Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04171/2019

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 9 December 2020 *via Skype for Business*	**On 23 February 2021**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

TA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D. Forbes, Lifeline Options (OISC Representative)
For the Respondent: Mr T. Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to / not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents that I was referred to were, in addition to the materials already in the bundle for the First-tier Tribunal, additional background materials provided by the appellant and her updated witness statement. In addition, the

Secretary of State relied on her Response to an Information Request Ethiopia: Conflict in Tigray, *Reference Number: 11/20-042, 25 November 2020.*

The order made is described at the end of these reasons.

The parties said this about the process: they were content that the proceedings had been conducted fairly in their remote form.

1. This is an appeal against a decision of the Secretary of State dated 3 April 2019 to refuse the appellant's asylum and humanitarian protection claim. TA is a citizen of Ethiopia born in 1989. Her appeal was originally dismissed by First-tier Tribunal Judge O'Hagan in a decision promulgated on 12 July 2019. On 15 November 2019, I found the decision of Judge O'Hagan to have involved the making of an error of law and set it aside insofar as it related to a general, humanitarian protection risk faced by the appellant on grounds of her claimed ethnicity. Judge O'Hagan made substantive findings concerning the appellant's asylum claim which were not subject to a challenge by the appellant, and which I did not set aside. I directed that the appeal be re-heard in the Upper Tribunal, taking into account the preserved findings of fact.

2. My error of law decision may be found in the **Annex** to this decision.

3. Regrettably, it took some time to rehear the case due to the pandemic. The original remaking hearing had to be postponed, and the postponed resumed hearing to be adjourned on account of Mr Lindsay not having access to any of the respondent's papers. The matter was finally able to resume on 9 December 2020.

Factual background

4. By way of a preliminary observation, in this case there are different spellings of Amharic terms. For example, the term "Qemant", features in some of the materials as "Kemant" or "Qimant". Similarly, "Agew" is rendered "Agow", or "Agaw". Nothing turns on the different transliterations in use.

5. The appellant arrived in the United Kingdom on 24 November 2013. She was initially listed as a dependent to her husband's claim for asylum, made on the day of the family's arrival. That claim was refused on 11 February 2015, and her husband's appeal against that refusal was dismissed by Judge Butler on 9 November 2015. On 10 October 2018, the appellant made a claim in her own capacity. A screening interview took place on 10 October 2018. A substantive asylum interview took place on 19 February 2019.

6. At paragraphs 2 and 3 of my error of law decision, I summarised the background to the appellant's asylum claim in the following terms:

2. The appellant claimed that she was at risk of being persecuted on account of the political opinion that would be imputed to her as the wife of a former sergeant in the Ethiopian army. She claimed her husband had been forced to vote in favour of the ruling party, in breach of a prohibition against members of the military voting. She also claimed he was suspected to be a supporter of Ginbot 7, an opposition party who maintained to have won the disputed presidential elections in 2005 but were corruptly prevented from taking power by the ruling EPRDF Party. The appellant claimed that her husband had been arrested, detained and mistreated on account of his perceived association with Ginbot 7.

3. The second strand to the appellant's claim was that she was at risk as a member of the Agew tribe, which was engaged in extensive inter-tribal conflict with the Amhara tribe, and had led to mass internal displacement in Ethiopia.

7. The respondent accepted the appellant's claim to be Ethiopian but rejected the other aspects of her claim. While she was "given" the benefit of the doubt in respect of her claim to be a member of the Agew tribe, pursuant to paragraph 339L of the Immigration Rules, she was found not to have been "consistent" with her claims that the members of the tribe were suffering increased persecution, on the basis she failed to mention those developments in her screening interview. Her husband did not raise the points at his appeal, considered the respondent, thereby further depriving the appellant of credibility in this respect. In any event, the background materials do not suggest that the appellant's membership of the Agew people would place her at increased risk upon her return: see [46] of the respondent's refusal letter dated 3 April 2019.

8. The focus of this appeal is the second strand to the appellant's claim, namely whether she is entitled to humanitarian protection on account of the humanitarian situation in Ethiopia.

