IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005586
First-tier Tribunal No:
PA/00876/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 April 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

AASA

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel instructed by JD Spicer Zeb Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 8 March 2024

DECISION AND REASONS

1. The Appellant is a national of Ethiopia born on the 1st May 1995. He appeals with permission against the decision of the First-tier Tribunal (Judge Buckwell) to dismiss his appeal on protection grounds.

2. The basis of the Appellant's protection claim was that he has a well-founded fear of persecution in Ethiopia for reasons of this ethnicity and political opinion. He claims individual, and familial, involvement with the Oromo Liberation Front (OLF). In particular he claims that his family fled Ethiopia when he was a child because his parents were active members of the OLF; their land had been confiscated by the government and his father had been killed fighting after fighting for the OLF. Since the Appellant's arrival in the UK he has been

supporting the organisation through attendance at protests against the Ethiopian government.

3. The Respondent rejected the claim. It was not accepted that the Appellant was a supporter of the OLF, or even that he was of Oromo ethnicity.

4. The Appellant appealed to the First-tier Tribunal and the matter came before Judge Buckwell who, having heard the evidence, made a number of findings in the Appellant's favour. He accepted that the Appellant is from Kemise as he claimed. The significance of this is that although Kemise is in Amhara, it falls within an Oromiya 'special zone'. The Judge accepted that the Appellant is in fact Oromo [§78-79]. He further accepted that the Appellant's parents had been "politically motivated", that his father had fought in the OLF against the Ethiopian government [§79], and that the Appellant had undertaken some *sur place* activities in the UK [§81]. He did not however consider that any of these matters placed him at risk in Ethiopia today. Judge Buckwell directed himself to the applicable country guidance in AAR (OLF - MB confirmed) Ethiopia CG [2022] UKUT 00001 (IAC) and found the Appellant did not have a significant enough profile to establish a risk on return.

The Grounds: Discussion and Findings

5. Ms McCarthy's primary ground of appeal concerned the application of the country guidance in AAR. The material parts of the headnote read:

> *(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.*

6. The First-tier Tribunal expressly directed itself to that guidance. It notes that the Appellant himself had never been arrested by the authorities in Ethiopia, and that although "his mother may have been harassed by visits", nor had she [§80]. Given that, the Tribunal reasons, "whatever suspicions there might have been concerning her activities, [they were] most probably based upon the military involvement of her late husband" [§85]. It is accepted that the Appellant has had some involvement in protests against the Ethiopian government whilst in the UK. This leads the Tribunal to this conclusion:

> 86. With respect to (3), it is qualified, as to 'significant history'. I do not find that if the Appellant were to return to Ethiopia now he would be found to be an individual who had a 'significant' history with respect to support or membership of the OLF, either in Ethiopia or in this country. I specifically acknowledge that the term 'significant' does not require there to have been a very high level of involvement or support, as (4) specifically states. I do not find that the *sur place* activities of the Appellant will have come to

> the attention of the authorities in Ethiopia. There is no evidence that they have. On that basis I do not accept that the Appellant would be perceived as returning to Ethiopia with an attitude which was anti-government. I do not find that if he returned to Ethiopia, he would be in possession of such an agenda. I have considered the 2022 CPIN.

7. The risk assessment was then premised on three key findings: that the authorities in Ethiopia will not know about the Appellant's involvement here, that neither he nor his mother were ever arrested, and that if returned to Ethiopia the Appellant would not be in possession of an anti-government agenda.

8. Before us Ms McCarthy challenged the first of these conclusions by pointing to a passage in AAR which the First-tier Tribunal appears to have overlooked:

> "While, in our view, individuals being returned to Ethiopia from the UK with a known history of OLF support, whether that be an arrest history or otherwise, face a significant risk for that reason alone, individuals who go on to continue their activism with the OLF on return will inevitably face an even greater risk. Likewise, individuals who have engaged in significant recent activism on behalf of the OLF, or other Oromo nationalist groups, while in the UK may also face a greater risk. This would include participation at the large-scale, and at times disorderly, demonstrations that have taken place outside the Ethiopian embassy in London over the summer of 2020. These demonstrations were closely monitored by the Ethiopian authorities, who reportedly raised diplomatic complaints with the British government over what they perceived to be the British police's failure to appropriately protect the Embassy and its staff. The events have also been widely reported in Ethiopian media and videos have been circulated online amongst both supporters and opponents of the OLF's cause".

