



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12017/2016

THE IMMIGRATION ACTS

Heard at Glasgow  
On 5 October 2018

Decision Promulgated  
On 17 October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

N J  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Gibb of D Duheric & Co, solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant because this decision discusses the appellant's health concerns.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Fox promulgated on 19/10/2017, which dismissed the Appellant's appeal on all grounds.

## Background

3. The Appellant was born on 6 February 1980 and is a national of Gambia. The appellant arrived in the UK on 20 September 2012 and claimed asylum. On 17 October 2012 that application was refused by the respondent. The appellant appealed unsuccessfully, and her appeal rights were exhausted by March 2013. On 4 April 2016 the appellant submitted further representations claiming to have a well-founded fear of persecution because she had converted to Christianity. The respondent refused the appellant's renewed application on 19 October 2016.

## The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Fox ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 09 March 2018 Judge Scott Baker gave permission to appeal stating inter alia

3. The respondent had accepted that the appellant had converted to Christianity from Islam and that she evangelised outside her church in the refusal letter dated 19 October 2016 at page 6. The FTT judge noted this at [16] and [18] of the decision but at [20] found that she did not evangelise on the evidence before him. Given that the evangelising by the appellant has been accepted by the respondent this finding amount to an arguable error of law; if the Judge had reason to reject the agreed facts the appellant should have been placed on notice which he failed to do.

4. As a result of this error it is considered that the findings as to risk on return are arguably tainted as the appellant was not considered credible by the Judge and the risk to the appellant on return was arguably incorrectly assessed.

## The Hearing

5. In a rule 24 note dated 23 March 2018, the respondent accepts that the Judge's decision contains a material error of law. Parties agents joined in inviting me to set the decision aside because the reasons for refusal letter accepts that the appellant is a Christian who evangelises in public, yet the Judge found that the appellant is not an evangelising Christian.

## Error of Law

6. In SS v Secretary of State for the Home Department [2010] CSIH 72 the Secretary of State considered that it was credible that the Claimant had been involved in film production. The Judge did not accept that the Claimant was a filmmaker. The Court of Session noted that the Judge had before him, as a starting point as to the veracity of the Claimant's version of events, an acceptance by the Secretary of State that the Claimant was a filmmaker. Although the Judge was not bound to accept that conclusion, any departure from a position established as true by both parties would require explanation. In its absence, the reasonable inference was that the Judge had

misunderstood or left the evidence out. The error was therefore properly categorised as one of law.

7. In YHY (China) AP Petition for JR 2014 CSOH 11 it was held that there was procedural unfairness amounting to an error of law where points were taken against the appellant that were not in the original decision and notice of the additional points had not been given to the appellant. Specifically, it had never been suggested that the appellant was not the father of a child but the Judge found that to be the position.

8. At [20], [26], [31] and [32] the Judge finds that the appellant is a Christian who does not evangelise. He assessed the risk on return simply on the basis that the appellant has converted from Islam to Christianity. He did not consider the risk on return to a Christian convert who is driven to publicly evangelise. The Judge departed from the respondent's position (which accepts a significant part of the appellant's claim). Because the Judge did not put the parties on notice that he was departing from an accepted part of the appellant's account, the decision is tainted by material error of law. The error of law is material because the Judge's mistake infected the assessment of risk on return.

9. I set the decision promulgated on 19 October 2017 aside. I am invited to substitute my own decision by assessing the risk on return on the accepted facts that

- (i) The appellant was born into a Muslim family and converted from Islam to Christianity.
- (ii) The appellant is an evangelical Christian who wants to evangelise publicly wherever she goes.
- (iii) The appellant's family of origin are a conservative Islamic family
- (iv) The appellant's mental health is fragile. She suffers from depression which is treated with oral medication. She has expressed suicidal ideation. Since 2017 she has received treatment from her GP for low mood. She sleeps poorly and has a poor memory and struggles to concentrate. Although she was referred to the community mental health team, she decided not to engage with them. The appellant has a one year history of low mood and fluctuating thoughts of self-harm/suicide. Her doctor's initial diagnosis is of either a depressive episode or an adjustment reaction.

