



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

Appeal Number: AA/06207/2015

THE IMMIGRATION ACTS

**Heard at Columbus House, Decision & Reasons Promulgated
Newport On 26 November 2015 On 6 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**I C
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paur, Counsel

For the Respondent: Mr Richards, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a Gambian national, born on 18 February 1979. She claimed asylum in the United Kingdom on 15 June 2012. On appeal, her application was remitted to the Respondent as the decision was found to be not in accordance with the law and the Respondent withdrew the decision. The Respondent then refused her application in a letter dated 24 March 2015. She appealed against that decision and the appeal was dismissed by First-tier Tribunal Judge Real in a decision dated 6 September 2015. The Appellant sought permission to appeal against the decision of

the First-tier Tribunal which was granted by First-tier Tribunal Judge Landes on 1 October 2015. She considered that it was arguable that the First-tier Tribunal did not give adequate reasons for her findings that there would not be very significant obstacles to the Appellant's integration into Gambia taking account of the expert evidence of Dr Kea. She considered that there was less force in the arguments so far as the protection claim was concerned. She did not limit the grounds of appeal which could be argued.

The Grounds

2. It is submitted that the First-tier Tribunal erred in rejecting the evidence of Dr Kea. The grounds argue that the First-tier Tribunal's approach to the assessment of the Appellant's credibility is flawed as it did not take account of Dr Kea's conclusions in relation to the fact that the Appellant would be a source of shame to her family and that they would pursue her on return. The Appellant argues that Dr Kea's report shows that her claim that her family have animosity towards her and wish to pursue her is plausible and objectively justified in the context of the Gambian culture. It is also argued that the First-tier Tribunal erred in assessing whether the Appellant could relocate within Gambia. The Judge had cited the fact that the Appellant had previously relocated elsewhere in the Gambia but had failed to appreciate the Appellant's circumstances. The Judge had failed to have regard to the fact that the Appellant would be socially excluded and may suffer verbal and physical abuse.
3. The Appellant now had three children out of wedlock and the country evidence included in the Appellant's bundle made it clear that children born out of wedlock were discriminated against. The Appellant asserts in the grounds that this had not been considered when looking at the viability of relocation. In finding that the Appellant had connections in Gambia the Judge had not born in mind the evidence from Dr Kea that she would be socially excluded and seen as a woman of ill-repute.
4. It is also submitted that the Judge had given inadequate consideration to the effect of removal on the Appellant's children. The Judge stated that the circumstances facing her on return were now similar to those when she lived away from her family previously. It is submitted that those circumstances were now very different as the Appellant would be returning with three UK born children who were born out of wedlock. It is submitted that in the current circumstances the Appellant could not reasonably survive and support her children in Gambia. It is also submitted that the Judge had failed to fully appreciate the circumstances of the Appellant on return as a single woman with three children born out of wedlock of an age where they could not look after themselves. Whether the Appellant could support herself and her children on return is said to be central to the assessment of what is in the children's best interests.
5. It is further submitted that the Judge was wrong to find that the evidence of Dr Kea that the Appellant would not be able to find accommodation was

speculation. There was evidence to corroborate Dr Kea's conclusion that there was unlikely to be an assistance afforded to the Appellant. Further, in assessing the Appellant's children's best interests the Judge had failed to take into account the objective evidence in the Appellant's bundle which showed that children born out of wedlock were stigmatised, discriminated against and there were obstacles to registering such children. There were significant obstacles to the Appellant returning to Gambia.

The Rule 24 Response

6. The Respondent submits that the evidence of the expert received analysis at [34] and [36] noting that a number of the conclusions were from a premise rejected by the First-tier Tribunal and reasoned throughout the determination ([26] - [34]). Any error as to the issue of internal relocation (if any) could only be immaterial given the penultimate sentence at [34]. The First-tier Tribunal Judge therefore directed himself appropriately.