9. It is right to acknowledge that this passage does not appear in body of the decision in AAR, as Ms McCarthy initially suggested before us. It is in fact the view of Amnesty International, as relayed to the Tribunal by their researcher Mr Tom Southerden, and set out in Appendix 4 to AAR. Ms McCarthy nevertheless invited us to treat it as evidence accepted by the Tribunal in AAR, which endorses the views expressed by Amnesty International, and indeed Mr Southerden, as reliable and accurate [see for instance at its §102]. We accept that to be the case, but would also observe, in fairness to the First-tier Tribunal, that this is possibly why it was overlooked.

10. Ms McCarthy candidly acknowledged that it was not possible to say whether any of the protests attended by the Appellant were the protests specifically referred to by Mr Southerden as being closely monitored by the Ethiopian embassy. She nevertheless asked us to find that this was important context about the way that the Ethiopian authorities behave generally towards opponents in the diaspora, and that it is not apparent that it was evidence taken into account by the Tribunal here when it concluded "I do not find that the *sur place* activities of the Appellant will have come to the attention of the authorities in Ethiopia. There is no evidence that they have".

11. We accept that Ms McCarthy must be right on this point. The Court of Appeal has, in WAS (Pakistan) [2023] EWCA Civ 894, recently underlined the continuing value of the observations made by Sedley LJ in YB (Eritrea) [2008] EWCA Civ 360 [at 18] that where the evidence paints a bleak picture of domestic suppression of political opponents,

> "it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups".

12. In WAS the court applied this logic in the context of a Pakistani asylum claimant:

> 85. I paraphrase a question which Phillips LJ asked Mr Holborn in argument, 'What evidence did the UT expect?' It is very improbable that there would be any direct evidence of covert activity by the Pakistani authorities, whether it consisted of monitoring demonstrations, meetings and other activities, monitoring social media, or the use of spies or informers. I do not consider that Sedley LJ was suggesting, in paragraph 18 of *YB (Eritrea)*, that a tribunal must infer successful covert activity by a foreign state in the circumstances which he described. He was, nevertheless, making a common-sense point, which is that a tribunal cannot be criticised if it is prepared to infer successful covert activity on the basis of limited direct evidence. Those observations have even more force in the light of the great changes since 2008 in the sophistication of such methods, in the availability of electronic evidence of all sorts, and in the ease of their transmission. To give one obvious example, which requires no insight into the covert methods which might be available to states, it is very easy for an apparently casual observer of any scene to collect a mass of photographs and/or recordings on his phone, without drawing any adverse attention to himself, and then to send them anywhere in the world.
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> 85. I consider that, on this aspect of the case, the UT erred in law by losing sight of the fact that direct evidence about 'the level of and the mechanics of monitoring' in the United Kingdom is unlikely to be available to an asylum claimant or to a dissident organisation, and by imposing too demanding a standard of proof on A. The UT repeatedly said that A had not 'established' things, that 'cogent evidence' of something was absent, and that parts of A's evidence were not supported (see further, the next paragraph).

13. We are satisfied, having taken these matters into account, that in reaching its conclusions on the risk of detection in the UK the First-tier Tribunal has erred. It was of course correct to say that there was "no evidence" if what it meant by that was that there was "no *direct* evidence". There was however good indirect evidence available, from which a risk could be inferred and measured, and in the

context of a protection appeal that was important. As we are reminded in WAS, asylum seekers are in this context very unlikely to be able to provide evidence of what is actually known to the oppressive regime that they fear.

