Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00274/2020

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 16 November 2021	**On 23 November 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

EA
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Mohzam of Burton & Burton Solicitors.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Juss ('the Judge') promulgated on 31 March 2020, in which he dismissed the appellant's appeal on protection and human rights grounds.

Background

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2. The appellant, who was born on 5 April 1999, is a citizen of Ethiopia who claimed international protection on the basis of a real risk of mistreatment on account of his membership of the Semayawi Party, his Walkait identity, and involvement in motivating people in uprisings in Eritrea, leading to a fear of persecution for reason for holding an adverse political opinion.
3. The Judge notes the essence of the appellant's claim is that his father was connected with the Walkait Identity Issue and was part of the unrest and was eventually killed by the Government. The appellant claimed to have been involved in politics, handing out leaflets with his father and taking part in demonstrations, leading to his arrest and imprisonment, where he was held in detention for two months until family members paid a bribe for his release, during which he claims to have been tortured and ill treated. The Judge noted the appellant remained in Ethiopia for four months after his release, in the same area of Gonder, yet was not detected [4].
4. The Judge had the benefit of considering not only the documentary but also the oral evidence and sets out his findings and reasons from [16] of the decision under challenge.
5. It is clear the Judge considered the evidence with the required degree of anxious scrutiny as a result of which he did not find that the appellant satisfied the requirements of paragraph 339L the Immigration Rules, as his evidence was not coherent and plausible for the reasons set out at [18] and [19] where the Judge writes:

> 18. First, refugee law is forward-looking. The Appellant claims to be at risk of ill treatment in the future if he is returned, because in the past he had been so treated by the Ethiopian authorities. I do not accept that this will be the case. First, this is a case where the Appellant came to the attention of the authorities for attending one demonstration, which he did not himself organise (see RL at [57]). It is true that he argues an enhanced risk of persecution on account of his father's high-profile involvement in the same cause. However, this has never been approved by him and the SSHD is right to cast doubt on this elevated risk attaching to him now purely for this reason. Secondly, the Appellant left Ethiopia in 2017. He did not claim asylum in France or Greece. Within 24 hours of his arrival in the UK he had done so. But even if one believes that aside, the fact is that there have been, not one, but a number of political changes in Ethiopia. Since then, the most notable of which is the appointment of Dr Ably Ahmed, which has been described by independent observers as 'a watershed moment in the country's political development' so that there is 'an increased tolerance of political dissidents…' (RL at [63]). In fact, the Danish Immigration Service in September 2018 report has confirmed (RL at [63]) that 'the incoming Prime Minister Ably Ahmed had sharply broken with the policy of the past by reaching out to the opposition and showing signs of reformist policy.' Given that the Appellant is such a low level activist, I do not consider that on the lower standard that he will be at risk of ill treatment at all. Third, although the Appellant in his WS states that in prison he was 'tortured badly' ([2]) that change in political leadership now means that he is not at risk from the government of Ably Ahmed.
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> 19. Second, and in any case, I do not find the Appellant's account to be credible in any event. I do not accept that his godfather secured his release so that 'in return for payment. The nurse would keep your knowledge of me and the treatment secret' (at [3]) as this is not credible. I do not accept that he

managed to lay low for 4-months with no detection whatsoever because, 'the authorities would never have suspected the relationship between my godfather and myself' (at [5]). I do not accept that he was unable to procure supportive evidence from his cousin, for reasons he gives. He states that, 'when I had left Ethiopia and went to Greece, I called my cousin I asked her about my mother. My cousin told me she could not continue to live in her old house because of the constant harassment and intimidation from the authorities …'([7]). He states that 'my father was a prominent member of the *Welkait Identity Committee'* and that this was a Committee 'formed as a response to the growing dominance of the Tigrayan culture..'(at [8]). I do not see why his Cousin could not provide him with a supportive letter now that the political leadership has changed. The Appellant states (see WS at [15]) that, 'my cousin lives in Gondar and I asked her to send me a letter from the committee confirming that my father was murdered by the Authorities. Also, I asked for a letter that would confirm that he was a member of the committee…' He goes on to say that he had asked her to approach the remaining members of the *Welkait Identity Committee* 'for a letter' but she was unable to do so as 'the situation was getting worse' (at [16]) when in fact the situation is now better. I do not accept that it is credible that 'she told me that she would be unable to help.' At [16]).