### Submissions

10. I heard submissions from both Mr Gibb and Mr Govan. Mr Gibb took me through the background materials and relied heavily on the two reports from Dr P Kea. He told me that the Gambia is a predominantly Islamic country and the risks to the appellant are enhanced because she willingly converted from Islam to Christianity, because her family are devout Muslims who stridently disapprove of her conversion, and because the appellant is a vulnerable young woman. He took me through various strands of evidence and told me that the appellant is driven to

evangelise. He told me that the expert report and the background materials indicate that a woman viewed as an apostate in a predominantly Islamic country will inevitably be persecuted for publicly evangelising. He told me that the appellant's acts of voluntary conversion to Christianity was itself enough to raise the spectre of persecution.

11. For the respondent Mr Govan told me that there is a dearth of reliable evidence that there is any risk to either Christian converts or evangelical Christians in the Gambia. He took me through the same background materials and told me that there is no reliable evidence of a real risk of persecution. He was critical of the expert's opinions. He told me that the appellant can safely return to the Gambia.

### The background materials

12. (a) The Gambia is one of Africa's smallest countries and, unlike many of its west Africa neighbours, has enjoyed long spells of stability since independence. President Yahya Jammeh ruled the country with an iron fist after seizing power in a bloodless coup in 1994. His 22-year rule came to an end in 2016, when he was defeated in a shock election result by the main opposition candidate, Adama Barrow. Mr Jammeh only left office after mediation by neighbouring countries and the threat of armed intervention.

(b) Stability has not translated into prosperity. Despite the presence of the Gambia River, which runs through the middle of the country, only one-sixth of the land is arable and poor soil quality has led to the predominance of one crop - peanuts. Tourism is an important source of foreign exchange, as is the money sent home by Gambians living abroad. Most visitors are drawn to the resorts that occupy a stretch of the Atlantic coast.

(c) Adama Barrow defeated long-serving President Yahya Jammeh in a shock election victory in December 2016. Presidential elections on December 1, 2016, resulted in a prolonged political transition after the incumbent, President Yahya Jammeh, was defeated by businessman Adama Barrow, who garnered 43.3% of the vote. Jammeh had led the country for 22 years after taking power in a military coup in 1994, surviving four presidential elections (in 1996, 2001, 2006, and 2011), but in 2016 he lost with 39.6% of the vote. Parliamentary elections in April led to an absolute majority for Barrow's United Democratic Party with 31 seats (not including the 5 MPs appointed directly by the President) in the 53-seat National Assembly. The parliamentary presence of the former ruling Alliance for Patriotic Reorientation and Construction Party was reduced to five seats.

(d) On 14 February 2017, The Gambia began the process of returning to its membership of the Commonwealth and formally presented its application to re-join to Secretary-General Patricia Scotland on 22 January 2018. Boris Johnson, as the first British Foreign Secretary to visit The Gambia since the country gained independence in 1965, announced that the British government welcomed The Gambia's return to the Commonwealth.

(e) Christians in the Gambia constitute approximately 8 percent of the country's population. There is no state religion, but the predominant religion is Islam, practised by approximately 90% of the country's population. Article 25 of the Constitution protects the rights of citizens to practise any religion that they choose. The Christian community, situated mostly in the west and south of the country, is predominantly Roman Catholic; there are also several Protestant groups including Anglicans, Methodists, Baptists, Seventh-day Adventists, and various small evangelical denominations. In 1963 the Gambia Christian Council was formed as an ecumenical association of Roman Catholic, Anglican, and Methodist churches.

(f) Inter-marriage between Muslims and Christians is common. In some areas, Islam and Christianity are amalgamated with animism. Articles 17, 25, 32, 33, and 212 of the Constitution guarantees and protects the freedom of religion. Article 60 of the constitution prohibits forming political parties that are formed on a religious basis.

