



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-000454

First-tier Tribunal No: PA/51604/2021
IA/03521/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 22 December 2023**

Before

**UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

AD (ETHIOPIA)
(ANONYMITY ORDER MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant
Respondent

Representation:

For the Appellant: Mr R. Spurling, Counsel instructed by J D Spicer Zeb
For the Respondent: Ms S. McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 11 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is the remaking decision of the Upper Tribunal in respect of the Appellant's Refugee Convention appeal against the refusal decision of the Respondent dated 6 March 2021.
2. This decision should be read in line with the Upper Tribunal's error of law decision dated 29 June 2023.

The relevant background

3. The Appellant made his claim for asylum and humanitarian protection on 23 October 2017. The Respondent decided to grant the Appellant Leave to Enter on the basis of accepting that returning him to Ethiopia would breach the Respondent's Humanitarian Protection rules: the Leave is extant until 4 March 2026.
4. The Respondent however refused the Appellant's asylum claim. In reaching that conclusion the Respondent accepted that the Appellant is Ethiopian and had previously been a supporter of Ginbot 7 in that country and had handed out leaflets as part of his political involvement.
5. The Respondent went on to conclude that the Appellant had not provided credible evidence that he and his father were arrested by the authorities because of their support of Ginbot 7 and/or because of their belief that their home area of Welkait belongs to the Amhara people and not the Tigray people.
6. The Respondent also rejected the Appellant's claim to have escaped detention; he also disbelieved his claim that he was sentenced to 20 years imprisonment in absentia. The Respondent furthermore concluded that available background evidence showed a material change of circumstances in Ethiopia since the new presidency of Ahmed Abiy meaning that the Appellant would not face a real risk of persecution/serious harm in respect of his former support for Ginbot 7.
7. The Appellant appealed the decision to the First-tier Tribunal. The decision of Judge Plowright (made on 3 September 2021) has been subject to close scrutiny in the earlier error of law decision of the Upper Tribunal, but for the purposes of this decision:
 - a. The Upper Tribunal accepted the concession made by the Respondent's representative that the First-tier Tribunal Judge had made material errors in respect of his assessment of risk on return (at §§71 to 74 of the First-tier Tribunal decision), see §10 of the Upper Tribunal's error of law decision.
 - b. The Upper Tribunal however rejected the Appellant's challenge to the adverse findings of fact made by the Judge. Again, in summary, the Judge concluded that the Appellant was not a reliable witness about his claim to have been identified by the Ethiopian authorities,

arrested, detained and sentenced in his absence to 20 years imprisonment.

- c. The Upper Tribunal therefore set aside the decision of the First-tier Tribunal judge but preserved the adverse credibility findings made at §64 of the First-tier's decision.

The Upper Tribunal hearing

- 8. There has been unfortunate delay in hearing the remaking appeal. The previous hearing date marked for the substantive remaking was converted to a CMR due to the Appellant failing to comply with previous directions in respect of further evidence.
- 9. At the hearing before us, there was also non-compliance by the Respondent who failed to provide a skeleton argument as he was directed to do by 9 October 2023.
- 10. In preliminary discussions with the representatives, we established that the Appellant had in fact complied with the direction for a skeleton argument albeit that this document had not been reproduced in the papers before us.
- 11. Mr Spurling therefore forwarded his skeleton argument dated 9 October 2023 to the panel. We also note that Ms McKenzie had had sight of the document in advance of this hearing.
- 12. Mr Spurling also indicated that, despite his instructing solicitors requesting the Upper Tribunal to provide an Amharic interpreter, the Appellant was not in fact attending the hearing and therefore there would be no oral evidence. We have to express some discontent at the waste of public money caused by the booking of an interpreter on the request of the Appellant who then, for reasons which are not explained to us, decided not to attend.
- 13. We therefore heard oral submissions from both representatives with the Appellant's counsel having the final word.
- 14. In brief, Ms McKenzie argued the following:
 - a. The report of Dr Allo should be given little or no weight due to its very general nature and its unduly speculative conclusions. Ms McKenzie also submitted that some of the evidence relied upon in the report was from outdated articles and reports. Furthermore, she argued that the expert had not been endorsed by the Upper Tribunal in any previous decision.
 - b. Additionally, Ms McKenzie took us to one of the articles relied upon in the Appellant's skeleton argument bundle (C): 'The New Humanitarian: Unresolved status of western Tigray threatens Ethiopia's peace deal' (dated 26 September 2022) and argued that the Appellant's home area was in fact being governed by a group made up of Amhara