6. Permission to appeal was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal, the operative part of the grant being in the following terms:

> 2. It is arguable that, at [19], the judge erred in finding that it was not plausible that the appellant's godfather secured his release from detention when it was the appellant's evidence that his mother had assisted him to escape from detention and this had been accepted by the respondent. In respect of the appellant's father's profile.
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> 3. The Secretary of State accepted that the appellant was the victim of past persecution. In assessing future risk to the appellant, it is arguable that the judge applied an incorrect legal test. The judge failed to make findings on whether the improvements in Ethiopia are both significant and durable such that the appellant was no longer at risk.
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> 4. It is arguable that the judge failed to make findings as to whether there are insurmountable obstacles to family life taking place in Ethiopia in circumstances where the appellant's partner is and Eritrea national he has been granted refugee status in the UK. The judge also arguably failed to take into account the best interests of the child and failed to take those best interests into account when finding that the Appellant could return to the Ethiopia to obtain entry clearance to return to the UK.

Error of law

7. The appellant's account of detention, ill-treatment, together with members of the committee being killed is in accordance with the objective evidence, especially in relation to events in 2016 when Welkait Committee members had been arrested and tortured for petitioning for identity recognition of the Welkait Amhara population in Ethiopia.
8. The change referred to by the Judge is relevant as two weeks after Abiy Ahmed was appointed Prime Minister of Ethiopia in April 2018 he held a meeting with the recently released political prisoners from the

Welkait Amhara Identity Question Committee in Gondar. After the meeting, all attendees were hopeful that the Welkait issue could be solved peacefully. They agreed that the government institutions would abstain from arrest and torture but use a peaceful and democratic approach in line with the constitution of the Federal Democratic Republic of Ethiopia (FDRE) and, in return, the Welkait Committee would keep the population calm.

9. In relation to past persecution; paragraph 339K of the Immigration Rules states that "The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated".

10. There was no evidence before the Judge of a breakdown in the relationship or return to persecution or violent acts by or against this particular group, indicating that the changes that have been achieved are significant and durable on the evidence.

11. The reference to the 'godfather' releasing the appellant from detention appears to be a simple error as the appellant's claim was that other family members secured his release. Although it is not known why there would be any need to pay a bribe when other members of the party with a far higher profile than the appellant were being released from prison, if a guard used the opportunity to extract funds from family members this did not establish this is a case in which the appellant will be viewed as having escaped or would be wanted by the authorities if he was returned.

12. The core finding of the Judge is that even taking the appellant's case at its highest he had not established he will face a real risk on return as a result of the changes in the country situation. This has not been shown to be a finding not available to the Judge on the evidence.

13. The Judge was criticised during the course of the error of law hearing for basing the decision on no more than the reasons for refusal letter rather than considering the evidence had been provided as a whole, but there was no specific reference to any of the country material provided that would undermine the Judge's finding. Although the Judge does refer to material in the refusal letter this includes a reference to the Danish Immigration Service report which is a document prepared by others not connected to the Secretary of State. It is not established that the reference did not accurately reflect the comment of the Danish Report, or that the country material provided supports the contention the Judge's finding rents are outside the range of those reasonably available to him on the evidence.

14. The assertion the Judge went behind matters conceded by the Secretary of State, implying a procedural irregularity sufficient to amount to legal error, is not made out. Certain aspects were accepted by the Secretary of State in the refusal letter but the Judge was required to consider the evidence for himself especially as he had the benefit of oral evidence and submissions from both sides. It is not

made out there was any unfairness. The Judge dealt with issues clearly known to the parties in relation to which evidence had been called.

