

IN THE UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001236 First-tier Tribunal No: HU/50449/2020

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Decision & Reasons Issued: On 26 March 2023

Before

THE IMMIGRATION ACTS

UPPER TRIBUNAL JUDGE BLUNDELL

Between

AK (GAMBIA)
(ANONYMITY ORDER MADE)

<u>Appellant</u>

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Doerr, instructed by BHD Solicitors For the Respondent: Ms A Ahmed, Senior Presenting Officer

Heard at Field House on 22 December 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family are granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or his family members. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By a decision which was issued on 22 September 2022, I found that the First-tier Tribunal had erred in law in its decision to allow the appellant's appeal. I set

aside that decision in part in part and remade the decision on the appeal by dismissing the appellant's appeal against the revocation of his protection status. I ordered that the decision as regards Article 8 ECHR would be remade following a further hearing, with certain of the FtT's findings preserved. A copy of that decision is annexed to this one and the two decisions should be read in tandem.

- 2. The hearing resumed before me on 22 December 2022. The appellant was represented by Ms Doerr of counsel, the respondent was represented by Ms Ahmed, a Senior Presenting Officer.
- At the outset of the hearing, I checked that the advocates and I had the same papers. We each had the papers from the hearing before the FtT. There was a supplementary bundle and a skeleton from Ms Doerr, however, and Ms Ahmed required some additional time in which to familiarise herself with these.
- 3. Ms Ahmed asked me to confirm whether an observation I had made at [95] of my first decision (that the appellant has no 'meaningful family ties' in Gambia) was a preserved finding. She noted that the appellant had stated in his latest witness statement that he claimed to have no family in Gambia. Ms Doerr accepted that questions might properly be asked on this issue and that findings were to be made. She did not seek to suggest that any finding made by the FtT in that respect was to be preserved. I was content to proceed on that agreed basis.
- 4. As a third preliminary matter, Ms Ahmed indicated (having noted what I had said at the end of my first decision) that the Secretary of State would oppose the continuation of the anonymity order which has been in force throughout this appeal. I invited the advocates to make submissions on that point at the end of the hearing; there was no need to decide the point at an earlier stage as the hearing was not attended by anyone without a direct interest in it.
- 5. I heard oral evidence from the appellant, in English. There were no other witnesses. I do not propose to rehearse the appellant's evidence in this decision. I will refer to it insofar as I need to do so to explain my findings of fact.

Submissions

- 6. Ms Ahmed relied on the Secretary of State's decision. She submitted that there was no reason to continue the anonymity order; the appellant was not at risk in Gambia and it was important to recognise the principle of open justice, as reflected in Cokaj (anonymity orders: jurisdiction and ambit) [2021] UKUT 202 (IAC); [2021] Imm AR 1562. The appellant's mother and sisters were refugees who should not be named publicly but there was no such risk to the appellant.
- 7. As to whether there were very significant obstacles to the appellant's reintegration to The Gambia, his evidence had been untrue. His claim that his relationship with his father had broken down was a new invention, designed to meet what the appellant knew to be the respondent's case. The evidence given by the appellant's father at the FtT had been that their relationship had 'rekindled'. It was not credible for the appellant to claim that he did not even know the names of family members in The Gambia and he was refusing to make frank disclosure.
- 8. The reality was that the appellant's father returned regularly to The Gambia and rented a house there. He could travel with the appellant and help him to

reintegrate. He was a man with meaningful ties to the country which would obviously be of assistance.

- 9. Ms Ahmed noted that much had been said about the appellant's lack of familiarity with the Wolof and Mandinka languages but English was accepted on all sides to be the official language of The Gambia. In any event, it was not credible that he had forgotten how to speak those languages. He had grown up around The Gambian community in the UK. The appellant was a young man with skills and qualifications and he would be able to integrate into The Gambia. He was noted in the Independent Risk Assessor's report to have a good work ethic.
- Ms Ahmed was initially minded to make a submission that Dr Knorr was not a suitably qualified expert but she was content to abandon the point in light of what had been said in <u>GW (FGM and FGMPOs) Sierra Leone CG</u> [2021] UKUT 108 (IAC).
- 11. Ms Ahmed nevertheless submitted that the expert's opinion was based on a mistaken factual basis. The appellant did, in all likelihood, have family in The Gambia and he could count, in particular on the support of his father. That had not been considered by Dr Knorr. There were parts of the report which descended into advocacy and there had been no attempt by the expert to harmonise her approach with the conclusions reached in the Upper Tribunal's first decision, even though it had been provided to her. There was a lack of sourcing in the report and those sources which were cited provided questionable support for the conclusions reached. The report of Karen O'Reilly was similarly flawed. Her conclusions were general and speculative and there was no consideration of the role which might be played by the appellant's father.
- 12. What was required, Ms Ahmed submitted, was a broad evaluative judgment of the appellant's ability to integrate. Taking account the appellant's youth and good health, family support, education and skills and his familiarity with the languages and the culture of The Gambia, he did not meet the high threshold in s117C(4)(c) of the Nationality, Immigration and Asylum Act 2002. Lowe v SSHD [2021] EWCA Civ 62; [2021] Imm AR 792 did not compel any different conclusion, since it was a case decided on its facts. Ms Ahmed submitted that there was nothing on the facts of this case which warranted a conclusion that there are very compelling circumstances which were capable of outweighing the public interest in the appellant's deportation.
- 13. Ms Doerr relied on her skeleton argument and made the following submissions in development of it. She submitted that it was appropriate to make a general anonymity order. The decision would refer to the appellant's family members, including minors, and there was an extant risk to them in The Gambia. The appellant's father might also be exposed to risk when he returned to The Gambia. The appellant himself would be at risk if family members were aware of his identity.
- 14. Ms Doerr then made five points in support of the appellant's case that he would be in grave difficulty if returned to The Gambia. She accepted, firstly, that the question of risk was settled but she asked me to note that this was on the basis that the appellant would not resume contact with any family in The Gambia. Given what had gone before, the appellant had every reason not to turn to his family if he found himself back in The Gambia.

15. Ms Doerr submitted, secondly, that the experts had adopted what was necessarily the correct starting point when they proceeded on the basis that the appellant could not access family support without placing himself at serious risk. He had no choice but to return without accessing social networks.

