IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004603

First-tier Tribunal No: PA-52358-2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

27th February 2024

Before

UPPER TRIBUNAL JUDGE L. SMITH

Between

AH (ETHIOPIA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms R Polaschek, Counsel instructed by Duncan Lewis
For the Respondent: Ms S. McKenzie, Senior Home Office Presenting Officer (via Microsoft Teams)

Heard at Field House on 30 January 2024

Order Regarding Anonymity

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

BACKGROUND

1. By a decision promulgated on 8 December 2023, this Tribunal (myself and Deputy Upper Tribunal Judge Jarvis) found an error of law in the decision of First-tier Tribunal Judge Hanbury, itself promulgated on 29 September 2023, dismissing the Appellant's appeal on protection and human rights grounds against the refusal of the Respondent dated 13 June 2022.

2. The Appellant is a national of Ethiopia. He claims that return to that country would give rise to a well-founded fear of persecution on account of his membership of a particular social group (PSG) due to his medical condition. He suffers from vitiligo which is a skin condition leaving white patches on a person's skin.

3. Further or in the alternative, the Appellant claims that he is entitled to remain in the UK on grounds of humanitarian protection.

4. In the further alternative, the Appellant says that return to Ethiopia would breach his human rights (Article 3 ECHR) based on the risk of serious harm for the same reasons. The Appellant no longer pursues any human rights claim based on a deterioration of his medical condition in Ethiopia. He does say though that removal would breach his Article 8 ECHR rights as there would be very significant obstacles to his integration in Ethiopia. More generally, he also contends that removal would be a disproportionate interference with those rights.

5. I do not need to repeat the factual background to this appeal which is set out so far as relevant at [3] to [9] of the error of law decision. As we also noted, at [49] of the error of law decision, there is no dispute as to the Appellant's history in Ethiopia. As such, it was agreed before the parties at the error of law stage that the hearing to re-make the decision would proceed on submissions only.

6. I had before me a consolidated bundle of evidence running to 806 pages (numbered to page 803) to which I refer below according to the internal pagination as necessary ([B/xx]). I also had very helpful skeleton arguments on behalf of both parties – from Ms Polaschek dated 5 January 2024 as perfected on 29 January 2024 and from Ms McKenzie dated 11 January 2024 as supplemented on the same date.

7. I received very able submissions from both Ms Polaschek and Ms McKenzie and I am grateful to both for their sensible approach to this case.

8. Having heard submissions, I indicated that I would reserve my decision and provide that in writing which I now turn to do. I take the issues in the order in which they were raised in Ms Polaschek's skeleton as supplemented by her oral submissions.

EVIDENCE, FINDINGS AND DISCUSSION

Issue one: Refugee Convention

9. I note at the outset that Ms Polaschek accepted that, if I were to find in her client's favour on any of the issues, I did not strictly need to move on to the other issues. Whilst I accept that submission, I have nonetheless considered all issues in case the matter goes further whilst observing that this first issue would be determinative of the Appellant's case.

10. As recorded at [41] to [45] of the error of law decision, at that stage Ms McKenzie, for the Respondent, submitted that Judge Hanbury had not erred in law when finding that the Appellant could not be a member of a particular social group. That was also the Respondent's initial stance in the first skeleton argument dated 11 January 2024. However, in the supplementary skeleton argument, the Respondent conceded this point. That was on the basis that the Respondent had failed to appreciate the Tribunal's view that the appropriate test was a disjunctive and not conjunctive one. The concession was put as follows:

> "..4. In light of this, the SSHD does embrace the Upper Tribunal's findings an error exists and will for these present circumstances accept the current approach is a distinctive [sic] test to PSG. As a result, the SSHD can accept the Appellant meets the criteria for PSG. However, for the reasons outlined in the skeleton argument he will not face discrimination that amounts to persecution for reasons of his membership."

11. I observe that both parties had suggested that the decision in this case should be reported for what it has to say about membership of a PSG. Since this issue was conceded, that would not be appropriate. There is already in any event sufficient reported guidance in this regard (see in particular DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC) as referred to at [17] onwards of the error of law decision). Moreover, the position is changed by sections 32(2) to (4) Nationality and Borders Act 2022 in relation to asylum claims made following the entry into force of that legislation. Ms Polaschek did not repeat that request and was right not to do so.

12. The dispute between the parties in relation to whether the Appellant meets the Refugee Convention is therefore whether the treatment he faced or would face on return to Ethiopia risks amounting to persecution, whether there would be sufficient protection in Ethiopia against that risk and whether the Appellant could internally relocate within Ethiopia to avoid that risk. I take those issues in turn.

Treatment Amounting to Persecution

13. The Appellant relies in this regard on his own past experiences in Ethiopia and the expert report of Dr Awol Allo, a senior lecturer at Keele University.

14. Dealing first with the Appellant's own evidence, that is contained in the Statement of Evidence form (SEF) and witness statement (B/752-779), asylum interview record ([B/780-802]) and witness statement dated 9 December 2022 ([B/107-135]).

