**Upper Tribunal**
**(Immigration and Asylum Chamber)Appeal Number: PA/10687/2019 (V)**

**THE IMMIGRATION ACTS**

| **Heard by way of a remote hearing at Bradford IAC** | **Decision & Reasons Promulgated** |
|---|---|
| **On the 3rd September 2021** | **On the 11th October 2021** |

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

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

Appellant

**AND**

**H S**
**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**
For the Appellant: Mr Diwnycz, Senior Presenting Officer.
For the Respondent: Mr Howard, Solicitor advocate on behalf of the appellant

**DECISION AND REASONS**

Introduction:

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal Judge Forster (hereinafter referred to as the "FtTJ") who allowed HS's protection and human rights appeal in a decision promulgated on the 3 January 2020.

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2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. Whilst this is the appeal of the Secretary of State I intend to refer to the parties as they were before the First-tier Tribunal.

4. The hearing took place on 3 September 2021, by way of a remote hearing which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video. I was present at the Tribunal centre and the hearing took place using Microsoft Teams. There were no issues regarding sound, and no technical problems were encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

5. The history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle, including the witness statements.

6. The appellant is a national of Ethiopia and claimed to be of Oromo ethnicity. Her father was Oromo, and her mother was Amharic. Her father was involved with the Oromo Liberation Front ("OLF") and was arrested by the authorities in 2010 and had not been seen since. The appellant's mother had been arrested and detained repeatedly since her husband disappeared. The appellant was arrested and detained for 2 months in August 2016 while attending a demonstration in support of the OLF. The authorities linked her to her father. She claimed to have been beaten and questioned repeatedly before being released. The appellant returned home to find that her mother and sister disappeared. She remained in the family home until she was arrested again in August 2017 where she suffered ill-treatment during her detention to the extent that she needed hospital treatment. She then managed to escape from the hospital when there was a fire alert, and she contacted her uncle who took her to Addis Ababa where she remained in hiding until she left Ethiopia on 29 December 2017. The appellant claimed asylum in Sweden in 2017. The application was refused, and she went to Belgium before arriving in the UK on 9 April 2019 where she claimed asylum.

7. The appellant further claimed that she had been actively involved with the OLF during her time in the UK.

8. The respondent refused her claim in a decision letter dated 21 October 2019. Other than accepting her nationality as Ethiopian, the respondent rejected all aspects of her claim. As regards her ethnicity as an Oromo, at paragraphs 29 – 42 , the respondent referred to her limited ability to speak the language and lack of knowledge of Oromo culture which was inconsistent with her factual claim. At paragraphs 43 – 46, the respondent gave reasons for rejecting the appellant's account of her father's activity for the OLF and at paragraphs 47 – 52 gave reasons for rejecting her account that she had supported or had been involved with the OLF. The respondent noted that whilst she was able to provide some information about the party (its formation and that it was based in Ethiopia, she could not provide the full name of the party, she did not know who formed the party and could not describe the logo. She could not provide any further detailed answers on the OLF and that was found to be implausible for someone who is or has been connected to the OLF. Her answers given when asked what it meant to be a member of the OLF and the aims of the party for Ethiopia, the answers given were described as "vague responses with generalised answers" which was found to be inconsistent with someone who had knowledge of the party. At paragraphs 53 – 67 the respondent set out her reasons for rejecting the appellant's account that she was of adverse interest to the Ethiopian authorities. The respondent identified a number of credibility issues concerning her account and identified parts of the account which were inconsistent with the country material (paragraph 60, 62).

9. As to section 8 of the 2004 Act, the respondent took into account the journey undertaken by the appellant and that she travelled through Belgium, which was considered a safe country and that she failed to take advantage of a reasonable opportunity to make an asylum human rights claim whilst in a safe country. Failure to do so damaged her credibility.

