



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07266/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 29 November 2017**

**Decision & Reasons  
Promulgated  
on 12 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**ABDOUKARIM BAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Kotak, Counsel, instructed by Sriharans Solicitors  
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Wylie (Ftj), promulgated on 8 September 2017, dismissing the Appellant's appeal against the Respondent's decision dated 18 July 2017 refusing his asylum and human rights claims.

**Factual Background**

2. The Appellant is a national of Gambia, date of birth 14 November 1986. He entered the UK on 6 October 2007 as a student. An

application for further leave to remain in the same capacity was refused and an appeal dismissed on 25 April 2012. An application made in June 2013 for a residence card as an extended family member of an EEA national was refused on 17 December 2013 and an appeal against this decision was dismissed on 15 January 2015. A further application for an EEA residence card made in August 2015 was refused in February 2016 and an appeal against this decision was dismissed on 30 June 2016. On 23 May 2017, the Appellant was encountered at a residential address and served with a notice informing him of his liability to removal. He was detained as an overstayer. Whilst in detention, on 26 May 2017, he made an asylum claim.

3. The appellant contends that he would face persecution if returned to Gambia on the basis of an imputed political opinion arising from his family connections. He claims his father was a wealthy businessman and a member, active supporter and financial donor to the APRC political party, which was led by the former president Dr Jammeh. The appellant claims he joined the party in 2004 and organised rallies, meetings and engaged in fundraising. He claims he was attacked in 2006 by a group of people he believed were from the Mandika tribe, supporters of the United Democratic Party (UDP), the current governing political party in Gambia, which was in opposition at the time. Despite being stabbed in the arm and head the appellant did not report this assault to the police as he believed the police would do nothing. The appellant claims that the new regime started to target those who were connected with the former president after Dr Jammeh stepped down as president, and that these individuals were arrested and prosecuted with false charges. The appellant's father was warned by a friend who worked for the government that he (the father) was going to be arrested. The appellant's father left the country on 2 May 2017. He telephoned the appellant the next day to inform him of what had happened. The rest of the family including the Appellant's mother and two brothers remained in their home in Gambia. Two weeks later two of the appellant's brothers were arrested because of their support for the APRC and because of their father's involvement with their party. The appellant's mother, a further brother and his sister went into hiding. The appellant was then informed by a friend who saw a 'wanted' notice at the police station that an arrest warrant had been issued for him. Statements from individuals said to be neighbours were presented to the First-tier Tribunal referencing the arrests and claiming that stones had been thrown at the family home because they were supporters of the former president.
4. The appellant's article 8 claim revolved around his relationship with his Gambian wife, whom he married on 8 September 2016 and who was lawfully present in the UK as a student completing her PhD, and their son born on 23 November 2016. She has been studying in the UK since September 2008 and anticipates that she would complete her studies in September 2018. Her Tier 4 (General) Student LTR s valid until 14 January 2019. The appellant additionally believed that his

wife's family harm him because he married her when she was pregnant without the consent of the parents, wanted her to marry a cousin.

5. The respondent did not accept that the appellant's father was in exile or that his brothers had been arrested. Nor was it accepted that the Appellant was the subject of an arrest warrant. The respondent did not believe the appellant was a credible witness and rejected his claim to have a genuine subjective fear his safety if returned to Gambia. Based on the background evidence, even if the appellant was a supporter of the former president, he would not face any risk of serious ill-treatment. The appellant did not meet the requirements of the immigration rules leave to remain as a partner, and his removal would not constitute a disproportionate breach of article 8.

### **The decision of the First-tier Tribunal**

6. The judge accurately summarised the appellant's claims and recorded the submissions made by the representatives. Having correctly set out the legal framework, and the relevant legal principles, the judge set out her findings of fact and her conclusions. The judge did not find the appellant a credible witness. The judge identified inconsistencies between the appellant's evidence and his father's statement in respect of the basis upon which his father had been allegedly targeted, and inconsistencies in the evidence relating to why his brothers had been arrested. The judge noted that the appellant's claim was not supported by the background evidence provided, which indicated that there had been no intimidation, harassment or witch-hunting of former regime members and supporters, and that there was no reliable evidence that the new regime had targeted the families of persons who supported the former president. The appellant claimed that the authorities had been arresting families before his father left Gambia, but this was inconsistent with his father's account that he did not expect the authorities to go after his family. Given that the appellant's father telephoned the appellant the day after he left Gambia to tell him it was not safe in Gambia, this was incongruous with the evidence that the appellant's other family, including his brothers, remained living in the family home in Gambia. The judge noted the absence of any statement from the individual who obtained the "wanted" notice, and that she had not apparently made any enquiries about the whereabouts of the appellant's brothers or the charges levelled against them. The judge considered the documents issued by 'Gambian Movement for Democracy & Development', but noted the absence of detail relating to the alleged "harassment" of opposition supporters, and the absence of any independent evidence of human rights breaches from well-known NGOs. In drawing an adverse inference, the judge additionally relied on section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.
7. At paragraph 78 the judge stated,

Whilst the appellant's father may feel that he needs to stay outwith the country because of his relationship with the former president, I do not accept that there is any risk to the appellant as his son, if he returns to Gambia.

