Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02123/2018

THE IMMIGRATION ACTS

Heard At: Manchester Civil Justice Centre	**Decision and Reasons Promulgated**
On: 7th October 2019	**On: 05th November 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

A M
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Holmes, Counsel instructed by Howells Solicitors**
For the Respondent: **Mr Bates, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Ethiopia born in 2001. He appeals with permission the decision of the First-tier Tribunal (Judge Maxwell) to dismiss his asylum appeal.

2. The matter in issue before the First-tier Tribunal was whether the Appellant was entitled to refugee status. That turned in large measure on whether he could show that his historical account of family association with the Oromo Liberation Front and consequent persecution by the Ethiopian state was true. Because of his young age the Tribunal was also asked to consider whether there was a real risk that the Appellant would not be able to establish contact with his family, who are believed to remain in Ethiopia.

3. The Tribunal found against the Appellant on all material issues and dismissed the appeal.

4. On the 12th March 2019 the Appellant was granted permission to appeal to this Tribunal.

5. On the 24th May 2019 the matter came before me. At that hearing Mr Holmes of Counsel submitted on behalf of the Appellant that the decision of Judge Maxwell must be set aside for error of law. His primary complaint was that Judge Maxwell had failed to examine the Appellant's case with 'anxious scrutiny'. In the context of a claim for international protection, that is a public law error fatal to the determination: Bugdaycay v Secretary of State [1987] AC 514, R (YH) v Secretary of State for the Home Department [2010] EWCA Civ 116. The particulars of the Appellant's challenge were that the determination contains the following references entirely unrelated to this claim:

    i) At paragraph 29 the Tribunal summarises the Appellant's case as follows: "his case is that he is a debtor who cannot repay his debt and will be killed or seriously injured by his creditors. I have considered whether this could amount to him being part of a social group". The following paragraph consists of consideration of the guidance on social groups given in Shah and Islam [1999] INLR 144. The facts described played no part in the Appellant's case. The Appellant is not a debtor and he does not fear creditors. Nor is his case based on membership of a particular social group.

    ii) At paragraph 36 the determination evaluates the likelihood of the Eritrean authorities showing any interest in the Appellant. The Appellant is not Eritrean, has never claimed to be, and fear of the Eritrean authorities played no part in his case.

    iii) At the same paragraph the Tribunal rejects as "highly unlikely" the evidence that the [Ethiopian] "authorities would regard a 14 year old boy as someone actively creating a new OLF group, seemingly singling him out from the 26,000 people arrested at this time". Again, the Tribunal appears to have misunderstood the Appellant's case. He never

claimed to be a ringleader, or to have been accused of such. His case was that he had been rounded up, and subjected to the same level of interrogation, as a great many others.

iv) At paragraph 12 the Tribunal records that the Appellant adopted as his evidence in chief the transcript of his asylum interviews. This did not occur.

6. The Appellant's second ground of appeal was that the determination is flawed for a lack of reasons. Again paragraph 36 comes in for criticism in that the Judge rejects without reason the evidence that the Appellant was interrogated. Mr Holmes asked me to note the finding that it is "implausible" that the Appellant would have been afraid to try and contact his family: no explanation is offered as to why that might be the case. Mr Holmes submits that in the context of a teenager who has been arrested and interrogated, and who is justifiably concerned about his family's safety, it would be impermissible to characterise his subjective fear as "implausible": reliance is placed on HK v Secretary of State for the Home Department [2006] EWCA Civ 1037. Three reasons are given for rejecting the account overall: the Appellant's failure to try and trace his family, his failure to give a credible account of his journey through Europe, and the aforementioned implausibility of his fear of trying to contact his parents. In Mr Holmes' submissions that was simply not enough. These were all matters peripheral to the core account and could not legitimately be relied upon to reject the actual basis of the claim.

7. The Secretary of State did not oppose the Appellant's appeal. Appearing for the Secretary of State Senior Presenting Officer Mr Bates accepted that the determination did contain significant factual errors. Although these may well have arisen from 'cut and paste' mistakes, he accepted that the Appellant, upon reading the judgment, may be left feeling that the Judge did not give his claim the level of scrutiny that it properly required. Furthermore the Secretary of State accepted that the reasons given by Judge Maxwell for rejecting the claim did not go to the core of the claim and as such are unsustainable.

