



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01279/2018

THE IMMIGRATION ACTS

Heard at Field House
On 4 March 2021

Decision & Reasons Promulgated
On 15 April 2021

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

E S C
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the appellant: Mr M West, Counsel, instructed by Duncan Lewis Solicitors
For the respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the re-making of the decision in this case following the earlier decision of Upper Tribunal Judge Allen, promulgated on 16 July 2020, that the First-tier Tribunal had erred in law when dismissing the appellant's appeal against the respondent's refusal of his protection and human rights claims. Judge Allen concluded that the First-tier Tribunal's decision should be set aside and the case reheard a fresh with no preserved findings of fact.
2. This appeal has a protracted procedural history. The appellant, a citizen of Gambia, arrived in the United Kingdom in December 2010 as a visitor. He overstayed and was encountered in 2014. He then absconded and, in 2017, he made an asylum claim (amounting to a protection claim with an accompanying human rights claim). The protection claim had three basic elements to it: first, that he had been employed as an immigration officer and had been accused of issuing a false passport to an individual; second, that he feared the government as a supporter of the former regime (the Alliance for Patriotic Re-orientation and Construction - "APRC"); third, that his uncle was killed by troops in June 2017 and that the appellant had subsequently criticised the current government via a WhatsApp audio message, with the adverse consequences this would bring on return.
3. The claims were refused by a decision dated 10 January 2018. His appeal was dismissed by the First-tier Tribunal. This decision was then set aside by the First-tier Tribunal itself. The appeal was then reheard and dismissed by First-tier Tribunal Judge Sullivan on 19 July 2018. By a decision promulgated on 4 June 2019, Upper Tribunal Judge Grubb concluded that Judge Sullivan had erred in law, that her decision should be set aside, and that the appeal be remitted. The remitted appeal was heard by First-tier Tribunal Judge Scott-Baker. She too dismissed the appellant's appeal. This decision was successfully challenged in the Upper Tribunal.
4. Judge Allen's error of law decision is brief and the relevant passages state as follows:

"1. ... The appeal was dismissed and the appellant sought and was granted permission to appeal to the Upper Tribunal on the basis that it was arguable that the judge had failed to make any findings on the expert report, and that it was arguably unfair to have taken issue with there being no physical recording of a WhatsApp audio when it had been transcribed and the typed record was available.

...

3. The matter can be addressed fairly briefly in light of the response of the Secretary of State of 29 April 2020. In the letter of that date the respondent accepts that the decision of the First-tier Judge contains material errors of law in failing to address adequately the expert report and failing to give adequate reasons for material credibility findings. As a consequence, it is agreed that the decision should be set aside it is suggested on behalf of the Secretary of State that since there has been a previous remittal the matter should be reheard in the Upper Tribunal.

4. I agree with the submissions. It is clear that the judge's decision is flawed by material errors of law as contended in the grounds and as set out in the grant of permission. I also agree that in light of the earlier remittal it will be appropriate for the matter to be reheard in the Upper Tribunal. The matter will be listed accordingly."

5. A resumed hearing was listed for 24 November 2020. However, due to Internet connection problems that hearing had to be adjourned. A case management review hearing was conducted on 20 January 2021. At that point, additional evidence from the appellant was admitted.

6. In this way, the appeal came before me.

The evidence

7. Perhaps unsurprisingly, there has been an accumulation of evidence over the course of time. Unfortunately, for one reason or another no consolidated bundle had been prepared for the hearing. This led to a good deal of time being wasted on the day in order for the correct evidence to be marshalled. That evidence consists of:

- a) the respondent's original appeal bundle;
- b) the appellant's bundle, comprising an initial bundle and a supplementary bundle. In total, the relevant pages of subjective evidence run from 1 to 164, whilst 195-376 consists of country information. The bundle includes an expert report from Dr Pamela Kea, a Senior Lecturer in the Department of Anthropology at the University of Sussex;
- c) five witness statements from the appellant (three of which are contained in the bundle) dated, 1 February 2018, 15 February 2018, 12 June 2018, 3 October 2019, and 12 January 2021;
- d) a What's On - Gambia message relating to the appellant's daughter;
- e) a photograph relating to the appellant's daughters claimed abduction;
- f) two certificates relating to the appellant's claimed employment as an immigration officer;
- g) an Internet article on the use of WhatsApp in Africa;
- h) 8 original photographs of the appellant in his claimed role as an immigration officer;
- i) A "Certificate of Appointment" in respect of the claimed employment;
- j) two video clips, the first from Gambian television (a channel entitled QTV) relating to the claimed abduction of the appellant's daughter and the second containing footage of a window said to belong to the house of the appellant's ex-wife (this evidence was viewed on a laptop during the hearing with the agreement of both parties);
- k) oral evidence from the appellant.