- 16. Ms Doerr noted, thirdly, that much had been said about the appellant's father. Even assuming that the Secretary of State was correct, the support of the appellant's father was insufficient to cure the very significant obstacles which the appellant would plainly encounter on return to The Gambia. The evidence the appellant had given about his relationship with his father was nevertheless plausible; the relationship had merely returned to how it had been in the past and it was clear that the appellant's relationship with his mother and his father had not been good.
- 17. Fourthly, as to the appellant's ability to speak the languages of The Gambia, he had said all along that he had forgotten Wolof and Mandinka. That was logical, given that he had been in the UK from the age of eight. It was also to be recalled that the appellant's mother did not have a happy relationship with her own culture, which had made her a refugee due to the risk of FGM to her daughters.
- 18. As to the appellant's experts, Ms Doerr accepted the point made by Ms Ahmed, that their starting points should have been different when the Upper Tribunal's decision was taken into account. There was a valid reason for that in relation to Ms O'Reilly, whose report pre-dated that decision. As for Professor Knorr, she was a Professor of Anthropology, who could not properly have been expected to understand the legal reasoning in the first decision. Ms Doerr accepted that there were parts of her report which gave the appearance of advocacy but she submitted that the report was still deserving of weight when considered as a whole.
- 19. Drawing the threads together, Ms Doerr submitted that this was clearly a case of very significant obstacles which satisfied s117C(4)(c). The appellant left The Gambia at the age of eight and had not returned. He had no knowledge or experience of the country as an adult or even as a teenager. He had spent his life in the UK and was culturally British. He had no cosial contacts in The Gambia. Employment opportunities were scarce; Professor Knorr explained that even those who were well-educated and well connected could struggle. His employment opportunities would necessarily be limited and that was an important consideration for Article 8 ECHR purposes: Barbulescu v Romania (App No: 61496/08); [2017] IRLR 1032.
- 20. I asked the advocates at this stage to agree on the GDP per capita in The Gambia and was helpfully informed in an email after the hearing that they agreed on the sum given by the World Bank, of \$835.6 US dollars GDP per capita.
- 21. Ms Doerr submitted that the major industries are subsistence farming and tourism, although the latter was greatly reduced. The appellant had no relevant experience. There was a risk of informal or illegal employment becoming a necessity for the appellant, with all the risks of modern slavery which that entailed. The appellant might in any event choose not to register because of the risk that he might be discovered by his family. The appellant would be immediately recognisable from his British accent and Westernised ways, including opposition to FGM. He would be perceived as a deportee and shunned accordingly. It was logical to assume, and it would be assumed, that he had not

moved voluntarily from the UK to The Gambia. Logic therefore supported the experts' conclusions about the difficulties he would face.

- 22. Responding to a question about the Facilitated Returns Scheme, Ms Doerr accepted that there was a possibility of the appellant receiving money in this way but she submitted that the analysis in s117C(4) was not merely about finance. The relevant question was that posed by Sales LJ (as he then was) in <u>SSHD v Kamara</u>: whether the appellant could become an insider in a reasonable space of time.
- 23. As for s117C(6), Ms Doerr noted that she had set out the relevant factors at [34] of her skeleton. The law was trite. A broad balancing exercise was required. This was not merely a near miss case. It was relevant to consider the offending, the rehabilitation and the circumstances at the date of the crimes, given that the appellant was a minor. The worst offence was in 2017 and the appellant had completed his licence period. He had spent much more than half of his life in this country. Any risk of reoffending was lower than when the FtT had assessed it as being medium. The appellant had undertaken work to understand the impact on his victims and his family.
- 24. The appellant remained living at home and all of his immediate family are in the UK. When he said that he had no family in The Gambia, that was what he meant. He provided valuable assistance with the lives of his younger siblings. Ms Doerr submitted that there were 'some best interests considerations' in play. Also relevant to the Article 8 ECHR assessment was the solidity of the appellant's ties to the UK and The Gambia. The statutory s117B factors did not militate powerfully against the appellant even if he had claimed benefits in the past. The appellant stated that he was not practically able to work at present, as he has no identity document to establish his entitlement to do so.
- 25. I reserved my decision at the end of the submissions.
- 26. I wish to thank Ms Doerr and Ms Ahmed for their thorough and considered submissions.

Statutory Framework

- 27. As Lord Carnwath explained in <u>KO (Nigeria) v SSHD</u> [2018] UKSC 53; [2018] 1 WLR 5273, the intention behind the insertion of Part 5A of the Nationality, Immigration and Asylum Act 2002 was to "produce a straightforward set of rules, and in particular to narrow rather than widen the residual area of discretionary judgment for the court to take account of public interest or other factors not directly reflected in the wording of the statute".
- 28. The appellant is what has come to be known as a "medium offender" under the straightforward set of rules in Part 5A. That is not the language of the statute; the term was coined by Jackson LJ at [14] of NA (Pakistan) v SSHD [2016] EWCA Civ 662; [2017] 1 WLR 207. It refers to an individual such as the appellant who received a sentence of imprisonment of between 12 months and four years. (By s117(4)(d), references to a period of imprisonment in this Part of the Act include a person (such as the appellant) who is sentenced to detention, including detention in a young offenders institution.)
- 29. A medium offender such as the appellant is able to avoid deportation where the effect of that course is unduly harsh on a relevant partner or child or where the

offender meets the private life exception in s117C(4). As set out at [62] of my first decision, that sub-section contains three requirements: that the individual has been lawfully resident in the UK for most of their life; that he is socially and culturally integrated in the United Kingdom; and that there would be very significant obstacles to their integration into the country to which their deportation is proposed.

- 30. As will be apparent from my summary of the submissions, it is only the third of these requirements which is now in issue between the parties. It is very clear that the appellant has been lawfully resident in the UK for most of his life, having entered lawfully as the dependent of his father before seeking and being granted asylum.
- 31. The judge in the First-tier Tribunal found that the appellant was socially and culturally integrated in the UK. The Secretary of State sought to challenge that finding before the Upper Tribunal but the point was abandoned by her advocate at the first hearing on 20 May 2022: [40] of my first decision refers. She did pursue a challenge to the FtT's assessment under s117C(4)(c), however, and I found in my first decision, at [91]-[95], that it had erred in law in that assessment.
- 32. As I recorded at [95] of my first decision, the focus of this resumed hearing is therefore to consider whether the appellant meets the final requirement in s117C(4) and, if not, to consider whether there are very compelling circumstances over and above those in the statutory exceptions to deportation which suffice to outweigh the public interest in deportation. None of the findings made by the FtT in relation to s117(4)(c) were preserved.

<u>Analysis</u>

- 33. The appellant arrived in the United Kingdom in September 1998, when he was an eight year old child. He has never returned to The Gambia. He was educated in this country, gaining several GCSEs, and the judge in the FtT was correct to observe that he speaks English like a young man who has been raised in this country from birth. The judge in the FtT found for proper reasons that he was socially and culturally integrated to the UK. What was lacking in the FtT's assessment was a thorough, forward-facing analysis of the difficulties which the appellant would encounter on return to The Gambia.
- 34. At [14] of <u>SSHD v Kamara</u> [2016] 4 WLR 152, Sales LJ (as he then was) gave the following guidance on the concept of 'integration' in s117C(4)(c):

In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable

time a variety of human relationships to give substance to the individual's private or family life.

- 35. That passage was cited with approval at [55] of <u>Sanambar v SSHD</u> [2021] UKSC 30; [2021] 1 WLR 3847.
- 36. In <u>Parveen v SSHD</u> [2018] EWCA Civ 932, the Court of Appeal disapproved what had been said by the Upper Tribunal in <u>Treebhawon</u> [2017] UKUT 13 (IAC) about the threshold presented by 'very significant obstacles' in s117C(4)(c). Underhill LJ (with whom Asplin and Gloster LJJ agreed) did not find the Upper Tribunal's gloss on the language to be of assistance. At [9], he continued as follows:

It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".