8. The judge concluded that the appellant was not at risk of serious harm if returned to Gambia.
9. The judge then considered the Article 8 claim. With reference to paragraph 276ADE the judge noted the assertion by the appellant's wife that she will not return to Gambia until completion of her PhD studies in September 2018. The judge was not satisfied that this would amount to a very significant obstacle as contact could be maintained through remote forms of communication and the couple would be reunited after 12 months. The judge then considered Article 8 outside of the immigration rules, and referred to his duty under s.55 of the Borders, Citizenship and Immigration Act 2009. The judge properly noted that the best interests of the child was a primary consideration, not a paramount consideration. The judge accepted that the appellant's return to Gambia would interfere with his protected relationships with his wife and child. The judge did not however consider that his removal would be disproportionate. In reaching this conclusion the judge noted that the maintenance of effective immigration controls was in the public interest, that the appellant had no lawful status in the UK since 2012, his history of unsuccessful applications, and that his wife only had limited leave to remain as a student. The judge accepted that the appellant spoke English and that he would be able to work and support himself if granted leave to remain, although he had substantial debts for rent arrears and a bank loan.
10. At paragraph 92 the judge noted that both the appellant's wife and son were Gambian nationals and that they could enjoy family life together in Gambia. The judge noted the wife's evidence that, having spent so many years studying, she would not leave the UK until she obtained a doctorate. The judge accepted that this was "obviously a very reasonable position to take", but concluded that this was a choice to be taken by the family. The Article 8 appeal was therefore dismissed.

### **The grounds of appeal and the error of law hearing**

11. The grounds of appeal levelled various criticisms at the decision, many of which were insufficiently particularised, and many of which amounted to no more than a disagreement with the judge's findings. The grounds alleged that the judge applied a higher standard of proof than appropriate when rejecting the Appellant's account of his brothers' arrest, that she failed to lawfully assess the documentary evidence criticising the new government, and she failed to give adequate reasons for her findings. It was submitted that the judge

failed to take into account the length of time that the appellant's wife had resided in the UK, that she was embarking on a "very useful PhD programme", and that she would be entitled to ILR in 2018 having completed 10 years lawful residents UK.

12. The grant of permission by judge of the First-tier Tribunal Keane bore little resemblance to the grounds.

In large part the grounds amount to no more than a disagreement with the findings of the judge and an attempt to re-argue the appeal. At paragraph 35 of the judge's decision the judge (drawing on the contents of a skeleton argument which the appellant's representative relied) characterised as a core component of the appellant's claim for asylum the risk to which he would be exposed upon a return to Gambia by reason of the antipathy towards the appellant's father of the current Gambian authorities. It was intrinsic to the appellant's claim for asylum (as confirmed at paragraph 36 of the judge's decision) that the appellant's father had hurriedly left Gambia for Guinea on 2 May 2017. The judge appeared to reject such a complaint if paragraph 57 of the judge's decision was read with care. However, at paragraph 78 of the judge's decision the judge appeared to approbate the appellant's claim that the appellant's father might sincerely feel the need to stay outside Gambia "... because of his relationship with the former president." The judge's findings were arguably contradictory. The finding to which the judge arrived at paragraph 78 might arguably have established the factual foundation whereby the appellant might objectively fear persecutory act upon his return to Guinea [this should be Gambia]. The judge's decision disclosed an arguable error of law but for which the outcome of the appeal might have been different.

13. At the 'error of law' hearing Ms Kotak relied on judge Keane's grant of permission. She submitted that paragraph 57 of the determination was ambiguous and that it was possible that the judge had rejected the father's evidence. But at paragraph 78 the judge appears to accept that the father had left the country because of concerns based on his relationship with the former president. It was submitted that the judge's conclusions were contradictory. Ms Kotak additionally submitted that the judge failed to consider a material fact, namely that the appellant was the main carer for his child and that his wife would be unable to continue her studies as there would be no one else to take care of the child. It was submitted that the only issue was whether it was disproportionate to remove the appellant by separating him from his wife and child given that he was the main carer, given that the couple had never drawn on public funds, and in light of the best interests of the child.