Legal framework

9. The appellant must demonstrate to the lower standard that she meets the criteria in paragraph 339C of the Immigration Rules to secure a grant of humanitarian protection, and/or that returning her to Ethiopia would breach the United Kingdom's obligations under the European Convention on Human Rights. To the extent the appellant relies on Article 8 ECHR, the balance of probabilities standard applies.

Documentary evidence

10. The appellant relied on the materials she relied upon before the First-tier Tribunal, plus additional material served pursuant to my case management directions in these proceedings. She relies on an updated witness statement, and a range of background materials, the salient contents of which I outline below.

The hearing

11. The appellant participated in the hearing through an Amharic interpreter. At the outset, I established that the appellant and interpreter could understand one another and communicate through each other.

12. The appellant gave evidence. She adopted both of her statements and was cross-examined. I will outline the contents of her evidence to the extent necessary to reach my decision and give reasons.

Discussion

13. I reached the following findings having considered the entirety of the evidence, in the round, to the applicable standard of proof.

Background materials

14. The context in which the appellant advances her case is the significant, and increasingly prominent conflict and unrest in the north of Ethiopia. Details pertaining to earlier stages of the conflict were before Judge O'Hagan, and the background materials before me confirm that the situation is dynamic, and that the conflict continues to escalate.

15. I am grateful to Mr Lindsay for serving on the tribunal and the appellant the respondent's document *Response to an Information Request Ethiopia: Conflict in Tigray*, 25 November 2020. It is an up to date collation of background materials. I have also based my analysis on the background materials provided by Mr Forbes for the First-tier Tribunal, and this tribunal, in particular the International Crisis Group's report *Bridging the Divide in Ethiopia's North*, dated 12 June 2020, which necessarily pre-dates the recent escalation in conflict, but sets out some of the longer-term context in more depth, and is a source document for the respondent's *Response to an Information Request*.

16. The Tigray region is a mountainous area in the north of the country, with a distinct, but not uniform, ethnic identity. It has its own forces and a regional capital. It lies immediately adjacent to the Amhara region, the appellant's home location.

17. The Tigray people were one of the dominant tribal influences in Ethiopian politics and governance for the 27 years leading up to 2018. The current Prime Minister, Abiy Ahmed, took office in 2018, and is said to have "purged" from his governing coalition many Tigrayans. Mr Abiy is a member of the Oromo tribe. This set in train the disputes leading to the current conflict. The provenance of the dispute is complex, relating to the many tribal and ethnic tensions in Ethiopia, and the full details are beyond the scope of this decision. But what is clear is that the situation is very sensitive, and volatile.

18. Mr Abiy recently postponed national elections, ostensibly on safety grounds due to the pandemic. The result is that he continues to hold office, despite his term having expired. The Tigray people consider his rule to lack legitimacy. Against the orders of the Abiy ruling coalition, the

Tigray region organised its own regional elections, which have been deemed to be illegal by the government. The Abiy government accordingly views those "elected" in the Tigray elections to be illegitimate. Both sides consider the other to be illegitimate. On 4 November 2020, Mr Abiy is reported to have ordered his forces to strike Tigray, triggering the mass displacement of persons in the northern region from which the appellant claims to originate, and retaliatory conflict by Tigray forces. Both sides to the conflict have extensive armed forces. The media have recognised the difficulty they have experienced in documenting what is taking place, due to information blackouts and difficulties accessing the territory, but the conflict has been described as the early stages of a descent into civil war. A six-month state of emergency in Tigray was declared by the Addis-based government. Rocket strikes and heavy fighting has been reported across large swathes of northern Ethiopia: see [3.3.1]. Air strikes and artillery fire over a large area in the Tigray region has been reported, as have retaliatory rocket strikes against large Ethiopian cities by Tigrayan forces. See [3.2.2] and [4.1.1.6]. Forces loyal to Mr Abiy are reported to be being aided by the Eritrean military.

19. There are reports of extensive civilian casualties, not all of which are readily attributable to collateral damage. See [3.4.1] which documents a reported massacre of Tigray people in the town of Mai-Kadra on 9 November 2020: see the Amnesty International report *Ethiopia: Investigation reveals evidence that scores of civilians were killed in massacre in Tigray state*, dated 12 November 2020, relied upon by Mr Forbes. The media have recorded reports that both sides are responsible for atrocities against civilians: see [3.4.5].