- 37. In her skeleton argument and her able oral submissions, Ms Doerr submits that the appellant would necessarily encounter a package of difficulties on return to The Gambia and that he is able to cross the elevated threshold in the provision.
- 38. The principal area of factual dispute between the parties concerns the family support on which the appellant might be able to call on return to The Gambia. Understandably, Ms Doerr has urged me not to lose sight in this connection of the basis upon which the appellant finds himself in the UK. His mother claimed and secured asylum because she did not want her younger daughter to undergo Female Genital Mutilation. She feared that she would be subjected to that barbaric practice by the appellant's father's family, who had already inflicted it upon the older daughter before she arrived in the UK. Judge Morrow accepted in his determination on the asylum claim that the younger daughter was at risk on this basis, and that there was a risk of repetition on the older daughter in the event that the family progressed plans for her to have corrective surgery.
- 39. Ms Doerr submits that this history is likely to have caused the appellant's mother to have turned her back on The Gambia and on the regressive social mores pursuant to which these practices continue to take place. I accept that submission, which was not seriously contested by Ms Ahmed. This is necessarily important insofar as it might be thought that the appellant could rekindle family relations upon return to The Gambia, so as to aid his integration. The appellant made reference to this when he gave oral evidence before me, stating that he knew very little about his family in The Gambia because of what had happened with his sister. Although Ms Ahmed was correct to note that this account differed somewhat from the account given in the appellant's witness statement (in which he said he had no family there) I accept his explanation in oral evidence; he meant that he has no knowledge of the family in The Gambia because of what has gone before. I accept that he does not have a pool of relatives there upon whom he could call for support on return, now or in the future.
- 40. What is said by the Secretary of State, however, is that the appellant's father returns regularly to The Gambia and that he rents a three bedroom house there.

Ms Ahmed submits that even if the appellant does not have other family to whom he can safely turn, he would be able to count on his father's support. Ms Ahmed cross-examined the appellant at some length about this possibility. She reminded him that his father had given evidence in the FtT and had said that he returned regularly to The Gambia. The appellant protested that he did not have a good relationship with his father. Ms Ahmed reminded him that his father had said in the FtT that they had rebuilt their relationship. The appellant stated that this was how things had been in 2020 but relations had soured again, with his father not even bothering to return his calls.

- 41. The difficulty with that evidence, as Ms Ahmed suggested to the appellant, is that he made a more recent witness statement, for the purposes of this hearing, which contains no suggestion that he has fallen out with his father. That is a notable omission, for two reasons. Firstly, it has previously been part of the Home Office's case that the appellant's father would be able to assist him on return to The Gambia. Secondly, this is unlikely to be an omission on the part of the appellant's solicitors. He has been expertly represented throughout these proceedings, with detailed and timely responses to all directions, and with evidence (including expert evidence) obtained in order to support his case where appropriate. The appellant accepted that he understood the case which would be made against him in this respect and that he had not covered the point in his witness statement. He was unable, in my judgment, to give any credible explanation for this omission. When it was put to him that it was a late fabrication to address what was thought to be a problem, the appellant did not accept that, and stated that he did not even know where his father was. He said that the problem was with his father, who was unable to accept that the appellant was trying to move on from the mistakes he had made in the past. I did not accept the appellant's evidence in this respect. Had it been the case that the appellant's relationship with his father had broken down to the point that they were no longer in touch, I am satisfied that this important detail would have been elicited and included in the witness statement which was prepared for the appellant. I note that the statement was prepared for the specific purpose of updating the Tribunal on the appellant's life since his first statement was prepared and the deterioration of his relationship with his father was an important detail which would have been included had it been true.
- 42. In his witness statement before the First-tier Tribunal, the appellant's father stated that the he had not lived with his wife and children since their separation in 2009 but that they had grown closer again since she had claimed asylum in 2009. He spoke of his regret about the appellant's offending and the efforts they had both made to rebuild their relationship since the appellant had been convicted. The appellant's father gave evidence before the First-tier Tribunal in June 2021.
- 43. The appellant's mother reported in her statement, at [5], that she had a 'cordial relationship' with her husband for the sake of the children. Also before the FtT was a risk assessment report written by a qualified Probation Officer named Rabina Haque. At paragraph 6.4 of that report, Ms Haque stated that the appellant was in regular contact with his father and at paragraphs 11.3 and 19.1 she stated that both of his parents were 'very supportive of him'.
- 44. Insofar as the appellant has maintained that relations with his father have soured since the hearing before the FtT, I do not accept that to be the case. Had that been so, it would have been articulated in the appellant's statement for the

reasons I have given above. It is more likely, in my judgment, that the appellant has understood the potential significance of his father returning to The Gambia regularly, and has recently decided to maintain untruthfully that he is no longer in contact with him.

- 45. I accept Ms Ahmed's submission that the appellant is likely to receive some assistance from his father upon return to The Gambia. The appellant's father has clearly been keen to make amends with his wife and children after their separation in 2009 and it was the appellant's own evidence, at least until 2021, that their relationship was rebuilt. I consider that the appellant would be able to call upon his father to assist him in reintegrating to The Gambia, including by the provision of accommodation in the three bedroom house he rents there for the equivalent of £150 per month, as recorded by the judge in the FtT, at [82] of his decision.
- 46. I have been given very little information about the appellant's father's resources. He was a banker in The Gambia and he has a Master's degree in banking and finance (his statement refers, at [3]). He could not find similar employment in the UK, however, and he was working as a Weighbridge Controller in Nottingham at the time of the FtT hearing, according to his statement. The burden is obviously on the appellant to show that his father would not be in a position to provide meaningful assistance. He has chosen, on my finding, not to provide evidence in that respect, preferring to maintain the lie that he is not in contact with his father. Given his father's ability to travel regularly to The Gambia and to rent a property there, I conclude that he would be in a position to provide meaningful financial assistance to the appellant on return.
- 47. Ms Doerr did not seek to dispute what was said at the foot of the respondent's decision about the appellant being able to call upon the Facilitated Returns Scheme for some financial support. The letter states that the appellant 'could return home with a reintegration package worth £1500 or £750" and that, if he was accepted by the scheme, he would receive "£500 cash on departure". I was not addressed on these sums but it seems that the appellant would be paid a cash sum on departure, with an ability to access the balance at a point in the future. Like the Tribunal which considered OA (Somalia) v SSHD [2022] UKUT 33 (IAC), I consider the safer course is to rely on the smaller of the two figures (£750) since I do not know whether the appellant would be entitled to that, or to the larger sum. Were he to receive a total of £750 from the Secretary of State, he would return to The Gambia with a little more than the average annual GDP per capita of that country, as agreed between the advocates in their post-hearing email.
- 48. Ms Doerr submitted that the appellant would face very significant obstacles in integrating to The Gambia *even if* he could count on his father and on the FRS. Her carefully constructed submission was premised on several factors, which in turn were based on the expert reports of Ms O'Reilly and Professor Knorr. Before I turn to the factors in question, therefore, I will consider the submission made on behalf of the respondent that these reports were pieces of advocacy rather than expert testimony.
- 49. I note that Professor Knorr and Ms O'Reilly both featured in <u>GW (FGM and FGMPOs) Sierra Leone CG</u> [2021] UKUT 108 (IAC), a decision of which I was a part. Professor Knorr was described as 'eminently well qualified' to provide expert evidence on The Gambia at [133] of that decision. She was instructed by the respondent to provide expert evidence in the linked case of a woman from

nearby Sierra Leone. Ms O'Reilly was instructed by the appellant in the Sierra Leonean case and it was not suggested by Treasury counsel that she was not qualified to provide expert evidence on that nearby state.