8. That being the agreement of the parties, I set the decision of Judge Maxwell aside.

9. On the 5th July 2019 the matter resumed before me so that the decision in the appeal could be 're-made'. At that hearing I heard oral evidence from the Appellant, and submissions on the credibility thereof. Having heard those matters I indicated that (for the reasons set out below) I was satisfied that the Appellant had told the truth about events in Ethiopia. I was not however able to justly determine the appeal. That was because at that hearing, for the first time, the Secretary of State produced evidence which, it was submitted, would justify departure from the extant country guidance, i.e. the decision in MB (OLF and MTA – risk) Ethiopia CG [2007] UKAIT 00030 (IAC). That evidence was

produced in small bundle comprising a Human Rights Watch (HRW) report dated January 2019, and two news reports, one from December 2018 and one from May 2019. Mr Holmes strongly objected to the inclusion of such evidence. He submitted that the Appellant had been given no notice that the court would be asked to depart from the guidance given in MB, and that in the circumstances his instructing solicitors had been entitled to prepare the case on the basis that the prevailing law would be applied.

10. I determined that it was important, applying the *Sivakumaran* principle, that more recent country background evidence was admitted: my task is to determine whether the Appellant has a well-founded fear of persecution as of today's date. It was a matter for me whether I accepted that MB should no longer be followed, but it was appropriate that the Secretary of State be given an opportunity to make that case. In the circumstances I adjourned the matter part-heard so that the Appellant's representatives be given an opportunity to address the new submissions raised by the Secretary of State. Those submissions were supplemented, on the 22nd August 2019, by publication and submission of a new Country Policy Information and Guidance Note dated August 2019: *Ethiopia: Opposition to the Government* ('the CPIN').

11. The hearing resumed before me on the 7th October 2019. I heard submissions from both sides on the prevailing country situation. I reserved my judgment.

The Appellant

12. The Appellant's account is set out in the following documents:

    i) 'Welfare' questionnaire dated the 23rd August 2017
    ii) Witness statement dated 19th December 2017
    iii) Statement of Evidence form dated 19th December 2017
    iv) Asylum Interview record dated the 18th January 2018
    v) Witness statement dated 7th March 2018

13. That account is, in essence, as follows.

14. The Appellant is from Bordode, in the Oromia region of Ethiopia. He is the eldest of five siblings and at the time that he left Ethiopia both of his parents were alive. He completed primary school and had started at high school before he left Ethiopia.

15. The Appellant and his family were all supporters of the Oromo Liberation Front (OLF), a group fighting for human rights and independence from Ethiopia. He grew up with that political sympathy and believes that his father was an actual member of the OLF. His father was arrested on many occasions: when the Appellant was small his father was in prison for 2 years. His father would take

him to rallies and meetings, and so influenced him to also support this cause. The Appellant came to understand that the Oromo people have been suppressed by the government in Ethiopia for many years and that they need to stand up for their rights. He knew of people who were engaging in peaceful demonstrations who were arrested and put in jail. He knew many Oromo activists who were detained even though they never held any weapons. Accordingly he came to understand that you need to be careful about any action supporting the OLF.

16. In 2015 there were a series of protests relating to land rights of the Oromo people. The Appellant and his family were at one such protest when the security services opened fire on the crowd. The Appellant and his family members were separated in the chaos. The Appellant was arrested. He was held with many other demonstrators, first in a police station in Borode, and then after five days he was transferred to a prison in Mieso. He spent 15 days in that prison. He was questioned about his support for the OLF and why he was on that demonstration. He was released following the intervention of his paternal uncle who bribed an officer to get him out. This uncle collected the Appellant and brought him directly to Addis Ababa where he remained in hiding for approximately 3 weeks. The Appellant's uncle arranged for him to get out of the country. The Appellant was at that point 14 years old.

17. It is not in dispute that 2015 saw an upsurge in Oromo political activism, and a corresponding clampdown by the authorities. In his November 2017 CPIN *Ethiopia: Oromos including the 'Oromo Protests'* the Respondent draws on numerous sources to give the following summary:

> 2.2.5 Following plans announced by the government in 2014 to substantially expand Addis Ababa (aka 'the Addis Ababa Masterplan'), which would have reportedly incorporated around 30 towns and villages in the Oromia region and displaced thousands of farmers from their land without adequate compensation, **there were protests across the Oromia region in April-May 2014 and from November 2015 to October 2016**.
>
> 2.2.6 Whilst initially and primarily a series of protests against the perceived injustice of – and the lack of consultation on – the Masterplan, the protests also triggered and raised long-standing grievances of the Oromo people in relation to economic marginalisation and subsequently in reaction to state violence towards earlier demonstrators.
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> 2.2.7 The protests were initially led by students but they soon were joined by farmers, workers and others across the Oromo community. The protests developed frequently into riots which targeted

businesses, particularly foreign owned businesses seen as benefiting from the government's distribution of land.