20. There reports that the humanitarian situation in Tigray is becoming urgent, with around 100,000 people displaced [4.1.1.8]. *France24* has reported a "full-scale" humanitarian crisis, and the Sudanese government estimates that 200,000 displaced Ethiopians could cross the border [4.2.2]. Some reports recorded 30,000 fleeing to Sudan in the initial two weeks alone [4.2.3], and the UNHCR recorded that over 40,000 had fled to Sudan by 24 November 2020.

21. The Amhara tribe are distinct from the Tigray people, and the Oromo people, of which the prime minster is a member, but it is by no means clear that the general tribal conflict taking place at the present time can readily be distinguished on simple tribal terms. The Abiy government has used forces from the Amhara region in the conflict [2.1.1.], [3.2.3], [3.2.3-1.1.6]. The Amhara region has long-standing disputes with the Tigray over land, reports suggest.

22. The International Crisis Group's June 2020 report documents the Amhara and Tigray conflict, which takes place in the adjacent north Ethiopian territory. The report states at page 5 that, "the [Amhara] dispute has mainly translated into a proxy conflict between the Amhara and *Qemant*, an ethnic minority community who were formerly widespread but now reside only in patches of north-western Amhara [the adjacent region to

Tigray], and who are believed by many Amhara to be backed by the TPLF [Tigray People's Liberation Front]." In March 2019, the United Nations Office for the Coordination of Humanitarian Affairs ("OCHA") issued a "*Flash Update"*, reporting that over 90,000 had become displaced in the Amhara region following tensions between the Amhara and Qemant communities.

23. Against that background, the appellant claims that she faces a heightened personal risk of indiscriminate violence as a result of the internal armed conflict in Ethiopia, for the purposes of paragraph 339C(iii) and 339CA(iv) of the Immigration Rules (humanitarian protection). She draws on Elgafaji v Staatssecretaris van Justitie Case C-465/07 at, for example, [39], contending that her personal characteristics as a member of the Agew tribe, of which the Qemant people are a subset, places her at a heightened risk. The appellant's case is that, in the context of the evolving conflict, her tribal identity increases her risk profile in the face of the indiscriminate violence taking place in Ethiopia.

The appellant's ethnicity

24. First, as I identified at [24] of my error of law decision, it is necessary to identify whether the appellant is a member of the Qemant/Agew tribe, as she claims.

25. Judge Butler's decision of 27 October 2015 found the appellant to lack credibility: see [45]. That finding was made in the context of the appellant's husband's claim arising from his claimed status as a member of the Ethiopian military; the appellant was found to have given false evidence to assist her husband's claim. The decision is my starting point, but several observations are relevant.

    a. First, my role is to reach a decision based on the entirety of the evidence in the case, taking the Judge Butler decision as my starting point but not necessarily the finishing point.

    b. Secondly, the appellant was not a party to the proceedings before Judge Butler. She was a witness. She lacked the ability to make submissions in her own capacity concerning her evidence.

    c. Thirdly, the basis of the appellant's claim in these proceedings is wholly distinct from her husband's in the Judge Butler proceedings. It is, as Mr Forbes noted in a letter to the respondent dated 22 February 2019, a *sur place* claim. It is a claim based on recent events, all of which post-date Judge Butler's findings.

    d. Fourthly, people lie for a variety of reasons. It would be an error to conclude that, just because a person may have lied in one context, they are incapable of uttering any (reasonably likely) truth in another. Mr Lindsay relied on MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 as authority for the

> proposition that the appellant's previous lies deprive her of all credibility, but as held by Sir John Dyson JSC at [32], it would be to fall into a trap to dismiss an appeal merely because an appellant has told lies.

26. Turning to the evidence in these proceedings, in a screening interview conducted on 18 October 2018, the appellant reported at question 1.13 that she was a member of the "Agow" tribe. At question 4.1, upon being asked "BRIEFLY" (emphasis original) to explain the reasons she would be unable to return to her home country, the appellant gave an account of being beaten and tortured by the Ethiopian police, "because of my husband". She also said that she feared "the government… I fear them because of my husband problem [sic]". At question 27 of her substantive asylum interview, the appellant gave further detail of the tribal problems with the Agew tribe and the Amhara people.