- 50. In fairness to Ms Ahmed, her submission that Professor Knorr was inexperienced when it came to The Gambia was swiftly withdrawn when I reminded her of what had been said about her in <u>GW</u>. Nor did she seek to suggest that Ms O'Reilly was inappropriately qualified She was correct not to make that submission; Ms O'Reilly is a Protection Officer for the UNHCR with long experience of working in Africa. She has personal experience of assessing the asylum claims of Gambian nationals on behalf of the UNHCR, whilst she was based in Senegal, and was clearly adjudged to be qualified to do so.
- 51. Ms Ahmed's submission was instead that Professor Knorr and Ms O'Reilly had demonstrably taken up the appellant's cause and had demonstrated their partiality by the terms in which their reports were expressed and by failing to cite sources in support of their opinions.
- 52. Ms O'Reilly has made two reports. The first is dated 8 December 2020. The second is dated 25 January 2021, and was made in response to the respondent's review in the FtT. Neither gives any indication of partisanship and both are in my judgment supported by adequate source information.
- 53. Professor Knorr has made one report, dated 18 December 2022. In the main, the report is balanced, impartial and supported by citation of adequate sources. The part of the report in which Professor Knorr very obviously swerves off piste is [42], in which she expresses an opinion on the respondent's argument that the appellant is not socially and culturally integrated to the UK because he has committed violent crimes. Ms Ahmed submits simply and powerfully that Professor Knorr was entering the arena in expressing these opinions, and that her decision to do so reduces the weight which can properly be attached to the remainder of the report. I agree with the premise of the submission but not fully with the conclusion. Professor Knorr is evidently an expert. She agrees with Ms O'Reilly in every material respect and her opinions apart from that at [42] are deserving of respect, subject to what follows.
- 54. The difficulty with both reports is that they are based, as Ms Ahmed noted, on a partial or inaccurate understanding of the appellant's family circumstances. Neither expert was aware that the appellant's father returned regularly to The Gambia. Both experts proceeded on the basis that the whole family would be at risk throughout The Gambia as a result of their actual or perceived rejection of traditional practices in the form of FGM. As the judge in the FtT found at [74], however, it is not possible to reconcile that conclusion with the fact that the appellant's father returns to The Gambia for several weeks every year without incident. Ms O'Reilly cannot be criticised for not knowing about this, since it was only revealed in evidence before the FtT. Professor Knorr should have engaged with the point, however, since she was quite properly provided with the FtT's decision and with my first decision, and the point featured squarely in both. Insofar as the judge in the FtT concluded that the appellant could return to a different area of The Gambia without fearing retribution from the Mandinka, his logic - based in the appellant's father's ability to do precisely that - was unassailable, and must stand, despite the subsequent report of Professor Knorr.
- 55. Both Professor Knorr and Ms O'Reilly proceeded on the assumption that the appellant would have no family support on return to The Gambia. That

conclusion was based, logically, on the conclusion that the appellant could not turn to the family members from whom his mother and sisters had fled. But it failed to take into account the appellant's father's regular return to the country and what I have found to be his likely willingness and ability to support the appellant. Both experts attached particular significance to the fact that a person with no livelihood would usually turn to their kin for support and reasoned that the appellant, without any such support, would risk destitution and worse. That concern falls away wholly or in significant part when the support from the appellant's father and the additional support from the FRS are taken into account.

- 56. The judge in the FtT concluded that the appellant would nevertheless 'stand out as an outsider' and that it would be 'difficult for him to do much more than survive'. I set that assessment aside because it was inadequately reasoned and forward-looking. (In fairness to the judge, the conclusions expressed in that section of his decision were in the alternative to his analysis under the Refugee Convention.) It is therefore necessary to consider in some detail the situation which will face the appellant upon return.
- For the reasons I have already explained, I conclude that the appellant will not 57. be at risk on return to The Gambia, assuming that he does not return to his home area. Nor is there any reason for him to fear that he would be at risk from his family or from society at large; insofar as any such theoretical risk has been expressed by the appellant or the experts in this case, it has been disproved by the reality of his father's regular, safe return to the country. I have already concluded that the appellant will have access to accommodation on return to The Gambia. That can and will be provided by his father, and I consider it more likely than not that the appellant's father will also be able to provide him with him some money in order to assist him to survive financially. Even a small amount of money by UK standards will go a long way in The Gambia, given the agreement between the advocates that the average per capita income in the country is appreciably below \$1000 US per annum. The appellant will also have the benefit of returning to The Gambia with an FRS payment of £750. subsistence, therefore, there is no reason to think that he will encounter any real obstacles to integration.
- 58. Ms Doerr submitted that the appellant would struggle linguistically, given his claimed inability to speak Wolof and Mandinka, the two tribal languages which are most commonly spoken in The Gambia. I note that no such concern was expressed by Ms O'Reilly at [38]-[46] of her first report (in which she considered the appellant's accommodation and employment options). Professor Knorr noted at [1] of her report that the appellant speaks English with a British accent but 'none of Gambia's native languages or lingua francas'. She developed that concern at [19] and [37]-[42] of her report.
- 59. I consider the appellant to have overstated his lack of proficiency in the tribal languages which are said to be the language of oral communication amongst Gambians. The appellant lived in the country until he was eight years old. By that age, he would have had a full grasp of the languages spoken by his parents and those around him. He would also have had some schooling, in which his linguistic proficiency would have improved still further. The appellant's mother is not a highly educated woman; she left school at the age of six according to the statement she made for her asylum appeal. An interpreter had been requested for her at that hearing but the interpreter did not attend, and she was able to manage in English. In the circumstances, I consider it more likely than not that

one of the traditional languages of the country was spoken by the family at home, at least until the family gained greater proficiency in English. The appellant speaks English like a native English speaker but I consider that he has a renewable connection with the language(s) which he spoke when he was raised in The Gambia. With the assistance of his father, when immersed in the environment of his country of nationality, I find that he will be able to re-acquaint himself with those languages and learn to speak them fluently within a reasonable period of time.