15. The Appellant's own experiences as a child include that, in his home village, children of his own age were banned from playing with him and adults and teenagers would beat him to keep him away from the other children. He was treated as if he were cursed and sent to faith healers. His mother was also abused verbally on the basis that she was responsible for his condition ([B/107-111]).

16. When the Appellant was aged about six years, his mother took him to a doctor in Addis Ababa. He believes that the doctor told her that his condition was incurable. His mother abandoned him in Addis Ababa ([B/111-112]). As Ms Polaschek put it, the fact that the treatment to that point led to the Appellant's mother abandoning him at that young age shows how serious the ill-treatment of her and the Appellant must have been. As Ms Polaschek also pointed out, the fact of the abandonment means that the Appellant has no family support were he to return to Ethiopia.

17. On the streets as a child in Addis Ababa, the Appellant was initially able to obtain some support from a charity who gave him food and offered him some education. However, again, as a result of the reaction of other children, the Appellant was no longer able to attend for that support ([B/113]).

18. Paragraph [17] of the Appellant's statement about his treatment thereafter bears setting out in full ([B/113]):

> "After approximately a year, the abuse became really violent. People began to throw things at me and I thought that I had enough and did not want to continue suffering from this kind of treatment. I was scared that these members of the community would kill me."

19. In the course of his asylum interviews, the Appellant was asked various questions about his fear of return and answered as follows ([B/787-797]):

> "Q12: Why do you fear returning to Ethiopia?
> A12: People might kill me or threaten me.
> Q13: Why would they try to kill or threaten you?
> A13: According to our country belief because of my skin problem people they say it's a sickness from the devil. For these reasons they are afraid of me.
> Q14: By 'people' do you mean everyone in Ethiopia or certain groups?
> A14: By many people they hate me or don't want me to be there.
> Q15: Does this include your family?
> A15: Yes
> …
> Q54: How are people with vitiligo treated by society in Ethiopia?
> A54: What is happening is society think you have been cursed and don't want to be close to you. Isolate you.
> …
> Q57: [A], I'm just trying to understand in general how are people with vitiligo treated by their families?
> A57: Generally the people they will reject you but some people who understand the problem they may help but mostly they reject.

Q58: How do the police treat people with vitiligo?
A58: What is happening because we were living, sleeping in the street, at night the police come and think we are gangs they beat you and treat you badly.
Q59: If the police did not think you were a member of gang would they treat you differently because you have vitiligo?
A59: Yes because even the police see even if not gang they still beat you.
Q60: Can people with vitiligo access healthcare in Ethiopia?
A60: Yes there is clinic by Government to treat people with vitiligo.
Q61: Can people with vitiligo go to school in Ethiopia?
A61: Yes it is possible to attend school but the people, the students will be away from you. They are not happy to be near you.
Q62: Do people with vitiligo ever get attacked or killed by anyone in Ethiopia?
A62: Yes I've not seen people with vitiligo being killed but I know they have been beaten.
Q63: Why do you fear being killed if you have never seen it happen?
A63: When I was young they were always beaten [sic] me when this repeatedly happen one day they will kill me.
Q64: Can people with vitiligo get jobs in Ethiopia?
A64: This one I don't know
…
Q75: Why did you decide to leave Ethiopia?
A75: I decided to leave because I think I will be harmed or killed by society. For this fear is why I left."

20. The Appellant's evidence is underpinned by the report of Dr Allo dated 7 December 2022 ([B/167-203]) ("the Expert Report"). Ms Polaschek submitted that the Expert Report should be given weight. She drew my attention to the Supreme Court's judgment in Kennedy v Cordia (Services) LLP [2016] UKSC 6 from which she drew the following principles in relation to an expert's duty to the court:

(1) An expert should be independent.
(2) The expert should state the facts and assumptions upon which his/her evidence is based.
(3) The expert should say if a matter is outside his/her expertise.
(4) The expert should say if an opinion is provisional if there is insufficient data on which to base it.

21. Ms Polaschek submitted that Dr Allo had complied with those duties. She said that the Respondent's objection (that Dr Allo had not previously been recognised as an expert by this Tribunal in other cases) was not reason to give the Expert Report less weight. I accept her submission. Dr Allo has set out his expertise and fairly set out his opinion including accepting that there is limited evidence about the treatment of vitiligo sufferers in Ethiopia based on his research. I give weight to the Expert Report.

22. Dr Allo's opinion about societal discrimination against those suffering from vitiligo is consistent with the Appellant's own evidence. He says that the social stigma creates an environment of prejudice "so degrading, and

demeaning that it creates a fear in the minds of persons with a disability from participating in social life" ([B/180]).

