



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2021-001446

First-tier Tribunal No: PA/50355/2020  
LP/00066/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 12 January 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**NA**  
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr W Khan, instructed by Fountain Solicitors

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 15 June 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. The appellant is a national of Ethiopia and of Oromo ethnicity. He arrived in the UK on 9 February 2019 and claimed asylum. That claim was refused by the respondent for reasons set out in a decision dated 12 June 2020. The appellant's appeal against that decision was dismissed on all grounds by First-tier Tribunal Judge Dixon ("the judge") for reasons set out in a decision dated 7 February 2021.

## **THE DECISION OF THE FTT**

2. The judge summarised the basis upon which the appellant claims that he will be at risk upon return to Ethiopia at paragraphs [2] and [3] of his decision. He referred to the respondent's reasons for refusing the claim, and at paragraph [4], noted that the following matters are not in issue:
  - a. The appellant is a national of Ethiopia and of Oromo ethnicity.
  - b. The appellant's family, and in particular his father, were politically active in Ethiopia.
  - c. The appellant's family received adverse attention from the Ethiopian authorities.
  - d. The appellant had been arrested and detained as he claimed.
3. The appellant attended the hearing of the appeal and gave evidence with the assistance of an Oromo interpreter. The issues in the appeal were identified and are set out at paragraph [15] of the decision. The appellant's oral evidence is recorded in paragraphs [20] to [31] of the decision. The appellant called a witness, Mr Suleyman as recorded in paragraph [32] the decision.
4. The judge's findings are set out at paragraphs [53] to [59] of the decision. The judge noted, at [54], that much of the credibility of the appellant's account is accepted by the respondent. However he also noted that he did not find the appellant's evidence before him, to be credible. He referred to the considerable confusion in the evidence as to the sequence of events regarding the appellant's mother-in-law and father-in-law discovering the association of the appellant and his family with the OLF. The judge noted the caution that must be applied when considering discrepancies around a sequence of events but came to the clear conclusion that the appellant was simply not able or prepared to give a coherent account. The judge also found, at [55], that it is highly unlikely that the appellant's mother-in-law (having taken the significant step of offering the appellant shelter in her family home) would not have enquired as to the extent and nature of the problems the appellant faced so that she was aware of the risks that may arise from the appellant's background. That was particularly so where the appellant's evidence is that his father-in-law worked for the regime in an informant capacity. At paragraph [56] of his decision, the judge said:

“Generally, I found the appellant’s evidence to be confused and at times it was very difficult to get anything like a coherent account. Even factoring in nerves and the pressure of giving evidence, I did not find the appellant to be a credible witness.”

5. The judge went on to find that the appellant’s evidence regarding the cover that his father-in-law was able to provide for the appellant’s wife, but which would not extend to the appellant, is not credible. The judge rejected the appellant’s claims in that respect. The judge said, at [57] to [59]:

“57 ...I find that it is likely that his father-in-law would seek to extend the same cover to him as well as his daughter. After all, he did accept the appellant marrying his daughter, notwithstanding the appellant’s family background. In the absence of any persuasive reasons advanced by the appellant to support his claim, it appears to be likely that his father-in-law would (if needed) extend the ‘cover’ to his daughter’s husband.

58. I find that the appellant’s father-in-law (and indeed his wife’s family) would act as a protective factor for the appellant and mitigate any risk to him from the regime.

59. I agree with the submission of Mr Smith, recorded at paragraph 35 above, that the appellant is not at risk from his wife’s family and I agree with the reason he has given: the evidence is that the appellant’s father-in-law is not a zealous state operative and would not turn the appellant in even if the authorities were interested in the appellant. This is all the more so in light of the changed country conditions since 2014: there is much less reason now for the appellant’s father-in law to have any ill-feeling towards the appellant given the OLF has been recognised as a legitimate political actor.”

6. The judge then turned to the country guidance set out in *MB (OLF and MTA-risk) Ethiopia CG* [2007] UKAIT00030 and said that he is satisfied that there is cogent evidence showing durable change in the country conditions. At paragraph [60], he identified the background material that demonstrates the marked improvement in political conditions as set out in the respondent’s decision and the background material, that, in particular, post-dates the peace agreement that was reached in August 2018 between the OLF and the government. Having reviewed the background material, including material that was provided by the appellant after the hearing the judge said, at [61] to [62]:

“61. ...I am satisfied that the general position is that the situation has changed in an enduring way following the bringing of the OLF into the legitimate political process, such that the decision in MB can be departed from. I acknowledge that there are signs for concern but they do not displace the fundamental shift which has taken place. The risks as there are do not arise from being an OLF sympathiser per se, even one with a history of having been detained. Rather, the risk attaches to having a prominent position, being an opposition activist or being located in a particular area (for instance and notably the Guji area) or being perceived to be a supporter of the splintered-off armed branch of the OLF. None of these has a bearing on the appellant’s

case. I reiterate that the appellant was not himself active in Ethiopia and has not indicated that he will be active on return.