8. The hearing was lengthy. I do not propose to summarise the appellant's oral evidence here. A full record of proceedings is on file and both representatives will have maintained their own note of what was said.
9. Suffice it to say that the appellant continued to rely on the three basic elements of his claim as set out earlier in this decision. His oral evidence expanded on these themes. In addition, the appellant stated that his daughter had been abducted in November 2020 and was found approximately three weeks later. A couple of days after this, the appellant's ex-wife's home was broken into by unknown persons. The appellant believed that these events were linked to his criticism of the current government through the WhatsApp audio message put out in June 2017.

Submissions

10. Mr Lindsay relied on the reasons for refusal letter and, as an overarching submission, asserted that the appellant had been untruthful and that the documentary evidence was unreliable.
11. The delay in the appellant's claimed asylum was significant. If he had been informed of the false allegations against him in 2011, why was the claim not made until 2017? In addition, there was no supporting evidence in respect of the false passport issue. Mr Lindsay did not accept that the appellant had even been an immigration officer. The expert report did not assist because the author was not an expert on documents such as those being relied on in this case. Certain aspects of Dr Kea's report were unclear. Even if the appellant had been an immigration officer, the rest of the claim was untrue. If there had been false allegations in 2011 it is highly likely that there would have been some follow-up since then. There was no evidence of any proceedings against the appellant.
12. In respect of the WhatsApp audio message, Mr Lindsay submitted that there was no chain of custody regarding the recording itself. It was unclear whether a CD had been given to the translation company and there was no evidence to show that this company had in fact produced the transcript. In any event, Mr Lindsay noted an inconsistency in the transcript: it stated that the message had been "written" when it was supposed to have been an audio message. Mr Lindsay submitted that the message was never made or transmitted. There was no evidence in respect of the WhatsApp group which had allegedly received it. In any event, the group appeared to be supportive of the APRC. The appellant had identified himself in the message simply in order to try and create a risk for himself. He had acted in bad faith. If his uncle had been killed (which was denied), it was a random incident and the appellant had tried to use it in an opportunistic manner.
13. In respect of the alleged abduction of the appellant's daughter, Mr Lindsay submitted that indicated she had suffered from mental health problems previously and this may have been an explanation for her disappearance. The appellant's explanation was incredible. His evidence on the details of what happened was also inconsistent. Even if the event had occurred, it was a criminal act and the police had investigated. There was no link to this incident and anything done previously by the

appellant. As to the alleged break-in, the incident had not been proved. Even if it did take place, there was nothing to link it to the appellant. At its highest, the appellant might have been a supporter of the APRC.

14. On Article 8, Mr Lindsay noted that the appellant had made no mention of any relationship in the United Kingdom since June 2018 and there had been no adequate explanation for this omission. This evidential problem went to undermine the appellant's overall credibility.
15. Mr West relied on his skeleton argument, dated 9 October 2019. He confirmed that there was no family life in the United Kingdom and that any private life claim being put forward effectively depended on the success of the protection claim. He also confirmed that there was no free-standing claim in respect of the appellant's ethnicity.
16. Mr West emphasised the lower standard of proof and that there was no requirement for corroborative evidence. The appellant had done all he could to provide supporting evidence. It was said that the appellant had been "in the dark" about details of the allegations made in 2011 and this explained the delay in claiming asylum. There was good evidence to show that the appellant had been an immigration officer. An email from the relevant authority was noted. The expert report should be afforded due weight. The fact of his previous appointment raised the appellant's overall profile.
17. There was no delay by the appellant following the death of his uncle in June 2017. The WhatsApp audio message was sent out a day after the incident and only about four months before the appellant was detained in October 2017. It was submitted that the audio message had been shared amongst various groups and it was made known to a wider audience. The misuse of WhatsApp was documented in country information. There was evidence to show that the authorities had come to know of the message.
18. The clip of the television broadcast viewed at the hearing was said to reliably show that the appellant's daughter had been abducted. There was a link between that abduction and the appellant. Given the proximity of the subsequent break-in, there was also a link between that incident and the appellant.
19. The country information and expert report showed that opponents of the current government might be targeted. Ill-treatment took place in detention.
20. Finally, Mr West emphasised the fact of the appellant's previous employment in Gambia. He had had a good job and there was no reason for him to have come to the United Kingdom and fabricate a protection claim.
21. At the end of the hearing I reserved my decision.