27. In her statement prepared for the hearing before Judge O'Hagan, the appellant used the following phrase:

> "We, the Agaw people, **and especially those of us termed "Kemant"** … have been like hostages in Amhara… We are a people, who without doing anything, can be blamed by Amhara nationalists for their failure to gain territory and increase power within Ethiopia." (Emphasis added)

28. Her husband's statement outlines his own Agaw ethnicity, adding that the term refers to a coalition of ethnic groups, including the "Awi, Kemant and Hamra". See the third unnumbered paragraph of his statement dated 19 June 2019. The husband did not give evidence, so the weight his written evidence attracts is limited.

29. In her oral evidence, the appellant said that she was a member of the "Awa" people, maintaining that she was not a member of the Qemant people directly. That is consistent with the expression of her identity in her second witness statement as coming from "Agaw Awi" in Amhara state. She explained that the Agew people in and around the Gondar region are Qemant, and that the Agew in Gojjam are called the Hamra. She stressed that she was not Qemant herself.

30. Mr Lindsay submitted that the appellant's evidence lacked credibility; whereas in her statement, she contended that she was "Qemant", in her oral evidence she adopted a different approach, as set out above. That was consistent with her performance before Judge Butler, submitted Mr Lindsay, where at [45], the judge documented the tribunal's view that the appellant had changed her evidence under cross-examination. Mr Lindsay also highlighted the appellant's assertions, in her second witness statement and under cross-examination, that certain of her husband's family have been arrested and imprisoned, contending that those assertions lacked credibility. I accept that the details were light, and that the appellant may well have exaggerated that aspect of her case. However, in the context of the unrest in Ethiopia, I cannot say with complete confidence that the appellant would not at least know of friends

and relations who have been impacted in that way. I accept that the appellant's evidence in this regard is light and so do not accept it, but I do not find that it deprives her testimony of credibility overall.

31. I find that, properly understood, in light of the number of other occasions the appellant has consistently maintained that she is a member of the Agew people, the appellant was not purporting to be a member of the Qemant in her statement. The phrase I have emboldened in paragraph 27, above, could bear several meanings. It does not necessarily mean that the appellant was purporting to be a member of the Qemant people herself. From the appellant's oral evidence, and the background materials concerning the composition of the Agew, which includes Qemant, I find she was referring to a subset within her own, broader, Agew people who identify as Qemant. Under cross-examination, the appellant said that she was referring to the problems experienced by the Agew people overall, and not just the Qemant. Nothing turns on her having not mentioned the (then only recent) escalation in conflict in her screening interview: she was specifically exhorted to outline her case "BRIEFLY". Applying the lower standard of proof, and bearing in mind the difficulties with translation, and the different grammatical constructions of the sentence in question, I find the appellant was not purporting to be a member of the Qemant people, but was merely referring to their existence within the broader ethnic subgroup of which she is also a member.

32. While Mr Lindsay submitted that the appellant lacked credibility, for the reasons I have set out above I find no inconsistency in the appellant's evidence. I find the appellant has not sought to mislead the tribunal on this point. Of course, Judge Butler found the appellant to lack credibility. However, those findings merely represent my starting point, and must be viewed subject to the observations outlined in paragraph 25, above. Whereas the appellant may well have sought to exaggerate in order to bolster her husband's asylum claim, and indeed has not challenged Judge O'Hagan's findings that her own asylum claim was not credible, this issue is a far more straightforward assessment of her own claimed ethnicity, assessed against the wider background materials and her own consistent account of the same.

33. I find that the appellant is a member of the Agew people from the Amhara region. There is clearly a high level of indiscriminate violence taking place in the adjacent Tigray region. Large numbers of people have been displaced from Tigray by the recent conflict, augmenting the humanitarian problems arising from the existing conflict in the Amhara region, and the conflict between the Amhara people and the Qemant: see the OHCR *Flash Update*, and the International Crisis Group report at page 5. As Mr Lindsay realistically accepted in submissions, the respondent's *Response to an Information Request* outlines extensive armed disputes and unrest in the north of the region: see pages 9 and 10.