62. It is pertinent to note that the primary and immediate reason for his fleeing Ethiopia was his father-in-law's attitude but that the overall fear he had was from the government. That is consistent with his never having been himself active.

63. I am further fortified in my view that the country conditions have undergone an enduring and material change by the report, for example on page 12 of the Civicus Monitor article, that in February 2020 dozens of high-profile opponents and government critics were to be released following an investigation. This indicates a willingness to follow and apply due process. Of course, the picture which emerges is not perfect but such action is consistent with there having been an enduring change."

7. The judge went on to consider the appellant's *sur place* activities (attendance at demonstrations in the UK) and found, at [64], that those activities would not put the appellant at risk upon return. He would be seen as a mere supporter. He was merely an OLF sympathiser in Ethiopia and his participation in the UK is consistent with that. The judge said that given the significant changes in Ethiopia, his UK activity would not place him at risk. At paragraph [65] the judge concluded:

"Overall, I do not find the appellant to be at risk on return to Ethiopia, notwithstanding his accepted background (coming from an OLF supporting family and having been detained). I am satisfied that the country conditions have changed to such a degree and in a durable way that the appellant (who in any event has only ever been an OLF sympathiser and not a supporter involved in any activity in Ethiopia) would not be the subject of adverse regime attention. The objective material does point to risk to some but as indicated above, none of those developments pertain to the appellant. In addition, as noted above, my conclusion is further reinforced by the fact that the appellant's wife has not had any problems from the regime. Finally, the appellant also has the particular protective factor of his father-in-law's position (as explained above) which would further insulate him from risk, even if he were to be of some interest."

#### **THE GROUNDS OF APPEAL**

8. The appellant claims the judge erred in three material respects. First, he noted that the credibility of the appellant's account of events in Ethiopia was, for the overwhelming part, accepted. However, the judge went on to find that the appellant was not a credible witness. Second, having found that that the appellant's family were supportive of the OLF and the appellant was detained and ill-treated in Ethiopia, the Judge erred in failing to apply the relevant country guidance set out in *MB (OLF and MTA-risk) Ethiopia CG*. The appellant claims there were no very strong grounds supported by cogent evidence, to justify departing from the country guidance. There has, the appellant claims, been no durable change in Ethiopia. Finally, the appellant claims it was accepted that he was a sympathiser of the OLF in Ethiopia and that he had taken part in protests

in the UK. The appellant claims that against those findings, the judge failed to adequately consider the risk the appellant is exposed to upon return. It is said that the fact that the appellant has previously been detained and ill-treated in Ethiopia is a good indicator of the future risk upon return, particularly in light of his Oromo ethnicity.

9. Permission to appeal was granted by First-tier Tribunal Judge Dempster on 21 January 2022 on all grounds. Judge Dempster said:

“2. The judge was perfectly entitled to make their own assessment of the credibility of the appellant and was not bound by the assessment of the respondent. However, from a reading of the decision, it does not appear that the appellant was afforded an opportunity of addressing the issue of credibility. At paragraph 38 of the decision, reference is made to the submissions of the appellant’s counsel including that the account of the appellant “had been accepted in all material respects”. The focus of the submissions was whether there was enough before the Tribunal to permit departure from the relevant country guidance. In these circumstances, it is arguable that the judge committed an irregularity capable of making a material difference to the outcome or fairness of the proceedings and the grounds disclose an arguable error of law.”