10. As to an assessment of her claim, consideration was given to the country guidance decision in MB (OLF and MTA – risk) Ethiopia CG [2007] UKAIT 00 30 which held that OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be it a real risk of persecution if they have been previously arrested or detained on suspicion of OLF involvement. So, to all those who have a significant history, of OLF membership or sympathy which is known to the authorities (paragraph 77). However in the light of her claim, which rejected that she'd come to the attention of the authorities she would not be at any risk of harm.

11. In the alternative the respondent considered that even if it was accepted that she had come to the attention of the authorities at one

protest, she would not be at risk having taken into account the CG decision and the updated country materials.

12. The respondent considered that the country information indicated there had been cogent and durable changes in regard to the opposition generally and former and current armed groups in particular and thus there were very strong grounds supported by cogent evidence to depart from the findings in MB.

13. The respondent considered that based on that material, and whilst it was not accepted that she was a supporter of the OLF, even if she were, it was not accepted that she would be at risk of persecution or serious harm on return to Ethiopia.

14. The remainder of the decision letter considered Article 8.

15. The appellant appealed that decision to the FtT (Judge Forster) on the 16 December 2019. In a decision promulgated on 3 January 2020 the judge allowed her appeal.

16. It appears that there was an application to adjourn the appeal for the appellant's solicitors to provide medical evidence, but this was refused because the judge considered the report "would not go to the main issue in the case which was whether the appellant is of Oromo ethnicity" (at [4]). The FtTJ set out his factual findings and analysis of the evidence at paragraphs [14]-[25] and having made a number of adverse credibility findings on her account, allowed the appeal finding that the appellant was of Oromo ethnicity as was her father. That she was only 14 years old they disappeared, and a knowledge of matters was slight and that in the light of his finding that she was Oromo and father was involved with the OLF that as she grew older and supported the OLF she came to the attention of the authorities. He therefore found that she was an Oromo and was a supporter of the OLF and came to the attention of the authorities in Ethiopia. Having considered the current CG decision, he found that she would be at risk on return and allowed the appeal.

17. Permission to appeal was sought on behalf of the Secretary of State and permission was granted by DIJ Manuell on 27 January 2020 for the following reasons:

> "The judge's analysis of the evidence is not easy to follow. The significant number of adverse conclusions about the appellant selectively disclosed documents reached point to rejection of the appellant's claims. Section 8 appears to be misunderstood. The judge's reasoning is deficient. The grounds are arguable."

The hearing before the Upper Tribunal:

18. In the light of the COVID-19 pandemic the Upper Tribunal issued directions indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via a remote hearing. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

19. I am grateful for their assistance and their clear oral submissions.

20. Mr Diwnycz of Counsel appeared on behalf of the Secretary of State and relied upon the written grounds of appeal. The written grounds submit that the judge erred in law by failing to give adequate reasons for why he found the appellant to be credible in her claim to be of Oromo ethnicity and her activity on behalf of the OLF. It is submitted that at paragraphs 14 – 21 of the decision, the judge recorded his findings, and it was clear that he did not find any support for the appellant's account based on any of evidence which he determined to be either lacking in expected detail or was inconsistent. He additionally found her credibility to be damaged by virtue of section 8 having failed to claim asylum in Belgium after leaving Sweden. Thus it is unclear why the judge found in the appellant's favour.

21. The grounds go on to state that whilst it is asserted that the judge based his conclusions on one point being that the appellant's father was Oromo and therefore it is reasonably likely that she was telling the truth, however in making this finding the judge failed to give reasons for why in fact he finds the appellant's father to be of Oromo ethnicity. The appellant's account by the judge's own findings is unreliable and as such without more it is a misdirection in law to simply accept her patronage and therefore the remainder of her claim.

22. It is additionally submitted that the judge erred in law in his statement that the appellant's rejected claim to asylum in Sweden should not have been held against her. Whilst it was not determinative, the fact that the appellant claimed asylum in Sweden and her account was rejected should have been given some weight in the credibility assessment given that they are also a signatory to the Convention. The judges failed to look at the evidence holistically and in the round in the light of Tanveer Ahmed.

