



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

Appeal Number: AA/01405/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
On 28 July 2015**

**Determination Promulgated
On 25 August 2015**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MR ISMAILA DEMBA
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs J Moore, Drummond Miller LLP

For the Respondent: Mrs M O'Brien, Home Office Presenting Officer

DECISION AND REASONS

- 1) This is an appeal against a decision by Judge of the First-tier Tribunal Lea dismissing the appeal on asylum and human rights grounds.
- 2) The appellant was born on 19 May 1980 and is a citizen of Gambia. The appellant came to the UK as a visitor in March 2004 to visit his then girlfriend, whom he had met in Gambia. While he was here he heard of his father's death. His father was killed because of an accusation of witchcraft made against the family. The appellant feared to return to Gambia and became an overstayer.

- 3) According to the appellant his mother's family were reputed to be witches and the suspicion of witchcraft fell upon the appellant from birth. When the appellant was 6 or 7 years old he and his brother were circumcised with other boys from the village. This took place in a forest nearby. A boy who was lying near the appellant died and the spiritual leader of the village accused the appellant's family of causing this through witchcraft. As a result of this the appellant was beaten in front of the village by the spiritual leader. Subsequently an old lady who lived next door to the appellant's family died and the appellant's family were accused of causing this also. The appellant was arrested by the police and beaten in detention. He has scars as a result. The spiritual leader of the village gave the appellant a dark mixture of herbs, leaves and roots in water to drink. The appellant reacted badly to this and this was considered a sign that he was a witch. The appellant was constantly harassed when he left the house because he was suspected of involvement in witchcraft. The reason the appellant was mistreated by the police after he was arrested was because the President of the country is against witchcraft.
- 4) When the appellant was in the UK his father was arrested and beaten so badly in custody that he died following his release. According to the appellant, since that time his mother, brother and sisters have disappeared and he does not know where they are.
- 5) The credibility of the appellant's claims were contested before the First-tier Tribunal. The judge accepted that the appellant's account was credible in respect of the appellant's family being suspected of witchcraft, the influence of the spiritual leader in the village and the beatings that the appellant received from the spiritual leader and from the police. The appellant's account was consistent with the background information. In addition, the appellant's scars were the subject of a medical report which stated that the scars were consistent with the history of assaults with various types of instrument. The judge took into account the numerous scars and the lack of other causes suggested.
- 6) Before the Judge of the First-tier Tribunal it was argued for the respondent that there was a sufficiency of protection in Gambia. It was argued for the appellant that there would be no effective police protection. The judge had regard to background information suggesting that there was an avenue for complaints against the police and that there had been some disciplinary action against the police. The appellant did not pursue any of these avenues of complaint. Given the attitude of the President, however, the judge acknowledged that there might be difficulties with this.
- 7) The judge went on to consider the possibility of internal relocation. According to the appellant Gambia was a small country "where everybody knew each other". The judge noted that the population of Gambia was estimated to be 1,797,860 as at July 2011 and the capital of Banjul had an estimated population of around 50,000. The judge did not consider it plausible that everybody would know each other. It was argued for the appellant that it would be very difficult to relocate internally according to

the country information but the judge was not referred to any particular evidence showing this. The judge was not satisfied that it would be unreasonable or unduly harsh for the appellant to relocate within Gambia. He was a young and healthy man who had managed to leave Gambia on his own passport, relocate to the UK and stay here for 8 years. The judge found that internal relocation would be a reasonable and viable alternative to seeking international protection.

- 8) In the application for permission to appeal it was argued that the judge had erred in law in considering internal relocation. The appellant had suffered persecution at the hands of the State. According to the Michigan Guidelines on Internal Protection Alternative there should be a strong presumption against finding an internal protection alternative where the agents of persecution were, or were sponsored by, the national government. There was no basis in the judge's decision to explain why this strong presumption had been rebutted or what factors suggested that the officers of the state were rogue state agents. The appellant's father was arrested and beaten in detention with such severity he later died. The persecution in this case emanated from the state and the state's attitude towards the appellant's father precluded the conclusion that the persecution the appellant experienced was either committed by rogue officers or was a one-off event. Reference was also made to the size of Gambia and to the decision of the House of Lords in Januzi [2006] UKHL 5.
- 9) The judge's negative assessment of proportionality under Article 8 was also challenged in the grounds of appeal.
- 10) Permission to appeal was granted on the basis that the judge made arguable errors of law in her reasoning in respect of internal relocation.

Submissions

- 11) In her submission at the hearing before me, Mrs Moore pointed out that the Judge of the First-tier Tribunal had accepted the appellant's evidence as credible. The appellant had been beaten and tortured by the police. The question before the Upper Tribunal related to internal relocation only, which the judge had addressed at paragraphs 42 and 43 of the determination. Mrs Moore submitted that the judge failed to take into account that the persecution of the appellant was by the state, although she accepted the claim the appellant had been tortured by the police and that the appellant's father had died as a result of mistreatment in custody. The judge also referred to country information showing that witchcraft is a live issue in Gambia and that the President, who rules in a despotic fashion, is personally against witchcraft. The judge did not take into account that it was the state who were carrying out the persecution. The President had made this a personal issue. Police officers had been involved. It was an error of law to ignore these factors. The decision in respect of internal relocation required to be re-made.