2.2.8 In response, the government deployed the police, paramilitary police and the army to quell the protests. **The security forces reportedly often used force to do so and, on occasions, live ammunition when firing into crowds resulting in the deaths of some protestors**. Some estimates put the figure killed in the protests at 1,200. There were also reports of tens of thousands of arbitrary arrests, some of which resulted in people being beaten and tortured, and kept in prolonged detention…

…

2.2.10 The protests, in particular those in 2015/16, appear to be largely spontaneous, lacking proper organisation and organisers. **It is estimated that tens of thousands of people were arrested during the protests and the first few months of the state of emergency. Arrests and detentions were not limited to protest organisers, but large numbers of mostly lower profile 'grass roots' protesters were released following a 're-education' programme**, and those that remain in detention (estimated to be between two and seven thousand) tend to be suspected protest leaders (see Arrests/detention during and following the 2015/16 protests).

2.2.11 Where state violence was aimed at the crowds, it appeared to have been on a largely arbitrary basis. Given the number and size of protests and their wide geographical spread it is unlikely that the authorities were able to identify or have an interest in each person involved. Therefore simply having taken part in the protests is unlikely to bring a person to ongoing adverse attention of the authorities such that it would result in a real risk of persecution or serious harm on return.

2.2.12 **People with who took part in the protests but were not arrested and do not have an outstanding warrant are unlikely to be identified or sought and therefore unlikely to be at risk of persecution or serious harm on return**.

2.2.13 **People with who took part in the protests and were arrested but subsequently released are unlikely to be of continuing interest to the authorities purely because of their participation at a protest**, and the onus will be on the person to show that because of their activities and circumstances that they will be at risk of persecution or serious harm on return.

18. I am satisfied that the Appellant's account is consistent with that country background material. This lends weight to his claim.

19. I have considered the Secretary of State's submission that the Appellant's account has not been consistent. In his cross-examination Mr Tan demonstrated that the Appellant is unable to give a clear timeline of the dates between his departure from Ethiopia and his arrival in the United Kingdom. In view of his young age, and the uncontested fact that during that period he undertook a perilous and no doubt traumatic journey through at least four countries including Libya, it is to my mind wholly unsurprising that the Appellant's evidence as to the dates is vague. In his refusal letter the Respondent seeks to draw a contrast between the evidence that the Appellant gave during a 'welfare' interview – that he was targeted because he 'took part in an Oromo protest' – with his later evidence that it was because of his 'allegiance to the OLF'. Apart from the fact that the welfare interview transcript should never have been produced (to which see 'postscript' below), there is nothing inconsistent in that evidence. The Respondent asks me to place weight on the fact that the Appellant has sometimes referred to himself as a 'supporter' of the OLF and at other times a 'member'. I decline to do so. That a 14-year-old was unclear about the distinction – if indeed there is one – is of no consequence. Similarly nothing turns on the Appellant's inability to clearly articulate whether he went to those protests of his own accord or because his Dad wanted him to. It is perfectly possible that both are true.

20. I am satisfied, having regard to the Appellant's age and level of understanding about political issues, that the Appellant has been consistent in his claim. This lends weight to his testimony.

21. The Appellant's account is further given some support by two letters submitted from the Oromo Liberation Front representative in the United Kingdom, Dr Bersisa Berri. Materially, in his second letter Dr Berri confirms that he has made enquiries with the OLF in Bordode and it has been confirmed to him that the Appellant's father is indeed a local member involved in "clandestine activities". Dr Berri was further told that the Appellant himself had attended meetings and demonstrations during 2015. This corroborative evidence lends support to the claim.

22. Having considered all of the evidence, and applying the lower standard of proof, I am satisfied that the Appellant has told the truth about his experiences. I find as fact that:

    i) The Appellant's father was a long-standing member of the OLF;
    ii) That the Appellant had embarked upon his own Oromia activism;
    iii) That he was arrested and held in detention for approximately 3 weeks in 2015;

iv) That he escaped detention upon payment of a bribe;
v) That the Appellant continues to support the OLF cause.