23. As noted above, Dr Allo very fairly recognises that there is limited background evidence on which to base his opinion. He draws attention to two academic articles regarding the treatment of those with vitiligo. Those are a study entitled "Clinico-Epidemiological Profile and Treatment Pattern of Vitiligo in Selected Dermatological Clinics of Mekelle City, Northern Ethiopia" published by Hindawi Dermatology Research and Practice in 2020 (the Vitiligo Profile Study) ([B/276-281]) and one entitled "Public Knowledge and Attitudes towards Vitiligo: A survey in Mekelle City, Northern Ethiopia" published by the same organisation also in 2020 ("the Public Perception Study") ([B/282-285]).

24. As Ms Polaschek pointed out with the exception of reference to Dr Allo not having previously been accepted as an expert by this Tribunal, no issue is taken with his expertise and standing as an expert.

25. I accept that the Expert Report, the Vitiligo Profile Study and Public Perception Study all say that there is societal stigmatization of those with vitiligo. They do not go so far as to refer to physical ill-treatment. However, I do not accept that the Public Perception Study is as narrow in focus as the Respondent suggests (that the only issue is that people would not marry those with vitiligo). The overall tenor is that discrimination or stigmatization goes wider than simply that issue.

26. Nor do I accept that the Vitiligo Profile Study shows that vitiligo is prevalent in Ethiopia as the Respondent contends. The study is concerned only with patients being treated at dermatological clinics in one place in Ethiopia and will necessarily show therefore that the participants suffer from vitiligo or other dermatological conditions. The study itself says that "little is known about the status of Vitiligo in Ethiopia". In any event, the issue is not whether the condition is prevalent but whether its sufferers are subject to ill-treatment meeting the threshold of persecution. The Respondent himself accepts in the decision under appeal that "negative societal attitudes and misconceptions exist about vitiligo" (§ 54 [B/735]).

27. I accept Ms Polaschek's submission that it is possible for discrimination to reach a threshold which amounts to persecution. Ms Polaschek refers in this regard to the speech of Lord Hope in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 at [12] of the judgment. I also accept that it is not necessary for there to be physical abuse. Ms Polaschek also drew to my attention regulation 5 of the Qualification Regulations which make clear that persecution is to be understood as an act which is either "sufficiently serious by its nature or repetition" or "an accumulation of various measures".

28. If the evidence were confined to the Expert Report and the two studies underpinning that report, I would not have found that the discrimination

amounts to persecution when the instances of discrimination were considered even cumulatively.

29. However, that is not the high point of the evidence. The main evidence which is relied upon by the Appellant is what happened to him. It is his evidence that he was shunned by other children, beaten by adults and teenagers in his home village, treated as if he were cursed, abandoned by his mother aged six years, thereafter excluded from the little education and basic support which a charity could offer him whilst he slept on the streets and thereafter abused including physically by individuals until he felt obliged to leave Ethiopia because he feared being killed. Taken together, those factors lead me to the conclusion that the discrimination and ill-treatment which the Appellant suffered reaches the threshold of persecution. The Appellant's evidence is not disputed. Based on the ill-treatment which he has suffered previously, the Appellant fears similar or worse treatment on return. I accept that his own evidence, coupled with the evidence about societal discrimination against vitiligo sufferers discloses a real risk of discrimination and ill-treatment reaching the threshold of persecution on return.

30. As I have already noted, the Respondent conceded that, on the disjunctive approach, the Appellant is entitled to be recognised as a member of a PSG due to an innate characteristic or common background which cannot be changed (his skin condition). Had the concession not been made, I would in any event have accepted that the Appellant is a member of a PSG based on that characteristic/background and the societal discrimination and ill-treatment faced by vitiligo sufferers in Ethiopia.

Sufficiency of Protection and Internal Relocation

31. That though is not the end of the issue whether the Appellant is entitled to be recognized as a refugee. He would not be so entitled if there were a sufficiency of protection or the option to relocate within Ethiopia to avoid the risk which I have accepted he fears.

32. I do not understand the Respondent to suggest that the Appellant could relocate within Ethiopia to avoid the risk he claims. The Appellant moved (against his will) to Addis Ababa where he suffered ill-treatment again. If anything, the ill-treatment was worse than he had suffered in his home village. As Ms Polaschek pointed out, in the capital city one would perhaps expect a more cosmopolitan society but that is not what the evidence shows.

33. I turn therefore to sufficiency of protection. The Respondent relies on background evidence which he says shows that Ethiopia has an established police force which is largely effective. He also points to measures taken by the authorities in Ethiopia to protect those with disabilities ([B/737-740]).

