ASYLUM AND IMMIGRATION TRIBUNAL

HA (OLF members and sympathisers – risk) Ethiopia [2005] UKAIT 00136

THE IMMIGRATION ACTS

Heard at: Field House
On 17 August 2005

Determination Promulgated
6 October 2005

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Before

Dr H H Storey (Senior Immigration Judge)
Miss B Mensah (Senior Immigration Judge)

Between

Appellant

and

Secretary of State for the Home Department

Respondent

Representation
For the appellant: Mr G. Denholm of Counsel, instructed by J.D. Spicer & Co.
For the respondent : Mr J. Gulvin, Home Office Presenting Officer

This case is reported solely for what it says about risk to OLF members and sympathisers on the basis of recent country reports.

DETERMINATION AND REASONS

1. The appellant is a national of Ethiopia. She appeals against a determination of the Immigration Judge, Mr P.H. Norris, notified on 5 April 2005, dismissing her appeal against a decision refusing to grant asylum and refusing to grant leave to enter.

2. By virtue of the Immigration and Asylum (Treatment of Claimants, etc.) Act 2004 this appeal is to be treated as a reconsideration in which the initial issue is whether or not there was a material error of law on the part of the Immigration Judge.

3. The Immigration Judge accepted that the appellant came from an Oromo family, which was active in the affairs of the Oromo community, but did not accept that her parents had been arrested in April 2001 or that they subsequently disappeared, or that she was involved then in the OLF. However, he did accept that the appellant became an "active supporter of the OLF" in December 2003 or early January 2004, that she was arrested in May 2004 at a time when she and others were engaged in a meeting of a small group of OLF members and that she was detained for approximately three weeks during which time she was severely ill-treated on account of her activities for OLF and the political opinions. He further accepted that she was then released on condition that she report weekly, did not have contact with any of the others arrested with her and she refrained from any involvement with OLF. He found too that she observed the conditions on which she was released "until at least 20 July 2004".

4. However, the Immigration Judge dismissed her appeal because she had only been (at the time of her arrest) a "modest and low-level supporter of OLF", that she had not been charged with any offence, had been allowed to leave the police station on conditions, had observed the conditions on which she was released until at least 20 July 2004 and had not resumed her political activities at any time following her arrest. He stated at paragraph 13:

> "I am unable to find that the circumstances in which she was living from 6 June onwards put her at risk of further ill-treatment. Whatever her activities for the OLF had been prior to her arrest in May 2004, the authorities would have discovered what they were but it is clear they had nevertheless decided to release her without charge or trial. I find that the appellant had no continuing commitment to the OLF following her arrest in May 2004, and that accordingly she had no subjective fear of any continuing ill-treatment at the hands of the police nor was any such fear justified on the basis of the objective evidence. Furthermore, I see no reason why the appellant, if she felt it was unsafe for her to continue to live at the former family home, should not have relocated to another part of Addis Ababa, and in particular to live with or near to her uncle and his family.'

5. The grounds of appeal contended that the Immigration Judge in assessing future risk had failed to attach any or adequate weight to past persecution; had failed, in assessing future risk, to consider his findings in the context of the relevant country material; had failed to deal properly or at all with the implications of the fact that the appellant had been released on conditions; and had erroneously concluded that there was internal flight open to the appellant.

6. We consider these grounds do establish a material error of law. Whilst the Immigration Judge did give consideration to the relevance of the fact that the appellant had been released on conditions, he erroneously confined this consideration to the question of whether she was "willing" to observe the conditions and whether the conditions were "reasonable" ("I find that the conditions of her release were entirely reasonable having regard to the nature of the organisation of which she was avowedly a supporter"). Even putting to one side the fact that on the Immigration Judge's own findings the appellant had only observed the conditions "until at least 20 July 2004", there obviously came a point (either straight after 20 July 2004 or when she left Ethiopia in late September 2004) when she fell in breach of her conditions. The crucial questions which needed to be addressed, therefore, were "What would be the reaction of the authorities to that breach and how would that affect how they would view her on return to Ethiopia?". The Immigration Judge nowhere addressed these questions. The closest he came to addressing them was in paragraph 13 when he noted that:

> 'I do not consider that she was at any real risk of arrest at any time after her release from detention on 6 June 2004, provided that she observed as she was willing to do, the conditions of her release'.

7. If anything the wording of this passage (".. provided that") implies that he accepted that, if she fell in breach of her conditions, she would be at risk of arrest.

8. The failure of the Immigration Judge to address these crucial issues was an error of law because both were central to the question of future risk. In paragraph 14, confining himself to his finding that the appellant would not resume her OLF activities if she returned to Ethiopia, he found nothing to suggest the authorities were or would be interested in re-arresting her post-release. However, that conclusion failed to take into account a highly material and relevant factor because it flew in the face of the plain fact that the authorities would view her as a person who had breached her bail conditions.

