



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00186/2020 (V)

THE IMMIGRATION ACTS

Heard at Field House *via Teams*

On 16 June 2021

**Decision & Reasons
Promulgated
On 25 June 2021**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**D K E
(ANONYMITY DIRECTION CONFIRMED)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A Joseph, Counsel, instructed by J D Spicer Zeb Solicitors
For the Respondent: Mr. S Walker, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant appeals against a decision of the respondent not to grant him leave to remain on asylum grounds, or alternatively on humanitarian protection grounds. The respondent's decision is dated 23 December 2019.
2. The First-tier Tribunal (JfTt Havard) dismissed the appellant's appeal by a decision dated 5 May 2020. The appellant was granted permission to appeal by UTJ Macleman by a decision sent to the parties on 28 August 2020. By a decision dated 10 November 2020 this Tribunal (UTJ Gill)

allowed the appeal to the extent that the decision of the First-tier Tribunal was set aside, and it would be remade by this Tribunal.

3. UTJ Gill detailed at [20] of her decision the present scope of the appeal before me:

‘20. ... Accordingly, the re-making of the decision on the appellant’s appeal will not include Article 8. It is limited to the appellant’s asylum claim, humanitarian protection claim and related Article 3 claim and is further limited to the assessment of the future risk of persecution, serious harm or inhuman or degrading treatment or punishment. ...’

4. In addition, at [20] of her decision, UTJ Gill preserved the findings of fact made by Judge Havard, at [32]-[55] of his decision, which are detailed below.

Hearing

5. The hearing before me was a Teams video conference hearing held during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. I was addressed by the representatives in the same way as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.

Anonymity

6. Judge Havard issued an anonymity order, and no request was made by either party for such order to be set aside. I confirm the order at the conclusion of this decision. I do so as it is presently in the interests of justice that the appellant is not publicly recognised as someone seeking international protection: paragraph 13 of Upper Tribunal Immigration and Asylum Chamber Guidance Note 2013 No 1: Anonymity Order’.

Background

7. The appellant is a national of Ethiopia and is aged 48. He is ethnically Amhara.
8. He was employed as a human resources officer for a state-owned armament engineering factory and at the same time was involved with Ginbot 7 (‘PG7’) an Ethiopian opposition political organisation, founded in 2008, and at that time a proscribed terrorist organisation.

9. In June 2015 he passed on sensitive information to a colleague active with PG7. The information was concerned with army personnel and employees working at the factory.
10. The appellant was arrested at a secret political meeting in August 2015 and detained for four months. During his detention, he was beaten and submerged into a container of cold dirty water. Such ill-treatment amounts to torture.
11. The home of his friend was searched, and the classified information found by the Ethiopian authorities. Consequently, his wife was arrested and detained for five days.
12. On 25 December 2015, a police officer placed him in a car, covered his eyes with a cloth and drove him from the prison. After an hour, he was required to change vehicles and in the second car he found his uncle. He was informed that his uncle had secured his release by paying a bribe.
13. The Ethiopian Police issued a summons for the appellant's arrest on 28 December 2015, identifying his escape from custody and his having transferred a stolen government document to a third party connected to PG7.
14. The appellant hid for two weeks before leaving Ethiopia in January 2016 and travelling across various countries before reaching United Kingdom clandestinely on 13 September 2018.
15. The respondent refused the asylum claim by decision dated 23 December 2019. Though Judge Havard found the appellant credible as to his personal history he concluded that the appellant did not possess an objectively well-founded fear of persecution consequent to the present circumstances in Ethiopia.
16. In setting aside the decision of the First-tier Tribunal UTJ Gill reasoned, at [13]-[16]:

'13. The grounds contend that the Judge erred in law in his assessment of the risk on return. Para. 6 of the grounds contends that the Judge identified that the appellant's disclosure of classified personnel information needed to be considered separately to his affiliation with PG7 but he failed to consider the risk and return arising from this aspect of the appellant's evidence.