14. The next criticism made of the risk assessment was in respect of the significance of the Appellant's family. The Tribunal accepts that both of the Appellant's parents were known to the Ethiopian government as OLF supporters/activists, and yet does not appear to draw any conclusions from that fact. It seems to us that a clear record of familial involvement with the OLF would be a relevant factor. There are numerous references to the significance of such a personal history in the country guidance, and with respect to the First-tier Tribunal, as a matter of common sense such a record would obviously be relevant to whether the Ethiopian authorities would perceive the Appellant as someone with anti-government sentiments. See for instance the Amnesty International evidence, again accepted by the Tribunal and set out in Annex 4 of the decision:

> With reference to [the appellant], the appellant in this case, our organisation has not previously documented his case and we are therefore not able to comment on his background directly. We would note, however, that his claimed background, as summarised above, is in our experience very common amongst young supporters and activists for the OLF or the wider Oromo nationalist movement, including a family history of involvement, youth engagement and serious adverse experience with the Ethiopian security forces. If his background is accepted by the Tribunal, in our organisation's view it contains a number of elements that in combination would indicate a significant risk of being perceived as a supporter of the OLF, including his age and gender, his family history of involvement with the OLF and his arrest history.

15. We conclude that the Appellant's family history was a relevant feature of his risk profile.

16. Finally we are asked to consider the Tribunal's conclusion about the Appellant's own beliefs:

> "I do not accept that the Appellant would be perceived as returning to Ethiopia with an attitude which was anti-government. I do not find that if he returned to Ethiopia, he would be in possession of such an agenda".

17. In his submissions Mr Wain invited us to treat the latter sentence as a complete answer to the Appellant's ground (ii), which was that the Tribunal failed to assess whether the Appellant did in fact hold the protected political beliefs he claims to be at stake here. The difficulty with that approach is that the bald finding that the Appellant is "not in possession of such an agenda" is difficult to square with the findings that precede it. The Appellant is accepted to be from an OLF supporting family, whose mother endured harassment, and whose father took up arms in defence of their political commitment to that cause. The family lost their land to the government, and were scattered into exile. The Appellant has himself been demonstrating in the UK in support of that organisation. Those being the findings, it seems to us that more explanation is required if the Tribunal is to conclude that today the Appellant does not in fact hold those political beliefs. If,

as Mr Wain suggests, that sentence is intended to convey that the Appellant's claimed belief is cynical, or alternatively that it would dissolve upon arrival in Ethiopia, then this should have been the express, reasoned, finding. Here it was not.

18. It follows that the decision must be set aside on protection grounds. In his closing remarks Mr Wain asked that if that were our decision, we reconvene the hearing to hear further submissions on disposal. We have considered whether that would be necessary, and conclude that it is not. That is because we are satisfied that on the findings made by the First-tier Tribunal, this is an appeal that must be allowed. The Appellant is from a known OLF family who has continued to express opposition to the Ethiopian government from the safety of exile. Standing back and looking at all of the relevant factors in the round we are satisfied that this must reach the relatively low threshold required to establish a "significant history" as it is referred to in AAR.

19. It follows that we need deal only briefly with the remaining grounds. Before us Ms McCarthy sensibly withdrew reliance on Article 15(c) of the Qualification Directive, since she was unable to point to any evidence capable of establishing that there was a risk of indiscriminate violence throughout the territory of Ethiopia. Her final ground related to evidence about the Appellant's poor mental health. The Appellant had been captured and tortured by a militia in Libya on his way to Europe; he bears the physical, and mental, scars of that ordeal. Before the First-tier Tribunal evidence of his depression and Post-Traumatic Stress Disorder had been relied upon to advance submissions under both Articles 3 and 8 of the ECHR. The Tribunal, quite properly in our view, considered this evidence not to reach the standard required to establish a claim under Article 3. It did not however factor it in to its assessment of Article 8, and in particular to the matter of whether there were "very significant obstacles" to the Appellant's integration if returned to Ethiopia. Mr Wain conceded that this was a material omission, and so ordinarily the Article 8 assessment would need to be 're-made'. Since we have allowed the appeal on protection grounds we do not however consider it necessary to reconvene the hearing to enable that outstanding question to be resolved.

Decisions and Directions

20. The decision of the First-tier Tribunal is set aside.

21. The decision in the appeal is remade as follows: "the appeal is allowed on protection grounds".

22. There is presently an order for anonymity in this ongoing protection appeal.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
10th March 2024