#### **THE HEARING OF THE APPEAL BEFORE ME**

10. Mr Khan adopted the grounds of appeal. He submits that at paragraph [54] of the decision, the judge acknowledges that much of the credibility of the appellant’s account is accepted. He accepts the judge had the opportunity of hearing from the appellant and that the judge was entitled to reach his own decision as to the credibility of the appellant, but he submits, the hearing before the FtT proceeded on the premise that the appellant’s account had been accepted by the respondent and that was the basis upon which the appellant’s claim was advanced and the judge was not therefore addressed upon the credibility of the appellant’s account in the closing submissions. The judge records at paragraph [38] that on behalf of the appellant it had been submitted by Mr Howard that “*the appellant had given a truthful account of matters and his account had been accepted in all material respects.*”. The judge had previously noted, at [35], that the Presenting Officer relied upon the respondent’s decision in which it was accepted that the appellant and his family were accepted as coming from an OLF supporting family and that the appellant had been detained in Ethiopia. The appellant therefore had no opportunity to address any concerns as to his credibility.
11. Mr Khan submits that the country guidance set out in *MB (OLF and MTA-risk) Ethiopia CG* remains good law and there was no justification for departing from the guidance set out. Mr Khan submits that at paragraphs [60(a) to (g)] of the decision the judge refers to some of the background material before the Tribunal, but there was other background material listed in the index to the appellant’s bundle comprising of 142 pages, that the judge failed to have regard to, and that he does not address. The judge only addressed the background material handed up, and ‘cherry picked’ the evidence. The judge accepted some of the reports showed that abuses

continue to be perpetrated widely, and in reaching his decision to depart from the country guidance, the judge failed to look at all the background evidence in the round. Mr Khan submits the conclusion reached by the judge, at [63], that the country conditions have undergone an enduring and material change is simply not supported by the evidence and the judge should therefore have considered the risk upon return by reference to the guidance set out in *MB (OLF and MTA-risk) Ethiopia CG*.

12. Mr Khan accepts that the guidance set out in *MB (OLF and MTA-risk) Ethiopia CG* has since been superseded by guidance set out in *Roba (OLF - MB confirmed) Ethiopia CG* [2022] UKUT 00001 (IAC). That decision post-dates the decision of the FtT here, but importantly, confirms that *MB (OLF and MTA - risk) Ethiopia CG* still accurately reflects the situation facing members and supporters of the OLF if returned to Ethiopia. The Upper Tribunal clarified the existing country guidance and said, at headnotes [2] to [4] that:

“(2) OLF members and supporters and those specifically perceived by the authorities to be such members or supporters will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement.

(3) Those who have a significant history, known to the authorities, of OLF membership or support, or are perceived by the authorities to have such significant history will in general be at real risk of persecution by the authorities.

(4) ‘Significant’ should not be read as denoting a very high level of involvement or support. Rather, it relates to suspicion being established that a person is perceived by the authorities as possessing an anti-government agenda. This is a fact sensitive assessment.

Mr Khan submits there was no good reason in the circumstances to depart from the country guidance in force at the time and that if the judge had properly followed the relevant country guidance, it is likely that he would have reached a different conclusion bearing in mind the whole of the background material.

13. The respondent has filed a rule 24 response dated 10 March 2022 that is adopted by Mr Lawson. The respondent submits that although the appellant’s account of his OLF connections and detention in Ethiopia were accepted, it was open to the judge to find the appellant’s evidence regarding his being taken in by his future wife’s family and his father-in-law’s awareness of his OLF connections, to be confusing and contradictory. Those issues were explored at the hearing of the appeal and it was open to the judge to find that the appellant’s evidence in that regard was not credible. It was also open to the judge to conclude that the appellant is not at risk from his father-in-law, who would in fact be able to provide him with some protection if needed.
14. Mr Lawson submits that where it transpires at the hearing of an appeal that an appellant is not credible as to some aspects of the claim, the judge is entitled to depart from the respondent’s view that the appellant is credible. Here, Mr Lawson submits the judge identifies the concerns that

he had about particular aspects of the appellant's account. Mr Lawson submits that the guidance now set out in *Roba (OLF - MB confirmed) Ethiopia CG* was not available to the judge when he reached his decision in 7 January 2021 and that the judge gave adequate reasons for his decision to depart from the guidance set out in *MB (OLF and MTA-risk) Ethiopia CG*, based upon the background material referred to. The judge was not required, Mrs Lawson submits, to identify and address piece of the background material that was before the Tribunal.