Findings of fact

22. My findings of fact have been arrived at after a holistic assessment of the evidence. That assessment has been carried out against the applicable prism of the lower

standard of proof. Internal and external consistency, together with plausibility, are integral elements of the evaluation of whether the appellant has told the truth or not. In respect of plausibility, I have taken care not to judge matters from the perspective of what may or may not be a common experience in the United Kingdom: the claimed events took place in Gambia. Having said that, a degree of common sense is relevant to the equation.

23. In setting out my findings I have sought to take the relevant elements of the appellant's claim in chronological order for ease of reading. This does not of course mean that I have view them in artificial isolation. A structure of some sort is required.

The appellant's claimed employment

24. The appellant has consistently stated that he had worked as an immigration officer in Gambia, claiming that this employment ran from 2001 until 2010 (in his statement of 1 February 2018 the appellant claims that his employment ceased on the day he left Gambia).
25. In support of his claim the appellant has produced two training course certificates, a Certificate of Appointment, and 8 original photographs. In addition, the expert report from Dr Kea purports to confirm that the Certificate of Appointment document is "genuine"; the layout and stamp being "typical" of Gambian identity cards. She also asserts that the two training certificates are "genuine documents".
26. I have concerns over certain aspects of the evidence on this issue. First, it is not immediately apparent to me that Dr Kea has specific expertise as to the genuineness of documents such as those provided by the appellant. Second, whilst the Certificate of Appointment is date stamped 2 April 2001, there is another oval shaped stamp on the certificate dated 5 May 2009. This has not been explained. Third, the appellant's claim to have been employed as an immigration officer from 2001 does not appear to sit happily with the two training course certificates, which purport to confirm that he undertook "basic training" between 2004 and 2005. It seems incongruent that employment could have been commenced without any "basic training" and that such training did not occur until three years later.
27. Against this, I accept that Dr Kea is an experienced academic with a specialism in Gambian and Senegalese culture and political economy. I accept that she has indeed written many expert reports over the course of almost two decades. It is not in dispute that she was a contributor to a COI report in 2011. Overall, I am prepared to accept that she has experience and knowledge of the Gambian authorities and, at least in general terms, the type of documents issued by them. The fact that she is not specifically a document expert does not entirely detract from her ability to provide expert opinion on the documents. I therefore attach appropriate weight to this aspect of her report.
28. As to the two training course certificates, I have now seen the originals (which were laminated). This counts for something, at least. It is certainly problematic that the certificates indicate that basic training only occurred some years after employment

commenced. However, I bear in mind the contextual nature of plausibility assessments. The way things are done in Gambia may well not approximate to procedures in the United Kingdom.

29. The Certificate of Appointment is in original form. The initial date on the document corresponds with the appellant's consistent evidence as to the start of his employment. The other date stamp remains unexplained, but in my view this is not fatal to the document's reliability. If the document had been forged it is perhaps unlikely that an entirely incongruent date stamp would have been applied to it.
30. The original photographs are, in my view, supportive of the appellant's claim. There is no dispute that these show the appellant himself. He appears in uniform, both alone and with others. In certain photographs, the emblem on the shirt corresponds with that on the Certificate of Appointment. One particular photograph shows the appellant together with what would appear to be to more senior members of the department/unit.
31. There are also a series of emails by an individual called Saidou Manga, who appears to be (or have been) the Deputy Commissioner of the Passport Control Unit within the Immigration Department in Gambia. I will refer to this evidence again, below, but for present purposes the email exchanges include details from this individual which are clearly supportive of the claim that the appellant had been employed as an immigration officer.
32. Taking all the evidence into account, I am prepared to accept, on the lower standard of proof, that the appellant was employed as an immigration officer.