34. The Appellant claims that he was targeted for abuse not just by individuals but also by the police. At paragraphs [18] and [19] of his statement ([B113-114]), he says this:

> "18. My daily routine, whilst I was in Ethiopia was that I relied on restaurants to have leftover food. During the night, to ensure I was not attacked, I used to go by the river to spend my night and sleep there. Whenever I tried to ask anyone for help, they used to run away and not empathise with me. People then used to shout abuse at me. I also could not go and ask the police for help, the police would tell me to leave the area and that they were getting rid of the beggars. I could not trust the police for any protection or help, because the people who had a sworn duty to protect people like me had turned their back on me and I was left to die.
>
> 19. The police, regardless of what their duty are still members of the Ethiopian community and these superstitions continue with these people and there was absolutely no support. Sometimes I just felt like giving up and sometimes I wished for the suffering to stop by taking my life. I was begging people to help me. It was at these points that I would turn to religion as it was not permissible for a muslim to take his own life. Islam was one thing which kept me going and allowed me to feel fighting for survival. I was sleeping rough with other people under a bridge and there would be times when the police would come and attack us because the area was known for gang activity. The police threatened me a number of times and I was beaten by them on many occasions."

35. The Respondent takes issue with the evidence that the Appellant was beaten by the police because of his vitiligo. The inference from paragraph [68] of the decision letter ([B/739]) is that the Appellant was mistreated because he was in an area used by gangs. In any event, the Respondent contends that the Appellant had not sought the protection of the police and that there is an independent avenue of redress if he were dissatisfied with the police response.

36. I have set out at [19] above, the Appellant's answers to questions 58 and 59 of the asylum interview concerning his treatment by police. Even if what is said in answer to question 58 bears out to some extent the inference which the Respondent seeks to draw, the fact that the Appellant may have been mistreated because he was sleeping on the streets in the first place arises from his vitiligo. Without the discrimination suffered for that reason, he would not be there. The issue is not whether the police were abusing the Appellant but whether they would protect him. Given the ill-treatment meted out on the Appellant's accepted evidence, it is highly unlikely that he would seek protection from them.

37. Further, the Appellant's own view is that he was ill-treated by the police due to his vitiligo (see also §19 of his statement set out above). That is consistent with the views of Dr Allo who points out at §26 of the Expert Report ([B/180]) that "state institutions themselves tacitly and implicitly subscribe to the broader stigma that pervades the social order".

38. Ms Polaschek drew my attention to this Tribunal's decision in AW (sufficiency of protection) Pakistan [2011] UKUT 31 (IAC). Although not strictly part of the guidance for which the decision is reported, I accept that this provides confirmation of the unremarkable proposition that whether an individual has access to protection has to be looked at based on their own

circumstances rather than the general position. The fact that some minorities and people with disabilities are able to access protection does not mean that all can necessarily do so.

39. Ms Polaschek also drew my attention to the Respondent's own country and policy information note entitled "Ethiopia: Actors of Protection" dated September 2020 ("the CPIN") ([B/303-309]) which concludes that although there is in general effective police protection "each case must be considered on its facts".

40. Again, I rely for my conclusion on the evidence of the Appellant himself. Not only was no action taken by the police to protect a vulnerable young child living on the streets against the physical and other abuse to which he was subject from individuals, but the police were also abusing him. Whatever their motivation for so doing, given that the Appellant would likely be returning to the same situation as he left (given the absence of family or other support and his mental health condition) albeit as a young adult, I am satisfied that it cannot be said that there is sufficient protection available to this Appellant.

Conclusion on the Refugee Convention claim

41. For those reasons, the Appellant succeeds on the first issue. He has a well-founded fear of persecution by reason of his membership of a particular social group. There is no sufficiency of protection available to him nor any option for internal relocation. He is therefore entitled to be recognised as a refugee.

Issue two: Humanitarian Protection/ Article 3 ECHR

42. The Appellant argues that, even if the discrimination and harm which the Appellant would face on return is not sufficient to warrant the according of refugee status, he nevertheless ought to be recognised as qualifying for humanitarian protection based on the risk of serious harm within Article 15(b) of the EU Qualification Directive (Council Directive 2004/83/EC) ("the QD"). The protection claim in this case pre-dates 28 June 2022 and therefore the QD continues to apply. Reference is made in that regard to the Respondent's guidance entitled "Humanitarian protection in asylum claims lodged before 28 June 2022" (Version 6.0).

43. The QD for claims made prior to 28 June 2022 is reflected in paragraphs 339C-339CA of the Immigration Rules. Paragraph 339C(iii) reflects Article 15(b) of the QD where "substantial grounds have been shown for believing that the person concerned, if returned to the country of origin, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country". Article 15(b) of the QD is also in materially similar terms to Article 3 ECHR.

44. The tests under Article 15(b) of the QD and Article 3 ECHR largely overlap with the claim under the Refugee Convention. However, the Appellant submits that a risk of ill-treatment falling short of persecution may still

amount to a risk of serious harm warranting humanitarian protection. The Applicant points to the test in Article 3 ECHR which includes inhuman and degrading treatment as well as torture. I take into account that the threshold in Article 3 ECHR is a high one.

