



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07787/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice  
On 29 January 2018**

**Decision and Reasons  
Promulgated  
On 15 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**WANDY SANNEH  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Emezie, Solicitor-Advocate, Dylan Conrad Kreolie  
Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a Gambian national born on 15 February 1960. He is the subject of a deportation order signed by the respondent on 15 December 2014 and he appeals the refusal of his asylum/human rights claim on 25 July 2017. He entered in September 2000 on the basis of his marriage which ended when he obtained indefinite leave to remain in June 2003. Another partner and children then applied to join him in the UK.

2. On 14 March 2014 the appellant was convicted of wounding and inflicting grievous bodily harm on his wife; he had stabbed her whilst she was in bed and as a result of the seriousness of the wound she required hospital treatment. The appellant received a 24-month prison sentence, initially suspended for 24 months and a restraining order prohibiting him from contacting his wife and children or visiting the family home for three years. He breached the terms of that order twice and on 21 June 2014 his suspended sentence was activated but reduced to 18 months. The respondent then issued a decision to deport. The appellant relied on his family life although at that time he had no contact with the family. On 14 September 2016, the day after being notified of his impending removal, he claimed asylum on the basis of his unwillingness to participate in idol worship.
3. The appeal came before First-tier Tribunal Judge Keith at Harmondsworth on 30 October 2017 and was dismissed by way of a determination promulgated on 15 November 2017.
4. The appellant sought to challenge the determination on the basis that the judge erred in refusing an adjournment application, that he did not appear to have considered the article 8 representations made in March 2017 and that the asylum claim had not been fairly considered. Permission was only granted on the adjournment point.

## **Submissions**

5. Mr Emezie submitted that an adjournment application had been sought because two witnesses (the appellant's wife and a friend) had been unable to attend the hearing and wanted the matter transferred to Manchester. After some discussion, it transpired that no application had ever been made for such a transfer.
6. Mr Emezie submitted that the judge had failed to address the inability of the witnesses to attend. When it was pointed out to him that in fact the judge had done so, he submitted that he had not properly dealt with the issues. He submitted the evidence of the wife was crucial as the judge could not assess the claim without hearing evidence from her.
7. Mr Emezie complained that although the wife and the children had written letters, the judge found there was no subsisting relationship. He submitted that bail had been wrongly denied and all attempts to obtain evidence for his case had been thwarted. The judge had placed too much weight on an out of date Oasys report. He had been wrong to find that the appellant's wife did not want him back and he

speculated about the appellant's ability to integrate (at paragraph 50). Mr Eemzie submitted that the judge was wrong to find that the appellant was still an alcoholic because he would not have been able to obtain alcohol in prison. Whilst the judge claimed to have taken the best interests of the appellant's child into account, he could not have done so as the child wants him back home. He relied upon Teinaz v London Borough of Wandsworth [2002] EWCA Civ 1040 where the position of a litigant who could not attend through no fault of his own had been considered. Mr Emezie submitted that those principles applied equally to witnesses. The effect of deportation upon the appellant's wife would be unduly harsh and he therefore fell within the exceptions to deportation. There were insurmountable obstacles to his reintegration to Gambia which had not been considered.

8. Mr Kotas responded. He submitted that the appellant's complaint was essentially that he had not obtained the adjournment he had sought. He pointed out that an adjournment had previously been granted and there had been no further application until the hearing and no reference had ever been made about any disability suffered by the partner which prevented her from attending. The judge had considered the adjournment application at length. He had regard to the ultimate test of fairness. He explored what further documentary evidence was sought but the representative could not assist. The only supporting evidence from the appellant's partner was an email from 2014 which did not support his appeal. Given the domestic abuse, there had to be credible evidence from the partner that she had had a change of heart. The judge properly considered all the evidence and properly assessed whether there could be a fair hearing. The grounds amounted to no more than a disagreement. The appellant chose to withdraw from his own appeal hearing. There was no reason for him to have done so. He could have given oral evidence. He could have challenged the Oasys report. He chose not to do so. He is just aggrieved because he did not get an adjournment. The issue of insurmountable obstacles had not been raised in the grounds. The asylum claim was hopeless. It was raised late in the day. The appellant could relocate to escape his uncle.
9. Mr Emezie replied. He submitted that there was a statement from a solicitor who confirmed that the appellant's partner was willing to give evidence. She had attended a bail hearing. The appeal was doomed without the evidence of the partner so there was no point in him staying for the hearing. The judge acted unfairly. The asylum claim engaged the convention. Internal relocation was not a reasonable option.
10. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