23. Mr Diwnycz therefore submitted that the decision of the FtTJ disclose the making of errors of law and should be set aside in its entirety and should be remitted to the FtT to be heard afresh.

24. Mr Howard relied upon the Rule 24 response filed on behalf the appellant and dated 11 May 2020. In that written response, it is submitted that the judge explained how he assessed the respondent's evidence and explained what parts of the evidence he accepted and

rejected and explained the basis upon which he made his conclusion. In particular at paragraph 22, the judge noted that the appellant was 14 years old when her father disappeared and as a result her knowledge of such matters would have only been slight.

25. In his oral submissions, Mr Howard referred to paragraph 13 of the decision where the judge confirmed that he had considered all the evidence in the round before arriving at his conclusions and at paragraph 22 the judge applied the lower standard of proof to the protection claim.

26. As to his assessment at paragraph 22, Mr Howard submitted that the judge accepted that the appellant was of Oromo ethnicity, her father was also Oromo and involved with the OLF and then as a result of that she supported the OLF and came to the attention of the Ethiopian authorities when she attended a demonstration and due to the connection of her father. Mr Howard submitted that those are findings which were open to the FtTJ to make and that the judge did consider her claim where he stated at paragraph 22 “there are inconsistencies in the appellant’s evidence which damage your credibility but overall to the lower standard acceptor evidence”.

27. Mr Howard submitted that the respondent had stated that this was a “reasons challenge” and the threshold is a high threshold and therefore the judge had considered all the evidence, he had applied the correct standard of proof and notwithstanding the inconsistencies the judge found that she would be at risk of harm. Whilst the judge could have given further explanation, the reasons given were adequate.

28. In the written submissions, it is further set out that the judge correctly applied the country guidance decision and that at [19] with regard to section 8 of the 2004 act, the judge explained that he taken that into consideration when assessing her overall credibility.

29. Mr Howard on behalf of the appellant invited the tribunal to uphold the decision.

30. At the conclusion of the submissions I reserve my decision which I now give.

Decision on error of law:

31. The grounds advanced on behalf of the Secretary of State challenge the decision of the FtTJ on the basis of the failure to give adequate reasons for his decision to allow the appeal.

32. This is opposed by Mr Howard on behalf of the appellant who submits that the FtTJ confirmed that he had considered all the evidence in the round before arriving at his conclusions (at [12]) and that in his submission the judge had explained what part of the evidence

accepted and which part of the evidence he rejected. He further submits that at paragraph [22] the FtTJ did make reference to inconsistencies in her evidence which damaged her credibility but the FtTJ accepted her account to the lower standard which applied. He therefore submits that the challenges to the decision are no more than a mere disagreement with the findings of fact and do not amount to a material error of law.

33. Having reviewed the decision in the light of the grounds and the submissions of each of the parties, I am satisfied that the FtTJ's decision involved the making of an error on a point of law. I shall set out my reasons for reaching that view.

34. In his decision the FtTJ considered the appellant's claim relating to events in Ethiopia based on her history and that of her father. The core of the claim was that she and her father were of Oromo ethnicity, her father was involved with the OLF, he had been arrested as had been the appellant herself. She later escaped from a hospital before arriving in the UK. Her claim also related to have been involved in activities in the UK supported by a letter from the OLF in the UK.

35. On that core account the FtTJ made a number of adverse credibility findings. They can be summarised as follows:

(1) On the issue of ethnicity, the judge found that the appellant had failed to demonstrate a detailed knowledge of that culture including the "Gadda system" which he found to be an integral part of Oromo life, provide very little detail about Oromos, she could not speak Oromo. The judge found that whilst the appellant's mother and father were of different ethnicities, he would have expected a knowledge of her father's culture and language to be much greater and all the more so because of her stated interest in and support for the OLF which existed to promote the session of the Oromo (at [14]).

(2) The appellant was unable to provide detailed information about her father's role in the OLF. In the light of her participations in demonstrations and support for the OLF, the judge found that he expected her to know more about her father and what he did for the organisation (the appellant had given his arrest and disappearance of the motivation for her own critical activities) (at [15]).