34. I find that the appellant's status as a member of the Agew people, of which the Qemant are a member, enhances her risk profile in the northern

region. I find that there has been indiscriminate violence in the area, and that it is reasonably likely that the appellant would face a real risk of serious harm in the region. This finding is based on her ethnicity alone and not due to the claimed links she has with detained persons.

35. However, there is no evidence that the appellant would not be able to relocate internally to the south of the country. The conflict is in the north, and I have not been taken to any evidence demonstrating that internal flight elsewhere in Ethiopian would not be an option. I accept that large numbers of people from the Tigray region, and some from Amhara, have become internally displaced, with many fleeing to neighbouring Sudan and Eritrea. However, in the absence of further or detailed background materials concerning the availability of internal flight within Ethiopia, there is no evidence that it is reasonably likely that the appellant would not be able to locate elsewhere. The appellant would not have to be returned directly to her home region. She could be returned to Addis Ababa. I accept that large numbers of internally displaced persons from the north of the country are likely to place additional hurdles before the appellant and her family when seeking to establish a home elsewhere in the country. However, there is no evidence before me that it would be unduly harsh to expect the family to relocate internally.

Article 8

36. Plainly, the appellant's removal would be an interference with her private life and her family life. Although the family would be likely to be removed as a single unit, for the reasons set out below, the impact on the nature and quality of family life would be such that, although family life would continue, it would nevertheless be subject to an interference. The interference would be of the gravity to engage the operation of Article 8. It would be in accordance with the law, and, in principle, capable of being regarded as necessary in a democratic society. The essential question is whether the interference in the appellant's private and family life that removal would entail would be proportionate to the legitimate public end sought to be achieved.

37. The appellant has three children. Her eldest daughter was born on 15 March 2013 and accompanied the appellant and her husband upon their arrival here on 24 November 2013. By the time of the hearing on 9 December 2020, she had been in the United Kingdom for a period exceeding seven years. She is a "qualifying child" for the purposes of section 117B(6) of the Nationality, Immigration and Asylum Act 2002. That subsection provides:

> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> > (a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

There is no suggestion that the appellant is not in a genuine and subsisting relationship with any of her children.

38. The appellant's son and younger daughter were born here on 12 April 2014 and 23 December 2016 respectively.

Best interests of the children

39. When determining the best interests of a child, all relevant factors must be taken into consideration. Children should not be held responsible for their immigration status, nor should the actions of an adult be held against them. Ordinarily, when determining the best interests of children in the position of those in these proceedings, one would consider the nationality of their parents, and ask the "real world" question of where should the children's parents be? In the present matter, neither the appellant nor her husband hold leave to remain in this country. They are Ethiopian, and lived there for their entire lives before moving here. The children are Ethiopian, too. The appellant had to give evidence through an interpreter, suggesting that she is more comfortable speaking Amharic than English, although I accept that she speaks some English. It is more likely than not that the children speak Amharic at home with their parents. But for any considerations to the contrary, the best interests of the children would be to return to Ethiopia, with their parents.

40. However, any assessment of the best interests of the child must take into account all relevant circumstances and entail a personalised assessment of the facts applicable to the children. In the present matter, there is extensive conflict in Ethiopia, preventing the appellant and her children from returning to their home area, where there is a real risk of indiscriminate violence. There are large numbers of internally displaced persons, and thousands have fled abroad. Returning to Ethiopia at the present time is likely to present particular challenges to a family in the position of this appellant and her children, even though, from the humanitarian protection perspective, her relocation would not be unduly harsh; the thresholds are not the same. I find that it is not compatible with the best interests of the children in these proceedings for them to be expected to return to Ethiopia at the present time. Two of the children were born here and have only known life in this country. The eldest child came here as a very young baby and has lived here for over seven years. In those circumstances, their best interest to remain with their parents in this country. It is not in their best interests to return to Ethiopia at this time.