9. We are further satisfied that this was a material error on the part of the Immigration Judge, since it affected the Immigration Judge's decision upon appeal.

10. Both parties agreed that if we found there was a material error of law we should go on to the second stage of reconsideration on the basis of the primary findings of fact made by the Immigration Judge.

11. The decision we substitute for that of the Immigration Judge is to allow the appeal. The Immigration Judge gave a summary of the OLF in his determination. But this was largely confined to an historical and political analysis noting that this organisation continues to exist as a body committed to armed struggle. It made no mention of salient facts concerning the approach of the authorities to the OLF, despite the fact that he had before him the April 2004 CIPU Report which detailed in paragraphs 5.50 – 6.1 the arrest and detention of thousands of OLF

members or sympathisers and the commission by security forces of unlawful killings and their mistreatment of detainees. At paragraph 6.1 it stated:

> "The government continued to arrest and detain persons arbitrarily, particularly those suspected of sympathising with or being members of the OLF. Thousands of suspects remained in detention without charge."

12. Had the Immigration Judge brought this specific evidence to bear on the crucial issue of the reaction the authorities were reasonably likely to make to the fact that the appellant had fallen into breach of her conditions of release, we consider he would have drawn a different conclusion as to future risk. On his own account the appellant had experienced arrest and severe ill-treatment on account of her activities for the OLF and her political opinions. That arrest and detention were relatively recent: May-June 2004. She had then breached her conditions, by failing to report weekly. It is reasonable to infer that her failure to report would cause the authorities to suspect that she had breached the other two conditions relating to avoidance of contact with OLF politics and with OLF colleagues. The fact that the appellant might have ceased being involved with OLF and had no continuing commitment to this organisation would be not at all determinative of how she would be perceived by the authorities. On the basis of the April 2004 CIPU Report we consider it was reasonably likely that they would re-arrest and detain her and, in the course of that detention, inflict further ill-treatment upon her by virtue of her (perceived) political opinion.

13. Even if we are wrong in the assessment we have made of what the Immigration Judge would have concluded had he addressed the crucial issues in the light of relevant background evidence which was before him, we (having found a material error of law) have to consider the evidence in this case in the light of the up-to-date position ***(R & Others [2005] EWCA Civ 982)***. The appellant's representatives have now adduced a Human Rights Watch report of May 2005 entitled "Suppressing Dissent". It notes at paragraph 65 that police officials in Oromia often subject individuals who are arrested on suspicion of OLF-related activities to torture and other forms of mistreatment. At paragraph 67 it notes:

> "Many of the former detainees interviewed by Human Rights Watch said that their eventual release from custody was only the beginning of their ordeal. In many cases police officials harass and intimidate former detainees and their families for years after their release".

14. In our view the contents of this report lend additional support to the conclusions we have drawn as to future risk to this appellant.

15. Mr Gulvin ventured to suggest at one point that even if we were satisfied that the authorities would take an adverse view of this appellant if she came to their attention on return, it was not reasonably likely that she would come to their attention. Neither Mr Gulvin nor Mr Denholm were able to assist us with specific background evidence regarding record-keeping operated by the Ethiopian authorities. However, it is in our view abundantly clear that amongst the different opposition and dissident parties and groups currently existing in Ethiopia, the authorities make a particular priority of targeting those who are members of OLF or are known OLF sympathisers. The OLF is committed to armed struggle and does not regard itself as willing to work within the existing political and parliamentary system. In such circumstances it would be entirely reasonable to assume that the Ethiopian authorities maintain centralised records on persons suspected of OLF involvement. The many instances highlighted in the CIPU and Human Rights Watch report of repressive action taken against the suspected OLF members and sympathisers strongly indicate in our view the existence of a centralised and relatively sophisticated system of record-keeping. Whether at the point of return at the airport in Addis Ababa or subsequently, we consider it reasonably likely therefore that this appellant would come to the adverse attention of the authorities as someone who had been previously arrested on suspicion of OLF involvement and had breached conditions of her release.

16. In such circumstances we do not consider that she would be safe either in her home area or in another part of Ethiopia or there would be a viable internal relocation alternative.

17. As already noted, this case is being reported for what it says about risk to OLF members and sympathisers. In our view there is a current risk to OLF members and sympathisers who have been previously arrested and detained on suspicion of OLF involvement or who have a significant history, known to the authorities, of OLF membership or sympathy. We have not considered that it is suitable for designation as a Country Guideline case because we did not have sufficiently full evidence or submissions. But equally it is right that we should make known, by reporting, the views we have reached on the basis of the latest available evidence as presented in this case. Our decision does not affect the continuing status as country guidance of ***HB (Ethiopia EDP/VEDP members Ethiopia [2004] UKIAT 00235***.

18. Accordingly we conclude that:

- there was a material error of law;

- The decision we substitute is to allow the appellant's appeal.

DR H.H. STOREY
SENIOR IMMIGRATION JUDGE