people. Ms McKenzie therefore averred that the Appellant would not be at risk because he would be living amongst people who have the same political opinion as him. Ms McKenzie also relied upon para. 118 of Dr Allo's report to emphasise this point.

- c. Ms McKenzie contended that the Appellant would otherwise not be in a different situation as compared to any other person in Ethiopia and re-emphasised that the Appellant's claim to have had an adverse political profile in Ethiopia had not been accepted by the First-tier Tribunal.
 - d. Ms McKenzie also criticised Dr Allo's report in respect of his opinion about the Ethiopian authorities alleged surveillance of diaspora activities and asserted that there was insufficient evidence to establish that the Appellant would be known in respect of his attendance at demonstrations in 2018 & 2019.
15. We do not summarise Mr Spurling's submissions at this stage as we deal with them in our findings and reasons below.

Findings and reasons

- 16. In coming to our conclusions, we have had careful regard to the Upper Tribunal's stitched bundle of 794 PDF pages which consists of the material from the First-tier Tribunal including the decision of Judge Plowright and the further evidence provided by the Appellant after the error of law decision in June 2023.
- 17. For completeness, the additional material consists of an objective Appellant's bundle dated 25 July 2023 consisting of 291 pages and a subjective Appellant's bundle dated 4 October 2023 of 219 pages.
- 18. Separately from the stitched bundle, we have also taken into account:
 - a. The Respondent's position statement dated 11 September 2023.
 - b. The Respondent's 'Response to an information request, Ethiopia: EZEMA Party situation update', (29 August 2023).
 - c. The Respondent's 'Response to an information request, Ethiopia: Attitudes towards ethnic Welkait, and the contested Welkait region', (24 August 2023).
 - d. The Respondent's 'Response to an information request, Ethiopia: Attitudes towards returnees', (24 August 2023).
 - e. The Appellant's expert report from Dr Allo, dated 10 August 2023.
 - f. The Appellant's skeleton argument for the Upper Tribunal substantive hearing dated 9 October 2023, including the full versions of the

additional background evidence relied upon by counsel (amounting to 95 pages).

- g. The report of the International Crisis Group ‘Ethiopia’s Ominous New War in Amhara’, (dated 16 November 2023).
 19. Again, for completeness, we should add that we identified the potential relevance of the International Crisis Group report (16 November 2023) to both representatives at the beginning of the hearing. We did this because, at that stage, we were unaware that Appellant’s counsel had provided a skeleton argument with additional updated background evidence in compliance with directions postdating the expert’s report in August 2023. This was important because the expert had noted that the Council of Ministers in Ethiopia had declared a state of emergency in the Amhara region on 4 August 2023 after irregular Amhara forces took control of towns in that area [paras. 115 – 116]. We therefore considered it important that the Upper Tribunal have sight of more up-to-date material.
 20. We gave additional time to both representatives to read and digest the report before delivering their competing submissions.
- The accepted parts of the Appellant’s claim***
21. In respect of our findings, we must firstly start by identifying aspects of the Appellant’s claim which have already been established/accepted:
 - a. The Appellant was a supporter of Ginbot 7 when he resided in Ethiopia; he is a supporter of Amhara rights.
 - b. The Appellant does not have a *material history* in Ethiopia, in other words he has not historically been identified and/or mistreated by the Ethiopian authorities.
 - c. The Appellant has attended two demonstrations in the UK for the Patriotic Group 7 and one associated reception ceremony welcoming Andargachew Tsige on 16 June 2018. The Appellant was also in London in 2019 relating to high-ranking Amhara officials and for Amhara women kidnapped in Ethiopia.
 22. We also add that the Respondent has accepted that returning the Appellant to Ethiopia would result in a breach of the Respondent’s Humanitarian Protection rules (para. 339C). We consider that we have not been given particularly helpful assistance by the Respondent on this point. It is clear that the Judge of the First-tier Tribunal had precisely the same difficulty (see para. 13 of the decision) in which it is recorded that the Presenting Officer explained that Humanitarian Protection was granted to the Appellant on the basis of general country conditions in Ethiopia.
 23. In the hearing before us, Ms McKenzie was only able to add that the grant was on the basis of the test formerly in Article 15C of the Qualification Directive (2011/95/EU) and incorporated domestically in para. 339C(iii) read