Section 117B(6) of the Nationality, Immigration and Asylum Act 2002

41. What is "reasonable" for the purposes of section 117B(6) in relation to the eldest child must be construed by reference to her best interests, which are to remain here. Accordingly, I find that it is not in the eldest child's

best interests for her mother to be removed, as it would not be reasonable to expect the child to leave the United Kingdom for Ethiopia.

42. Pursuant to section 117B(6), the public interest does not require the appellant's removal, and it would, therefore, be disproportionate for the purposes of Article 8 ECHR to remove her. The appeal is allowed on Article 8 grounds.

Notice of Decision

The appeal is dismissed on humanitarian protection grounds.

The appeal is allowed on human rights grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Stephen H Smith* Date 18 January 2021

Upper Tribunal Judge Stephen Smith

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee for the following reason. The appellant has succeeded on a different basis to that originally advanced to the respondent.

Signed *Stephen H Smith* Date 18 January 2021

Upper Tribunal Judge Stephen Smith

Annex – Error of Law Decision

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04171/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 October 2019	**15 November 2019**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

TA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D. Forbes, OISC Representative, Lifeline Options
For the Respondent: Mr T. Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, TA, is a citizen of Ethiopia, born 28 November 1989. She appeals against a decision of First-tier Tribunal Judge O'Hagan promulgated on 12 July 2019, dismissing her appeal against a decision of the respondent dated 3 April 2019 to refuse her asylum and humanitarian protection claim.

Factual background

2. The appellant claimed that she was at risk of being persecuted on account of the political opinion that would be imputed to her as the wife of a former sergeant in the Ethiopian army. She claimed her husband had been forced to vote in favour of the ruling party, in breach of a prohibition against members of the military voting. She also claimed he was suspected to be a supporter of Ginbot 7, an opposition party who maintained to have won the disputed presidential elections in 2005 but were corruptly prevented from taking power by the ruling EPRDF Party. The appellant claimed that her husband had been arrested, detained, and mistreated on account of his perceived association with Ginbot 7.

3. The second strand to the appellant's claim was that she was at risk as a member of the Agew tribe, which was engaged in extensive inter-tribal conflict with the Amhara tribe, and had led to mass internal displacement in Ethiopia. She provided a number of background materials to support this aspect of her case. She claimed the security situation was such that, combined with the absence of effective State protection, she faced a risk of being persecuted on this account.

4. The judge dismissed the appellant's appeal on the basis that her husband's own asylum claim had been refused, and his appeal against that refusal was dismissed by First-tier Tribunal Judge Butler in a decision and reasons promulgated on 27 October 2015. Judge Butler's decision provided the starting point for the findings of fact reached by the judge, he found, and the appellant had provided no basis to depart from those earlier findings (see [37]). There is no challenge to those findings of this judge.

5. The judge found there was nothing to demonstrate that the appellant was personally at risk on account of her Agew ethnicity. He noted there were no country guidance cases concerning the risk faced by the Agew tribe in Ethiopia; the most recent Country Policy and Information Note issued by the respondent dealt with the Oromo community, not the Agew tribe: see *Oromos including the 'Oromo Protests' – Ethiopia, November 2017*. The appellant contended that the *Oromo* note was out of date, and that the Oromo were now the dominant group in the federal government. The judge said at [41] that that he had considered whether the:

> "objective evidence supports the claim that members of the Agew tribe are at risk in Ethiopia. Having checked, there are no reported country guidance cases which would support this claim…"

He went on to conclude, "no CPIN has been issued by the respondent to support the claim that she would be at risk as a member of the Agew tribe."

6. At [42], the judge stated that the background material provided by the appellant was of "little merit for the most part." He found that some of the

background materials were from "obviously unreliable sources", including Wikipedia and articles from the BBC. He added:

> "what is wholly lacking is any report from a reputable source such as the UNHCR or a qualified country expert which addresses the overall position of the Agew in Ethiopia."

Permission to appeal

7. Permission to appeal was granted by First-tier Tribunal Judge Scott Baker on the basis that the judge had arguably overlooked and misinterpreted some of the background materials in the appellant's bundle. Judge Scott Baker considered that, although the judge's analysis of some of the background materials was open to him on the evidence before him, he arguably failed to have regard to the UN Office for the Coordination of Humanitarian Affairs ("OCHA") report, which featured at page 42 of the appellant's bundle.

