



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

Appeal Number: AA/09905/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 12th January 2015

**Decision & Reasons
Promulgated**

On 30th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MS AWA JOBE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akindele of AA Solicitors

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Miss Awa Jobe, date of birth 1st January 1968, is a citizen of Gambia.
2. I have considered whether or not it is necessary to make an anonymity direction in these proceedings. Having considered all the circumstances I do not consider it necessary to make such a direction.

3. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Lever promulgated on 26th August 2014 whereby the judge dismissed the Appellant's appeal against the decision of the Respondent to remove the Appellant from the United Kingdom.
4. By a decision made on 17th September 2014 First-tier Tribunal Judge Saffer gave leave to appeal to the Upper Tribunal. Thus the matter appears before me to determine in the first instance whether or not there is a material error of law in the determination.
5. Within the permission Judge Saffer indicates that it is arguable that the judge has applied the wrong standard of proof. In the grounds it is submitted that the judge has applied a test of substantial grounds for believing instead of reasonable grounds. In the determination the judge has set out the standard of proof to be applied in paragraph 23 and refers to it as:-

"Substantial grounds for believing that she is outside her country of nationality or if applicable her country of habitual residence by reason of a well-founded fear of persecution for a refugee Convention reason."

6. What is sought to be argued is that the test of substantial grounds for believing is a higher test than reasonable grounds or the real risk test imposed in Sivakumaran [1988] Immigration Appeal Reports 147. In Sivakumaran several formulations of the standard of proof to be applied in asylum, humanitarian protection and Article 2 and 3 ECHR are considered. Included in those formulations is reference to Lord Diplock from the case of R v The Governor of Pentonville Prison ex parte Fernandez [1971] 1 Weekly Law Reports 987. Lord Diplock therein gives several formulations all of which are the same, a reasonable chance, substantial grounds for thinking, serious possibility.
7. In referring to that formulation it is quite apparent that there was no distinction drawn between the various formulations. I would draw further attention to McDonald's Eighth Edition page 831 to 832 note 9 in which consideration is given to the various formulations. That refers to the case of Ahmad Hussan [2002] UKIAT 00841 in which the Tribunal has specifically stated that the real risk test or a serious possibility or the phrase substantial grounds for believing constitute the same standard.
8. Accordingly the first ground by the Appellant fails to take account of the case law. There is therefore no distinction to be drawn between terminology used by the judge and the standard that applies from Sivakumaran.
9. In the circumstances the first Ground of Appeal has no substance.
10. I would note that Judge Saffer in giving leave in this matter does not refer to the other Grounds of Appeal.

11. The other grounds refer to the fact that the judge has failed to give adequate reasons for findings of fact made and made irrational findings.
12. There is then recited a whole series of findings of fact made by the judge. The judge has clearly and carefully considered the evidence that was before him. He has set out valid reasons for making the findings of fact that he has. Those findings of fact were open to him on the evidence. The judge has dealt with the aspects of the case which have caused him to question the credibility of the Appellant's account and made findings on the material issues in the case. He has given valid reasons for making the findings of fact that he has. He has identified specific instances where he was satisfied that there was no rational explanation and otherwise that the Appellant's credibility was seriously undermined.
13. The judge has clearly set out the basis on which he has come to his decision. He has given valid reasons for making the findings of fact that he has. He has fully assessed all of the evidence. The findings were open to the judge on the evidence. The Ground of Appeal is nothing more than a disagreement with the judge's findings.
14. In the circumstances those were findings of fact that the judge was entitled to make. The judge has given adequate and sufficient reasons for his conclusions.
15. I have considered the remaining Grounds of Appeal. They similarly seem to challenge the findings of fact made by the judge. I find in the circumstances that the judge has fully justified the decision made and there is no material error of law within the determination.
16. For the reasons set out I uphold the decision to dismiss this matter on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure