



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

Appeal Number: AA/09905/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 16th June 2014**

**Determination Sent
On 14th July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MISS AWA JOBE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akindele

For the Respondent: Mr Harrison

DETERMINATION AND REASONS

Introduction

1. The Appellant born on 1st January 1968 is a citizen of the Gambia. The Appellant was represented by Mr Akindele. The Respondent was represented by Mr Harrison, a Home Office Presenting Officer.

Substantive Issues under Appeal

2. The Appellant came to the United Kingdom in 2001 and thereafter remained unlawfully until she claimed asylum on 24th July 2012. The Respondent had refused the Appellant's application for asylum and had also refused her discretionary leave to remain. The Appellant had appealed that decision and her appeal was heard by First-tier Tribunal Judge Ennals on 13th March 2014. The judge had allowed her appeal on asylum grounds. The Respondent had made application for permission to appeal on grounds which are contained on file and dated 26th March 2014. Permission to appeal was granted by First-tier Tribunal Judge Williams on 10th April 2014 on the basis that the matters raised by the Respondent had merit and arguably raised an error of law. The matter comes before me in accordance with directions to firstly consider the question of error of law.

The Respondent's Submissions

3. Mr Harrison relied upon the Grounds of Appeal. Essentially it was submitted that the judge had found that close relatives of people involved in the coup were likely to be of adverse interest to the Gambian authorities but that the findings made in the determination were findings that it was simply those involved in the coup who would be at risk. It was further submitted that the judge had failed to give reasons or adequate reasons for findings made and had failed to consider the position of the Appellant's four children who had lived in Gambia throughout the time and was still there.

The Appellant's Submissions

4. It was submitted that no error had been made by the judge and I was referred to documents within the Appellant's bundle and also paragraphs within the determination where it was submitted that adequate findings had been made based on the evidence available and that no error of law had been made by the judge.
5. At the conclusion I reserved my decision to consider this matter. I now provide that decision with my reasons.

Decision and Reasons

6. It was agreed evidence that there had been an attempted coup in the Gambia in March 2006 and that the coup had been organised by a group of army officers led by Colonel Chan, former Chief of Defence staff. It had further been noted that information to that effect had been available from 22nd March 2006 onwards.
7. The Respondent in paragraphs 15 to 24 of the refusal letter had not explicitly accepted the Appellant was the second wife of Colonel Chan or related to two others allegedly arrested and detained. Neither had the Respondent explicitly rejected that claim. The Respondent had however raised a number of factors relating to the Appellant's credibility generally and specifically had placed no weight on the documents that had been

provided by her that allegedly went to proof of the marriage and family relationship and had referred to the case of **Tanveer Ahmed [2002] UKIAT 00439** at paragraph 23 of the refusal letter. Further it had specifically not been accepted that there was credible evidence to demonstrate that even if related as claimed family members would be at risk and in that respect note had been made of the fact the Appellant had come to the UK and remained unlawfully from as early as 2001, had made no application for asylum in March 2006 and although claimed to have gone to various solicitors was unable to provide any such details, had not reported a passport allegedly lost in 2003 until 2012. The evidence also disclosed that the Appellant had apparently gone to the Gambian Embassy in 2012 to obtain a new passport despite her claim to have a fear of persecution. It had further been noted that articles that Colonel Chan had been arrested with his first wife and family although no evidence had been provided that the wife and family had been arrested. There had also been evidence provided by the Appellant herself that she had four children in the Gambia who had remained throughout this period of time.

8. The credibility of the Appellant and her claim were therefore not insignificant and perhaps even central features to the determination of this case. The documents provided by the Appellant particularly those that allegedly demonstrated the family relationships as claimed were documents that needed to be examined in the round as to their reliability or otherwise.
9. There were clearly a not insubstantial number of matters that required resolving by the judge by an examination of that evidence in the round. The assessment of the evidence and conclusions in this case are relatively brief and whilst that in itself may not necessary reflect a difficulty or a lack of scrutiny there were matters of significance highlighted by the Respondent that were not dealt with adequately or at all.
10. The Appellant had made reference to the arrest of her brother who allegedly was the Accountant General for the Government and was intended to be the next President of Gambia if the coup had been successful. On the face of it that would place him in an extremely significant position alongside Colonel Chan and would therefore logically put at risk his family i.e. members of the Appellant's own family. The Appellant within her interview record had recorded that within the Gambia she had her parents, three other brothers and a sister. There appears to have been no reconciliation of whether or not they had suffered as a result of the alleged family ties.
11. It is also noteworthy that in paragraph 25 of the determination whilst acknowledging that the Respondent had raised several issues inconsistent or unsatisfactory about the Appellant's case which were then listed by the judge, she did not specifically address and comment on those aspects of the Appellant's account having already made a decision on the case itself. Those matters listed by the judge at paragraph 25 were not insignificant matters on the question of credibility of the Appellant's account and by

extension reliability of documents provided and whilst not an exhaustive list certainly indicated the judge was aware of a number of credibility issues that had been raised both within the refusal letter and at the hearing by the Presenting Officer.

12. In a case of this nature upon which credibility was central and in light of which documents needed to be examined as to reliability it was incumbent upon the judge to have considered those matters clearly put in dispute in an examination of the evidence in the round. Her failure to consider those matters in that way and not to have resolved those matters when examining the evidence as a whole was an error of law. If those matters had been examined in the round it may well have presented a different view on credibility and plausibility and in turn may have led to a different conclusion. To that extent the failure to deal with significant and contentious issues and a failure to consider them in the round when assessing credibility generally amounts to a material error of law.

Decision

13. I find the judge made a material error of law in this case such that the decision of the First-tier Tribunal is set aside and that decision needs to be remade.

Signed

Date 20.06.2014

Deputy Upper Tribunal Judge Lever