Discussion

8. There has been no challenge to the judge's findings in relation to the appellant's risk profile on account of her husband's claimed imputed political opinion.

9. The focus of Mr Forbes' submissions related to the judge's analysis of the background materials concerning the risk of inter-tribal violence in Ethiopia. He submitted that there are more internally displaced persons in Ethiopia than in any other country in the region, and that the materials before the judge demonstrated that there had been a recent and significant deterioration in the situation. He relied specifically on the contents of the OCHA report at page 42 and following of the bundle. The grounds of appeal were also critical of the judge's dismissal of the reliability of certain of the other background materials, on essentially rationality-based grounds.

10. Mr Lindsey submitted that the judge reached a decision that was open to him on the facts. He accepted that the judge did appear to have overlooked the OCHA report but maintained that any errors on that account were not such that the decision should be set aside.

11. I find the judge erred in his consideration of the background materials for the following reasons.

12. First, the judge appeared to consider that his analysis of the background materials was something that he was to conduct on the basis of his own, pre-existing knowledge or impression of those materials. The judge stated that he had little awareness of some of the materials in question and, accordingly, did not engage with their detail, and ascribed minimal weight to them. The judge commented that some of the materials were from "obviously unreliable sources." He added that, "there were few [background materials] of which I have any existing experience or

knowledge…" Even articles by the BBC ("those few of which I have some experience"), "can contain errors", he said. See [42].

13. Judges should not perform their fact-finding roles on the basis of their pre-existing knowledge or impressions of the sources of information. Of course, personal knowledge of the judge can play a part in such analysis, although fairness is likely to demand that if a judge has particular knowledge of an area, that he or she reveals that to the parties at the hearing, if that pre-existing knowledge is to form part of the tribunal's later operative reasoning. Indeed, many judges develop particular expertise in the factual matters that frequently arise in the Immigration and Asylum Chamber, and the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 expect the specialist expertise of the tribunal to be used appropriately when dealing with cases fairly and justly: see rule 2(2)(d). However, the task of the tribunal in analysing background materials should not be based primarily upon, and is not limited to, the personal knowledge the judge may happen to have of the factual issues under consideration.

14. The proper approach to the analysis of background materials in an unfamiliar area includes steps such as the consistency of their contents with other materials, their internal consistency, and rigorous scrutiny of their contents. Often statements in background materials which are obviously opinion can be distinguishable from those which purport to be made in reliance on some form of evidential basis. Where an evidential basis is proffered or cited by the materials in question, the weight to be ascribed to the analysis depends on the nature of the evidence citied, and an assessment of the document in the round.

15. That some articles or materials "can contain errors" is, of course, a reality of the lower standard of proof applicable to asylum proceedings. The possibility of reaching positive findings of fact on the basis of documents that "can contain errors" is embedded within the reasonable likelihood standard of proof. The mere possibility of errors in articles is not a reason to refuse to engage with those materials, still less a reason to find them to be wholly unreliable. To aspire to the omission of errors would be to apply a standard of proof which greatly exceeds the lower standard applicable to protection appeals.

16. The second reason why the decision involved the making of an error of law is because the judge failed to have regard to material factual matters that were actually before him. Having said that what was "wholly lacking" was a report from a "reputable source such as the UNHCR", the judge overlooked that there was precisely such a document in the bundle: the OCHA *Flash Update* concerning the Qemant people.

17. Central to Mr Forbes' submission is the proposition that the appellant, as a member of the Agew tribe, would also be regarded as a member of the Qemant people. In her statement, the appellant describes how, as a

member of the Agew tribe, she also may be described as a member of the "Kemant" [sic] community. See the fifth unnumbered paragraph:

> "In paragraphs 43-46 of the reasons for refusal the caseworker seems to be saying that he does not believe that I am Agew and that, even if I were, I would not be at risk as I have not been involved in protests. But, this does not take into account the events which happened in Ethiopia since I left in 2013 in particular from 2015 to today (2019). We, the Agaw [sic] people, and especially those of us termed "**Kemant**"... [sic] have been like hostages in Amhara... We are a people, who without doing anything, can be blamed by Amhara nationalists for their failure to gain territory and increase power within Ethiopia." (Emphasis added)