(3) As to her claimed involvement with the OLF party, the judge found that she was not able to describe the flag when asked about it, she was not able to describe the OLF's logo or give the full party of the name which the judge found was inconsistent with her claimed involvement with the organisation and her participation in the demonstration (at [16]).

(4) As to her claimed detention and ill-treatment, the appellant claimed that she had scars but when asked why she had not provided the

information when she claimed asylum the appellant stated that she had only recently informed new solicitors and that she had not been asked about it. The judge found that this explanation was not credible because it was "very important evidence that if true was described would have supported the asylum claim" (at [17]).

(5) The FtTJ found that the appellant's claim that she had escaped from hospital was inconsistent and was one that was lacking in detail (at [18]).

(6) Her credibility was damaged by her failure to claim asylum in Belgium, taking into account section 8 of the 2004 Act (at [19]).

(7) The FtTJ did not attach "very much weight" to the arrest warrant provided because the appellant left Ethiopia on 29 December 2017 but the arrest warrant was dated more than 18 months later, the document referred to "file/criminal act" but failed to identify any connection with the OLF or any specific charge, the appellant received the document from her uncle in Ethiopia but the evidence as to how it was obtained and how he came to send it to her in the UK was "vague and lacked credibility" and because the appellant gave "inconsistent evidence about contact she had with uncle and others since leaving the country". The judge found its "provenance is dubious, and its content does not go to the claimant's alleged involvement with the OLF" (at [20]).

(8) The judge did not give a great deal of weight to the letter from the OLF due to its lack of detail concerning how the appellant's claim was verified. The author of the letter confirmed her ethnicity as an Oromo but did not explain how he had reached that conclusion (at [21]).

36. Having made those adverse credibility findings the judge went on to consider his conclusions on the claim. The judge stated at [22]: "I find that the appellant is of Oromo ethnicity. Her father was an Oromo. The respondent questioned his involvement in the OLF because the appellant was only able to provide brief details about his activities. I take account of the fact that the appellant was only 14 years old when he disappeared, and a knowledge of such matters would have been slight. It is plausible, given my finding that the appellant is an Oromo and that her father was involved in the OLF that as she grew older she supported the OLF and came to the attention of the authorities when she attended a demonstration and because of the connection with her father. There are inconsistencies in the appellant's evidence which damage her credibility but overall to the lower standard I accept her evidence. I find that the appellant is an Oromo and was a supporter of the OLF and came to the attention of the authorities in Ethiopia."

37. In my judgement the adverse findings of fact summarised above are in direct contrast to the conclusion reached that the appellant is of

Oromo ethnicity and was a supporter of the OLF who would come to the attention of the authorities in Ethiopia.

38. I would accept, as Mr Howard submitted, that in his decision the judge referred to having considered all the evidence "in the round" before arriving at his conclusions as set out at paragraph [13] and stated that he had applied the lower standard of proof. However a general self-direction in an earlier part of a decision does not necessarily mean that the judge applied that self-direction in his conclusions having undertaken the fact-finding exercise.

39. When looking at the decision, the core of the account was that her father was of Oromo ethnicity as was she and as a result she supported the OLF and came to attention to the authorities as a result of her links with her father and her own support for the OLF. In his factual findings, the judge expressly found that the appellant's evidence was lacking on the issue of ethnicity given that she could not answer questions about Gadda which was an "integral part of Oromo life" and failed to demonstrate any detailed knowledge of that culture. She could not speak Oromo and the judge expected that in the light of her account her knowledge of the culture and language would be much greater. Her claim to be Oromo was also further undermined by her account of being involved and supporting the OLF for the reasons given at paragraph [14]. As her claim support of the OLF, she could not provide information as to the flag, its logo or give the full name of the party which was inconsistent with her claimed involvement and her participations in demonstrations both in the UK and in Ethiopia.