The claimed false allegations in 2011

33. My acceptance of the first aspect of the appellant's claim does not of course mean that I am bound to accept his assertion that false allegations were made against him in 2011, although that favourable finding is a relevant consideration.
34. The appellant's case is that he was falsely accused of having issued (or being complicit in the issuance of) a passport to an individual who was not entitled to it. As result of this activity being detected, the appellant has maintained his claim that he will be arrested on return to Gambia.
35. The evidential problems with this aspect of his claim are significant.
36. No mention of this claimed problem was made in the screening interview. The brief description of the asylum claim referred only to the alleged criticism of the government following the death of the appellant's uncle in 2017. Screening interviews are by their nature relatively superficial. However, basic aspects of a claim can be expected to be stated at that point in time, absent particular circumstances such as, for example, mental health problems or fear of disclosure due to shame or fear. No such circumstances exist here.
37. The appellant accepts that he was made aware of the false allegation in 2011. Yet he did not make his asylum claim until after he was detained in this country in 2017. I

find that the explanation for this delay is wholly unsatisfactory. The appellant knew full well of the ability to claim asylum in this country. He has asserted that he was unsure whether the false allegations had in fact been made. It is striking that, even on the appellant's own evidence, he appears to have made no real effort to obtain any information from anyone in Gambia about any legal proceedings against him in respect of the allegation. I do not accept the briefly stated assertion in the statement of 1 February 2018 that he tried to make telephone calls, but these went unanswered. Even if he had made some attempts, this in no way goes to adequately explain the very lengthy delay in making the asylum claim. It is also noteworthy that the false allegation issue is not dealt with in any detail in the numerous witness statements made over the course of time.

38. Dr Kea's report does not offer any material support in respect of the specific assertion that a false allegation had been made against the appellant.
39. There is no evidence from the immigration authorities in Gambia to the effect that an allegation (which they may have regarded as correct) had been made, or even that he had been formally dismissed from his employment as a result. I have not been referred to any evidence that any formal notification was provided either to the appellant himself or anyone else with whom he has had contact over the intervening years. Corroborative evidence is not a requirement, but its absence can be relevant where the evidence of the individual is found wanting, as it is here.
40. As mentioned previously, the appellant relies on email exchanges between him and Saidou Manga. The emails date back to the period June-August 2019. Whilst Mr Manga does appear to support the appellant's claim to have been employed as an immigration officer, nothing is said about any allegations against him in respect of the issuance of a passport. This poses two problems for the appellant. First, in my view it is implausible that a high ranking official within the relevant department would be conversing (using what appears to be his official email account) with an individual (the appellant) who had apparently been accused of a serious offence in the past. Second, and alternatively, if Mr Manga was well-disposed to the appellant, it is damaging to the appellant's case that no mention is made of any outstanding allegations and/or proceedings against the appellant in respect of the passport issue. It goes to show that either there was no allegation in the first place, or, if there was, that no further interest continued to exist as of 2019 at the latest.
41. Again, corroborative evidence is not a requirement. Again though, its absence can be relevant where the appellant's evidence suffers from significant problems, as it does here.
42. Taking the evidence as a whole, I do not accept that it is reasonably likely that the appellant was ever falsely accused of issuing a passport to an individual who was not entitled to it. The appellant has been untruthful in this respect. In my judgment, the reality is that the appellant has sought to bolt on this element of his claim to the fact of his previous employment as an immigration officer.

43. This has an adverse impact on the appellant's overall credibility, as does the lengthy delay in him making the asylum claim in the United Kingdom.

The appellant's support for APRC

44. I am willing to accept that the appellant was a low-level supporter of the APRC. The card and letter from the organisation were regarded by Dr Kea as genuine documents. The appellant has been consistent about his support for this party. Having said that, his evidence on his involvement is sparse. He accepts that he never had a particular role in the party and the APRC letter does not assert otherwise. I find that to be the case. I do not accept that he has been active in any meaningful sense, either in Gambia or the United Kingdom.
45. I have factored in the appellant's support for the APRC when considering all other aspects of his claim. The country information does indicate that political opponents may be subject to adverse attention by the current regime, depending on their circumstances. The implications of this are of course highly fact-specific. A generalised background support emanating from country information does not, of itself, show that the appellant has been telling the truth about his particular history.