- 60. I accept that the appellant will have limited cultural familiarity with The Gambia. He will have memories of life in that country but they will be the memories of a child and he will have no understanding of adult interaction there. His only knowledge of adult interaction is in the context of the East Midlands. The judge in the FtT thought that he would be perceived as an outsider and I think that is correct, but only to a point. His father is clearly at ease in the country, and chooses to return there every year. There is no reason to think that he is perceived with any hostility or as an 'outsider' and I consider that to be an important consideration in assessing the appellant's prospects building, within a reasonable time, a variety of human relationships. The experts were clearly concerned about the prospect of a young man such as the appellant endeavouring to make his own way in a foreign culture but the addition of his father's support presents a different picture. His father will be able to return with him and guide him in the ways of the country. I do not suggest that the appellant will immediately become culturally attuned to the country; it will take some time and it is likely to present some difficulty but that difficulty will not be acute when considering the support which will be available to him.
- Ms Doerr echoed the experts, and Professor Knorr in particular, when she 61. expressed concern about the appellant's ability to secure employment in The Gambia. It is clear from the expert reports that there is limited employment available and that much of it is low paid. The two main industries are subsistence farming and tourism and the latter has declined significantly in recent years. (It is obviously not suggested by Ms Doerr or by the experts that these are the only two industries, however). I have considered what is said by both experts in this regard. I have considered the ECtHR authority to which Ms Doerr made reference orally and in her skeleton. Whilst the case concerned an employee's right to privacy in relation to their private correspondence, I am prepared to accept that the statement of principle quoted at [22] of Ms Doerr's skeleton (about the importance of the working environment for the development of relationships with the outside world) is of more general application. Neither expert had the benefit of considering the role which the appellant's father might play in his re-integration to The Gambia, however, and I do consider that to be of significance in the employment context also. The appellant has no work experience history in The Gambia but there is every reason to think that his father has some connections there; it cannot sensibly be suggested that he habitually spends several weeks a year there, yet has no personal connections within the area where he stays. There is every reason to think that the appellant's father would be able to introduce the appellant to his personal contacts, so as to ensure that he was not discriminated against and excluded, as Professor Knorr put it at [39] of her report. Within time, and with his father's assistance, despite the high unemployment rates and the decline in the tourist industry, it is more likely than not that the appellant will be able to secure employment in The Gambia and will be able to support himself. employment is likely to be low paid and manual at first, in common with the

construction industry work which the appellant was doing in the UK until recently, but his proficiency in English, his GCSE qualifications from the UK, and his increasing familiarity with the local languages of The Gambia will all serve to increase his chances of finding better paid employment in due course. There is no reason to conclude, as the experts did, that the appellant will fall into exploitative work or work in the sex industry when it is understood that he will have the support of his father, an ex-banker, and the very considerable assistance of the FRS package.

- 62. I should deal separately with a submission made at [27] of Ms Doerr's skeleton. Basing her submission on something said by Professor Knorr, she states that the appellant would have to register in order to secure employment and that he would be exposed, through that system, to an 'elevated risk' from his father's family. I do not accept that submission. There is, as I have said, no reason to think that the appellant's father is at risk when he returns to The Gambia every Although the experts opine that no distinction is made between the genders as far as retributive attacks for the rejection of cultural mores is concerned, nothing is said about generational differences. It must be the case that the sibling of a child who was not mutilated is at lesser risk than the parent of that child, who was responsible (or perceived to be responsible) for the rejection of the societal expectation of FGM. The appellant's father is not at risk on return, and the appellant would be likely to be at less risk than his father, therefore. There is no reason to think that the appellant's family would have any interest in pursuing him and his father's regular return to The Gambia strongly suggests otherwise.
- 63. In any event, this submission proceeds on the assumption that the appellant's family would have access to the civil registration system. Whilst Professor Knorr states that the need to register would increase the chance of the family discovering the appellant's location, she gives no indication of how open the civil registration is to a member of the public, nor does she give any examples of corruption playing a part in the officialdom of the country opening otherwise closed records to the public. In sum, whilst The Gambia evidently has a civil registration system ad corruption, the presence of both does not serve without more to establish that the appellant would be exposed to enhanced risk from his family by registering.
- Ms Doerr also submits that the appellant's criminal convictions would reduce his 64. prospects of seeking employment. It is not suggested that the appellant would wish to disclose his convictions, or that they would be discovered through some form of communication between the British and Gambian authorities. suggestion, instead, in Professor Knorr's report, is that the appellant would be assumed by Gambian society to be a criminal deportee because there is 'no reason why a young Gambian with no financial resources, without kin, social, and ethnic networks, with all his family connections in the UK would voluntarily return to Gambia from the UK'. For all the reasons I have given above, however, this is not an accurate account of the appellant's circumstances on return. He would have financial resources. Given the FRS, he would return to The Gambia with very considerable resources by local standards. He would, via his father, have networks into which he could tap. And although his nuclear family live in the UK, his father could accompany him on return in order to ameliorate any integration difficulties he might otherwise have.

65. Considering all the factors cumulatively, therefore, and with the appropriate focus on the future, I consider that this appellant – who has lived in the UK since the age of eight – will encounter difficulties in attempting to reintegrate to The Gambia. Considering the assistance which will be available to him, however, I do not accept that those difficulties meet the elevated threshold in s117C(4)(c) and I do not find that the appellant satisfies the private life exception to deportation.

- 66. It nevertheless remains to consider whether there are very compelling circumstances over and above those in the statutory exceptions to deportation which suffice to outweigh the public interest in the appellant's deportation. In doing so, I have been considerably assisted by [31]-[35] of Ms Doerr's excellent skeleton argument and by her able oral submissions.
- 67. In addition to the authorities she has cited there, I have reminded myself of the recent decisions of the Strasbourg Court in <u>Unuane v UK</u> (App No: 80343/17); [2021] Imm AR 534 and <u>Otite v UK</u> (App No: 18339/19); [2022] ECHR 748. In the former case, the ECtHR emphasised the ongoing importance of 'the criteria which emerge from the Court's case-law' and identified <u>Boultif v Switzerland</u> (App No: 54273/00); [2001] ECHR 497 and <u>Uner v The Netherlands</u> (App No: 46410/99) [2006] ECHR 873, although it accepted at [81] that s117C provided scope for all relevant factors to be taken into account in the assessment of proportionality. In the latter case, the ECtHR rejected the submission made by the applicant and supported by the AIRE Centre and the JCWI that the statutory scheme prevented the striking of a fair balance between the rights of the individual and those of the expelling state.
- 68. I do not propose to set out the factors which the ECtHR reaffirmed in those authorities. They are set out at [33] of Ms Doerr's skeleton. I shall consider each of those factors in the order she helpfully set out at [34] of her skeleton, however. Many of those submissions are uncontroversial.
- 69. Ms Doerr accepts that there is a strong public interest in deporting those defined as foreign criminals under section 117D. She also accepts that the appellant was convicted of serious offences, including as20 wounding and a knifepoint robbery. The statutory consequence of that is clear from s117C(2) of the 2002 Act ("the more serious the offence committed ... the greater is the public interest in deportation") although I accept, as a result of Maslov v Austria (App No: 1638/03); [2008] ECHR 546, that the public interest is diminished to an extent by the fact that the appellant was a minor when he committed the offences in question. He was born in January 2000 and committed the most serious offence on 22 August 2017, so he was a few months short of attaining his majority at that time.
- 70. The appellant has been in the United Kingdom for fourteen years, having arrived in 2008. He committed the offences in 2016 and 2017, at which stage he was still a teenager. He has committed no further offences since then. His Offender Manager considered him to represent a medium risk of reoffending but the judge in the FtT was impressed by the evidence called on his behalf, and concluded that he had successfully rebutted the presumption that he represented a danger to the community. I have no reason to depart from that finding and was not invited to do so by Ms Ahmed. Whilst Ms Doerr states simply that the appellant present a medium risk of reoffending, I have taken into account the reasoning and conclusions of the FtT judge in this regard.

