



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

Case No: UI-2024-000128  
First-tier Tribunal No: PA/54488/2022

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:

On 15<sup>th</sup> of October 2024

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**HM (ETHIOPIA)**  
**(ANONYMITY ORDER CONFIRMED)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Holmes, Counsel, instructed by Shawstone Associates

For the Respondent: Mr A Tan, Senior Presenting Officer

**Heard at Manchester on 11 October 2024**

**ANONYMITY ORDER**

**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 appeals a decision of First-tier Tribunal Judge Robertson ('the Judge') refusing his international protection and human rights appeals. The decision was sent to the parties on 26 November 2023.

### **Anonymity Order**

2. The Judge issued an anonymity order. Neither representative requested that it be set aside. I consider that at the present time the appellant's private life rights protected by article 8 ECHR outweigh the public interest in knowing his identity in these proceedings, as protected by article 10 ECHR, consequent to him seeking international protection. In these circumstances the anonymity order is properly to continue.
3. The order is detailed above.

### **Relevant Facts**

4. The appellant is a national of Ethiopia and ethnically Amhara. He is aged 41. He left Ethiopia in May 2018 and entered the United Kingdom clandestinely in October 2018, claiming asylum the next day. The respondent refused his application for international protection by a decision dated 24 September 2019.
5. First-tier Tribunal Judge Phull dismissed the appellant's appeal by a decision dated 21 January 2020. Judge Phull found, *inter alia*:
  - The appellant was engaged in protests following the May 2005 elections in Ethiopia amidst allegations of vote rigging made by the opposition Coalition for Unity and Democracy ('CUD').

- The appellant was arrested, detained for one month and tortured by the Ethiopian authorities consequent to the protests. The torture has left permanent injuries. He was released on the undertaking that he would stop engaging in protests.
- The appellant was arrested in 2011 on suspicion of involvement with Patriotic Ginbot 7 ('PG7') and again detained and tortured.
- There is a reasonable likelihood that the appellant supported PG7.

6. As to the various political parties detailed above:

- The CUD participated in the May 2005 elections as a coalition of four parties: Ethiopian Democratic League, All Ethiopian Unity Party, United Ethiopian Democratic Party-Medhin Party and Rainbow Ethiopia: Movement for Democracy and Social Justice. The coalition became a political party later in 2005 under Hailu Shawul and was dissolved in 2007.
- PG7 was founded in 2008 and is named after the date of the 2005 elections. The Ethiopian government claimed in 2009 that it had foiled a coup attempt led by members of PG7. This was denied by PG7. In 2011 PG7 was proclaimed by the Ethiopian government to be a terrorist group. It was regarded as such until 2018 when the party's leadership was invited to return to Ethiopia by Prime Minister Abiy. It dissolved in May 2019, joining six other parties to form the Ethiopia Citizens for Social Justice ('EZeMa') party. EZeMa contested the 2021 general election.

7. The appellant stated that he joined PG7 in 2012. In 2018 he attended a meeting held by PG7 which was raided by the authorities. He was arrested and detained for eighteen days and released upon payment of a bribe. Judge Phull's decision is unclear as to whether it was accepted the appellant became a member of PG7 - the finding of fact goes no further than he was a supporter, at [28] of the decision - or as to whether the 2018 arrest occurred. The Judge's focus was upon whether an arrest warrant was issued following his release. The Judge considered opinion provided by Professor Mario Aguilar in a report and addendum not to be expert and concluded that the arrest warrant was not authentic. Consequently, Judge Phull concluded that the appellant would not be of adverse interest to the authorities on return to Ethiopia.

8. In respect of *sur place* activities, Judge Phull concluded that the appellant would not be at risk on return because of the improvement in the political situation following the accession of Prime Minister Abiy in 2018.
9. The appellant served further representation in November 2018, February 2019 and February 2022. He relied upon an expert report addressing, primarily, the authenticity of the arrest warrant, and a psychiatric/ scarring report. He detailed his membership of the Moresh Wogenie Amara Organisation UK ('MUK'). The respondent accepted the representations constitute a fresh claim under paragraph 353 of the Immigration Rules by a decision dated 6 October 2022 but refused to grant the appellant status.