(g) The Supreme Islamic Council is an independent body that advises the government on religious issues. Although not represented on the council, the government provides the council with substantial funding. The country's president serves as the minister of religious affairs and maintains a formal relationship with the council. Government meetings and events typically commenced with two prayers, one Islamic and one Christian. The government often invited senior officials of both religious groups to open major government events with prayers. The president, a Muslim, delivers a Christmas message to the nation each year and also delivers messages for major Muslim feasts.

(h) The constitution establishes Qadi courts, with Muslim judges trained in the Islamic legal tradition, in specific areas that the chief justice determines. The Qadi courts are located in each of the country's seven regions and apply sharia law. Their jurisdiction applies only to marriage, divorce, custody over children, and inheritance questions for Muslims. Sharia also applies to interfaith couples where there is one Muslim spouse. Non-Qadi district tribunals, which deal with issues under the customary and traditional law, apply sharia, if relevant when presiding over cases involving Muslims. A five-member Qadi panel has purview over appeals regarding decisions of the Qadi courts and non-Qadi district tribunals relating to sharia.

(i) Foreign missionary groups operate in the country. The government does not require religious groups to register. Faith-based nongovernmental organizations (NGOs) must meet the same registration and licensing requirements as other NGOs. Apostasy is not a crime in Gambia. Background materials tell me that there is a functioning and effective police and criminal justice system in Gambia.

### Analysis

13. In the first inventory of productions for the appellant there are news articles reporting that (in Gambia) Christians have been attacked by Islamist inspired mobs. Those documents predate the significant change when Mr Barrow into power. His

predecessor, President Jammeh, had declared Gambia an Islamic state. One of Mr Barrow's early acts of government was to declare the Gambia is not an Islamic state and to reinforce that country's constitutional respect for freedom of religion.

14. The respondent relies on two reports from Dr Kea. Dr Kea's first report is dated 7 July 2017 and was before the First-tier tribunal. Dr Kea records that Gambia is recognised as a religiously tolerant country, but that Islamic extremism was present there. She speaks of attacks on Christians and restrictions on the practice of Christianity, and then turned her attention to the viability of internal relocation. The author of the report does not specifically say that Christians in Gambia faces a real risk of persecution, nor does the author of the report says that an evangelising Christian would be at a risk.

15. Dr Kea's supplementary report is dated 24 May 2018. Dr Kea acknowledges the changes made by Adama Barrow. She still offers the opinion that there is a risk to the appellant as an evangelising Christian. It has always been the appellant's position that she is not at risk from the state, but that she is at risk from nonstate agents. Dr Kea, in both of her reports, identifies a risk from nonstate agents.

16. The appellant specific claim is that the crucial part of profile is the desire to evangelise. In her supplementary report Dr Kea's says

Although I cannot provide any examples of evangelical Christians being ill-treated in Gambia in recent times....

She then goes on to quote from the head of a missionary organisation working in Banjul who says that, in some communities within Gambia, missionaries and evangelising Christians had to operate "underground". Dr Kea founds on that one statement defining it by saying

No doubt because of the threats of conflict that openly evangelising behaviour would generate.

17. I place little weight on Dr Kea's conclusion because of her candid statement that despite her knowledge and expertise she cannot provide one single example of an evangelical Christians being ill-treated in Gambia in recent times, and because her conclusion, drawn from one solitary source of evidence, is unexplained.

18. The background materials do not support the appellant's claim to have a well-founded fear of persecution as an evangelical Christian. The background materials indicate that the Gambian constitution promotes freedom of religion. The background materials indicate that there is religious tolerance in Gambia. The background materials indicate that there number of Christian missionaries working openly in Gambia and that part of their work is to convert Islamic Gambians to Christianity.

19. The appellant claims that she fears her family who have threatened her life because she has converted to Christianity. In her witness statement the appellant explains that she comes from a prominent Muslim family, but deals with threats from her family in only one paragraph (paragraph 28). On the appellant's own evidence her immediate family have expressed their disapproval, but they have not threatened her life. The appellant produces no reliable evidence of her family's intention to kill her, nor of a realistic threat to her life, nor of an enduring interest in harming the appellant.