14. I agree that the Judge did plainly fail to assess the risk of persecution arising from the appellant's disclosure of classified personnel information.

15. I also agree with para. 7 of the grounds that, in his assessment of the risk on return, the Judge failed to take into account the appellant's evidence, which he accepted, that he had escaped from detention.

16. I am therefore satisfied that the Judge did materially erring law, in that, there were two material omissions in his assessment of the risk on return.'

Preserved Findings of Fact

17. Though lengthy, it is appropriate that the preserved findings of Judge Havard are detailed in their entirety:

- '32. It is the Respondent's case that the Appellant's account was not credible and the version of events he had provided was either inconsistent or implausible. The Respondent also maintained that, even if the Appellant was a supporter of PG7, he would not be at real risk of persecution on return.
33. I had read the accounts provided by the Appellant: at his screening interview on 14 September 2018; the written statement dated 3 January 2019; the answers he gave as his asylum interview on 21 January 2019, and the further statement dated 30 January 2020 he had provided in advance of the hearing of this appeal. I also listened carefully to the Appellant when he gave his oral evidence.
34. As part of my assessment of the credibility of the Appellant's account, I have considered the issues raised by the Respondent in the RFRL on which Mr. Holt relied together with the submissions he made at the hearing of the appeal.
35. Whilst there were certain inconsistencies in the Appellant's various accounts to which reference is made below, I found overall the Appellant to be credible. He responded to the questions which were quite properly put to him by Mr Holt in a measured way and did not seek to exaggerate or to be evasive. His responses were full and made without hesitation. I have also taken into account in my assessment of his credibility the fact that the Appellant claimed asylum as soon as he arrived in the UK.
36. It was not disputed that the Appellant is a national of Ethiopia and is an ethnic Amhara. Furthermore, the Appellant's employment history was not challenged but it is suggested that, whilst acknowledging that Amharas had been considered by the Tigrayan Peoples Liberation Front as an enemy, the Appellant had not only worked at an armament engineering factory from 1997 but have been promoted to act as a human resources officer. To be treated in this way was inconsistent with the Appellant's suggestion that the regime would give preferential treatment to the Tigrayan people.
37. However, the Appellant's evidence was that, even though he was the acting human resources officer, he was paid less, and his appointment was never confirmed. The activities undertaken at the factory were not sensitive as it no longer manufactured armaments but it related to their maintenance, rather than manufacture. The Appellant stated that the company was also involved in the

production of civilian items for the textile industry. I found his explanation to be plausible.

38. Furthermore, I do not consider that the Appellant's promotion to acting human resources officer, the period during which he held that post which was never made permanent, and the fact that he was paid less than the position merited were factors which were inconsistent with the Appellant's description of Amharas generally being the subject of discriminatory behaviour which the Appellant opposed.
39. Indeed, at paragraph 35 of the RFRL, the Respondent refers to background information which confirms in general terms, 'that Amharas have had problems previously'.
40. I have found that the Appellant's account of his employment history was plausible. Indeed, the Appellant was not challenge to any extent with regard to his work on the role that he fulfilled.
41. I also found the Appellant's accounts of him initially becoming a supporter of PG7, as opposed to a member, to be plausible. He provided a consistent account of the way in which he was approached by his colleague in work and that they discovered that they shared similar beliefs and concerns. I do not accept that the Appellant's account of the way in which he joined PG7 was inconsistent. He described how, in July 2014, he had joined one of the two organisations which had merged in January 2015 to become PG7.
42. It was accepted by the Respondent that he had been able to answer the various questions put to him about PG7 in the course of his AIR such as the names of the leaders of the party, when the party was founded, and the aims and objectives of party. However, even though he answered such questions that were put to him about PG7 correctly, the Respondent then suggested that such knowledge did not amount to proof of involvement.
43. I did not consider it to be material that the Appellant failed to name the political party when questioned at the screening interview. This was very much a preliminary interview and he made it clear that he had been imprisoned due to his political connections.
44. I also found his account of his conversations with his work colleague leading to him becoming a supporter of PG7 to be consistent and plausible. I accepted the Appellant's evidence and found that, having become a supporter, he would attend meetings organised by a member of PG7 which would involve other supporters and that he then distributed leaflets on two occasions.
45. The account provided by the Appellant relating to his detention and that of his wife set out in his witness statement dated 3 January 2019 was inconsistent with the account that he provided at his AIR on 21 January 2019.