71. I also accept that the appellant shows every sign of having rehabilitated. He has complied with his probation requirements and has, as I understand it, successfully completed the licence period of his sentence. I accept that he moved away from Nottingham so as to remove the peer pressure to which he has been subject in the past, and I accept that he was employed in the construction industry until recently. He has endeavoured to turn a corner in his life, by leaving behind the violence and acquisitive behaviour which characterised his childhood. I accept that he has understood the error of his ways in the past.

- 72. The appellant clearly has a private life in the UK, having studied, worked and grown up in this country from the age of eight. It is not suggested by Ms Doerr that he enjoys a family life in this country but I accept her submission that all of the appellant's immediate family is in this country. His family includes his two sisters, who are now eighteen and thirteen. Ms Doerr suggested rather tentatively that there were 'some best interests considerations' as a result. No such considerations can arise in relation to the older sister who is now an adult. In relation to the younger sister, there is no reason to think that the appellant's mother will be unable to cope without the appellant. He no longer lives with her and his sisters for the reasons that I have mentioned. He continues to visit them regularly. I accept that the appellant's mother and his sisters will be desperately sad if he is deported but there is no evidential basis to conclude that there would be any real impact on the best interests of the appellant's minor sister in the event of his deportation.
- 73. The only tie the appellant has to his country of nationality is through his father's regular visits to that country, and the appellant has not returned to The Gambia since he came to the United Kingdom. He has a renewable connection to it but he is not currently familiar with the way in which life is carried on amongst adults there.
- 74. The other statutory factors are also relevant, as Ms Doerr notes in her skeleton. Nothing in s117B militates against the appellant in the balance of proportionality. The maintenance of immigration control is immaterial as the appellant has had ILR at all material times. For the same reason, neither s117B(4) and (5) have any purchase against him. The appellant speaks good English and is financially independent in the sense contemplated in Rhuppiah v SSHD [2018] UKSC 58; [2018] 1 WLR 5536.
- 75. Ultimately, therefore, having set out the cons in favour of deportation and the pros which weigh in favour of the appellant, what is required of me is to strike a fair balance between those factors. Even making every allowance for the fact that the appellant committed the offences in question before his eighteenth birthday, and for the fact that he has made real efforts to change his life since then, I am satisfied that there remains a very cogent public interest in his deportation. His deportation will not sever any family life which he has in the UK, although it will bring to an end the private life and the relationships he has enjoyed in this country since 2008. It will be difficult for him to re-integrate into The Gambia but that difficulty will not be very significant for the reasons I have already given. Weighing all of these matters, I conclude that the public interest in the appellant's deportation remains such as to outweigh his private life. The appeal is therefore dismissed on human rights grounds.

Anonymity

I am grateful to the representatives for their submissions on anonymity and to Ms Ahmed for her citation of <u>Cokaj v SSHD</u>. Ultimately, having noted the importance of open justice, I have concluded that it is necessary to make an anonymity order in the terms above. I reach that conclusion because the appellant continues to be a refugee until the decision in this appeal becomes final and because, as the appellant's mother and older sister have been subjected to FGM, it is appropriate to take steps to ensure that their identities are protected. Whist they were not resident in the United Kingdom at that time, I note that Parliament requires anonymisation where an allegation of FGM has been made in respect of a British citizen or resident: s4A of the Female Genital Mutilation Act 2003 refers.

Notice of Decision

The appellant's appeal against the revocation of his protection status was dismissed for the reasons given in my first decision. The appellant's appeal against the refusal of his human rights claim is dismissed for the reasons given in this decision. I remake the decision on the appeal by dismissing it on all grounds, therefore.

M.J.Blundell

Judge of the Upper Tribunal Immigration and Asylum Chamber

9 February 2023

Upper Tribunal (Immigration and Chamber)

Asylum

Appeal Number: UI-2021-001236 [HU/50449/2020]

THE IMMIGRATION ACTS

Heard at Field House On 20 May and 21 July 2022 **Decision & Reasons issued**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AK (GAMBIA) (ANONYMITY ORDER IN FORCE)

Respondent

Representation:

For the Appellant: Stefan Kotas, Senior Presenting Officer

For the Respondent: Deborah Revill, instructed by Barnes, Harrild and Dyer Solicitors

DECISION AND REASONS

1. The Secretary of State for the Home Department appeals, with the permission of the First-tier Tribunal, against the decision of First-tier Tribunal Judge Mills to allow AK's appeal against the revocation of his protection status and the refusal of his human rights claim. To avoid confusion, I shall refer to the parties as they were before the FtT: AK as the appellant and the Secretary of State as the respondent.

Background

- 2. For reasons which will shortly become apparent, it is necessary to set out the relevant background in some detail. I have gratefully taken much of what follows from the decision of the FtT.
- 3. The appellant is a Gambian national who was born on 25 January 2000. He arrived in the UK on 13 September 2008, aged eight. He held entry clearance as the dependent of a student. The appellant's father was studying here. His mother had already entered as his dependent. The family was in due course granted further leave to remain which was valid until February 2010.

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4. The appellant had one younger sister, FK, at that time. She remained in The Gambia with her paternal grandparents when the appellant first came to the UK. In June 2009, the appellant's parents had a third child, a daughter named IK. FK then came to the UK in order to live with the rest of the family. The appellant's mother discovered that FK had undergone Female Genital Mutilation ("FGM") whilst she was in the custody of her grandparents.