Risk Assessment

23. The current country guidance is set out in MB (OLF and MTA – risk) Ethiopia CG [2007] UKAIT 00030. Since the parties are in agreement as to its effect I need do no more than set out the relevant part of the headnote:

> *(1) As at February 2007, the situation in Ethiopia is such that, in general:-*
>
> *(a) Oromo Liberation Front members and sympathisers;*
>
> *(b) persons perceived to be OLF members or sympathisers; and*
>
> *(c) members of the Maccaa Tulema Association;*
>
> *will, on return, be at real risk if they fall within the scope of paragraph (2) or (3) below.*
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> *(2) OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement. So too will those who have a significant history, known to the authorities, of OLF membership or sympathy. Whether any such persons are to be excluded from recognition as refugees or from the grant of humanitarian protection by reason of armed activities may need to be addressed in particular cases.*

24. The Appellant has demonstrated, to the lower standard of proof, that he meets the requirement set out in (1)(a) of that headnote: he is an OLF member/sympathiser. I have further accepted that he falls within the risk category identified at paragraph (2), since he is someone who has previously been arrested or detained on suspicion of OLF involvement. Applying that guidance, the appeal should be allowed.

25. Not so fast, says the Secretary of State. The evidence in MB is now a decade old, and the Secretary of State submits that the situation in Ethiopia has markedly improved for persons in the Appellant's position. Before I evaluate that submission, it is appropriate that I remind myself of the test to be applied when considering whether to depart from country guidance.

26. In SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 Lord Justice Stanley Burnton said this:

> 45. There are simply not the resources for a detailed and reliable determination of conditions in foreign countries to be made on an individual basis on each decision on the application or appeal of

> persons seeking protection. There are far too many such cases, as is demonstrated by the Secretary of State's use of charter flights to accommodate the large numbers of returnees to countries such as Afghanistan and Iraq. Neither those representing those seeking protection nor the Secretary of State herself have the resources for the detailed, lengthy and costly investigation of conditions on return that is appropriate, given the potential risk to the returnees, in every case. Even if the resources were available, it would be wasteful to have such an investigation, involving much the same evidence, in every case. There would also be a risk of inconsistent decisions, a consideration that is particularly important in the present context since it follows from a decision that one person requires protection, if correct, that a person in the same situation who has been returned may have risked or suffered ill treatment or worse.
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> 46. The system of Country Guidance determinations enables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.
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> 47. It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them **unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so**.

27. The Upper Tribunal elaborated upon this test in the subsequent decision in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC) [at §72]:

> [We] recognise that where a previous assessment has resulted in the conclusion that the population generally or certain sections of it may be at risk, any assessment that the material circumstances have changed would **need to demonstrate that such changes are well established evidentially and durable**.

28. Against that legal backdrop I now turn to assess the evidence adduced on behalf of the Secretary of State. Since the CPIN post-dates, and incorporates, the press articles and HRW, I start with that, and specifically to the passages relied upon by Mr Tan. The highlighting is my own.

29. At section 2 the CPIN addresses the evidence about 'former designated terrorist organisations':

> 2.4.12 Members, or perceived members, of one of the three opposition groups designated as terrorist organisations in 2011 (the OLF, ONLF or Ginbot 7/AGUDM) have historically been subjected to surveillance, harassment, arrest and imprisonment, torture and ill-treatment – including during the most recent State of Emergency (February – June 2018). **This treatment also sometimes extended to supporters and family members of supporters or those perceived to be affiliated with OLF**, ONLF or Ginbot 7/AGUDM.
>
> ...
>
> 2.4.15 **Since the country guidance determination in MB, the country situation has improved. During 2018, Prime Minister Abiy Ahmed removed the designation of the OLF, ONLF and Ginbot 7/AGUDM as terrorist organisations and welcomed high profile leaders back to Ethiopia, where they can register as political parties (although there is no indication this has yet happened). Hundreds of thousands of people gathered in Addis Ababa to welcome back OLF leaders which is reported to have passed without incident. A number of high profile prisoners have also been released and /or pardoned, including deputy leader of Ginbot 7 who had been detained since 2014.**
>
> 2.4.16 **Armed members of the OLF, the Oromo Liberation Army (OLA), returned to Ethiopia and committed to laying down arms, with sources indicating that up to 1000 members had entered government rehabilitation camps. However, there were reports of attacks in early 2019, including airstrikes, by the authorities on OLA training camps (see OLF militants / Oromo Liberation Army (OLA) and Former designated terrorist organisations).**
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> **2.4.17 The situation for high profile leaders of the former designated terrorist organisation has, generally, improved. Besides allegations made by the OLF website of a number of arrests and by other sources of airstrikes on OLA positions in early 2019, there have been no further recent reports in the sources consulted of targeting of members, sympathisers or family members of the previously terrorist-designated groups.**
>
> **2.4.18 In general, the country information indicates that there has been cogent and durable change in regard to the opposition generally and former and current armed groups in particular. Therefore there are very strong grounds supported by cogent evidence to depart from UT's findings in MB. In the context of the significant and fundamental reform that has occurred since April 2018, the onus is on the person to demonstrate that, based on their profile, political activities, past experiences including any arrests (and the timing of those arrests), they will be at risk of persecution or serious harm on return**.