## **Discussion**

14. I have no hesitation in concluding that the judge did not materially err in law in her assessment of the protection claim. The essence of the appellants claim was that he would be the subject of an imputed political opinion because of his father's close association with the

former president and the APRC party, and because of the Appellant's own involvement in the APRC. The father's evidence was to the effect that he felt he had to leave Gambia because he believed he was going to be arrested. Paragraph 78 of the determination must be read with care. The judge noted that the appellant's father "may feel that" he needed to remain outside Gambia because of his relationship with the former president. The judge finds that while the appellant's father "may" hold a subjective fear for his own safety because of his close association with the former president, the father's evidence in respect of the Appellant's claim was not believable. There is no inconsistency in the father giving truthful evidence in respect of the motivation for own departure from Gambia, but giving untruthful evidence in respect of any adverse interest in the rest of his family. Such a fear, if genuinely held, is not inconsistent with the numerous detailed adverse credibility findings made by the judge in respect of the appellants claim. I can detect no consistency between paragraphs 57 and 78. It was open to the judge to conclude, on the one hand, that the appellant's father may have felt the need to leave Gambia because of his relationship with the former president, but, on the other hand, to conclude that the appellant fabricated his claim to fear persecution based on his association father. For the reasons given by the judge for rejecting the Appellant's account, summarised in paragraph 6 of this judgement, I am satisfied that the judge was rationally entitled to conclude that the appellant did not hold any genuine subjective fear for his safety if returned to Gambia, and that any fear was not, in any event, objectively based. In particular, the judge was rationally entitled to note the absence of any independent and respected human rights reports supporting the appellant's claim that family members of individuals prominently and closely involved with the former regime had been targeted.

15. Ms Kotak additionally submitted that the judge's article 8 assessment was vitiated by a material error of law by the failure to take into account the evidence that the Appellant was the one responsible for bringing up their child while his wife was studying. If there was no-one who could look after the child then the wife would have to give up her studies when she was very close to completing her PhD and this would constitute a disproportionate interference with her Article 8 rights.
16. There doesn't appear to be any dispute that the Appellant's wife has been studying in the UK since 2008 and that she is completing a PhD in Business Administration at the University of the West of Scotland. The evidence before the judge was that the PhD would be completed by September 2018. The judge did not specifically refer to the evidence, contained in the statements of the Appellant and his wife, that he takes care of their son while she studies, undertakes her research and attends university. The judge did however conclude, at paragraph 92, that the family could enjoy family life together in Gambia, and that, while the wife's assertion that she would not leave the UK until she obtained her doctorate was 'very reasonable', this was her choice. From this I infer that the judge was satisfied that it

was open to the Appellant's wife to return with their child to Gambia, and thereby maintain the family unit, even if this would result in her ability to complete her PhD.

17. Article 8, in the context of studies, has recently been considered by the Court of Appeal in *Ahsan v SSHD* [2017] EWCA Civ 2009. Having considered several decisions on the subject, including *Patel v Secretary of State for the Home Department* [2013] UKSC 72, [2014] AC 651, *Nasim v Secretary of State for the Home Department* [2014] UKUT 25 (IAC), *MM v Secretary of State for the Home Department* [2009] UKUT 305 (IAC), and *CDS (Brazil) v Secretary of State for the Home Department* [2010] UKUT 305 (IAC), Lord Justice Underhill confirmed (at [86]) that the right to complete a course of education is not, *as such*, a right protected by Article 8. *CDS (Brazil)* was not to be read as meaning that the mere fact that the student is part-way through a course leading to a professional qualification by itself engages Article 8, but that properly considered, a student's involvement with their course and their college can itself be an important aspect of their private life, and whether those and other factors are sufficient to engage article 8 in any particular case will depend on the particular facts. His Lordship noted that the longer a student has been here the more likely he or she is to have generated relationships of the necessary quality and depth.
18. There has been no assessment by the judge in respect of the nature of the wife's involvement with her college and course, or the relationships she has established as a consequence of her studies. If required to leave her studies and return to Gambia in order to maintain the family unit, or because there is no-one else to look after her child, it is possible that there may be a breach of her Article 8 rights as described in *Ahsan*. In these circumstances, the absence of any indication that the judge considered the evidence that the Appellant took primary care of their child, and the absence of any consideration of the possible interference with the wife's article 8 rights established through her studies, amounts to a material legal error.
19. The matter will be remitted to the First-tier Tribunal to consider only the article 8 aspects of the claim as described in this decision. The First-tier Tribunal will consider in particular whether the wife could continue her PhD from Gambia, whether there is anyone who could provide adequate child care, whether the child could be cared for in Gambia without his mother until she completes her PhD, and the nature of the wife's involvement with her college and course.

### **Notice of Decision**

**The appeal in respect of the protection claim is dismissed.**

**The First-tier Tribunal decision is vitiated by a material error of law in respect of the human rights claim only. The case is remitted to the**

**First-tier Tribunal for further consideration in respect of Article 8  
before a judge other than judge of the First-tier Tribunal Wylie.**

Signed



Upper Tribunal Judge Blum  
2017

Date 12 December