- 5. This caused a rift between the appellant's mother and father. The appellant's mother had been forced to undergo FGM when she married, at the age of 22, because the appellant's father was of the Mandinka tribe, in which FGM is widely practised. But she had not thought that they would undertake the procedure on such a young child without their parents' permission. She ultimately separated from her husband and claimed asylum, with her children named as her dependants, on 10 September 2009. The basis for that claim was that IK was at risk of FGM on return to The Gambia.
- 6. The Secretary of State refused the asylum claim and the appellant's mother appealed against the refusal. The appeal was heard by Judge Morrow, sitting in Glasgow, on 2 December 2009.
- 7. In a decision which was issued a week later, Judge Morrow allowed the appeal. He found that the facts summarised above were reasonably likely to be true and that IK was at risk of FGM on return to The Gambia. He also accepted that FK would be at risk of the procedure being performed again if, as was intended, she underwent reconstructive surgery in the UK. He concluded that The Gambia would provide no protection against this risk and that there was no feasible internal relocation option. The judge summarised his conclusions in the following paragraphs:
 - [21] In subjecting the appellant's claim to the utmost scrutiny and looking at the evidence in the round bearing in mind the objective evidence placed before me and the expert report, it is incumbent upon me to take the family as a whole when reaching my conclusion. There is no question in this case that the appellant and her three children would be returned as a unit to The Gambia should her appeal be refused. Bearing in mind all the findings in fact and reasons above I find that the appellant has discharged the lowest standard of proof of showing that her return would expose the child [IK] and the child [FK] if she has received reconstructive surgery, to a real risk of persecution for a 1951 Geneva Convention reason namely belonging to a social group that of uncircumcised women. I have reached the conclusion that because of the high incidence of female genital mutilation in The Gambia and also the nature of the family structure there that the appellant's children would not receive a sufficiency of protection with regard to this practice if returned.
 - [22] I was also invited to hold that the appellant and her family would be in breach of their rights in terms of Article 3 of the Human Rights Convention. Taking all the evidence into account, I find that the appellant's daughter [IK] would have her Article 3 rights breached if she was to be returned to The Gambia through being subjected to the practice of Female Genital Mutilation. While understanding that it may be somewhat speculative at this case [sic], the medical evidence points towards the appellant's daughter [FK] progressing through the medical system to receive reconstructive surgery on her genitalia.

Should she be returned after that date then she too would be at risk of her Article 3 rights being breached.

- [23] In reaching this conclusion I have carefully considered the objective evidence and the law relating to the appellant and her children being returned to The Gambia as a unit.
- 8. The Secretary of State did not seek permission to appeal against Judge Morrow's decision and, on 6 January 2010, she wrote to the appellant's mother's solicitors. The letter named the appellant's mother and each of the three children before continuing as follows:

DETERMINATION OF ASYLUM CLAIM

Your client has been granted leave to enter/remain in the United Kingdom as a refugee. Your client's claim has been recorded as determined on 6 January 2010.

I would be grateful if you would forward the enclosed letters and papers to your client at the earliest opportunity.

9. On the same date, the respondent issued the appellant and (I assume) his mother and sisters with limited leave to remain valid until 6 January 2015. The appellant's residence permit was endorsed in an Immigration Status Document which contained the following text:

Refugee Status

The person named on this document has been recognised by the Secretary of State as a refugee as defined by the 1951 Geneva Convention relating to the Status of Refugees and its Protocol.

The period for which leave to enter or remain in the United Kingdom has been granted is indicated in the endorsement.

While the period of leave indicated remains valid, the holder is able to work in the United Kingdom without any immigration restrictions limiting the type of work they can undertake.

- 10. On 23 April 2015, following a successful application, the appellant's mother and all three children were granted Indefinite Leave to Remain.
- 11. The appellant subsequently committed a series of crimes involving a knife. On 4 July 2016, he was involved in a street fight in Nottingham during which he stabbed another young man and caused him serious injuries including a perforated bowel. On 18 August 2017, the appellant attempted to make off without paying a taxi fare. When he was challenged by the driver, he brandished his knife and made threats. Then, on 22 August 2017, the appellant tried to take the bicycle of an eleven year boy, whom he threatened with a knife when he attempted to resist. The appellant accepted responsibility for only the first offence but was convicted of all three. He was sentenced by HHJ Buckingham to a total of 36 months' detention.
- 12. The respondent duly informed the appellant that he was liable to deportation and, separately, that she intended to revoke his refugee status. The latter letter

contained 22 numbered paragraphs. It began by noting that the 'Secretary of State is considering revocation (cessation) of your refugee status' and that 'the revocation of your refugee status is being considered through the cessation of this status.' There was citation of Article 1C(5) of the Refugee Convention and paragraph 339A of the Immigration Rules. The respondent stated as follows, at [8]:

In your case as explained below, it is considered that you can no longer, because the circumstances, in connection with which you had been recognised as a refugee have ceased to exist, continue to avail yourself of the protection of the country of your nationality. The Secretary of State is proposing to cease your refugee status because he is satisfied that Article 1C(5) and therefore paragraph 339A(v) of the Immigration Rules apply.

- 13. At [9], the respondent noted that the appellant's mother had been granted refugee status 'because your sisters would be at risk of being victims of female genital mutilation' and that the appellant was 'granted in line'. The respondent explained at [14]-[15] the basis upon which she had provisionally concluded that cessation was the proper course of action:
 - [14] At the onset of the consideration as to whether the circumstances leading to the grant of your refugee status have fundamentally and durably changed, it is noted that you were granted asylum in line with your mother. She was granted due to her marriage into the Mandinka tribe because your sisters would be at risk of being victims of female genital mutilation.
 - [15] Consideration has also been given to your protection concerns in The Gambia. As noted above, you were granted refugee status in line with your mother. She was granted on the basis of her marriage into the Mandinka tribe because your sisters would be at risk of being victims of female genital mutilation. You are a male and now an adult You have not raised any protection concerns in The Gambia. Therefore, it is considered that your circumstances upon return to your country of origin no longer engage your rights under the 1951 Refugee Convention or Articles 2 and 3 of the ECHR.
- 14. Representations in response were made by the appellant and on his behalf.

The UNHCR's Response

- 15. On 10 May 2019, the UNHCR responded to the respondent's notification that she was proposing to cease the appellant's refugee status. It noted the history of the case and the respondent's intention to cease the appellant's status 'as [AK] is now an adult and is also a male, he can no longer refuse to avail himself of his country of nationality, Gambia.'
- 16. The UNHCR explained its supervisory role and reiterated the importance of cessation not being triggered by criminality, since to do so represented (in its view) a conflation of the cessation provisions and the exception to the obligation of non-refoulement in Article 33 of the Convention. The UNHCR highlighted the consequences of cessation and the proper approach to its consideration, as set out by the Grand Chamber of the European Court of Justice in Salahadin Abdulla v Bundesrepublik Deutschland (C-175/08); [2011] QB 46. It noted the respondent's

belief that the appellant's gender and majority meant that his circumstances upon return to his country of origin no longer engage his rights under the 1951 Refugee Convention. It asked the respondent to consider whether the appellant's family might be at risk on account of their opposition to the cultural tradition of FGM and the possibility that his British accent might make him a target in The Gambia. It reminded the Home Office of the need to conduct a 'forward looking' assessment of risk and suggested that it might be necessary to interview him so as to conduct a thorough assessment of his case. It concluded by noting that there was evidence of an improvement in the appellant's behaviour and of the profound effect which deportation would have on him.