30. I interpolate two observations about these passages. First, it must be recalled that a C*P*IN is meant to convey Home Office policy as much as objective

information. The conclusion at 2.4.18 "there are very strong grounds supported by cogent evidence to depart" from MB must be read in that light: it is in fact for the Tribunal, and the Tribunal alone, to determine whether that is the case. Second, the statement at the end of that passage in respect of the burden of proof is misleading. The country guidance presently indicates that the Appellant does have a well-founded fear of persecution. The onus is on the Secretary of State to demonstrate that this is no longer in fact correct.

31. Mr Tan further referred me to [3.1.4] which states that President Abiy Ahmed, elected in April 2018, is himself of Oromo ethnicity, and to the whole of section [3.2]. Although I have read that section in its entirety I do not find it necessary to set it all out. Headed 'Abiy Ahmed's agenda and early actions' the section summarises the view expressed by observers including ACLED, the Danish Immigration Service and the US state department, that the election of Abiy Ahmed represents a 'watershed' in Ethiopian politics. The early indications were that he intended to demonstrate a tolerance for political dissent, a more co-operative approach to Eritrea and that he would make positive changes by generally respecting human rights. The State of Emergency was lifted in June 2018, and thousands of political prisoners were released. The head of the prison service was sacked because of repeated allegations of widespread torture in jails, and groups including the OLF were de-proscribed.

32. Section [4.3] discusses political participation. Sources such as the US State Department are again cited to point out that although the constitution and law have long provided citizens with the right to vote by secret ballot, in practice the ruling party the EPRDF have numerous advantages over other parties, such that they have been continually in power for decades. They won every seat at the last election. The CPIN cites sources predicting that the changes introduced by Abiy Ahmed will mean that opposition groups will be able to meaningfully participate in the elections in 2020. Despite the generally optimistic tone of section [4.3] I do note that the OLF had, as of March 2019, still not been able to register with the National Election Board [at 4.3.9]:

> 'Dawud [OLF leader] told Ethiopia Insight in January that OLF was asked by NEBE to submit a document signed by founders. This is impossible as OLF was established in 1973 and the founders have left or are dead, Dawud said. He added that the recently approved Administrative Boundaries and Identity Issues and Reconciliation and Peace commissions excluded OLF, while its ideological opponents are present, as is Leenco.'

33. Section [6] sets out the history of the OLF and confirms that its aim is self-determination for the Oromo people. Section [10] states that since the organisation was unbanned the authorities have lifted restrictions on access to supportive television stations and websites. It is reported that when exiled leaders returned to Addis they were met by jubilant crowds.

34. For the Appellant Mr Holmes reminded me that my starting point must be the country guidance. He accepted that there has been something of a change in circumstances in that Abiy Ahmed has made positive steps towards resolving the Oromo issue, but submitted that it was too early to tell whether any of his measures will have an impact on the ground in terms of the human rights situation for ordinary OLF supporters. He emphasised the following matters.

35. First, that human rights abuses persist under the government of Abiy Ahmed. Although commentators applaud the legalisation of various organisations, and the closing down of a notorious prison, concerns remain that repressive laws, in place to stifle dissent, are still in place, and are still being used. Yohannes Gedamu, an academic cited in the CPIN [at 6.6.5] opines in a piece dated 11th September 2019 that "Abiy's administration typically delivers mixed results" when it comes to the implementation of reforms. He noted that the Head of Ethiopia's human rights commission had recently decried the continuing use of anti-terror laws. Human Rights Watch, the US State Department and NGO 'Civicus' confirm that arbitrary detention is still being deployed in Oromia as a tactic to suppress dissent. Ill-treatment, lack of due process and impunity for security personnel remain a significant problem. The Human Rights League of the Horn of Africa declared in May of this year that "arbitrary arrests, killings and harassment have widely continued unabated in the Oromia Regional State". They believe that since Abiy Ahmed came to power in April 2018 at least 140 Oromia (mainly youth) have been killed, and 383 have been imprisoned.