with para. 339CA(iv): *serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*

24. We find that it is inappropriate for the Respondent to fail to provide adequate explanation for a decision to grant Leave to Remain/Enter in a case where another aspect of the claim has been refused. We fully recognise that the assessment of the Refugee Convention is, by law, a different legal consideration from that of Humanitarian Protection but nonetheless there is potentially some overlap.
25. Indeed, the position before the Upper Tribunal is still unclear even though we now understand that the grant of Leave was based upon para. 339C(iii) (read with para. 339CA(iv)) – frankly we are none the wiser as to whether the Respondent reached this decision on the basis of the general conditions for all civilians in Ethiopia or because of features of the Appellant's own personal characteristics set into the context of the ongoing internal armed conflict, applying the sliding scale in Diakite v Commissaire général aux réfugiés [2014] WLR(D) 37.
26. Ultimately, we conclude that the Appellant has not been procedurally disadvantaged in this case but nonetheless we consider it important to remind the Respondent of the importance of furnishing applicants/appellants with sufficient information to understand the nature of **all** material decisions made in respect of such claims.

The Respondent's criticism of Dr Allo's report

27. Before we lay out our conclusions as to the current circumstances in Ethiopia and the Appellant's home area of Welkait, we should firstly deal with the Respondent's criticism of Dr Allo's expert evidence (dated 10 August 2023):
 - a. We reject Ms McKenzie's submission that less weight should be given to the instant report because the expert has not been "endorsed" by the Upper Tribunal. Ms McKenzie did not direct us to any law or jurisprudence to support this submission and we consider it to be incorrect. Instead we have assessed whether the expert has compiled his report in accordance with the Ikarian Reefer guidance as reiterated by the Supreme Court at §§46-59 of Kennedy v Cordia (Services) LLP (Scotland) [2016] UKSC 6.
 - b. We also find that the Respondent has not provided any evidence/authority to suggest that the Upper Tribunal should automatically be wary of Dr Allo's expertise or independence.
 - c. Whilst we, to some extent, accept Ms McKenzie's submission that *some* of Dr Allo's sourcing is relatively old (especially in the context of the Ethiopian state's capacity to monitor diaspora activities), we find that Dr Allo's expert view on the complex issues relating to the ethno-political disputes in Welkait and across the Amhara region is up-to-

date and, as we detail later, his conclusions at para. 131 about the likely consequences of the ongoing conflict between the Ethiopian government and forces within the Amhara regional state are measured and evidence based.

- d. We therefore also reject Ms McKenzie's assertion that Dr Allo's report was overly general - in our view the complexity of the current circumstances justified the expert's use of historical material. We also conclude that the expert's "speculation" was not excessive and fully in compliance with the limits advised by the Upper Tribunal in EM and others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) at §259, albeit that the assessment of what is reasonably likely is ultimately the task of the Tribunal:

“...The fact that it is reasonably foreseeable something may occur, whilst constituting a matter within the scope of the holistic assessment, will not necessarily play a determinative or even significant part in the finding of whether there exists a real risk to a person. The significance of the reasonably foreseeable state of affairs will depend upon a number of interrelated factors, including the predicted point in time at which the event may occur, the likelihood of its occurring and the directness and degree of its impact on the person concerned.”