### **First-tier Tribunal Decision**

10. The appeal came before the Judge sitting at Nottingham on 18 October 2023. She observed the guidance provided in *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka\** [2002] UKIAT 00702; [2003] Imm AR 1.
11. The appellant confirmed his membership of both MUK and the National Movement of Amhara ('NaMA'). The latter is an Amhara ethnic nationalist political party, established in 2018, which contested the 2021 general election.
12. The Judge concluded, *inter alia*:
  - Whilst the expert report was helpful as to providing an up-to-date indication of the situation in Ethiopia, the author is not an expert in authenticating documents and improperly relied upon sweeping statements, at [20(vi) to (viii)]
  - The arrest warrant and corresponding documents are not authentic, at [20(x)]
  - The appellant attended demonstrations in the United Kingdom, including outside Downing Street and the US Embassy, but as an attender rather than as an organiser, at [20(xii) and (xiii)]
  - Copies of screenshots of Zoom meetings were of poor quality and unidentified, at [20(xii)]

- There is no doubt of the appellant’s continued political activities in the United Kingdom, at [20(xiv)]
  - CPIN confirms that former members of PG7 are not at risk on return, at [20(xvi)]
  - Opposition groups have been “more accepted” and in general activists have not been subjected to the same persecution as in the past, however that clearly varies between groups and regions, at [20(xvi)]
  - The appellant does not have a high political profile and would not be returning as a NaMA official, merely a supporter, at [20(xviii)]
  - The Danish Immigration Service report ‘*Ethiopia: Political opposition parties, recent developments*’ (26 March 2021) references NaMA as operating in several regions, and though there were reports of arrests and meetings being banned, the report did not assess NaMA members, whether leaders or ordinary members, as having been at risk since 2019, at [20(xix)].
13. The Judge concluded that the appellant would not be at real risk of serious harm or persecution on return to Ethiopia, at [22].

### **Grounds of Appeal**

14. The appellant initially advanced four grounds of appeal. Deputy Upper Tribunal Judge Zucker granted permission to appeal on ground 1 alone by a decision sent to the parties on 25 July 2024.
15. By means of ground 1 the appellant contends that the Judge erred in law by failing to conduct any assessment of his ability to meet the test established by the Supreme Court in *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31; [2011] 1 AC 596. The Judge failed to ask herself whether the appellant would be politically active in Amhara politics against the present Prosperity Party government on return, and what would happen to him if he were active.

### **Discussion**

16. At the outset I confirm my gratitude to Mr Holmes and Mr Tan for their concise and helpful submissions.
17. Mr Holmes accepted that in considering the issue of risk, the Judge engaged with the appellant's political activity in the United Kingdom. However, she failed entirely to engage with how the appellant would act on return to Ethiopia in respect of his political activity. Mr Holmes identified three pillars to his submission:
  - i. The appellant has an accepted history of arrest and serious ill-treatment and so benefitted from the presumption established by paragraph 339K of the Rules;
  - ii. The respondent's position that there was wholesale positive change in Ethiopian politics since the accession of Prime Minister Abiy was untenable; and
  - iii. The objective evidence placed before the First-tier Tribunal established to the requisite standard that the appellant would be at risk on return.
18. With his usual candour, Mr Holmes accepted that the background evidence filed with the First-tier Tribunal was limited and may be said not to possess the expected focus.
19. He further confirmed that he did not rely upon the country 'expert' report placed before the Judge. He was correct to adopt this position. It may have aided the Judge, and previously Judge Phull, to have commenced by expressly considering whether the author of a country report placed before them was expert on the issues addressed. The Upper Tribunal confirmed in *MH (review; slip rule; church witnesses)* [2020] UKUT 125; [2020] Imm AR 983, at [39], that whilst no question of admissibility arises in the Immigration and Asylum Chamber the criteria identified by the Supreme Court in *Kennedy v Cordia (Services) LLP (Scotland)* [2016] UKSC 6; [2016] 1 WLR 597, at [43]-[44], are relevant in deciding whether evidence is properly described as "expert evidence".
20. In *Kennedy*, the Supreme Court approved a section of the South Australian Supreme Court decision in *R v Bonython* (1984) 38 SASR 45, from which it distilled four key considerations which govern the admissibility of expert evidence (which in Scots law is known as "skilled evidence").