## Discussion and Conclusions

11. I have considered the submissions and the evidence with care. Permission was not granted in respect of the asylum aspect of the claim. In any event, there has been no reason given for why the appellant did not pursue that claim at the hearing. His decision to abandon his article 8 claim because there was no point in staying without the oral evidence of his partner does not have any relevance to the asylum limb of the claim. The appellant had the opportunity to pursue it but chose not to. His conduct, along with the lack of merit in that ground (as found by Judge Scott Baker) means there can be no challenge to the findings on asylum.
12. I now turn to what is essentially the appellant's complaint; the refusal of an adjournment. The Tribunal files shows that the appeal was initially due to be heard on 19 September 2017 but on 12 September 2017 the representatives sought an adjournment on the basis that the appellant had applied for bail and needed time to prepare as "*all the evidence relating to his private life has not been collected*". An adjournment of six weeks was sought. The application was refused on the grounds that there was no guarantee that bail would be granted and that the appellant could obtain his evidence through other means. The application was renewed at the hearing before First-tier Tribunal Judge Malcolm and an adjournment was granted until 30 October 2017.
13. The matter then came before First-tier Tribunal Keith. A further application for an adjournment was made at that hearing. The judge was told that the bail application had been withdrawn because the appellant's partner had been unable to attend it and the other surety had travelled to Gambia. The representative relied on a statement in which he set down the instructions he had received which were that the appellant's partner was willing to attend the hearing if it was transferred to Manchester so that she could more easily travel there.
14. The judge considered this statement at paragraph 30. He then explored with the representative the further documentary evidence sought and what steps had been taken to obtain it (at 31-32). He noted there was some inconsistency in whether the appellant's partner was willing to assist (at 32) and the only direct evidence from the partner was an email (and so unsigned) from 2014 (at 33). He noted also that there was no documentary evidence to support the claim that the eldest (adult) child was sick and had been unable to assist in obtaining further evidence (at 32).

15. The judge then considered the test and reminded himself of fairness principles (at 37) and the seriousness of the appeal (at 38). He took account of what was said about documentary evidence but did not find the submission that there was further evidence to be reliable given the absence, without any reason, of any witness statements from the appellant's family (at 39 and 40). Although Mr Emezie vociferously argued that the statement from the solicitor was evidence of the partner's willingness to give evidence, that statement is nothing more than instructions from the appellant as confirmed in the opening sentence. There is nothing to suggest that the partner has been consulted or that she gave any instructions or information to the solicitors. The email of 2014 was written at a time when the appellant was prohibited from making any contact with his family and that raises concerns. The judge was clearly mindful of the coercion that could be placed on the partner as evidenced by the Oasys report (at 39) and he properly questioned why there was only one friend who could have given evidence (ibid). he questioned why there was also no statement from the appellant's adult son or why he had not helped to obtain any documentary evidence (at 41). He considered that the claim that the appellant's partner would attend to support the appeal was speculative.
16. Notwithstanding Mr Emezie's submissions, I do not find that the judge approached the adjournment application unfairly. He properly considered the evidence and the claims made and reached an entirely sustainable conclusion. In the six weeks that the appellant had previously obtained, nothing appears to have been done to obtain any evidence and the absence of witness statements from the appellant's family without any reasons whatsoever, was a significant red flag to the judge.
17. The judge properly considered the application for an adjournment. Weighing all the submissions made and the evidence before him, he was entitled to conclude that the refusal of the adjournment would not cause unfairness to the appellant. the decision of the appellant and his representative to them abandon the proceedings is a matter for them but as Mr Kotas submitted, there was no reason for that. The appellant could have given oral evidence himself and certainly in respect of his asylum claim he had not proposed to call any other oral evidence.
18. The judge carefully considered the position of the appellant's partner as did the sentencing judge and the author of the Oasys report. In the absence of any reliable supporting evidence from her, it was entirely open to him to conclude that the evidence did not suggest that she would attend any hearing to support the appeal. It is also significant that no reference to her alleged disability was made prior to the second hearing before the First-tier Tribunal.

19. In conclusion, therefore, I find that the judge did not make any errors of law which necessitate the setting aside of his decision.

**Decision**

20. The First-tier Tribunal did not make any errors of law. The decision to dismiss the appeal is upheld.

**Anonymity**

21. I was not asked to make an anonymity order and, in any event, see no reason to do so.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' followed by a period.

Upper Tribunal Judge

Date: 12 February 2018