The uncle's death in June 2017

46. The appellant's case is that his uncle, HJ, a supporter of the APRC, was killed whilst attending a demonstration on 3 June 2017. According to the appellant's statement of 1 February 2018, the demonstration was against the presence of ECOMIG troops in the country. This force had been allowed in to ensure the transition of power from former president Jammeh to the incumbent, Adama Barrow. As time went on, certain sections of the population felt aggrieved by their continued presence in the country. The appellant's evidence is that his uncle was "possibly" shot by ECOMIG troops.
47. In addition to the appellant's own consistent evidence on this issue, there is a fair amount of documentary evidence connecting HJ to him by way of an uncle/nephew relationship. I am prepared to find that the two were related as claimed.
48. The claim that HJ was killed at the demonstration in question is supported by Dr Kea's report. She cites a media article confirming that an individual did die, naming him as HJ (the full name is used in the report). The death certificate is not without its difficulties, specifically the apparent fact that the death was not registered until a year after the event itself. However, taking the evidence in the round, I accept that HJ was in fact shot and killed at the demonstration on 3 June 2017. The evidence shows that the killing was not targeted, but occurred as a result of ECOMIG troops opening fire on peaceful protesters. If it is being said on the appellant's behalf that his uncle was singled out, I do not accept that to be the case.

The WhatsApp audio message

49. Along with other elements of the appellant's case, I find the evidence relating to the WhatsApp audio message to be significantly problematic.

50. The appellant asserts that the day after his uncle's death he recorded and then sent a WhatsApp audio message to his "group", which contained between 300 and 500 recipients. The message was in strident terms and displayed what he says was his anger at the actions of the ECOMIG troops. It is the consequences of this audio message that underpins a central plank of the appellant's protection claim.
51. It is somewhat strange that the appellant's estimate of the numbers in his WhatsApp group ranged so widely from 300 to 500 people. However, this concern does not play a material part in my consideration.
52. I am satisfied that a recording of *a* WhatsApp audio message was obtained by the appellant. However, the recording did not come from WhatsApp itself, but, according to a letter from the appellant's brother dated 5 February 2018, apparently from an unidentified "UTG student" who is said to have downloaded the message onto a laptop. It is of note that, notwithstanding the claimed initial receipt of the audio message by between 300 and 500 people, the *only* recording of the message was obtained from a single individual about whom nothing is said (even whether he was a member of the appellant's WhatsApp group).
53. I am satisfied that a recording of *a* WhatsApp audio message was provided to the Language Factory on 19 February 2018, as confirmed by their letter of 8 March 2018. However, there is no reliable evidence that either: (a) the audio message provided was the same message allegedly recorded by the appellant on 4 June 2017; or (b) the message was in fact that downloaded from the unidentified student's laptop. The letters from various individuals (including the appellant's brother) contained in the bundle do not shed any reliable light on the chain of custody issue.
54. I have been unable to find any credible explanation from the appellant as to why he himself did not have a recording of his own WhatsApp audio message, or indeed any proof that any message was ever posted. I find his claim that the mobile telephone on which the message was stored broke after falling into the toilet to be highly convenient and, in light of the evidence as a whole, untruthful.
55. In reaching these findings, I in no way seek to impugn the integrity of the appellant's legal representatives or the professionalism of the translation company.
56. In respect of the translation itself, I find that the audio message provided to the translation company had two parts to it: the first in the Joola language; the second in Mandingo. It is the case that the Joola section starts off by stating that, "this message is written today through WhatsApp...". The use of the word "written" is odd, given the apparent nature of the message. In oral evidence, the appellant appeared to say that there was an error in the transcription. This really does his general credibility no favours. There is no evidence of any approaches to the Language Factory to correct any alleged "error" by them.
57. The content of the message gives rise to significant concerns. The message is directed at the current government. The word "you" is used repeatedly when criticisms are stated in relation to the uncle's death. However, on the appellant's evidence, he sent the message only to a WhatsApp consisting of those with a similar political

persuasion, namely broad support for the previous government of the APRC. I find that to be materially problematic. If an individual is seeking to openly criticise a government, they would, I find, seek to do so in a direct fashion. In other words, they would take steps to ensure that the message went to those supportive of the government or to use a social media or some other platform in order to make the criticisms heard by the intended audience. In oral evidence, the appellant stated that members of his WhatsApp group could have shared it with other pro-government individuals or groups. That may in theory be so. However, at no stage has he said that this was in fact his intention. A final point is the absence of any adverse messages on WhatsApp emanating from those critical of the appellant's actions. The appellant himself has asserted that he and his mother were insulted on the social media platform. Yet no documentary evidence of this has been provided. As stated previously, corroborative evidence is not required, but its absence leaves the appellant's own evidence to stand alone. In this case, that evidence is damaged in numerous respects.

