



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/09410/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19 February 2016**

**Decision and
Promulgated
On 8 April 2016**

Reasons

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

[F F]

(~~no anonymity direction made~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr T Lay of Counsel

For the respondent: ML Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Gambia born on [] 1965. She appealed to the Upper Tribunal against the determination of First-tier Tribunal Judge Scott-Baker dated 21 July 2015 refusing her appeal against the decision of the respondent dated 28 August 2014, refusing her asylum and humanitarian

protection and to remove her from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999.

2. Permission to appeal was granted by First-tier Tribunal Judge Fisher on 28 August 2015 stating that it was arguable that the First-tier Judge erred in not properly evaluating whether the appellant had the availability of family support in Gambia in light of her evidence that the appellant was subject to physical abuse by some family members and thereby her conclusion that her brother and son would provide her with some family support on return being speculative and inadequately reasoned.

The first-tier Tribunal's findings

3. The Judge in his determination made the following findings which I summarise.

- The appellant has given evidence on occasions in the past as to the abuse that she suffered as a child especially from her father who raped her and as to the death of her son when he was five and the miscarriage of twins and I accept that these facts that the appellant has suffered trauma as a result thereof.
- The appellant claims the appellant was unable to give a cogent account as to her husband's claimed involvement in the UDP political party and her evidence on his political activities was vague. I do not however place any weight on the fact that the appellant has been confused as to whether her husband was kidnapped in 2008 or 2009 as I accept that as she has experienced dramatic events in the past her recollection may in part be unreliable. I also note that the appellant has been inconsistent as to when she suffered a miscarriage and as to whether it was after the second time the authorities visited her house or at the time she received the first threatening letter. But again I do not place any adverse inference from this inconsistency.
- In light of the objective material, I find on the lower standard of proof that it is likely that the appellant's husband did disappear in 2009. I make no finding that he was taken by the government as the appellant's evidence on this was particularly vague. She has been inconsistent as to the extent of the interest in her after the disappearance of her husband. Crucially on her own account, I note that she was able to live in the same place for two years before leaving at her own behest. On her own account she has not been personally targeted in her own right and if the authorities had been interested in her then they would have made themselves known at the time. The appellant has not established that she had come to the adverse attention of the authorities either because of her own political opinion or on imputed political opinion arising from her husband's activities.

- The appellant did not claim asylum on arrival in the United Kingdom and this has also damaged the credibility.
- The appellant alleged that she had been called a witch in Gambia as her husband disappeared, her son died and she suffered a miscarriage losing twins. It is not accepted that if her life was at risk and was perceived to be a witch, she would have remained in her area without harm.
- In dealing that the domestic abuse claimed by the appellant, I note that her father has died and she is in contact with her mother. The current circumstances or indeed the fact that she remained living in the same place for two years after the miscarriage of the twins does not assist the appellant in establishing that she is at risk of ill treatment on return from her family. She also now has an adult son living in the Gambia and her brother has recently returned from the UK and they will be able to offer her support and assistance. When she claimed that her son had recently gone missing, I note that the appellant was vague in her evidence on this and I reject this claim for that reason.
- In respect of risk on return, I do not accept that the appellant is at risk. The main perpetrator was her father who has now died and the evidence was that she is in contact with her mother, brother and sister and such contact indicates that she is accepted as part of the family. She is now a grown woman and unlike the time when she had been abused by her father as a child.
- It is accepted that the appellant has suffered trauma in the past and that she had been unfortunate in losing her husband and children but that does not mean that she is at risk of serious ill-treatment on return from any local people as being accused of being a witch. I find that this aspect of her claim is exaggerated. She remained living in the Gambia until 2010 when she left which was two years after the date when her husband was kidnapped and she lost to the twins and three years after her son died of malaria. If she had been at risk from any local people she would have suffered at that stage which she did not.
- In respect of her medical condition, the appellant's psychiatry conditions are not so severe that it could be said that she is an exceptional category of persons and that Article 3 is engaged. Therefore, her removal from the United Kingdom would not interfere with her rights under Article 8 or Article 3. There are medical facilities available in the Gambia and the appellant cannot establish on the evidence that she can be viewed as an exceptional case so that it can be said that returned is disproportionate.