- 28. For completeness, we raised with Mr Spurling Dr Allo's apparent application of the Court of Appeal's decision in YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360 at para. 58 which appeared to be an example of the expert veering into the territory of behaving as an advocate. We accept Mr Spurling's submission that this is not a matter which materially impacts upon Dr Allo's overall objectivity and that Dr Allo had provided an evidential basis for his conclusions such as to make the reference to YB unnecessary in any event.

The situation in Welkait (Western Tigray)

- 29. As we have already indicated, the current situation in northern Ethiopia (which includes the Appellant's home area of Welkait) is complex. We do not need to give an extensive history of the circumstances there other than to record that we find the following based on all of the evidence before us:

- a. Western Tigray, which the Amhara people call Welkait, was occupied by the Tigray People's Liberation Front ("the TPLF") in the 1970s. The TPLF went on to dominate the ruling coalition which introduced the current federal system and granted the territory to the Tigray people in 1995.
- b. In recent times there has been a resurgence in Amhara ethno-nationalist identity which has led to a serious dispute between the Amhara and the Tigray as to rights to Welkait (Western Tigray).

- c. As a consequence of the civil war between the TPLF and the Federal government which began in November 2020, the Amhara region's paramilitary force and an Amhara militia called "Fano" fought alongside Federal troops annexing Western and Southern Tigray (Raya). The new zone was governed by the Amhara under the name of Welkait-Tsege-Setit-Humera.
- d. The annexation of Western Tigray during the 2020-2022 period led to charges of ethnic cleansing including the forced displacement of hundreds of thousands of people and extreme violence including rape.
- e. There are also accusations of violence carried out by Tigrayan rebel forces in the area.
- f. After the initial victory of the joint Federal and Amhara troops over the Tigray forces, intense fighting then broke out between the Fano militia and the Ethiopian National Defense Force ("ENDF") due to the government's desire to centralise control in the region by integrating Amhara forces into the police and national army.
- g. This move by the Ethiopian government came as part of the peace deal negotiated with the TPLF in 2022: the Pretoria Peace Agreement (reached on 2 November 2022) did not include the Amhara and said nothing specifically about control of Welkait. It is currently unclear how President Abiy's government will seek to resolve this crisis.
- h. The Ethiopian government launched a crackdown against the Fano leading to the arrest of more than 4000 people, including journalists, activists and a former general.
- i. Overall this has led to the alienation of large numbers of Amhara people and a breakdown in the coalition between the Amhara and President Abiy's government. The Amhara have also accused the President (who is of the Oromo ethnicity) of allowing Oromo militants to massacre Amhara civilians in Oromia.
- j. The government's calls for regional paramilitary groups to disarm in April 2023 led to as many as 50% of these groups retreating to the countryside to join the Fano rebels.
- k. Fighting then broke out across Amhara in August 2023 leading to the declaration of a 6-month state of emergency on 4 Augst 2023; Fano were pushed back by the ENDF - the ENDF retain control of the major towns in the Tigray region.
- l. The crackdown by the Federal government also led to a number of Amhara residents of Addis Ababa being arrested.
- m. The mixed Amhara irregular forces are maintaining an unpredictable guerilla war against Federal forces.

30. We add that in respect of who currently controls Welkait, the evidence is somewhat opaque which is understandable bearing in mind the turmoil the area has experienced in recent years. We have noted that only part of the Amhara special forces amalgamated into the Federal army after the call to disarm in April 2023. We have also recorded the actions of the Federal government in driving back the Fano/Amhara incursions into the Amhara region and the 6-month state of emergency.
31. Mr Spurling agreed that there is uncertainty over who controls Welkait but that the uncertainty was part of the risk faced by the Appellant.
32. We have therefore concluded, applying the lower standard of proof, that Welkait is currently under the control of mixed Federal and Amhara forces still loyal to the government. This appears to be consistent with the expectations of the experts referred to by the German Federal Office for Migration and Refugees as relied upon by the Respondent in the 'Ethiopia: Attitudes towards ethnic Welkait, and the contested Welkait region' COI response, at para. 1.2.3.