58. The audio message is replete with fairly base insults directed towards the government (I need not repeat the particular words used here). On the one hand, it appears to me as though the insulting language is highly likely to have been used by the appellant in order to attempt to ensure an adverse reaction (assuming that the message was heard by the "right" people, namely the government). On the other hand, the appellant has said that the message was driven by anger at the loss of his uncle, and this may, to an extent, explain the use of the foul language. More importantly, there is real merit in Mr Lindsay's submission that the appellant has gone out of his way to repeatedly identify himself, to name his mother, and to state where he was residing at the time (the United Kingdom). None of these details were necessary in any way in order to convey anger and emotion at the loss of the uncle. The author (or, more accurately, the speaker) of the message would have been identifiable through the WhatsApp platform itself (even if the message had been forwarded or shared by group members). The place of his residence was neither here nor there. Stating it on two occasions merely went to inform the authorities (assuming they got to hear the message) that he was probably seeking international protection in the United Kingdom and wanted to show the authorities here that he would be at risk on return to Gambia. Finally, and most significantly, by naming his mother, he was manifestly placing her at potential risk. Indeed, in his statement of 1 February 2018, the appellant states that people in Gambia were reacting badly to the audio message and that his mother was being insulted on WhatsApp.
59. I have already referred to the supporting letters from a variety of individuals in Gambia, which address the issue of the transmission and dissemination of the WhatsApp audio message. The authors of the letters all have a vested interest in assisting the appellant's protection claim. The epithet "self-serving" must be viewed with caution: an individual connected in some way with the subject of a protection claim can of course be telling the truth in all material respects. In the present case, it is relevant that there is no confirmation by a more independent source of the transmission and dissemination of the message. For example, there is nothing from the APRC, any human rights organisation, or other source, which purports to

support the appellant's assertions. The APRC letter, dated some six months after the WhatsApp message was apparently sent, says nothing about this issue.

60. The first of the supporting letters comes from the appellant's ex-wife. I am bound to say that it is somewhat incongruous that she actually describes herself as "your ex-wife" at the end of the document, when her "status" would be entirely obvious to the appellant. Beyond that, she asserts that she "would not be wrong" if she said that the WhatsApp audio message was on "all major" groups including the "UDP, GDC and NRP forums." No explanation is given as to how she would have known this to be the case. In the next paragraph, she appears to make a connection between the appellant and an uncle's former army colleague, a WhatsApp group, and problems encountered from the government. I cannot see any reference to this from the appellant himself.
61. The second letter comes from a friend, Mr Bojang. He states that a work colleague informed him of the appellant's WhatsApp audio message having appeared on pro-government groups. As with the first letter, reference is made to the use of WhatsApp by individuals and consequent problems. It is in my view difficult to understand why the author (who purports to be a friend of the appellant) would need to comment on wider issues relating to the use of WhatsApp in a letter to the appellant. The paragraph in question reads more like a submission on the situation in Gambia than a letter to a friend. The author names three WhatsApp groups on which it is said the appellant's audio message had appeared (Gambia Democratic Congress Forum, Better Gambia forum, and No Retreat No Surrender forum). It is not said how the author knew this to be the case, particularly as one of them was said to be "owned by soldiers". WhatsApp is an end-to-end encrypted platform and there has been no evidence as to how an "outsider" would know about the contents of a group of which they were not a member.
62. There is no independent evidence that any of the WhatsApp groups/forums in fact existed at the time.
63. The third letter was written by Yunus Colley. This begins by addressing the manner by which a recording of the WhatsApp audio message was obtained in Gambia. However, the bulk of the letter again reads like a submission. It addresses the general situation in Gambia and makes reference to named individuals who had had problems in part because of audio messages made by them.
64. As to the use (or misuse) of WhatsApp throughout Africa, the media article does not in my view take the appellant's case any further. It indicates that certain governments on the continent have been using the platform for their own ends and that inaccurate information can be conveyed using this method. WhatsApp is said to be influencing political culture. I am willing to accept that this is the case, as it probably is in many other countries around the world. However, the appellant's case, in so far as it relates to WhatsApp, involves his use of that platform and the consequences of so doing. That is not the same as misinformation being spread by the Gambian government.

