



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

Appeal No AA/06035/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
on 17 May 2016**

**Determination issued
on 19 May 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ESSAY TOURAY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr C McGinley, of Gray & Co., Solicitors

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

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge D'Ambrosio, dismissing his appeal against refusal of asylum.
2. The first ground of appeal to the Upper Tribunal is subdivided into 10 points, which principally criticise the judge's reasoning as speculative and illogical.
3. The second ground of appeal insists that the appeal should have been granted under article 8 of the ECHR.
4. Ground 1(iv) complains that the judge embarked on his own online activities, including investigations on Facebook, which was an unfair basis on which to reach adverse credibility conclusions, without giving the appellant the opportunity to respond.

5. That was an error of principle. The judge seeks to correct it by emphasising that he records the matter only incidentally, and not to support his adverse finding. However, he says that his enquiries disclosed numerous identities in the same name as the appellant, and the fact that he has an apparently common name in the Gambia is one of the reasons for the eventual outcome.
6. The error is compounded by the judge's statement that the appellant "failed to claim (far less provide evidence)" that his name was "unique or very rare" in the Gambia. That is, at least, unfortunately expressed. There was nothing wrong in principle about noting that the appellant's name is a common one, and drawing conclusions from that; but it should not have been hinted that there was an onus on the appellant to assert or prove to the contrary.
7. Mrs O'Brien fairly and correctly conceded that there had been legal error, that it was material, and that the appropriate outcome, as sought by the appellant, was to remit to the First-tier Tribunal.
8. The decision of the first-tier Tribunal is **set aside**. None of its findings are to stand. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the first-tier Tribunal** for an entirely fresh hearing.
9. The member(s) of the first-tier Tribunal chosen to consider the case or not to include Judge D'Ambrosio.
10. No anonymity order has been requested or made.



17 May 2016
Upper Tribunal Judge Macleman