



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001643

First-tier Tribunal No: PA/54721/2022
LP/00014/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 9 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

TA
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sepulveda

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

Heard at Field House on 5 August 2024

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of her family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellant seeks international protection and is therefore entitled to privacy.

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Boyes (“Judge Boyes”), promulgated on 2 April 2023. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Respondent to refuse her protection and human rights claim.

Factual background

2. The Appellant is a national of Ethiopia of Oromo ethnicity. Her protection claim was, in summary, made on the grounds of the risk arising from her ethnicity and active support for the Oromo Liberation Front (“OLF”), both prior to her coming to the United Kingdom and her continuing sur place activity. This was her second such protection claim; the first had led to an appeal that was dismissed by First-tier Tribunal Judge Shakespeare in a decision promulgated on 17 May 2021.
3. Judge Shakespeare’s findings relevant to risk arising from political involvement are found at [51-59] of the decision. In summary, those findings were:
 - (1) The Appellant is a supporter but not a member of OLF.
 - (2) She began her involvement with OLF in 2015, when she was living in Qatar. She had attended some meetings but was not the organiser.
 - (3) Her involvement with OLF activities whilst living in Ethiopia had been limited to a two-month period between June and September 2018.
 - (4) Whilst in the UK, she had attended meetings and demonstrations, but was not the organiser, and had made at least one financial contribution to OLF.
 - (5) All other assertions made by the Appellant was found to be not credible.
 - (6) Applying the relevant Country Guidance case, the judge concluded that the Appellant was not at risk because she does not have “a significant history, known to the authorities, of OLF membership or sympathy” and nor has she previously been arrested or detained.

Decision of Judge Boyes

4. Judge Boyes identified the evidence that was not before Judge Shakespeare, namely (i) an arrest summons (ii) evidence of her further attendance at demonstrations and (iii) an updated letter from a Mr Belay, the Chairman of the OLF Party in the United Kingdom. Judge Boyes considered whether this new evidence cast a different light on the findings of Judge Shakespeare or of itself gave rise to a risk on return.
5. Judge Boyes placed no weight upon the arrest summons [17]. In relation to the attendance at demonstrations, Judge Boyes found that none of the new material undermined the findings of Judge Shakespeare [19] and these activities were not such that the Appellant would have come to the attention of the Ethiopian authorities [20].
6. In relation to the letters from Mr Belay, Judge Boyes found that this evidence did not advance the Appellant’s case because [21]:

- (1) Mr Belay's evidence about the Appellant's role in OLF was consistent with Judge Boyes' findings in this regard and
- (2) insofar as Mr Belay sought to express an opinion about risk, he was not an expert witness.

7. Judge Boyes concluded that the Appellant had not come to the attention of the authorities in Ethiopia by virtue of her actions in the UK or, as found by Judge Shakespeare, her actions in Ethiopia or Qatar. He then stated at [22] that, if the Appellant were questioned on return, she could state that she had falsely claimed asylum. He further stated that the decision of the House of Lords in HJ (Iran) v SSHD [2011] 1 AC 596 did not protect non-genuine political activists.

The grounds of appeal and grant of permission

8. The grounds plead as follows:

" ...

b. The Respondent accepted that the Appellant may well be detained on return to Ethiopia by the Ethiopian authorities and had attended at least one demonstration. Furthermore, the FTT Judge accepted that the Appellant attended some OLF meetings in Qatar (see [7] of the FTT determination). In addition, the FTT Judge appears to accept that the Appellant may well have attended further demonstrations. It is contended that in light of these findings, the FTT Judge materially erred at [22] of the FTT determination in finding that the Appellant does not have any profile.

c. Furthermore, in light of the Country Guidance, it is contended that the FTT Judge has failed to adequately assess the persecutory risk that the Appellant faces on return to Ethiopia as a result of her accepted attendance at anti-Ethiopian government demonstrations, particularly given that the Appellant cannot be expected to lie about her activities for the OLF to avoid persecution of questioning (see RT (Zimbabwe) v SSHD [2012] UKSC 38).

d. In addition, the FTT Judge has failed to make adequate findings as to the likelihood of the Appellant being questioned on her return about her political involvement and whether this will be sufficient to establish her as being perceived by the authorities as possessing an anti-government agenda, as envisaged in AAR (OLF-MB Confirmed) Ethiopia CG UKUT 00001 (IAC).

e. It is submitted that the FTT Judge materially erred by finding that he could not place any reliance on the matters that Mr Belay raised (see [21] of the FTT determination), despite the fact that Mr Belay has a prominent role in that he is the Chairman of the OLF Party in the United Kingdom.

e. At [17] of the FTT determination, the FTT Judge failed to give adequate reasoning for finding that no reliance/weight can be attached to the Arrest Summons provided by the Appellant."

9. Permission to appeal was granted by Upper Tribunal Judge Kamara. The grounds upon which permission was granted were not restricted.

Discussion and conclusions

10. Ms Sepulveda's submissions on grounds a-d were interlinked. She submitted that:

- (1) there is a real risk that the Appellant would be stopped and questioned on return to Ethiopia and Judge Boyes' findings in this regard are inadequate;
- (2) when stopped and questioned, the Appellant could not be expected to lie about the nature of her previous OLF activities irrespective of the reason why such activities were carried out. Those activities, based on Judge Boyes' findings of fact, would be such as to give rise to a real risk of persecution or serious harm, applying Roba (OLF-MB confirmed) Ethiopia CG [2022] UKUT 00001 (IAC).
11. As noted in the grounds of appeal, the Respondent, in the refusal decision, stated: "... it is considered that upon return to Ethiopia you may be detained for questioning." It is far from clear in that decision whether the Respondent was accepting that questioning would relate to the Appellant's views about OLF but the concession was made within the context of the Appellant's claim to have an outstanding arrest warrant and to be politically active. Certainly, Judge Boyes dealt with the question as if the Appellant would be questioned about whether she was a supporter of OLF:
- "The HJ (Iran) argument raised [by the Appellant] is not persuasive. The Appellant's answer to any questioning is that she falsely claimed asylum in the UK on a basis which was not supported by any evidence which was reliable or cogent enough to substantiate a risk. HJ (Iran) is not authority for the proposition that the mendacious or the fantasist can succeed simply because they may choose to continue their case upon return. HJ (Iran) is concerned with those for whom the belief and the characteristic within the confines of the Geneva Convention are genuinely held. It is clear by virtue of Judge Shakespeare's findings which are now supplemented by my own findings that the creation of a risk in respect of political opinion is one which is a combination of convenience, mendacity and design orchestrated to create a basis on which to remain in the UK." [22]
12. In fact, I note that Judge Shakespeare did not find that the appellant was not a genuine supporter of OLF. In any event, as Ms Sepulveda pointed out, the question of whether the Appellant is a genuine supporter of OLF, and so would continue her activities on return (the HJ Iran point), is distinct from the question of whether the Appellant, on being questioned on return, would be perceived to be a significant supporter of OLF irrespective of her protestations that she holds no genuine views (the RT Zimbabwe point). In short, there is a difference of substance between somebody's genuine political beliefs and their imputed political beliefs.
13. At [22], Judge Boyes appears to have conflated the two questions and, in so doing, has failed to make any findings on the question of whether the Appellant, in revealing her activities as he found them to be, would be perceived by the authorities to be a significant supporter of OLF within the meaning of Roba. It follows that grounds b-d are made out.
14. In relation to ground e, there was a lack of clarity in identifying the precise nature of the error. However, I am satisfied that Judge Boyes has failed to make a

finding on a material matter in dispute. In assessing the evidence of Mr Belay, Judge Boyes was of the view that the evidence took the Appellant's case no further because "[Mr Belay] confirms the role undertaken by the Appellant however I have dealt with that above" [21]. In fact, there was a factual issue that needed resolution because the Respondent did not accept the evidence of Mr Belay and gave reasons for not accepting it. It was a factual issue capable of being significant because, if Mr Belay's evidence were accepted, it would be relevant to the nature, extent and genuineness of the Appellant's political beliefs.

15. In relation to ground f, Ms Sepulveda submitted that, in placing no weight on the arrest summons, Judge Boyes failed to consider the evidence in the round. Given my conclusions in relation to the other grounds, it follows that I find the Judge erred in his assessment of the arrest warrant because, whilst Judge Boyes did consider the evidence in the round, his findings are tainted by other errors such that it cannot stand.

Notice of Decision

16. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.
17. The appeal is remitted to the First-tier Tribunal for a hearing de novo (not before Judge Boyes) with no findings of fact preserved. In reaching this decision, I apply paragraph 7.2 of the Senior President's Practice Statement and take into account the oral submissions of the advocates.

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 August 2024