- The appellant's relationship with Mr. [W] does not come within the ambit of family life because it is clear from his evidence that he regarded the relationship has more akin to that of friends and it is not a committed exclusive relationship with her.
- The appellant has lived all her life in the Gambia until 2010 which is the majority of her life. She can speak the native language and she has her mother sister, adult son and a brother who recently has returned to the Gambia. In all of the circumstances I cannot therefore find that there are very significant obstacles to integration there and she would have some family support. I do not accept, as she was in contact with her brother in the United Kingdom that she has suffered any abuse from him and he would be able to support and assist her in the Gambia. Further her adult son remains in the Gambia and he too would be able to assist her.

The grounds of appeal

4. The appellant in his first grounds of appeal states that the Judge failed to integrate findings of fact in to the valuation of proportionality of removal under Article 8 in particular the availability of family support in Gambia. The second ground of appeal is that the Judge came to an irrational conclusion in his evaluation of Article 3 that the appellant faced risk of destitution because of the unavailability of family support and also her mental health problems in a semi-rural area where she would have to go. It is at odds with the Judges own findings as to the family history and the role played by the appellant's mother. The Judge ignored the medical evidence that family contact is likely to have a deleterious effect on her health and, further providing no reasoning as to how or why family support is meant to assist the appellant in circumstances where she will be in need of acute primary and secondly mental Health Services which are not available to her in the Gambia. The third ground of appeal is the failure by the Judge to have regard to the evidence of the appellant's partner as to the existence of family life. The finding that the appellant and Mr. [W] do not have a relationship of sufficient closeness to engage Article 8 is erroneous.

The hearing

5. On behalf of the appellant, Mr Lay adopted the grounds of appeal and said that the appellant has been a victim of abuse and was raped by her father. The Judge accepted that she had mental health problems due to the trauma. The Judge made an error when he said that the appellant had family in the Gambia who would assist her. The Judge did not integrate his findings. The appellant's evidence was that her brother and son would not help her. The family history is a very complex. The Judge also erred by finding that the appellant is not in a relationship. She and Mr [W] are partners. There was evidence that they were in an exclusive relationship.

6. On behalf of the respondent, Mr Tarlow adopted the Secretary of State's Rule 24 response and made the following submissions. The appellant has her son and brother who will assist her in the Gambia. The appellant is a grown woman and therefore there will be no risk. The Judge was entitled to come to the conclusions that he did and has not made any error.

My findings as to whether there is an error of law in the determination

7. I have given anxious scrutiny to the determination of the First-tier Tribunal Judge and have taken into account the grounds of appeal and submissions by the parties at the hearing. The Judge did not find the appellant or her claim for asylum and humanitarian protection credible for copious reasons.
8. The Judge stated that the appellant claims that the people think that she was a witch because her husband disappeared, her son died and she had a miscarriage of twins. The Judge however, found that the appellant managed to remain in her home for two years after these events and if she was going to come to the adverse attention of anyone, it would have been in those two years. The Judge was entitled to find, on the evidence that the appellant will face no harm on return.
9. Furthermore, the Judge found the appellant's evidence has been inconsistent and vague about her husband's activities in the political party, UDP. He said that in any event and on her own account, the appellant has not been targeted by the authorities for her own claimed political activities in Gambia. He was entitled to find that if the authorities or anyone else had any interest in the appellant, she would not have been able to live for two years in the Gambia and then leave at her own behest. The Judge was entitled to find on the evidence that the appellant had not demonstrated that she cannot be sent back to Gambia way she does not have any course to fear she will be ill-treated or harmed in any way the cause of her or her husband's political activities.
10. The main complaint against the Judge, and for which permission was granted, is that the Judge did not consider that the appellant had been abused by some members of her family. The Judge found that the main perpetrator was the appellant's father who is now dead and therefore there can be no further risk from him. The Judge did not accept that the appellant who was in contact with her brother in the United Kingdom suffered any abuse from him. He found that the appellant who is now a grown woman can return to her country when she has lived for the majority of our life since 2010. He found on the evidence that the appellant has a mother, sister, an adult son and a brother who recently moved to the Gambia. Therefore, the Judge was entitled to find that the appellant will have her family support in the Gambia as this family has been in contact with the appellant and this proves that they consider her as family. The Judge emphasized that the appellant's adult son is in Gambia who will be able to assist her and therefore she will not be returning as a single woman without family support. Mr. [W] in his evidence at the hearing also said that he will

