



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

Appeal Number: PA/01561/2019 (P)

THE IMMIGRATION ACTS

Decided under Rule 34

**Decision and Reasons
Promulgated
On 13 July 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MOAZ [K]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISIONS, REASONS AND DIRECTIONS (P)

1. The appellant, a national of Ethiopia, has appealed to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 9.5.19, dismissing his appeal against the respondent's decision of 31.1.19 rejecting his claim for international protection.
2. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal on 16.7.19, on the basis that it was arguable that the First-tier Tribunal Judge materially erred in having found that the appellant's case was "on all fours" with the Country Guidance of MB (OLF and MTA-risk) [2007] Ethiopia UKAIT 00030 in relation to being of Oromo ethnicity and an OLF sympathiser who, following a demonstration in March 2016 had been arrested, detained, and released on payment of a bribe, the judge nevertheless concluded that there had been political changes in Ethiopia highlighted in the country background information relied on by

the respondent. Despite an expert evidence suggesting that it was “too soon” to determine whether the recent changes were for the better and whether it was safe for the appellant to return, the judge dismissed the appeal on the basis that because of those changes the appellant was no longer at risk on return.

3. The appeal had been originally listed for hearing at Field House on 27.3.20, a date which had to be vacated as a result of the COVID-19 pandemic. On 26.3.20 the Upper Tribunal issued directions proposing that the error of law issue should be decided on the papers without a hearing and provided for further written submissions.
4. The respondent’s Rule 24 response, dated 28.8.19, suggest that the grounds amount to a mere disagreement and that having considered the expert report and the background material the judge was entitled to find that the situation in Ethiopia had changed so that the appellant was no longer at risk on return.
5. On 5.5.20, the Tribunal received the appellant’s undated submissions/skeleton argument, highlighting that the sole issue is whether the First-tier Tribunal Judge was entitled to depart from the Country Guidance of MB in relation to risk on return. Reference was made to the Court of Appeal decision in SG (Iraq) [2012] EWCA Civ 212, which held that there needed to be “very strong grounds supported by cogent evidence” to justify departure from a Country Guidance case. It is submitted that the decision of the First-tier Tribunal does not identify any such strong grounds and cogent evidence and that none such was available to the First-tier Tribunal.
6. In response, after the expiry of the time limits set in the directions issued by the Upper Tribunal, the respondent concedes that in light of SG (Iraq) the First-tier Tribunal judge failed to provide adequate reasons for departing from MB. The respondent invites the Upper Tribunal to set aside the decision of the First-tier Tribunal, in the process preserving the factual findings that the appellant’s account of arrest and detention before leaving Ethiopia is accepted, and preserving the negative credibility findings at [11] to [12] of the impugned decision that the appellant’s claim to have engaged in *sur place* activities was not truthful (there being no challenge to this finding in the grounds of application for permission to appeal).
7. The respondent submits that as the only issue is risk on return and given that the Country Guidance is now 13 years old, the Upper Tribunal is invited to consider if this appeal is a suitable vehicle for fresh country guidance.
8. The appellant’s response received by email on 26.5.20 was to invite the Upper Tribunal to allow the appeal outright. In the alternative, the appellant agrees that this case is suitable as a vehicle for new Country Guidance and should be linked with the case of AAR, appeal reference PA/04592/2019, which is awaiting hearing on similar grounds.

9. Having made enquiries with those responsible in the Upper Tribunal, I am satisfied that this case is most unlikely to be accepted as suitable for Country Guidance. I also understand that whilst considerable work by all parties involved in AAR has taken place over several months, because of the COVID-19 pandemic that case is unlikely to be resolved before several further months have elapsed. In the circumstances, I consider that I should deal with this case here and now.
10. On the appellant's written submissions and the concession of the respondent, I am satisfied that the First-tier Tribunal erred in departing from the Country Guidance without having "very strong grounds supported by cogent evidence to do," and, in any event, failing to provide adequate cogent reasons for doing so. This is a clear error of law, obviously material to the outcome of the appeal. It follows that the decision cannot stand and must be set aside. I consider it appropriate to remake the decision in the appeal in the Upper Tribunal on the basis of the evidence, findings of the First-tier Tribunal, and concessions made more recently by the respondent, as set out above. In doing so, I preserve the factual findings of the First-tier Tribunal namely, the appellant's account of arrest and detention before leaving Ethiopia. I also preserving the negative credibility findings at [11] to [12] of the decision of the First-tier Tribunal, finding that there is no truth to his claims of *sur place* OLF activity.
11. Nevertheless, on the concession of the respondent and on the findings of fact of the First-tier Tribunal, I am satisfied that this is a case in which the appellant falls squarely within the Country Guidance risk criteria of MB. The appellant is conceded to be an Ethiopian national of Omoro ethnicity who was arrested and detained by the Ethiopian authorities on the basis of being an OLF sympathiser. The judge fully accepted those facts. There being before the Tribunal no country background evidence sufficient to amount to "very strong grounds supported by cogent evidence," to depart from the Country Guidance, the Tribunal has no alternative but to remake the decision in the appeal by allowing it on asylum grounds on the basis that the appellant will face a real risk of persecution on return to Ethiopia on grounds of his OLF sympathy and having previously come to the adverse attention of the authorities.
12. In the circumstances, it is not necessary to address the other avenues to international protection or human rights.

Decision

13. For the reasons set out out above, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remake the decision in the appeal by allowing the appeal on Refugee Convention grounds.

Signed DMW Pickup
Upper Tribunal Judge Pickup

Dated 29 June 2020