Risk on return

33. In light of this finding, we also conclude that the Appellant would face a real risk of persecution in his home area of Welkait.
34. We have reached that conclusion on the basis that, although the Appellant has no current profile in Ethiopia, he is nonetheless accepted to be a supporter of the exiled Ginbot 7 movement (and later iterations of this group). The evidence in the International Crisis Group report (16 November 2023) suggests a perceived association between Ginbot 7 and the broader Fano forces who are fighting the Federal government.
35. In that respect we note that the Respondent has generally argued in this case (and other similar ones) that the Presidency of Ahmed Abiy (from 2018) has led to a material improvement in the political/security conditions in Ethiopia. The Appellant contests this by reference to the detailed view of Dr Allo that such a period of liberalisation was small and that the government has regressed into its past behaviour of intolerance of political opposition.
36. We find that the Appellant has established that the Respondent's case of a material change since 2018 is simply not made out. We find that the Respondent's evidential argument in this case is, in effect, the same submission which was rejected by the Upper Tribunal in the Country Guidance of Roba (OLF - MB confirmed) Ethiopia (CG) [2022] UKUT 1 (IAC):

"38. Upon assuming office in 2018, Prime Minister Abiy committed to opening the country politically and economically. In its first 100 days the government released thousands of political prisoners, lifted the state of emergency, removed terrorist designations on opposition groups including the OLF, closed a notorious detention facility, and granted amnesty to jailed dissidents. The Prime Minister replaced senior security chiefs, sacked prison officials and loosened press restrictions. He sought

peace with domestic insurgent groups, initiated a rapprochement with Eritrea that brought a formal end to a decades-long border dispute, and pursued a peacemaker role in the region. His foreign affairs efforts secured him the Nobel Peace Prize in 2019. These events led to the respondent considering that there were very strong grounds supported by cogent evidence to depart from the Tribunal's country guidance in MB (OLF and MTA - risk).

39. *The liberalisation process slowed down with reform making limited tangible impact in the political sphere after the initial efforts to bring formerly proscribed political actors back onto the political stage. The respondent's Fact-Finding Report acknowledges several sources as observing that after initial positive changes the situation was now "one of regression or backsliding": para. 1.5.1."*
37. This political regression is entirely consistent with our findings above about the 2020-2022 civil war and the resultant new conflict with Amhara ethno-nationalist factions. We therefore reject the alternative thrust of some of the very limited background material quoted by the Respondent in his three COI response products noted at §18.
38. Additionally, the Appellant was a supporter of the Welkait Committee which campaigned for the rights of the Welkait people (i.e. Amhara living in Western Tigray).
39. We therefore find that it is reasonably likely that the Appellant's pro-Amhara ethno-nationalist views would become known in a reasonable period of time on return and that he would reasonably likely face persecution from pro-Federal government forces who are in control of Welkait.
40. We also conclude that there is no safe part of Ethiopia to which the Appellant could reasonably relocate without the risk of persecution.
41. The evidence shows arrests of Amhara people made in Addis Ababa linked to the state of emergency declaration – whilst these numbers are small compared to the overall size of the Amhara population in Ethiopia (of many millions of people), we conclude that these arrests are indicative of the Ethiopian government having the resources and current incentive to target those who are seen as associated with the Amhara cause.
42. We therefore find that even in the recognised Amhara regions of Ethiopia there is a considerable Federal/pro-Federal military presence due to the Fano rebellion in the region and the current state of emergency - it is therefore also reasonably likely that he would face persecution there.
43. We also therefore conclude that the Appellant would reasonably likely not be able to express his pro-Amhara political views anywhere in Ethiopia without the real risk of persecution, applying the approach in RT (Zimbabwe) v Secretary of State for the Home Department [2012] UKSC 38.

Notice of Decision

The Appellant's Refugee Convention appeal is allowed.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 December 2023