46. In his statement of 3 January 2019 on which the Appellant relied when he gave his oral evidence, he stated that he was at a secret meeting at a house of a member of PG7 which was raided by the authorities who searched the house and found undistributed leaflets; he was taken to Beshefitu Police Station where he was kept for four months. It was during interrogation that he told the authorities the identity of the person who had introduced him to PG7. He said that when they raided his colleague's house, the classified information he had provided with regard to the names and personal information of employees was discovered.
47. He went on to say in his statement that on 25 December 2015 a police officer told the Appellant to follow him and he was taken by car away from the prison and then transferred to another car in which he found his uncle who told him that he had bribed an officer in order to secure his release. It was at this stage that he was told that, whilst detained, his wife had been arrested and detained for five days and they had also searched the Appellant's home. He also learnt the authorities were threatening his wife and mother to disclose his whereabouts.
48. In his AIR, the Appellant was consistent with regard to the circumstances leading to his detention and the conditions he experienced whilst in detention. However, when asked when the Appellant's mother and wife were arrested, the Appellant confirmed that his mother was cautioned and returned on the same day, whereas his wife was detained for five days and his response suggests that this took place during the two weeks that he was hiding following his release.
49. When cross-examined by Mr Holt and when the responses that he gave in the course of the AIR were put to him, the Appellant stated that this was an error by the interpreter. The Appellant confirmed that the police came to search his house following his release and asked where he was, but he maintained that his wife's detention for 5 days took place at the same time as the Appellant was being detained.
50. I took into consideration the fact that the witness statement dated 3 January 2019 had been prepared by the Appellant with the assistance of his solicitors and it was submitted to the Respondent attached to the Preliminary Information Questionnaire. The account provided in his statement of 3 January 2019 is clear, has been confirmed in the statement dated 20 January 2020 prepared for the purposes of the appeal hearing, and the Appellant remained firm in his account when he gave oral evidence. I therefore find that the Appellant was detained in August 2015 for a period of four months and that it was during this period of detention that his wife had also been arrested and detained for five days and during this time they had searched the Appellant's house.
51. It has also been considered by the Respondent to be inconsistent for the Appellant to indicate that he had been released but then for the police to be searching for him. I find that it is plausible that an

individual police officer received a bribe in return for which he arranged for the Appellant to be released from detention, and that once the police discovered he had been released, they attempted to search for him in order to bring him back into detention.

52. In support of this finding, the Appellant had produced at the hearing a document described as a summons dated 28 December 2015. It was claimed by the Appellant that his wife had located the document when she went to their house to mourn following the death of his mother.
53. What appears to be an original document from the Ethiopian Federal Police Commission dated 28 December 2015 has been translated at the request of the Appellant's solicitors and it relates to the Appellant's escape from detention, having been imprisoned because of his involvement with Ginbot 7 and of his intention to transfer a stolen government document to a third party. The Appellant had asked his solicitors whether it would be important for this document to be provided to the Tribunal. When he was told that it was important, arrangements were made for it to be sent. I have noted that there are two dates endorsed on the envelope namely 5 February 2020 and 10 February. The sender's name is consistent with that of the Appellant's wife with the sender's address shown as Addis Ababa in Ethiopian.
54. Whilst I do not consider that the documents, in isolation, would be sufficient proof of the Appellant's affiliation with PG7, his detention, and the fact that he was released in the circumstances outlined, I have included it in my deliberations as to the Appellant's credibility. The document is consistent with the Appellant's account of having escaped from detention on 25 December 2015 with the assistance of a person or persons working at the prison, and a summons being issued by the police three days later requiring the Appellant to report to the police.
55. I have also taken into consideration, in the same way, the email dated 7 December 2018 to the Appellant confirming his membership of PG7.'