45. In this regard, the Appellant focusses rather more on the societal prejudice and discrimination which he would face. He relies on his own evidence about the situation he would face on return as follows ([§33 at B/119]):

> "I fear that should I be sent back to Ethiopia, I will continue to face the same discrimination I faced whilst I was in Ethiopia. I would be forced to live on the streets again as I would not be able to get employment or rely on anyone for support. I have no support network, nor do I know of any family in Ethiopia. I will not be able to survive, nor get the medical attention/ mental health support I am receiving at the moment. I would like to state that in Ethiopia, I would never dare discuss mental health, and in the event that I was brave enough to do this and if the people in Ethiopia found out that I suffered from mental health problems and was seeing a therapist, those who are not religious would treat me as a 'mad' person and those who believe in Islam, will automatically associate this with a jin possession. In the United Kingdom, it is encouraged to speak about your mental health in order to improve this condition. In Ethiopia, mental health is not even accepted as a curable problem. I request the Immigration Judge to consider my application with sympathy and understand that I have lived a very difficult life and even trying to explain what has happened, has been extremely difficult."

46. In light of the section dealing with it in Ms McKenzie's skeleton argument, I make clear that the Appellant is not pursuing a case that his mental health and medical condition would itself mean that Article 3 ECHR would be breached by removal. It is accepted that there is treatment available in Ethiopia. Nevertheless, the Appellant does rely on the evidence that he suffers from mental health problems. He was assessed by the Helen Bamber Foundation in August 2022 as suffering from "a *severe* level of psychological distress" (report at B/158-161]). He was diagnosed by Dr Syed Ali at that time with severe depression and complex PTSD as a result of his treatment in Ethiopia and subsequent events ([B/137-154]).

47. The Appellant's evidence in relation to humanitarian protection and Article 3 ECHR is largely borne out by what Dr Allo says. Although Dr Allo recognises that there are formal anti-discrimination laws, he says that those are not effective in practice. Although State bodies may not actually harm the Appellant, they would not assist him because public officials carry the same general social stigmas as the rest of society ([B/201]). The fact that public authorities would not assist is also borne out by the Appellant's past experiences. Although he received some schooling and support from a charity in Addis Ababa, eventually that ceased due to the attitude of the other children to his vitiligo.

48. The Appellant also draws my attention to concerns expressed by the UN Committee on the Rights of Persons with Disabilities regarding the

implementation of Ethiopian laws as referred to by Dr Allo at [B/183]. The US State Department's report on Ethiopia in 2021 notes that persons with disabilities could not access education, health services, public buildings and transportation on an equal basis with others ([B/266]).

49. The views expressed in the Public Perception Study are also consistent with vitiligo suffers being effectively ostracised by society. Dr Allo describes the research as showing "significant levels of discrimination and stigma in the areas of self-esteem and psychological health, ability to seek and obtain employment, ability to engage in social, sexual and leisure activities" ([B/175]).

50. Taking all of those factors together alongside the evidence of the ill-treatment and discrimination suffered by the Appellant in the past (as set out at [29] above), I conclude that the Appellant has amply shown that removal would amount to a breach of Article 3 ECHR. I also consider that he is entitled to humanitarian protection on account of the treatment he would face on return.

Issue three: Article 8 ECHR

51. In light of my findings under the previous headings, I can deal with this aspect of the Appellant's case very shortly.

52. The test in relation to very significant obstacles to integration is to be found explained by the Court of Appeal in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 as follows:

> "14. In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

The instant appeal is not of course concerned with a foreign criminal but the test remains the same.

53. Even if the ill-treatment which the Appellant would suffer on return had not reached the threshold for persecution or Article 3 ECHR, the cumulative factors amount to very significant obstacles to the Appellant's integration in Ethiopia.

54. The Appellant grew up in Ethiopia. However, even then, for the last eight years that he spent there, he was living on the streets in a situation which can barely be described as any form of integration. He speaks the language but was not assimilated into society. He has no family support in Ethiopia. The evidence shows that, due to his vitiligo, he would be shunned by others in society and would not receive assistance from the State. He would find it difficult if not impossible to obtain employment. Based on the views expressed in the Public Perception Study, he would not find a partner. He would find himself effectively ostracised by society.

55. Whilst I once again recognise that the test in relation to whether there are very significant obstacles to integration is a high one, the foregoing factors which are amply supported by the evidence cumulatively show that this test is met.

56. In the circumstances, the Appellant would succeed within paragraph 276ADE(1)(vi) of the Immigration Rules. I do not therefore need to go on to consider Article 8 ECHR outside the Rules.

CONCLUSION

57. The Appellant has made out his protection claim both under the Refugee Convention and on Article 3 ECHR grounds. He would also be entitled to humanitarian protection. There would be very significant obstacles to the Appellant's integration in Ethiopia. He therefore also succeeds on Article 8 ECHR grounds. I therefore allow the appeal on all grounds.

NOTICE OF DECISION

The Appellant's appeal is allowed on all grounds

L K Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 February 2024

APPENDIX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004603

First-tier Tribunal No: PA/52358/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....8th December 2023...