## DECISION

15. The respondent had accepted the appellant is a national of Ethiopia and of Oromo ethnicity. It was also accepted that although the appellant was not himself politically active, his family, and in particular his father, were politically active, and that the appellant and his family received adverse attention from the Ethiopian authorities due to that. Finally, the respondent accepted that the appellant had been arrested and detained for one month in December 2014 as he claimed. The judge recorded those concessions made by the respondent at paragraph [4] of his decision and it is clear that the judge did not go behind those concessions.
16. The respondent had noted in the decision under appeal that on his own case, the appellant did not organise or take part in any OLF activities or demonstrations in Ethiopia and he had never been a member of the OLF. When the appellant was interviewed, he was asked about the whereabouts of his family and he confirmed that he remains in regular contact with his wife, who lives in Robe. He explained that prior to his departure from Ethiopia he had lived with his wife's family. In his evidence before the FtT, the appellant confirmed his wife remains living in Robe and that she is not at risk because she has the support of her father. It was this discrete aspect of the appellant's claim that appears to have been explored when the appellant gave evidence, and it is in this respect that the judge found the appellant not to be a credible witness.
17. It is now well established that if an individual has lied about one matter, it does not follow that he has lied about everything. The corollary of that is that if an individual has been honest about one matter, it does not follow that he has been honest about everything. The fact that an individual is accepted to have given a credible account that is accepted is a good starting point for the assessment of the individual's account. However, it does not follow that the Tribunal is bound to accept that everything said by the individual is credible. Being honest and credible in respect of some aspects of a claim might point to the individual being a generally credible witness, but it is a huge jump of logic for a Tribunal to conclude that just because a person's account of A, B and C is accepted as credible, the entirety of the person's evidence must be accepted as credible. An individual might be honest about some aspects of a claim but not credible as regard other aspects. Their motives may be different as respects different questions. In the end, the assessment of the credibility of the appellant's account is a matter for the judge. If during the course of a hearing evidence emerges or it becomes apparent that an account is not

credible, it is open to the judge to reach their own conclusions, subject to one important safeguard. That is, an opportunity address any concern regarding the credibility of the account. That is particularly important where, as here, the appellant and his representative appear to have proceeded upon the premise that the respondent accepts the core of the appellant's account as being credible.

18. The judge quite properly noted at paragraph [54] of his decision that much of the credibility of the appellant's account is accepted. The judge was right to have concerns about those aspects of the appellant's account that were challenged during the course of the hearing before him. He gives perfectly adequate reasons for his finding that he did not consider the appellant's evidence before the Tribunal to be credible. The appellant's evidence appeared to be littered with inconsistency and confusion regarding key aspects of his relationship with his wife, and, when his mother-in-law and father-in-law became aware of the association of the appellant's family with the OLF. I am however persuaded that reading the decision as a whole, the appellant's representative was proceeding upon the premise that the appellant's account of events had been accepted to be credible, and the appellant was not given any opportunity to address any concerns regarding his credibility. As far as I can ascertain, it does not appear to have been put to the appellant that he was not being entirely honest about the protection and support that would be available to him on return from his father-in-law. Neither, it seems, was the appellant's representative invited to make submissions as to the credibility of the evidence given by the appellant and how that might impact upon the judge's overall consideration of the appellant's claim. I am satisfied that in this context, procedural fairness required the appellant and his representative to be provided at least some opportunity to address any concerns held about the credibility of the evidence.
19. I am also satisfied that in reaching his decision, the judge failed to have regard to much of the background material that was relied upon by the appellant and set out in the appellant's bundle comprising of some 142 pages. That bundle included a volume of background material that does not appear to have been considered by the judge. I accept a judge is not required to address in their decision all of the evidence that is put before the Tribunal. However here, the judge departed from the country guidance set out in *MB (OLF and MTA-risk) Ethiopia CG*. The country guidance in effect, imposes a presumption of fact and unless there is cogent evidence to justify departure from the country guidance decision, the risk upon return must be assessed by reference to the country guidance decision. If a judge is to depart from the country guidance, an assessment is to be undertaken as to: (i) whether material circumstances have changed; and (ii) whether such changes are well established evidentially and durable. That inevitably requires a closer scrutiny of the background material relied upon by the parties, than might otherwise be necessary.
20. I accept that the decision of the Upper Tribunal in *Roba (OLF - MB confirmed) Ethiopia CG* post-dates the decision of the FtT, but that decision serves to demonstrate that the changes referred to by the judge are not as



well established evidentially and durable in the way he considered them to be.

21. Standing back and considering the decision of the FtT as a whole I am satisfied that the appellant has established that the decision is vitiated by material errors of law and must be set aside.
22. As to disposal, I have considered whether the proper course is to remit the appeal or to order that the decision be remade in the Upper Tribunal. In doing so, I have considered what was said in Begum (remaking or remittal) [2023] UKUT 46 (IAC). Given that the decision on the appeal needs to be taken afresh, and given the nature of the error into which the FtT fell, I have concluded that the just and proper course is to remit the appeal to the FtT for rehearing.

#### **NOTICE OF DECISION**

23. The decision of First-tier Tribunal Judge Dixon to dismiss the appeal is set aside with no findings preserved.
24. I remit the appeal for rehearing *de novo* before the First-tier Tribunal with no findings preserved.

**V. L Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**22 December 2023**