36. Second, that the announced reforms are precarious, and do not amount to durable change such that would be required to depart from country guidance. To this end Mr Holmes took me to a July 2019 briefing by the International Crisis Group which notes that the transition to multi-party democracy has already been marred by violence, and that as Ahmed's authority is challenged by various competing factions there is a risk of aggravating "deadly unrest". This inter-ethic violence has already killed thousands and displaced 2.9 million people since Ahmed came to office. In their most recent report Human Rights Watch, whilst commending Abiy Ahmed for the positive steps he has taken, put it like this:

> "Ethiopia has become a dangerous place. As political space opened, Ethiopians were finally able to voice historic grievances that they bottled up for decades under an authoritarian government. Many of these grievances are related to access to land and complex questions of identity and governance. Many Ethiopians have settled these scores, often along ethnic lines, including by forcibly displacing people from land or engaging in violent conflict with rival groups. This has occurred across many parts of the country amidst a serious security breakdown and vacuum in local governance"

37. Mr Holmes submitted that this evidence illustrated the need to read positive reports with caution, and balance. For instance, the CPIN reports that returning exiled politicians were greeted by jubilant crowds in Addis, and that these meetings passed off "without incident": in fact the instability that this gatherings created ended up in violence with the security forces killing at least 23 demonstrators with live rounds.

38. I have considered all of the evidence to which I have been referred. The salient facts, personal to the Appellant are that he has previously been arrested by the Ethiopian authorities upon suspicion of being a supporter of the OLF. He was held for three weeks and managed to secure his release by payment of a bribe. On these facts, applying the country guidance, his appeal should be allowed.

39. I have considered whether, having had regard to the evidence of developments in Ethiopia since Abiy Ahmed came to power in April of last year, there is before me cogent evidence of a durable change on the ground such that this Appellant would no longer be at risk. I am unable to find that to the case. The fact that the OLF have been unbanned, and its leaders permitted to return from exile, is of course significant. Ethiopia is heading for multi-party elections. Measures have been taken to put an end to the systemic use of torture in detention. I have taken those matters into account. I have however before me recent and unchallenged reports by reputable organisations such as the ICG and HRW indicating that extreme caution must be exercised when evaluating Abiy Ahmed's achievements so far. It remains the case that in Oromia the government have continued to suppress dissent by the use of detention and ill-treatment, shooting at demonstrators and even airstrikes against believed OLF targets. These abuses continue against the backdrop of widespread ethnic tension and instability. In such a climate there would be no reason to suppose that central government would be willing to loosen its grip on what is, in essence, a secessionist movement. I am not therefore persuaded that the facts relied upon by the Respondent are of sufficiently strength or cogency to justify departure from the facts in MB. It follows that the appeal must be allowed.

Post-Script

40. At the close of his submissions Mr Holmes asked that I record, in my determination, observations that I had made in open court about the Respondent's reliance on a document entitled 'Welfare Form: Unaccompanied Children'.

41. The preface of the document indicates that it is a pro-forma questionnaire to be completed *inter alia* in the case of unaccompanied children who have been trafficked or who have no one to care for them. The first set of questions clearly go to establishing the child's state of health. This Appellant was asked when he last had a proper night's sleep, to which he replied: "not slept properly in the

last 4 months". He also told the officer that he had not eaten in two days and that he was feeling stressed.

42. The next set of questions go to establishing the child's identity. There is then this question: "Why have you left your country?". Instructions to the interviewer in parenthesis state: "brief details only do not expand or question anything said". The same box includes this script, presumably to be read to the child before the question is asked:

> "(*If a claim for asylum has been made*) The questions I will be asking you here will not relate to the reasons why you might fear returning to your home country. Questions about that will take place at another time. The answers you give to me here will not be used later as part of your asylum claim"

43. Given that clear indication it is therefore extremely surprising to see that the decision maker in this case relied directly upon the answer the Appellant gave to that question to impugn his credibility. It is to my mind wholly unfair and inappropriate that the answers given by a child in a 'welfare' interview are then used against them. This is in part because of the physical and emotional state that the child is likely to be in, but more importantly it is because of the express assurance given by the Secretary of State that this will not happen.

Anonymity

44. The Appellant is a minor seeking international protection. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

45. The decision of the First-tier Tribunal contains material errors of law and it is set aside.

46. The decision in the appeal is remade as follows:

'the appeal is allowed on protection grounds"

47. There is an order for anonymity.

Upper Tribunal Judge Bruce
7th October 2019