The Hearing

7. Mr Puar referred to the Judge's findings at paragraph 28. A text message was sent by the Appellant's brother which was single message three years ago. The First-tier Tribunal found that a forewarning was inconsistent with an intention to kill her. The bundle before the First-tier contained a text message from the family. Paragraph 4 showed that the contact was the Appellant's brother and the threat was not issued by the father per se. It was clear that this was the brother saying "please come back" and this was inconsistent with her finding that this was a forewarning. This was not how the message read.
8. The other points emanated from the expert's report of Dr Kea and the appropriate starting point was page 19 of the bundle. There was a declaration at page 21 and it was clear that it was her expert opinion. It was an independent expert report and she was given specific questions to answer. Page 5 of the report and page 25 of the bundle confirmed that in her considered opinion it was likely that her family would pursue her. There was shame because the Appellant had three children out of wedlock. The expert then continued and identified that she may be labelled as a prostitute. Importantly she also stated that Gambians lived in family compounds. There were strong cultural ties and it was a small country. From page 27 it was clear that it was difficult to afford the high cost of housing. The Judge dealt with Article 8 at page 45. There was no rejection per se of Dr Kea's report save for what she said about housing. What Dr Kea said was that she could find employment but the practicalities were that she could not find housing. It was culturally unacceptable to live without a husband. The risk factor was having children out of wedlock and the potential ill-treatment for having done so. Her case was that her parents wanted to cause her harm but her research showed that not one of those conclusions were adopted on the evidence. The First-tier Tribunal was prepared to accept that her family her

disappointed in her. Looking at Article 8 that being the Judge's finding of fact, the Judge found that the reason there would not be very significant obstacles was accommodation. She said the expert's conclusion amounted to speculation. It was not speculation. It was unacceptable for a young woman to be living without a husband and those who rented rooms were male migrants. Moreover the difficulty was that the facts had changed. The main risk was having the children out of wedlock. That factor was not present before. Even if the Judge was to reject the contact argument the husband would not allow her to live with him. It was a temporary measure before and she was settled before. The current facts were totally different. In short, of course a judge could reject expert evidence but there must be sufficient reasons. The reasons were illogical and not in keeping with the evidence and not taking account of the new facts. It was incumbent to give reasons which had not been done. It was a confusing determination. The Judge did not reject the report of Dr Kea. There was also the ground that the determination did not adequately deal with the best interests of the children. The First-tier Tribunal in granting permission was not as impressed with that ground. Evidence was attached to the grounds. Illegitimate children were at risk of becoming stateless.

9. Mr Richards submitted that there was no material error of law. The Judge gave cogent reasons for her conclusions and the attack on paragraph 28 was misplaced. The comment made by the Judge was rational and did not affect the adverse findings already reached in that paragraph. The Judge did not reject the evidence of Dr Kea and the most significant sentence was in paragraph 34. Her self-direction in that paragraph was a perfectly proper direction. The expert gave advice as to the generality of the situation. The Judge was the arbiter of fact and gave full and cogent reasons for finding that this Appellant was not at risk from her family on return to the Gambia. She concluded that taken at its highest the family had expressed a wish that she did not return but there was no evidence that they persisted in that view. But in any event the Judge found that she was not at risk of persecution or ill-treatment at their hands. That was a perfectly proper conclusion at which to arrive. The Judge formed the view that the true catalyst for her claim was the loss of her employment in the UK. There were adequate reasons on the protection issue and having reached that conclusion it was open to her to make findings in relation to Article 8 and to the best interests of the children which she concluded were to remain with their mother and go back with her to the Gambia and make friends in their country. The grounds were in effect no more than a disagreement. The decision ought to stand.
10. In reply, Mr Puar said that at paragraph 36 of the determination in relation to the difficulty obtaining accommodation that the Judge concluded that the expert's conclusions were based on her family's intention to harm her and they would be alerted. That was just wrong. Her conclusions in respect of accommodation were founded upon the assumption that her family would not accept her which was the finding in any event which the Judge made. The risk factor which Dr Kea identified was having children out of wedlock and she only considered the potential for ill-treatment.

11. I reserved my decision. Both representatives agreed that remittal to the First-tier Tribunal would be appropriate if I were to find that there were a material error of law.