Before

UPPER TRIBUNAL JUDGE L. SMITH
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

AH (ETHIOPIA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr F. Clarke, Counsel instructed by Duncan Lewis
For the Respondent: Ms S. McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 30 November 2023

Order Regarding Anonymity

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 against the decision of First-tier Tribunal Judge Hanbury (hereafter "the Judge") who, in a decision promulgated on 29 September 2023, dismissed the Appellant's asylum and humanitarian protection appeals against the refusal of the Respondent dated 13 June 2022.

2. Permission to appeal was granted, without any restriction upon the grounds which could be pleaded, by Judge Cox on 18 October 2023.

The relevant background

3. As the Judge noted at para. 13 of the decision, the Respondent does not dispute the Appellant's claimed material history in Ethiopia. In short, the Appellant has suffered with vitiligo (a skin condition which leads to white patches appearing on a person's skin) since he was about five years of age. This led to the Appellant experiencing bullying and his uncles performing various Islamic ceremonies upon him to try to improve the vitiligo but without success. Adults and teenagers would beat the Appellant to keep him away from other children.

4. The Appellant's mother became concerned that the Appellant had been possessed by a jinn and took him to a local healer who performed further rituals on him including rubbing blood from a decapitated hen onto the Appellant's hands and across his body. These treatments were not successful and also led to the Appellant's mother being victimised because these rituals were seen as un-Islamic.

5. The Appellant's mother later took the Appellant to see a doctor in Addis Ababa who indicated that it would be extremely difficult to do anything to treat the vitiligo. This led to the Appellant's mother abandoning him (the Appellant was six-years-old) at a bus station in Addis Ababa.

6. As a consequence, the Appellant remained living on the streets in Addis Ababa for around eight years. During that time the Appellant had attempted to attend a school for orphans which ran once a week but was eventually prevented from doing so by abuse and other mistreatment he suffered from his fellow orphans. This led to the Appellant feeling suicidal but he did not carry this out because of his religious beliefs.

7. The Appellant also began to live with other people under a bridge where there was known to be gang activity and he was beaten by the police during this time.

8. The Appellant's experience of constant beatings and abuse as well as living as a beggar in Addis Ababa caused him to travel to Sudan in 2016, and later on to Libya where he was abused by traffickers because of his

vitiligo before he later escaped. The Appellant then raised money to pay people smugglers which eventually led to him and others being rescued at sea by the Italian authorities. Following this the Appellant travelled to Switzerland where he remained for about two years but was not able to access support or assistance and could not use public transport there because of the level of prejudice he faced due to his skin condition.

9. The Appellant then travelled to France and spent approximately one month living in the jungle in Calais where he sustained injuries from various police assaults. Ultimately he travelled from France to the United Kingdom by lorry and ferry in October 2018 and arrived on 15 October 2018; he claimed asylum the following day.

The Judge's decision

10. In the decision, the Judge laid out a summary of some of the aspects of the Appellant's material history (which we will come to later) before, at para. 11, recording that the Respondent's representative did not seek to cross-examine the Appellant.

11. Within para. 28, the Judge noted that the Respondent's case was that any negative societal attitude and prejudice that he might experience in Ethiopia was not significant enough to reach the level of persecution for the purposes of the Refugee Convention or serious harm for the purposes of Article 3 ECHR, nor did it amount to treatment justifying the grant of Humanitarian Protection, (i). The Respondent also asserted that the prevalence of vitiligo in Ethiopia is high, (ii).

12. The Respondent further pointed to CPIN evidence indicating that mental health services are available in Ethiopia, (iii); The Appellant's experience of societal isolation or societal opprobrium by his colleagues/other citizens in Ethiopia would be no worse than he would experience in a modern European country, (iv).

13. The Judge then reached the conclusion, at para. 29, that the evidence showed that there would be rudimentary healthcare available in Ethiopia for the Appellant and that he would be able to access his present medication, that being the antidepressant drug sertraline.

14. The Judge then boiled the Appellant's case down into five separate thematic points and first dealt with the Appellant's representation that he should be treated as a vulnerable witness applying the Joint Presidential Guidance Note: number 2 of 2010.

15. The Judge took into account the report of Dr Ali (who diagnosed the Appellant as suffering from severe PTSD), at paragraph 33(i); the reports of Dr Argyriou which concluded that the Appellant suffered with severe psychological distress, (ii) and at (iii) suggested, erroneously, that Dr Allo had identified the Appellant as suffering with traumatic amnesia and panic attacks – (we accept the Appellant's assertion that Dr Allo is a

country expert and not a medical expert and therefore did not diagnose either of those two conditions).

16. At para. 35, the Judge concluded that the Appellant should not be treated as a vulnerable witness seemingly because he had become an adult. The Judge then went on to say that in any event his vulnerability was not material to the issues to be determined given that he was able to survive on the streets of Addis Ababa for some years as well as in the Calais jungle camp in France. The Judge concluded that any such vulnerability would not affect the Appellant's ability to secure employment, a place to live or that those vulnerabilities would make him more likely to come to the attention of the authorities in Ethiopia.