15. No legal error material to the decision to dismiss the appeal on protection grounds is made out.

16. In relation to the human rights aspects, the Judge considers these from [20] of the decision under challenge. As there was no risk to the appellant in returning to his home area, for the reasons found by the Judge, and no other relevant evidence, it was not made out that the appellant would not be a 'sufficient insider' to enable him to properly re-establish himself in his home area, where he has family members. No material legal aid error is made out in the Judge's conclusion that the appellant could not succeed pursuant to paragraph 276ADE, of the Immigration Rules.

17. In relation to Article 8 ECHR the Judge writes between [23] and [26]:-

> 23. Although, it is said that that the Appellant's partner has full refugee status, I know nothing about their living arrangements for the quality of their relationship together as there has been no evidence to that effect before this Tribunal and they have not been together for two years and are not married. The partner may well be a refugee but this does not prevent her relocating to Ethiopia with the Appellant given the new government there of Dr. Ably Ahmed, bearing in mind the circumstances presented before me at this Tribunal today. If she does not wish to do so, then, if the Appellant claims to have the relationship that he does with his partner, there is nothing preventing him from applying to join her in his child by returning and making an application for entry clearance from Ethiopia.
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> 24. If I consider whether there are "exceptional circumstances" here, the Appellant obviously does not succeed inside the rules, and the question is whether he succeeds outside them. I do not find that he does. This is because the decision in **Agyarko [2017] UKSC 1** explains, "the European Courts use of the phrase 'exceptional circumstances' in this context was considered by the Court of Appeal in **MF** (Nigeria) [2013] EWCA Civ 1192 (paragraph 56). The Supreme Court goes on to say that,
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> "Ultimately, it has to decide whether the refusal is proportionate in the particular case before it, balancing the strength of the public interest in the removal of the person in question against the impact on private and family life. In doing so, it should give appropriate weight to the Secretary of State's policy, expressed in the Rules and instructions, that the public interest in immigration control can be outweighed, when considering an application for leave to remain brought by a person in the UK in breach of the Immigration Rules, only where there are 'insurmountable obstacles' or 'exceptional circumstances' as defined."
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> 25. The Supreme Court provided helpful guidance when it goes on to say that,
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> "The Secretary of State has not imposed a test of exceptionality in the sense that the case should exhibit some highly unusual features, over and above the application of the test of proportionality. On the contrary, she has defined the word 'exceptional', as already explained, as meaning circumstances in which refusal would result in unjustifiably harsh consequences for the individual, such that the refusal of the application would not be proportionate." (Paragraph 60).

18. The difficulty with the appellant's challenge is that identified by the Judge, namely that the appellant failed to provide sufficient evidence to even deal with straightforward matters such as their living arrangements and quality of the relationship. Although the appellant's partner has full refugee status, she is a national of Eritrea and not Ethiopia and there was insufficient evidence before the Judge addressing the question of whether it will be unreasonable or unduly harsh to expect her to relocate with the appellant to Ethiopia.
19. The Judge noted the date of birth of the child, a girl born on 13 February 2020. The best interests of such a minor child are to be cared for by her parents. It was not suggested otherwise in the evidence before the Judge. There was nothing to show the child is anything other than a healthy child, and in particular nothing to establish the need for the child to remain in the United Kingdom or to show that the child's best interests would not be served if she went to Ethiopia with her parents.
20. The Judge's finding that the family unit could relocate together means that family life recognised by article 8 can continue outside the UK. Whilst the Judge, suggesting the alternative that the appellant could return to Ethiopia and make an application to return to the United Kingdom lawfully, that is not the core finding and is just a reflection on an option should the appellant's partner wish to stay in United Kingdom.
21. Having given careful consideration to the material before the Judge, decision, grounds of challenge, and submissions made at the error of law hearing, I find the appellant has failed to establish the Judge has erred in law in a manner material to the decision to dismiss the appeal on the basis of the evidence that was before the Judge. It has not been shown that the findings made are outside the range of those reasonably available to the Judge on the evidence the appellant chose to rely upon at the hearing.

Decision

22. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

23. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……
Upper Tribunal Judge Hanson

Dated 17 November 2021