Discussion and Findings

12. The grounds of appeal all relate to the First-tier Tribunal's treatment of the expert evidence. It is not in dispute that Dr Kea is appropriately qualified to offer an expert opinion on the matters in issue. The First-tier Tribunal's findings of fact and in relation to the credibility of the Appellant's account that she would be at risk on return to Gambia are at paragraphs 26 to 34 of the decision. Whilst the findings for rejecting the Appellant's account to be at risk are to very well-reasoned I find that the First-tier Tribunal erred in her approach to the expert evidence. She made her findings of fact and in relation to credibility at paragraphs 26 to 33 without reference to the expert evidence. This approach runs contrary to established jurisprudence. In **M (DRC) v SSHD [2003] UKIAT 00054** the Tribunal held that it was wrong to make adverse findings of credibility first and then dismiss the report. In **HE v SSHD (2004) UKIAT 00321** the Tribunal held that where the report is specifically relied on as a factor relevant to credibility, the Tribunal should deal with it as an integral part of the findings on credibility, rather than just as an add on, which does not undermine the conclusions to which he would otherwise come. The Tribunal also, importantly, said that where the report simply recounts a history which the Judge is minded to reject and contains nothing which does not depend on the truthfulness of the appellant, the part which it can play in the assessment of credibility is negligible.
13. Dr Kea was asked, in relation to the protection claim, on her opinion on the question of whether the Appellant, or her sons born in the UK, would be at risk as a result of having children out of wedlock in the UK. She was further asked whether this risk would emanate from the Appellant's family in Gambia and/or the general public in Gambia. She concluded that the Appellant would be at risk in Gambia as a result of having children out of wedlock in the UK and that this risk would emanate primarily from her parents. She further concluded that it was very likely that the Appellant's family would pursue her upon return for bringing shame on the family. A daughter who brought shame on her family in this way may be socially excluded, disowned and/or physically abused (page 25 A's bundle).
14. The First-tier Tribunal found that the Appellant's evidence that she would be at risk was not believable for a number of reasons. The First-tier Tribunal found that the text messages relied on demonstrated disappointment with her rather than an intention to kill her; the messages coincided with her asylum claim at a time when all other attempts to remain in the UK had failed; her evidence about contact with her family had been inconsistent; the true catalyst for her asylum claim was the loss of her employment in the UK and her evidence that she had lost contact

with her friends and could not support herself was not consistent. The Judge further found that the Appellant had been in contact with her friends and family in Gambia and that her family were disappointed in her.

15. Whilst, as stated above, these findings were well-reasoned, the First-tier Tribunal did not deal with the expert's report as an integral part of the findings on credibility. The Judge stated at paragraph 34:

“I have considered, and in general terms, accept, as consistent with the Respondent's country evidence, the evidence of Dr Kea regarding the view that her family are likely to take about her behaviour, but I disagree as to her conclusions about the consequences of this situation on the facts as I find them in relation to this particular Appellant.”

16. It is clear from this passage that the Judge made findings of fact first and as a consequence disagreed with the conclusions of the expert. It is also clear that the expert's opinion, cited above, was not predicated on matters relating to the Appellant's credibility. It was predicated on established facts, namely that the Appellant had children out of wedlock in the UK. It was therefore evidence that should have been taken into account as an integral part of the findings on credibility. In the light of this, the error of law has to be material, as it cannot be said that the outcome would have been the same in the absence of the error.
17. I have also considered whether the First-tier Tribunal erred in law in relation to the findings on Article 8 under the Rules. The First-tier Tribunal found that there would not be very significant obstacles to integration under paragraph 276 ADE because the Appellant would be able to find employment. The First-tier Tribunal further found that the expert's conclusion that the Appellant would be unable to obtain accommodation was both founded on a premise that her family would harm her and was speculation in relation to the refusal of accommodation by compound heads. The Tribunal also found that financial assistance was available to the Appellant from the Assisted Voluntary Return scheme and she had friends she could rely on.
18. First-tier Tribunal Judge Landes in granting permission considered it arguable that the Judge did not give adequate reasons for her findings that there would not be very significant obstacles to the Appellant's integration bearing in mind what Dr Kea said about the Appellant suffering discrimination, being socially excluded and that she may suffer verbal and physical abuse (paragraph 5 of the grounds). She found that the Judge did not give reasons for rejecting Dr Kea's conclusions in that respect or explaining why she would be able to integrate into Gambia despite those problems.
19. Dr Kea's opinion was that the Appellant would suffer discrimination upon her return to Gambia because she would be seen as someone who had not conformed to cultural expectations. She states that she would be socially excluded and potentially suffer from various forms of verbal and physical abuse. As an unmarried woman she would be seen as a woman of ill-

repute and may possibly be labelled a prostitute. I consider that those factors were relevant to the question of integration and were not considered by the First-tier tribunal in the assessment conducted under paragraph 276ADE. Therefore the First-tier Tribunal failed to give adequate reasons for her finding that there were not very significant obstacles in the absence of a consideration of those factors. This also amounted to a material error of law.

Notice of Decision

In those circumstances I conclude that there was a material error of law in the decision of the First-tier Tribunal. All findings are vitiated by that error and the extent of judicial fact finding is such that this matter should be remitted to the First-tier Tribunal for complete rehearing both in respect of the protection claim and under Article 8 ECHR.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge L J Murray