17. In respect of the second thematic issue, the Judge made reference to the Appellant's reliance upon the Upper Tribunal's decision in DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC), ("DH"), see para. 37 onwards of this Judge's decision.

18. At para. 38, the Judge stated the following:

"I find that vitiligo sufferers do share a distinct identity but they are not a PSG within the meaning of the Refugee Convention. This is because although they have a common health condition by way of background that cannot be changed, they do not by and large face persecution, as opposed to discrimination, and their identity within Ethiopian society is not distinct. They face discrimination in common with other groups within that society."

19. At para. 39, the Judge further found that the incidents the Appellant described in Ethiopia were symptomatic of spiritual superstitious beliefs held by a proportion of the population but that there was not much evidence that he was singled out and indeed, "*no specific threats have been made against his life*".

20. The Judge further concluded that state protection would be available to the Appellant and that he would not face persecution as a consequence of his visible skin condition, (para. 40).

21. At para. 41, the Judge added that vitiligo sufferers in Ethiopia are not discriminated against or mistreated by the state itself and that there was nothing distinctive about the Appellant's own case which separated him from an ordinary member of society who suffers from a visible skin condition.

22. At para. 45, the Judge concluded that the evidence showing the Appellant's PTSD and depression was not in itself enough to show that returning the Appellant to Ethiopia would cause him intense suffering or a such a significant deterioration in his health due to the absence of sufficient healthcare in his own country.

23. At para. 48, the Judge then expressly found that the Appellant had exaggerated the extent of his mental health - without providing any clear reasoning as to why he reached that finding - and observed that the Appellant's mental ill health was currently primarily controlled by medication and that he had plateaued.

24. The Judge concluded that there was no real risk of deterioration related to the likelihood of suicide and that the Article 3 medical ECHR threshold was not met in this case, (para. 50).

25. In assessing Article 8 ECHR, the Judge took into account that the Appellant's skin condition did affect his ability to function socially and that there was force in the submission that such conditions can be debilitating in modern Western countries as well as African and other countries, (para. 53).

26. The Judge then considered paragraph 276ADE(1)(vi) of the rules and concluded that there would be no very significant obstacles to his reintegration into Ethiopia, primarily based upon the fact the Appellant had spent his formative years in that country and may have acquired skills whilst in the UK. Somewhat confusingly, the Judge also sought to apply section 117B of the NIAA 2002 to the assessment of very significant obstacles under the Rules.

27. Finally, at para. 56, the Judge concluded that there was no reason for considering the Appellant's claim outside of the Immigration Rules (despite applying section 117B of the NIAA 2002) but nonetheless also commented that the Appellant did not appear to have formed extensive networks of friendship in the UK or otherwise become part of the community.

The error of law hearing

28. In challenge to the Judge's decision, the Appellant submitted very detailed grounds of appeal which suffer with a lack of care in respect of the numbering of grounds pleaded.

29. This was then supplemented by a skeleton argument (dated 25 November 2023) authored by different counsel which sought to identify the materiality of some of the grounds pleaded.

30. On the basis that the cumulative effect of the original grounds of challenge as supplemented by Mr Clarke's skeleton argument effectively left the Tribunal with full written submissions from the Appellant, we therefore asked to hear from the Respondent..

31. Initially Ms McKenzie indicated that she had not had sight of the Appellant's skeleton argument dated 25 November 2023 and so she was given a copy of that document and sufficient time to read and absorb the arguments.

32. Having had time to consider the developed grounds in that document, Ms McKenzie very helpfully indicated that she took the view that the Appellant had made out his argument that there were errors of law in the decision of the Judge, although as we detail later, she did not accept these errors were material.

33. Ms McKenzie particularly referred the panel to ground 4 and the overall complaint that the Judge had entirely failed to engage with key aspects of the Appellant's evidence (unchallenged by the Respondent) when assessing the issues of persecution and serious harm, including the Appellant's specific account of being bullied, beaten and socially ostracised in Ethiopia; the Appellant's own view, as expressed in his interview, that he was beaten by the police in Ethiopia because of his vitiligo and his further assertion in the asylum interview that he feared that the repeated beatings he suffered in Ethiopia would one day result in his death.

34. Ms McKenzie also clarified that she was accepting all of ground 4 as well as grounds 3 and 5, effectively on the same basis.

35. As these grounds were accepted by Ms McKenzie, we merely summarise the overall points made in them.

36. Ground 3 - that the Judge failed, when considering the question of sufficiency protection, to address the question of the police's motivation for beating the Appellant which, as we have noted earlier, he attributed to his vitiligo or how this might impact upon the viability of any protection sought by the Appellant in the future against persecution from non-state actors.

37. The Appellant also challenged the Judge's application of the law in respect of the test of the reasonable likelihood of the feared persecution/serious harm.

38. The Judge also failed to address extensive expert country evidence put forward describing the serious and widespread discrimination advice faced by persons with vitiligo.

39. In respect of ground 5, the Judge failed to engage with the country expert report of Dr Allo who gave the view that the culture of discrimination in Ethiopia against those who are perceived to be disfigured (such as those with vitiligo) is "*toxic and virulent*" and manifests itself in material, spiritual, and moral deprivation ultimately leading to a disabling social structure and social marginalisation which exists in state institutions themselves. The expert also went on to comment about the limited prospects of the Appellant being able to obtain employment, education and so on. The expert also contested the Respondent's contention that vitiligo is widespread in Ethiopia.

Findings and reasons

40. We should say at this juncture that we entirely agree with Ms McKenzie's decision to accept that grounds 3, 4 & 5 were made out and therefore we only need to clarify that we accept the Appellant's core contentions in those grounds that:

a. The Judge unlawfully sidelined the Appellant's own description of his experiences in Ethiopia including persecution/serious harm at the hands of the police.

b. The Judge also erred by failing to adequately engage with the Appellant's country expert evidence from Dr Allo.

c. The Judge also misstated the test for a real risk of serious harm and/or persecution by noting the absence of any "specific threats" against the life of the Appellant.

41. In respect of materiality, Ms McKenzie averred that these myriad errors were not material. She asserted that the Judge was correct to say that the Appellant had not made out his claim that he is part of a particular social group for the purposes the Refugee Convention. Ms McKenzie took us to para. 38 of the Judge's decision and argued that the Judge's approach was in accordance with relevant jurisprudence.

42. Having heard that submission, we indicated to Ms McKenzie that we were not persuaded by her argument that the Judge had lawfully assessed the particular social group issues and that we agreed with the Appellant that it was plain that the Judge had erroneously applied a conjunctive rather than disjunctive test contrary to DH as relied upon by the Appellant in the skeleton argument to the First-tier Tribunal.

43. In DH, the Upper Tribunal concluded that:

"1. The Geneva Convention relating to the Status of Refugees 1951 provides greater protection than the minimum standards imposed by a literal interpretation) of Article 10(1)(d) of the Qualification Directive (Particular Social Group). Article 10 (d) should be interpreted by replacing the word "and" between Article 10(1)(d)(i) and (ii) with the word "or", creating an alternative rather than cumulative test.

2. Depending on the facts, a 'person living with disability or mental ill health' may qualify as a member of a Particular Social Group ("PSG") either as (i) sharing an innate characteristic or a common background that cannot be changed, or (ii) because they may be perceived as being different by the surrounding society and thus have a distinct identity in their country of origin…"

44. The disjunctive approach to the test was also applied by the Upper Tribunal in the later reported case of EMAP (Gang violence, Convention Reason) [2022] UKUT 335 (IAC).

45. It is evident from paras. 37 & 38 of the Judge's decision, that he applied a conjunctive test and this is a material misdirection in law.

46. We also accept the Appellant's further subsidiary argument that the Judge also materially erred by conflating the test for the establishment of a particular social group with the separate and distinct question of whether the Appellant faces a real risk of persecution as a result of his membership of that group.

47. We have already explained that Ms McKenzie properly accepted that the Judge failed to provide adequate consideration of Dr Allo's report (who dealt extensively with the levels of discrimination for people like the Appellant) and we find that this error also materially interacts with the finding at para. 38.

Notice of Decision

48. We therefore indicated to the parties that we found that the errors of law were material and were sufficient, without the need to consider the other various grounds, to cause the decision to be set aside.

Rehearing in the Upper Tribunal

49. Having heard from the two representatives, we agreed that the remaking of the appeal should be carried out in the Upper Tribunal rather than the First-tier Tribunal. In coming to that conclusion, we took account of the fact that there is no dispute between the parties as to the Appellant's material history in Ethiopia and subsequently before his arrival in the United Kingdom.

50. We therefore concluded that the remaking of the appeal can narrow its focus to the legal issues at play as well as the entirety of the Appellant's evidence as to his experiences (especially) in Ethiopia by reference to the relevant expert and background evidence.

DIRECTIONS

(1) We therefore direct that the Appellant and Respondent provide skeleton arguments to the Upper Tribunal. The Appellant is to provide his skeleton argument **no later than 5 January 2024** and the Respondent has until **19 January 2024** to provide his.

(2) At the date of drafting this decision we note that the Respondent has already issued his skeleton argument on 4 December 2023 despite the oral direction (as detailed above at (1)) for the Respondent to reply to the Appellant's document. We however maintain the Directions as they are and expect the Respondent to provide a skeleton argument which engages with the Appellant's further written representations no later than 19 January 2024.

(3) The re-hearing of the appeal is listed before UTJ L Smith on 30 January 2024, face to face, for a **full day**.

(4) Mr Clarke indicated during the hearing that the Appellant will not be seeking to rely upon any further evidence, and it was confirmed that there will be no cross-examination. Accordingly, there would appear to be no need for an interpreter but if one is required (if oral evidence is to be given), the Appellant's representatives are to notify the Tribunal within 14 days from the date when this decision is sent.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
7 December 2023