65. Dr Kea's report does not include specific evidence relating to the claimed dissemination of the appellant's WhatsApp audio message. It does provide an example of a group of soldiers who were arrested for allegedly using WhatsApp to criticise the government through audio messages. An official statement from the army accused the soldiers of engaging in "mutinous, defamatory, scandalous and unethical acts against the government". The sources indicate that one soldier was subjected to serious ill-treatment. This evidence is supportive of the generality of the appellant's claim in so far as the use of WhatsApp to criticise the Gambian authorities could potentially lead to adverse interest.
66. Bringing all of the above together, I make the following findings of fact in respect of the WhatsApp audio message.
67. In the first instance, I do not accept that the appellant ever sent a WhatsApp audio message, as claimed.
68. Alternatively, if any such message was sent, I find that it went only to a specific group of no more than 500 people. I do not accept that it was subsequently disseminated amongst other pro-government WhatsApp groups.
69. In the further alternative, if indeed a WhatsApp audio message was shared and heard more widely, I find that the appellant's actions were carried out in bad faith, with the express intention to create a risk for himself. This is in light of the use of language in the message; the provision of his details and those of his mother; his knowledge (as I find it to be) of the use by others of WhatsApp to criticise the government, with potentially adverse consequences; and the overall significant problems with the appellant's truthfulness. I do not accept that there have been any visits to, or any other form of harassment of, family members in Gambia as result of the WhatsApp audio message (I shall deal specifically with the claimed abduction of the appellant's daughter and the break-in, below). These claims are, like others, untrue embellishments.
70. I also find that the appellant has failed to show, on the lower standard, that the Gambian authorities will see the appellant's actions as anything other than what they are, namely an opportunistic attempt at creating a successful protection claim. The appellant's circumstances can be distinguished from the examples given in the country information and expert report regarding others who have used WhatsApp audio messages. The appellant is clearly not a serving soldier, as in the case of example given in Dr Kea's report. He would not be seen as a traitor or mutineer. Whilst he did have an official role as an immigration officer, this apparently ended in late 2010, 6 ½ years before the WhatsApp audio message was posted and there has been no action taken against him thereafter. The other example involved a relatively high profile academic whose position can again be readily distinguished from that of the appellant. The appellant was, at most, the distraught relative of an individual killed by ECOMIG troops in June 2017. He has no material political profile either in Gambia or the United Kingdom and close to 4 years have elapsed since any WhatsApp audio message was sent and (in this alternative scenario) seen by government-supporting users of that platform. In summary, I find that the

authorities would pay no material attention to him on return. If (which I do not accept) he was questioned on return, the most that is reasonably likely to occur is that the appellant is told to desist from sending any further critical WhatsApp audio messages. There is no evidence from him to begin to suggest that he would wish to send any such messages out of a genuine desire to protest against his uncle's death.

The daughter's claimed abduction

71. Having viewed the television video clip and considered the What's On Gambia messages, I accept that the appellant's daughter, IC, went missing in November 2020.
72. On the evidence before me, I do not accept that she was abducted for reasons connected in any way with the appellant. My reasons for this finding are as follows.
73. The appellant's evidence on this issue was unsatisfactory and, I find, untrue. On the one hand he has claimed that the police and other authorities in Gambia investigated her disappearance and took what appear to be all reasonable steps to assist the family. Indeed, in his latest statement, he asserts that the police contacted him to provide an update on what he describes as the kidnapping. On the other hand, the appellant is claiming that the Gambian authorities wish to detain him and do him harm as a result of the WhatsApp audio message and his political allegiance. There is an obvious and material tension on the face of the evidence.
74. In that same statement, the appellant said that his daughter was traumatised and had not been able to talk fully about what happened to her. That statement is dated 12 January 2021. In oral evidence, the appellant proceeded to convey details of what had happened, apparently provided to him by his daughter on 6 December 2020. What is said in the statement clearly does not sit consistently with the oral evidence.
75. The appellant told me that IC had not had any "health problems" before 6 December 2020 (that being the day that she was found). Mr Lindsay noted the contents of a letter from the appellant's ex-wife, dated 15 September 2019, which referred to their daughter as "still battling with her sickness" and being unable to attend school. In a letter dated 31 January 2019 from a family friend purportedly writing on behalf of the appellant's mother, it is said that IC had developed symptoms "similar to schizophrenia". In response to this, the appellant suggested that the "sickness" was just malaria and not a real health problem. I do not believe the appellant on this issue. Two sources, IC's mother and grandmother, have both in effect said that she was suffering from some form of a mental health condition. Malaria is a widespread disease in West Africa. It is close to being fanciful to suggest that the daughter's mother and grandmother would have mistaken symptoms of a genuine mental health problem with those of that disease.
76. In turn, there is merit in Mr Lindsay's submission that IC may well have disappeared as a result of a mental health condition, and not because of an abduction. Strictly speaking, it is not for me to engage with a scenario that has not been put forward by the appellant. My task is to assess the truthfulness of what he has said. In this regard, his evidence simply does not stand up to scrutiny, even on the lower standard of proof. Aside from the unsatisfactory evidence discussed above, there is the fact of the

