



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/12348/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 December 2022**

**Decision & Reasons Promulgated  
On the 30 January 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**H A A  
(ANONYMITY ORDERED)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer  
For the Respondent: Mr B Lams, Counsel instructed by Clydes Solicitors.

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent, also called “the claimant”, is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court. I make this order because the respondent seeks international protection and so is entitled to privacy.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant” against the decision of the Secretary of State refusing him refugee status or

any other kind of international protection. It is the claimant's case that he is a national of Ethiopia and he had been a member of a political party called the Patriotic Gimbot 7 or "PG7" and he had been detained and ill-treated because of his membership with that party and he made his way to the United Kingdom where he claimed asylum. The Secretary of State gave a detailed "Reasons for Decision" letter dated 8 October 2018. She disbelieved most of the claimant's case but did accept that he was a national of Ethiopia.

3. The appeal came before the First-tier Tribunal when the claimant was represented by Ms Geeta Koska of counsel who had produced a detailed skeleton argument extending to 51 paragraphs. At paragraph 36 Ms Koska said:

"Despite PG7 having been removed from the list of terrorist organisations at the time of writing the decision letter, the [Secretary of State] conceded that PG7 is a terrorist organisation according to CPIN and "... it is accepted that someone who support or is a member of the PG7 will also be at risk or persecution in Ethiopia" [§63]. The CPIN has since been updated, which has removed the presumption that a member of PG7 will be at risk on return. Therefore the burden of proof is on an applicant to demonstrate that they will be at risk of persecution or serious harm on return on the normal standard."

4. The First-tier Tribunal believed both the claimant's assertion that he was a member of PG7 and his assertion that he had detained and ill-treated. Proper reasons were given for these findings. They were not challenged by the Secretary of State and there is no reason to think that they should have been.

5. What is particularly troubling to the Secretary of State is the judge's reasons for allowing the appeal. At paragraph 48 the judge said:

"I have had regard to the risk on return and although PG7 had been removed from a list of terror organisations at the time of the decision letter, the respondent concedes that PG7 is a terrorist organisation and states, 'It is accepted that someone who supports or is a member of PG7 will be at risk of persecution in Ethiopia'. The updated CPIN has removed the presumption that a member of PG7 will be at risk on return; and therefore the burden rests on the appellant to suggest that would be the case."

6. The judge noted that the Secretary of State made it plain in the refusal letter that if it had been established to the Secretary of State's satisfaction that the appellant was a member of PG7 then the appellant would have been recognised as a refugee. The words quoted by the judge in paragraph 48 of his Decision and Reasons come directly from paragraph 63 of the refusal letter.

7. The Secretary of State did not at any stage issue a new refusal letter offering further reasons for refusing the application and, as far as I can see. there is no reason to think that it was ever spelled out to the judge in terms that the Secretary of State had changed her view that members of PG7 risk persecution. The omission of the previous view that members of RG7 risked persecution per se from the CPIN means that the Secretary of State cannot be expected to equate membership of PG7 with a risk of persecution but the change in the CIPIN did not, without more, amend the Reasons for Decision. Unless it was plain from the way that the case was presented to the First-tier Tribunal Judge that the Reasons for Decision had changed is hard to see how the judge erred by finding that the claimant was at risk.

8. The grounds of appeal are settled by Mr McGirr, who is, I know, an experienced Senior Presenting Officer, but as far as I can see he had nothing whatsoever to do with the presentation of the case in the First-tier.
9. Essentially the grounds make two points. First is the objection that the judge has just not explained how there can be a risk. It was established that the presumption of membership of PG7 will create a risk on return had been withdrawn. Second is an alleged "Making a Mistake as to a material fact". This is really a re-working of Ground 1 mixed with, I find, misconceived criticisms of the judge for accepting the evidence of an independent witness without dealing with points that were never put to him in cross-examination.
10. With respect to Mr McGirr, I find that the grounds are illuminated with the clarity of hindsight and indicate what he thinks ought to have happened, which is a very different thing from establishing that what did happen was erroneous. There is no merit in ground 2.
11. It is quite clear to me that the First-tier Tribunal Judge found, for sensible reasons, that the claimant had been persecuted. The judge then noted that the presumption that membership of PG7 would lead automatically to refugee status, addressed his mind briefly but clearly to background material before him dealing with likely political enemies found that the "enemy party", if I can call it that, was still in a powerful position and the judge was just not persuaded that any change in circumstance or attitude towards PG7 on the material before him would irradicate the risk that he felt was demonstrated by the past persecution and the declared beliefs of the claimant.
12. The judge made decisions on the material before them and with regard to way that the case was argued. With the assistance of Mr Lam and Mr Whitwell I have been able to delve into the judge's decision. It was explained by the findings of past persecution, by reference to background material of the power of the people likely to be the appellant's enemies. I find that the judge's conclusion was open to him for the reasons that he gave, which are adequate when I consider how the case was presented.
13. The judge allowed it on refugee and Article 2, Article 3 and Article 8 grounds. Mr Lam accepts, as I think is clearly the case, that Article 8 adds nothing to the other findings. It is supported solely by the difficulties the claimant faces on return.
14. The judge's decision was open to him on the material that was there. The Secretary of State may take the view that there is no longer a risk. That is a matter for the Secretary of State when considering what leave to grant and is not something on which I wish to express view.

**Notice of Decision**

15. The First-tier Tribunal did not err in law and the Secretary of State's appeal is dismissed.

Jonathan Perkins

Signed  
Jonathan Perkins

Judge of the Upper Tribunal

Dated 12 January 2023