20. The appellant at least implies that she is at risk from Islamist extremists and Gambian society as a whole. The weight of reliable background evidence indicates that the Gambia has an effective police and criminal justice system which can protect the appellant. The weight of reliable evidence indicates that evangelical Christians operate within Gambia and are not the specific target for Islamic fundamentalists or the general public. The appellant's own expert cannot find recent evidence of attacks on evangelical Christians in Gambia.

21. Given these conclusions, I find that the Appellant has not discharged the burden of proof to establish that she is a refugee. I come to the conclusion that the Appellant's removal would not cause the United Kingdom to be in breach of its obligations under the 2006 Regulations.

22. Therefore, I find that the appellant is not a refugee.

### **Humanitarian protection**

23. Although the appellant is not a refugee, I must consider whether she qualifies for humanitarian protection.

24. The background country information indicates that someone in similar circumstances to the appellant would not face a real risk of serious harm from the State, nor would he face serious harm from a non-state actor. Having found that the appellant is not a refugee because she has not established a well-founded fear of persecution, by analogy I find that the appellant cannot qualify for humanitarian protection.

25. Therefore, I find the appellant is not eligible for humanitarian protection.

### **Human rights**

26. As I have found that the appellant has not established a well-founded fear of persecution, by analogy I find that her claim does not engage articles 2 or 3 of the Human Rights Convention because she would not face a real risk of torture, inhuman or degrading treatment if returned to Gambia.

27. It is not disputed that the appellant cannot meet the requirements of appendix FM. Because of her age and the length of time she has been in the UK the appellant cannot meet the requirements of paragraph 276ADE(1)(i) to (vi) of the rules. I find

that the appellant's asylum claim is not made out. By analogy, there are no significant obstacles to reintegration in the Gambia, so that the appellant cannot meet the requirements of paragraph 276ADE(1)(vi) of the rules.

28. In Hesham Ali (Iraq) v SSHD [2016] UKSC 60 it was made clear that (even in a deport case) the Rules are not a complete code. Lord Reed at paragraphs 47 to 50 endorsed the structured approach to proportionality (to be found in Razgar) and said "what has now become the established method of analysis can therefore continue to be followed..."

29. I have to determine the following separate questions:

- (i) Does family life, private life, home or correspondence exist within the meaning of Article 8
- (ii) If so, has the right to respect for this been interfered with
- (iii) If so, was the interference in accordance with the law
- (iv) If so, was the interference in pursuit of one of the legitimate aims set out in Article 8(2); and
- (v) If so, is the interference proportionate to the pursuit of the legitimate aim?

30. Section 117B of the 2002 Act tells me that immigration control is in the public interest. In AM (S 117B) Malawi [2015] UKUT 260 (IAC) the Tribunal held that an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources. In Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC) it was held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present the public interest is fortified.

31. The appellant has no family in the UK so that article 8 family life is not established.

32. After considering all of the evidence I still do not know enough about the appellant's home, her habits and activities of daily living, her significant friendships, any integration into UK society, or any contribution to her local community. There is no reliable evidence of the component parts of private life within the meaning of article 8 of the 1950 convention before me. The appellant fails to establish that she has created article 8 private life within the UK.

33 I find that the Decision appealed against would not cause the United Kingdom to be in breach of the law or its obligations under the 1950 Convention.

### Decision

The decision of the First-tier Tribunal promulgated on 19 October 2017 is tainted by material errors of law. I set it aside.



I substitute my own decision.

The appeal is dismissed on asylum grounds.

The appeal is dismissed on Humanitarian Protection grounds

The appeal is dismissed on article 2, 3 & 8 ECHR grounds.

A handwritten signature in grey ink that reads "Paul Doyle". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Signed  
Deputy Upper Tribunal Judge Doyle

Date 10 October 2018