passage of time between the WhatsApp audio message in mid-2017 and the daughter's disappearance in late 2020. It is not reasonably likely that the authorities, if they genuinely wished to do the appellant or those close to him harm, would have refrained from taking any concerted action for over three years.

77. Taking the evidence as a whole, I do not accept that IC had experienced problems at school because of the appellant's actions.
78. If the appellant's daughter was indeed abducted, it is in my judgment not reasonably likely that this had any connection to the appellant's circumstances. It is extremely likely that it was purely a criminal act.

The claimed break-in

79. I accept that the second video clip shows footage of a metal grille across the window of a house. It appears as though the grille has been forced on one side. Neither the video nor any other evidence aside from that emanating from the appellant links the footage to the appellant's ex-wife, or that IC resided there at any time. There is no independent evidence such as a police report relating to the claimed break-in.
80. As to the appellant's own evidence on this issue, he is once again relying on the 2017 WhatsApp audio message to link the claimed break-in to a desire on the part of the Gambian authorities to do him harm, directly or otherwise. As will be apparent from a reading of my decision thus far, the appellant's evidence is, to a very large extent, untruthful.
81. I do not accept that there was a break-in on 8 December 2020. If there was, I do not accept that it was in any way related to the appellant's circumstances. On the appellant's witness statement evidence, items of some value were taken, indicating that the intrusion was a burglary and not an act of persons connected to the authorities. I do not accept that its timing was anything other than a coincidence.

Conclusions

82. I now apply my findings of fact to the issue of whether the appellant is at risk on return to Gambia.
83. I appreciate that my findings have included alternative scenarios. In the particular circumstances of this case, I have deemed this to be appropriate. I have borne in mind that opportunistic attempts to create a risk are not necessarily fatal to the existence of such. In the present case, I have made findings on the views of the Gambian authorities on the alternative basis that a critical WhatsApp audio message was sent and disseminated.
84. On all of the factual scenarios set out above, the appellant has failed to show that he is at risk on return to Gambia for any reason. He has no relevant political profile and is of no material interest to the authorities. That is the case even if such interest existed on a temporary basis once the WhatsApp audio message was heard in the latter part of 2017. There have been no acts of harassment or any threats perpetrated

against the appellant or family members at any time. There were never any force allegations made against the appellant in respect of his role as an immigration officer.

85. Whilst the country information and expert report indicate that ill-treatment of political opponents can occur, each case is fact-specific. The appellant cannot show that anyone with any connection to the APCR is at risk.
86. In light of my findings, no issue arises under the principle in HJ (Iran) [2010] UKSC 31; [2010] 3 WLR 386. I note that the appellant's case has not been argued on this basis in any event.
87. The appellant's appeal fails on protection grounds.
88. Similarly, the Article 8 claim fails. There is no family life in the United Kingdom. Any private life established over the course of time is thin, to say the least. It is been established during unlawful residence in this country. In light of all relevant matters, this aspect of the appellant's case is bound to fail.

Anonymity

89. In all the circumstances, it is appropriate to maintain the anonymity direction made originally by the First-tier Tribunal and continued by the Upper Tribunal.

Notice of Decision

90. **The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. That decision has been set aside.**
91. **I re-make the decision by dismissing the appeal on all grounds.**

Signed: *H Norton-Taylor*

Date: 12 April 2021

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed: *H Norton-Taylor*

Date: 12 April 2021

Upper Tribunal Judge Norton-Taylor