



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/04819/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 15 January 2019**

**On 04 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**Y M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity should have been granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to make an order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent.

**Representation:**

For the appellant:

Mr P. Anderson, instructed by Virgo Solicitors

For the respondent:  
Officer

Ms J. Isherwood, Senior Home Office Presenting

## **DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 29 March 2018 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Hanbury ("the judge") dismissed the appeal in a decision promulgated on 31 August 2018. The judge summarised the appellant's immigration history and the basis of her protection claim [2-4]. He went on to summarise the respondent's reasons for refusal [5-6]. The judge summarised the evidence given by the appellant at the hearing and the submissions made by the legal representatives [7-11].
3. The judge outlined the correct burden and standard of proof [13] before going on to make his findings. He bore in mind that the appellant was not required to provide corroborating evidence and that the evidence must be considered in the round [16]. He reminded himself of the low standard of proof. He considered that the *"objective evidence shows that there have been prolonged protests in Ethiopia over the political, economic, social and cultural conditions in which people have to live. Unfortunately, these are met with arbitrary arrests, torture and ill-treatment by the authorities..."* [17]. The judge went on to give the following three reasons for rejecting the credibility of the appellant's account *"among the many discrepancies identified by the respondent"*:
  - (i) He did not accept the appellant's explanation for failing to claim asylum at the earliest opportunity in a safe third country i.e. France. He rejected her claim that she was under the control of the agent because she said in interview that she was not afraid of the agent [19].
  - (ii) The judge found that it was implausible that the appellant's father would have been able to continue work as a teacher if his son was suspected of activities with PG7 or Ginbot 7. He noted that the appellant claimed that her brother was arrested as long ago as November 2013. He found that it *"seems highly unlikely that, for example, the appellant's brother's wife would have been able to live in Ethiopia following the arrest of her brother by the authorities."* [20].
  - (iii) The judge also found the appellant's account of having escaped from custody inherently implausible. He found that it was unlikely that she would be able to escape on payment of a bribe if she had been arrested because of her brother's activities [21].
4. The judge was not satisfied, even on the low standard of proof, that *"the events the appellant says took place in fact took place and believe that [they] are internally inconsistent as stated by the respondent and that this severely damages the appellant's credibility."* [22]. Having already rejected her account of past events, the judge went on to consider the evidence relating to the appellant's claimed activities for PG7 in the UK.

He was not satisfied that the evidence showed that the appellant had been active for PG7 in the UK or that her profile was such that it was likely to have come to the attention of the Ethiopian authorities [23-24].

5. The appellant appealed the First-tier Tribunal decision on the following grounds:
  - (i) The judge erred in attaching undue weight to his own opinion of the plausibility of the appellant's account without reference to background evidence: *HK v SSHD* [2006] EWCA Civ 1037 referred.
  - (ii) The judge erred by starting his credibility assessment with reference to section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 ("the AITC Act 2004")
  - (iii) The judge failed to give adequate reasons for his credibility findings.
6. Upper Tribunal Judge Grubb granted permission to appeal in the following terms:
  - "2. Grounds 1 and 3 are arguable. First, it is arguable, on the basis of the grounds, that the judge placed undue reliance upon the implausibility of her account when not accepting the truth of [that] account. It is arguable that the reasoning is not objectively sustainable. Secondly, the judge arguably does not clearly identify the inconsistencies relied on by the respondent and give adequate reasons for accepting them.
  3. Ground 2 is not arguable. The judge properly dealt with s.8 of the 2004 Act at [19]. He was entitled to regard the appellant's failure to claim asylum in France as damaging of her credibility."

### **Decision and reasons**

7. After having considered the grounds of appeal and the submissions made by both parties I conclude that the First-tier Tribunal decision involved the making of an error of law.
8. It was open to the judge to take into account the fact that the appellant did not claim asylum in a safe third country, but it is unclear what weight he placed on this issue given that it did not go to the core elements of her account of past events: see *SM (Section 8: Judge's process) Iran* [2005] UKAIT 00116.
9. It is unclear on what basis the judge concluded that the credibility of the appellant's account was undermined by the fact that her father was able to continue working as a teacher and that her brother's wife could remain in Ethiopia after his alleged arrest. The judge noted that the background evidence showed that political opposition was met with arbitrary arrests, torture and ill-treatment by the Ethiopian authorities but that does not lead to the inexorable conclusion that all family members of those who are of adverse interest to the authorities must be at risk in order for the appellant's account to be found credible. The appellant only had to prove

her case to a low standard of proof. No assessment was made as to whether it was plausible that the appellant's brother might have been arrested as claimed in light of the background evidence. The fact that her father and her brother's wife did not appear to have had problems might be relevant but was not necessarily determinative given the low standard of proof.

10. The third reason given for rejecting the credibility of the appellant's account of past evidence was the "inherent improbability" of her account of having escaped from custody. Again, this appears to have been drawn from the judge's own view of what was plausible without reference to whether it might be plausible to be released from custody on payment of a bribe in context of the conditions in Ethiopia. In *Y v SSHD* [2006] EWCA Civ 1223 Lord Justice Keene emphasised that a judge "must look through the spectacles provided by the information he has about conditions in the country in question."
11. Even if those findings were open to the judge to make, it is concerning that there is no balanced analysis of whether there was any evidence to support the appellant's claim. The judge adopted the reasons given in the decision letter without analysing them or considering whether the appellant's response to those points adequately addressed them. At [22] the judge concluded that he was not satisfied that the appellant had given a credible account of events before going on to consider the evidence relating to her claimed activities in the UK. The evidence of her activities in the UK should have formed part of a holistic assessment of all the evidence before coming to a balanced conclusion about the credibility of her account.
12. While some of the findings clearly were open to the First-tier Tribunal to make, others relied unduly on the judge's own view of the plausibility of the account without assessing whether it was plausible in the context of the background evidence relating to Ethiopia. The First-tier Tribunal failed to consider whether there was any evidence that might support the appellant's account. The First-tier Tribunal adopted the reasons for refusal without considering the appellant's response. For these reasons, I conclude that the credibility findings did not follow a sufficiently structured approach: see *KB & AH (credibility-structured approach) Pakistan* [2017] UKUT 00491.
13. The First-tier Tribunal decision involved the making of an error on a point of law. The nature and extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal.

## DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside and remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 28 February 2019  
Upper Tribunal Judge Canavan