18. In his statement at page 6 of the bundle, the appellant's husband describes his tribal identity, and that of his wife as being the "Agaw-Kemant" people. See the first unnumbered paragraph:

> "...there is an ongoing border dispute between the Amhara and the Tigrayans with our ethnic group, the **Agaw-Kemant** people, who claim our own separate identity, caught in the middle [of the inter-tribal conflict described elsewhere in the statement]..." (Emphasis added)

Similarly, in the second paragraph, the appellant's husband writes:

> "Some terrible atrocities have happened to **Agaw-Kemant**, especially in February this year when hundreds of our families were burned to death inside their houses and thousands of others became internally displaced peoples." (Emphasis added)

19. The significance of the appellant and her husband identifying as members of the Qemant community is that it links the claimed ethnic status of the appellant with background material from a well-respected international organisation which featured in the appellant's bundle.

20. The OCHA Report dated 1 March 2019 is titled *Amhara Flash Update*. It summarises humanitarian disturbances in the Amhara region of Ethiopia, and difficulties between the Amhara and Qemant communities, which are described as having "spiked" in September 2018.

21. The document begins with the following executive summary:

> "More than 90,000 people are currently displaced in Amhara region, the majority since September 2018. The IDPs are living with host communities (70%) and in temporary, sub- standard settlement sites (30%).
>
> The IDPs lack adequate access to basic services such as food, water and sanitation, education, health, shelter and livelihoods. The most pressing need articulated by IDPs is security and protection, followed by food, shelter and household items.
>
> Nearly all IDP sites in central Gondar are accessible, while some sites in West Gondar remain inaccessible due to security concerns on the road.

> Basic social services (schools, health, and other government services) were suspended due to insecurity.
>
> NDRMC started dispatching food and non-food relief supplies to Central and West Gondar since 12 February, but needs surpass resources available.
>
> Central and West Gondar zones are historically less affected by climate variability (drought/flood) and the smallholder farmers are, for the most part, able to sustain themselves. For this reason, there is absence of humanitarian partners in the areas, which is posing a significant challenge in the current situation."

The remainder of the document expands upon the above summary.

22. Mr Lindsay realistically accepted that the judge appeared to fall into error by failing to consider the OCHA report. Given the appellant's association of her ethnic identity with the Qemant people, the judge's dismissal of the race-based persecution limb of the appellant's asylum claim for a lack of background materials was irrational, I find. That is not to say the judge would have been bound to accept the appellant's case. But it is to say that it was necessary for the judge to engage with those materials.

23. The judge accordingly fell into error by basing his analysis of the documents on his own pre-existing knowledge (or lack of knowledge) of their contents and provenance, which was an irrelevant consideration. The judge also failed to engage with the contents of the documents, and so fell into error by failing to give sufficient (i.e. any) reasons for dismissing the race-based limb of the appellant's case. These are not simply disagreements of fact; they were errors of law arising from the judge's irrational reasoning. The judge failed to have regard to relevant considerations.

24. I find that the above errors were such that the decision needs to be set aside. Taken together, the news reports and the OCHA report demonstrate that there has been considerable tribal unrest and conflict in the Amhara region. Further findings of fact are necessary, to explore the impact of that conflict upon the likely risk profile of the appellant upon her return, in the context of the well-documented existing internal displacement in Ethiopia. In turn, that will inform consideration of whether there will be effective state protection available to the appellant and her husband, and whether internal relocation would be reasonable. It may be necessary to find whether the appellant is a member of the Qemant/Agew subgroup, as she claims.

25. The above matters will be determined by the Upper Tribunal.

26. This appeal is allowed to the extent set out above.

Notice of Decision

The decision of Judge O'Hagan involved the making of an error of law and is set aside.

The findings of Judge O'Hagan concerning the appellant's claimed risk of persecution on account of her imputed political opinion are preserved.

The appeal will be re-heard in the Upper Tribunal.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Stephen H Smith* Date 14 November 2019

Upper Tribunal Judge Stephen Smith