18. Judge Harvard concluded as to his findings of fact, at [56]-[57]

- '56. To conclude, I have taken a step back and considered all of the evidence in the round. I have found that the appellant has proved, to the lower standard: that he became a supporter of PG7; that he attended secret meetings; that he distributed leaflets supporting the cause of PG7; that, in his role as acting human resources officer, he had access to information relating to the names and details of employees; that he provided this information to his work colleague who had introduced him to PG7; that he was arrested in August 2015 following a raid by the authorities of a meeting of PG7 that he was attending; that he was detained for four months and interrogated, and that he escaped from detention on 25 December 2015, his uncle having bribed someone working at the prison to facilitate his escape.

57. I have also found that, with the support of his uncle, the Appellant left Ethiopia in January 2016, and travelled via Sudan, Libya, Italy and France to the UK, arriving on 13 September 2018, claiming asylum the following day.'

Decision

19. At the hearing Mr. Walker informed me that upon noting the preserved findings of fact, in particular the appellant's escape from prison and the existence of a police summons in respect of an offence of passing on sensitive State information, and also upon considering the objective evidence filed by the appellant, in particular the evidence concerned with prison facilities, the respondent accepted that the appellant is presently at real risk of serious harm breaching protected article 3 rights upon return to Ethiopia. Consequently, the respondent asked me to allow the appeal on humanitarian protection grounds.
20. As to the appeal on Refugee Convention grounds, the respondent identified this matter as being a classic prosecution not persecution case. The interest of the Ethiopian authorities in the appellant flows from his passing on sensitive State information, not his political opinion. Consequently, the respondent requested that the appeal be dismissed on Refugee Convention grounds.
21. Mr. Joseph confirmed on behalf of the appellant that he was content with the approach to this appeal identified by Mr. Walker, and he did not pursue the appeal on asylum grounds.
22. Having considered the evidence in this matter I am satisfied that the parties have adopted the correct approach to the conclusion of this appeal. On the face of the appellant's evidence, his prosecution is for legitimate and acceptable reasons and cannot properly to be said to have been politically inspired or to repress political activity. National states can properly take steps to prosecute under criminal law the unauthorised distribution of sensitive State information. I am therefore satisfied that the appellant cannot establish that he falls for protection under the Refugee Convention.
23. However, I am satisfied that he faces a real risk of being detained in poor prison conditions upon return to Ethiopia, and his poor treatment will be exacerbated because of his actions in distributing sensitive State information to a member of a formerly proscribed political organisation. For the reasons outlined by Mr. Walker before me, I am satisfied that the appellant has established substantial grounds for believing that if returned to Ethiopia he would face a real risk of suffering serious harm. Such serious harm would consist of inhuman or degrading treatment during the time of his prison incarceration, which is likely to be lengthy: paragraph 339C and 339CA of the Immigration Rules.

24. I am further satisfied that the appellant is not excluded from humanitarian protection.

Notice of Decision

25. The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside by this Tribunal pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007 ('the 2007 Act').

26. The decision is remade.

27. The appellant's appeal is dismissed on Refugee Convention grounds.

28. The appellant's appeal is allowed on humanitarian protection grounds.

29. The appellant's appeal is allowed on human rights (article 3) grounds.

Order Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

30. The anonymity order issued by the First-tier Tribunal is confirmed in the following terms:

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. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan
Dated: 16 June 2021

TO THE RESPONDENT
FEE AWARD

No fee was paid and so no fee award is made.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan
Dated: 16 June 2021