help the appellant setup in the Gambia if she has to return. Therefore, the Judge's finding that the appellant has family in the Gambia is not irrational.

11. I find that it is clear from reading the determination that the Judge took into account the medical evidence in the round and there is no error of law in his evaluation of the evidence. The Judge relied on jurisprudence from Medical Health cases and found that there are medical facilities available into Gambia and the appellant's case cannot be viewed as an exceptional case so that her return can be said to be disproportionate. The appellant had PTSD and although Mr. [W] had lived with the appellant, he said in his evidence that he did not know that the appellant was mentally ill until the appellant was arrested. This shows that the appellant was able to live without any outward signs of mental stress which is presumably why she has not had any psychological therapy sessions. The Judge stated that the appellant's medical condition is controlled by medication which she can continue to take in Gambia. He was entitled and bound to come to these conclusions on the evidence before him.
12. The Judge was also entitled to rely on Mr. [W] evidence that his relationship with the appellant is not akin to marriage or constitutes family life for the purposes of Article 8. The evidence was that they have not lived together for at least two years prior to the application which is why they cannot meet the requirements of the Immigration Rules.
13. Mr. [W] evidence is noted at paragraph 57 of the determination. He stated that he responded to an advert in 2012 that he placed in the local paper and the appellant responded. He said that after some time, the appellant moved in with him and he did not know that she was in this country illegally or that she was mentally ill until she was arrested. In his evidence he said he was not in love with her but would help her. He confirmed that they did not have a sexual relationship. He further confirmed that if she had to go to Gambia he would help her set out in life. The Judge was entitled to find on this evidence that the appellant's relationship with Mr. [W] was not one which can be characterized as family life. The Judge was entitled on the evidence of Mr. [W] that he did not consider her relationship with Mr. [W] was not one of lovers and it was more consistent with them being friends. The Judge accepted that the appellant had private life and her relationship with Mr. [W] would come under this category but said it is proportionate to remove the appellant. These are sustainable findings.
14. I find that the Judge was entitled and required to reach his conclusion based on his consideration and evaluation of the evidence as a whole. I find that the Judge did take into account the risk of return for this appellant and found that she is not at risk for cogent and proper reasons which cannot be characterized as irrational or perverse. The Judge also found that the appellant has family support in Gambia which is also not irrational or perverse.

15. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ commented on that analysis as follows:

15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original Judge's thought processes when he/she was making material findings.

16. I find that I have no difficulty in understanding the very clear reasoning in the Judge's determination for why he reached his conclusions. I find that the grounds of appeal are no more than a disagreement with the Judges findings of fact and the conclusions that he drew from such findings. I find that no differently constituted Tribunal would come to a different conclusion on the evidence in this appeal.

17. I find that no error of law has been established in the determination. I find that he was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country and she can return to the Gambia without fear of any harm. I uphold the decision.

DECISION

Appeal dismissed

Dated this 20th day of March

2016

Signed by,

Deputy Judge of the Upper Tribunal

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Mrs S Chana