40. Those factual findings have not been taken into account in the judge's concluding analysis that "I find the appellant is an Oromo and was a supporter of the OLF" (at [22]). The judge has not provided any analysis or given reasons as to why he accepted that the appellant's father was Oromo or that she supported the OLF given the key adverse findings of fact and where the FtTJ expressly found a lack of knowledge about the OLF and of Oromo culture and life undermined her factual account.

41. In my judgement there is a stark contrast between those adverse findings of fact on the key elements of the claim and the consistency and truthfulness of the claim as a result. Those are matters which go to the heart of the overall credibility assessment. On a careful consideration of paragraph 22, I am satisfied that there is no analysis or explanation provided as to why the judge accepted the appellant had been truthful in her account and accepted that she was an Oromo and that she had been a member/supporter of the OLF given his earlier rejection of the core aspects of her account.

42. Whilst Mr Howard points the sentence at [22] where the judge took into account her age and that she was 14 when her father

disappeared and that her knowledge of matters would have been slight, when reading that sentence it provides no reasoning or analysis as to why that supported her claim about being a supporter/member of the OLF. The reference to her age does not deal with the adverse findings of fact relating to the lack of knowledge about Oromos and the OLF which he found had been inconsistent with her claim to have demonstrated on behalf of the OLF both in Ethiopia when she was older and in the UK when her earlier age would have little or no relevance.

43. As regards the issue of her arrest the FtTJ, further than saying it was plausible that she was mistreated in detention, makes no finding of fact as to whether she was so detained by the authorities and the last part of paragraph 17 appears to indicate that the judge did not believe her evidence as to any arrest or ill- treatment because he rejected her explanation for having not informed her solicitors. There is a lack of clarity and analysis on this key issue also.

44. Other supporting evidence in the form of the arrest warrant and the letter from the OLF provided by the appellant were given little or no weight and the findings on that material were not taken into account in the final analysis. His factual finding that her escape from the hospital was both inconsistent and lacking in the detail expected of such an event were also matters that were not taken account of in his overall analysis. The reference to “inconsistencies in the appellant’s evidence” is not the subject of any further analysis and does not in my judgement explain why those inconsistencies, which plainly went to the core of account, entitled the judge to reach the conclusion that she was credible in her account and that he accepted her evidence.

45. Overall I am satisfied that there is a significant difference between the adverse factual findings made by the judge and his conclusion which was purportedly made in the light of those findings as set out at paragraph [22] and that the judge failed to adequately reason why in the light of those adverse findings on key elements of her claim it led to the conclusion that she was credible and that she would be at risk of serious harm or persecution.

46. In reaching that assessment I have reminded myself of the high threshold necessary and that the obligation on a tribunal judge is to give reasons in sufficient detail to show the principles upon which the tribunal has acted and the reasons that have led to the decision. Whilst I accept that appellate courts should not rush to find a misdirection simply because they might have reached a different conclusion on the facts or express themselves differently, in my judgement and on a careful reading, the FtTJ erred in law for the reasons that I have given above. Consequently the decision cannot stand, and it should be set aside. Both parties have submitted that in the event of the Upper Tribunal reaching the conclusion that the decision of the FtTJ involved the making of an error on a point of law,

that the appeal should be remitted to the First-tier Tribunal for a hearing afresh.

47. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

48. In my judgement and consistent with the overriding objective, the correct forum for re- making the appeal is the First-tier Tribunal. The error of law is one that undermines the decision as a whole and all findings will be required to be remade. I also note that her claim involved a sur place claim having been involved with the OLF whilst in the UK, but no factual findings are made on that part of her claim nor on the detention aspect of her claim. I also note that an application had been previously made for the admission of further evidence which had not been granted. On that basis I am satisfied that the appeal falls within paragraph (b) above and that is appropriate to remit the case to the FtT.

49. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision shall be set aside and remitted to the FtT for a hearing.

**Notice of Decision:**

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT is set aside and remitted to the FtT.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Upper Tribunal Judge Reeds

Dated 6 September 2021