- i. whether the proposed skilled evidence will assist the court in its task;
  - ii. whether the witness has the necessary knowledge and experience;
  - iii. whether the witness is impartial in his or her presentation and assessment of the evidence; and
  - iv. whether there is a reliable body of knowledge or experience to underpin the expert's evidence.
21. It is a judicial decision as to whether opinion evidence can properly be considered 'expert', and it is an important judicial decision.
22. I agree with the Judge that the author of the report before her is not expert on document authentication. The use of sweeping generalisations is not to be expected of an expert. Having read the report and its addendum, there is insufficient basis for my considering the author to possess the necessary knowledge and experience to assist a tribunal in respect of assessing risk for opposition political activists in Ethiopia. At its core, the report simply collates a small number of articles and a YouTube recording with minimal attendant observation. It is difficult to identify the presentation of any core knowledge as to the on the ground activities of NaMA, or indeed the present political situation in Ethiopia generally as well as the fragmented political scene in Amhara Region.
23. The absence of reliable expert evidence is a real difficulty for the appellant in this appeal, as there is very little, if any, up-to-date objective evidence provided as to the position of NaMA and MUK members, as well as former PG7 supporters (or members), in Ethiopia.
24. Turning to Mr Holmes' three limbs. The appellant enjoys the benefit of the presumption of paragraph 339K of the Rules. This paragraph establishes an alleviating evidentiary rule for cases where an appellant has established to the requisite standard that they have already been subject to persecution or serious harm, or to direct threats of such persecution or such harm. Such fact will be regarded as indicative of future risk, unless there are good reasons to consider that such persecution or serious harm will not be repeated: *Roba (OLF - MB confirmed) Ethiopia CG* [2022] UKUT 00001 (IAC), at [9].

25. However, when considering whether there are good reasons to consider that such persecution or serious harm will not be repeated, a judge will have to factor that the detention and torture occurred during a time when the Tigray People's Liberation Front ('TPLF') dominated the Ethiopian People's Revolutionary Democratic Front ('RPRDF') political coalition that was in power from 1991 to 2019. The authority of the TPLF was subsequently reduced to the Tigray Region alone and since the conclusion of the Tigray War following the Pretoria Peace Agreement in 2022 the TPLF has experienced severe internal divisions. The driving force of the regime that targeted and tortured the appellant on two occasions no longer has direct power in the majority of Ethiopia generally or in Amhara Region specifically.
26. In respect of the second limb, the Judge's assessment as to the present political tensions is identified at [20(xvi)]. She adopts a nuanced approach. Her observation that opposition groups have been more accepted by both central and regional governments and that in general activities have not been subjected to the same persecution in the past is consistent with the decision in *Roba*. I note the reference in *Roba* to the present government identifying the RPRDF as having engaged in the systematic use of torture against members and perceived members of the opposition. It was accepted in *Roba* that there has been regression in the political scene, if not to the regular occurrences of targeting and torture experienced under the RPRDF of which the appellant was a victim.
27. A difficulty for the appellant is that underpinning the first and second limb is the requirement for cogent evidence as to the present circumstances in Ethiopia. Mr Holmes directed my attention to passages within the Danish Immigration Service report (26 March 2021) confirming that members of NaMA were arrested following several assassinations in Amhara and Addis Ababa in June 2019, and the tightening of democratic space in Ethiopia following the assassinations. The latter was considered by the Upper Tribunal in *Roba*. He also took me to a document issued by the UN Human Rights Council, "Human Rights Council hears that the situation in Ethiopia has deteriorated significantly ..." (21 September 2023), and, particularly, two paragraphs on page nine of the document addressing the killings and violence occurring in the Tigray War and the ongoing attacks against Amhara by the Oromo Liberation Army, as evidence of the central government's attitude towards the 32 million people who live in Amhara State. These references are general in nature, are primarily



focused to security force operations during the now concluded Tigray War.

28. Observing the presumption, these documents are incapable of establishing to the requisite standard that the appellant would be at real risk on return to Ethiopia generally, and Amhara Region in particular, consequent to his future political activities. Whilst such real risk may potentially be established through expert evidence, such evidence is presently absent.
29. Having addressed Mr Holmes' submissions, and considered them above, the primary difficulty for the appellant is that the Judge did undertake the *HJ (Iran)* assessment in respect of his continuing his political activity on his return. Though addressed in brief terms, the Judge's assessment at [20(xviii)] is directed towards the risk for members engaged with NaMA activities in Ethiopia. No risk was identified. This paragraph of the decision is not challenged. Consequently, there is no merit of the challenge, and it is properly to be dismissed.

### **Notice of Decision**

30. The making of the decision of the First-tier Tribunal sent to the parties on 26 November 2023 did not involve the making of a material error on an issue of law.
36. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.
37. An anonymity order is confirmed.

*D O'Callaghan*  
**Judge of the Upper Tribunal**  
Immigration and Asylum Chamber

**11 October 2024**