- 12) Mrs Moore continued that the judge had also looked at the size of Gambia, which was a small country. The judge formed the view that the population was big enough for internal relocation to be viable. In fact Gambia was the smallest country on mainland Africa and was about the same size as Northern Ireland in land mass and population.
- 13) Mrs Moore indicated she was not pursuing the issue under Article 8 but that there were errors of law in relation to internal relocation, in respect of which the decision should be re-made. She pointed out further that there had been no cross-appeal and the credibility of the findings made by the judge should stand.
- 14) For the respondent, Mrs O'Brien confirmed there was no cross-appeal but referred to a rule 24 notice dated 19 June 2015. Unfortunately this rule 24 notice had not reached the appeal file. Mrs Moore had, however, received a copy of the notice, which contended that the internal relocation finding was correct and paragraph 41 showed that the actions of the police were in effect carried out by "rogue policemen". Mrs O'Brien submitted that the appellant's case was clearly within the spectrum for a finding of viable internal relocation. The appellant was not in fear of state sponsored persecution notwithstanding the action in 2009 by the President against witchcraft. The appellant's problems pre-dated this and were restricted to a certain locality.
- 15) Having heard the parties on the question of whether the judge erred in law in her reasoning in respect of internal relocation, I indicated that I was not satisfied that the reasons given were adequate. The country information showed that the authorities in Gambia have used witchcraft to persecute persons. Those might be political opponents of the President but other civilians, not involved in politics, might also be caught up in this. In addition, it was clear that Gambia was a small country, which raised an issue about the viability of internal relocation. I informed the parties that the decision would have to be re-made on the issue of internal relocation and I invited them to address me on this.
- 16) In response Mrs Moore put before me a schedule of relevant passages in the country information, referring particularly to the 2009 round-up of supposed witches instigated by the President.
- 17) For the respondent Mrs O'Brien referred to the use of witchcraft as a tool of control by the state. She submitted, however, that the time delay was significant in relation to this particular individual. The round-ups of suspected witches were at their height in 2009. The appellant could go somewhere else in Gambia. This was a question of balancing risk.
- 18) In response Mrs Moore referred to the finding that not only had the appellant been beaten in police custody but more recently the appellant's father had died as a result of having been beaten in police custody. The President had not changed and he had a personal interest in witchcraft. If

the appellant returned to a different town he would be remembered. Both the appellant and his father had been accused of witchcraft.

Discussion

- 19) In this appeal it has been accepted that the appellant was arrested and severely beaten by the police in custody because of his alleged involvement in witchcraft. This was before he came to the UK in 2004 and, without more might now be considered an event somewhat remote in time. Other factors have arisen since then. The first is the death of the appellant's father following his mistreatment in custody after he was arrested for alleged involvement in witchcraft. In addition to this there is the more recent involvement of the President in the persecution of supposed witches.
- 20) In this regard the main activity by the President took place in 2009 when more than 1000 villagers from a particular district were taken to secret detention centres by "witch hunters" accompanied by Gambian police and soldiers. It was said that they were required to drink hallucinogenic potions as an act of exorcism. It was indicated by Amnesty International that the President believed that one of his aunts had supposedly died from witchcraft.
- 21) Mrs O'Brien referred to the events of 2009 as having taken place some time ago. More recent country information indicates that witchcraft is still an issue leading to persecution in Gambia. The appellant relied among his evidence on a Daily Telegraph Report of 25 November 2015 on witchcraft in Gambia. In this article the President, Yahya Jammeh, is described as a "modern-day version of Papa Doc Duvalier, the late voodoo-practising dictator of Haiti". It was suggested that the President had a "previous track record of blending statecraft with witchcraft." Reference was made to the 2009 round up of more than 1000 supposed "sorcerers".
- 22) This article refers to the President's approach towards supposed witchcraft but gives no specific instance following the 2009 round-up. The other country information before me, including Amnesty International reports refers to the abuse of human rights in Gambia where there are enforced disappearances, extra-judicial killings and torture. I was referred by Mrs Moore to a Freedom House report of January 2012 in which it was said that between 2007 and 2009 the President claimed that he could personally cure HIV/AIDS using traditional herbs. He also threatened decapitation of homosexuals and warned against causing instability through human rights activism.
- 23) Although there is no specific evidence of action instigated by the President since 2009 against supposed witches, the same President remains in power and the police force which acts on his behalf is, according to the country information, able to act largely with impunity. Given the size of Gambia I think it is difficult to suppose that were the appellant to relocate his identity and family background would not be discovered. Questions

would be asked about where he originated from and in a small country it would not be difficult to find information about his past. Were the persecution of the appellant to recommence, not only would he not be protected by the police but, on the basis of his own previous experience and the experience of his father, it is reasonably likely that the police would participate in this persecution. For these reasons I am not satisfied that there is a viable alternative of internal relocation for this appellant. The decision should be re-made and allowed on asylum grounds. Given that the persecution feared by the appellant is on the grounds of traditional religious belief and practice, it falls within the concept of persecution by reason of religion in the Refugee Convention.

- 24) In conclusion, I am satisfied that the Judge of the First-tier Tribunal did not give adequate reasons for finding that there was a viable internal relocation alternative for this appellant. In particular she did not take sufficiently into account that the appellant had been persecuted, as was his father, by the police, who are agents of the state. Given the country information regarding the behaviour of the police in Gambia and their lack of accountability, it is not sufficient to say that these were rogue police officers or that the persecution of both the appellant and his father were one-off events. The avenues of complaint referred to by the judge in her determination are largely theoretical, given the climate of impunity within which the police operate. In addition, the judge failed to explain why in a country as small as Gambia there would not be a reasonable likelihood of the appellant's identity and whereabouts being discovered. Having regard to this error of law the decision of the judge is set aside so far as it relates to internal relocation and re-made on the basis set out above.

Conclusions

- 25) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 26) I set aside the decision.
- 27) I re-make the decision in the appeal by allowing it.

Anonymity

- 28) The First-tier Tribunal did not make an order for anonymity. No application for such an order has been made before me and having regard to the circumstances I do not consider that such an order is necessary.

Fee Award: Note: This is not part of the determination

As no fee has been paid or is payable no fee award is made.

Signed

Date

Judge of the Upper Tribunal