The Secretary of State's Decision

- 17. On 2 September 2020, the respondent wrote to the appellant's solicitors to communicate the decision under challenge in these proceedings. The respondent concluded that the appellant had not rebutted the statutory presumptions in section 72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") that his crimes were particularly serious or that he represented a danger to the community of the United Kingdom. She stated, rather confusingly, that the appellant's 'refugee status has been withdrawn on the grounds that the Geneva Convention does not prevent your removal from the United Kingdom.'
- 18. In a separate part of the letter, the respondent went on to consider whether she should cease the appellant's refugee status. This part of the letter contains significant recitation of the UNHCR's views and an inaccurate account of the conclusions reached by 'the Tribunal' in IS (Uganda) v SSHD [2019] EWCA Civ 167-; [2020] 1 WLR 43. The most significant part of the letter for present purposes is this, however:

Within the notification letter of 26 February 2019, consideration was given to whether the circumstances leading to the grant of your refugee status had fundamentally and durably changed. It is noted that you were granted asylum in the UK in line with your mother. Consideration has been given to your protection concerns in Gambia. As noted in the notification letter dated 26 February 2019, the reasons for your mother's grant was for her fear for her daughters, however, you are a male adult and there are no concerns for your return to Gambia. You have not raised any protection concerns in Gambia. Therefore it is considered that your circumstances upon return to your country of origin no longer engage your rights under the 1951 Refugee Convention.

19. In the remainder of the letter, the respondent expressed conclusions that the appellant was ineligible for Humanitarian Protection and that his removal would not be in breach of Articles 3 or 8 ECHR.

The Appeal to the First-tier Tribunal

20. The appellant appealed to the First-tier Tribunal. The appeal proceeded in accordance with the procedure envisaged in the amended FtT Procedure Rules, with the appellant filing much of the evidence upon which he intended to rely (including expert reports from a country expert, Ms O'Reilly, and a Probation Officer, Ms Haque) and the respondent setting out her case in a review. The appeal then came before the judge, sitting in Birmingham on 10 February 2021.

21. That hearing was adjourned for reasons explained by the judge at [20] of his careful decision. It was, he noted, apparent to him at that hearing that a potentially determinative issue had not been considered by the respondent at all. He considered it arguable, in light of JS (Uganda) v SSHD, that the appellant was 'not a refugee at all, given that it was quite clear from the 2009 appeal determination of Judge Morrow that the appellant had never himself been found to be personally at risk of persecution, and so did not meet the definition of refugee found in Article 1A(2) of the Convention'. It was possible, the judge thought, that the appellant was a 'derivative refugee' rather than what Haddon-Cave LJ called a 'Refugee Convention refugee' in JS (Uganda) v SSHD. If that was so, there was no need to apply the cessation provisions at all. This issue was labelled by the judge 'the JS (Uganda) issue'.

- 22. The Presenting Officer sought time in which to consider the <u>JS Uganda</u> issue and to provide a position statement upon it. Ms Revill, who has represented the appellant throughout, opposed the application. The judge granted the adjournment as he considered it to be in the interests of justice that the issue be canvassed. He made directions that the respondent should set out her position on 'the <u>JS (Uganda)</u> issue', with a response to follow from the appellant if so advised.
- 23. In the event, the Presenting Officer who was before the judge at the first hearing did not comply with the direction and it went to another civil servant who, in the words of the judge, 'completely failed to address the question of whether or not the appellant was, in fact, a refugee to whom the cessation clauses were applicable'. Instead, there was a repetition of the inaccurate interpretation of <u>IS (Uganda)</u> found in the initial decision.
- 24. Ms Revill was understandably robust in her written response to this letter and the judge began the second hearing, on 29 June 2021, by clarifying the issues with the representatives. Mr Williams, the Presenting Officer who appeared for the respondent on this second occasion, 'accepted that he had to proceed on the basis that the appellant had been recognised as a refugee under the Convention'.
- 25. As such, it was agreed by the advocates that the judge should consider the application of s72 of the Nationality, Immigration and Asylum Act 2002 first, followed by consideration of cessation under Article 1C(5), and then an analysis of the appellant's rights under the ECHR. The judge added this about cessation at [26] and [27]:
 - [26] In terms of the cessation point, Mr Williams stated the respondent's position to be that 'the circumstances in connection with which he was recognised as a refugee was essentially his dependency, as a minor child, on his mother. It would be argued that, as he was now an adult, was not dependent, and could not show that he was at personal risk on return, that his refugee status could be ceased. It was explicitly accepted that his minor sister was still at risk, but said to be irrelevant to the cessation of his status.
 - [27] For her part, Ms Revill submitted that the authorities were clear that the risk that gave rise to the recognition of refugee status needed to have ceased to exist, even if those circumstances were not directly related to the individual now being considered. What was needed was a consideration of both 'risk and relationship'. As such, the concession

that his sister was still at risk of persecution, should be taken as a concession that the appellant's refugee status cannot be ceased.

- 26. Having defined the issues at [25]-[29], the judge summarised the oral and documentary evidence before him at [30]-[33] before providing an impressive review of the relevant law at [34]-[58]. At [60]-[72], the judge found that the appellant had failed to rebut the first presumption in s72 (particularly serious crime) but that he had rebutted the second (danger to the community of the UK).
- 27. The judge then turned to consider the cessation of refugee status at [73]-[78]. He found at [74] that the appellant was not at risk of persecution if returned to The Gambia at the date of the hearing. At [75], however, he declined to find that this sufficed for the appellant's status to be ceased. He noted that it was Ms Revill's submission that the Court of Appeal had found in JS (Uganda) and SSHD v KN (DRC) [2019] EWCA Civ 1665 that

'where a person had been treated as a refugee because of the risk to a family member, it had to be shown that the risk to that family member had ceased'. The Court of Appeal did not accept that it was enough to show that any risk to the individual appellant had ceased, or indeed never existed.'

- 28. The judge explained at [76]-[77] why this interpretation of the Convention was correct notwithstanding the 'apparent perversity' of the outcome. A refugee could be expelled under Article 33(2) and it was not necessary, in any event, to recognise a person as a refugee in the first place when they did not meet the definition in Article 1A(2) of the Convention. The judge drew his findings on the Refugee Convention aspect of the appeal together in the following paragraph:
 - [78] As such, as I find that the appellant has rebutted the presumption that the [sic] is a danger to the community, such that I have quashed the s72 certificate; as the respondent has accepted that the appellant is a recognised refugee under the Convention for whom it is necessary to apply the cessation provisions; and because the respondent has accepted that the circumstances in which he received that recognition, namely the risk to his sister and mother, have not ceased to exist; I find that the [sic] Article 1C(5) of the Refugee Convention does not apply to him, he remains a refugee who is protected against refoulement, and his appeal against deportation succeeds on asylum grounds.
- 29. At [79], the judge underlined his conclusion that the appellant was not at risk on return to The Gambia, and dismissed his appeal on Article 3 ECHR grounds. He also found that he was excluded from Humanitarian Protection.
- 30. The judge then considered Article 8 ECHR, finding that the appellant met the first (private life) exception to deportation, as set out in s117C(4) of the 2002 Act. It had been accepted by the respondent that the appellant has spent most of his life lawfully in the UK. The judge accepted that the appellant was socially and culturally integrated to the UK for reasons he gave at [81] and that he would face very significant obstacles to reintegration in The Gambia: [82]-[85]. So it was that he allowed the appeal on Article 8 ECHR grounds as well as on Refugee Convention grounds.

The Appeal to the Upper Tribunal

31. The Secretary of State sought permission to appeal. There is said to be a single ground of appeal: "Failing to give adequate reasons for findings on a material matter".

- 32. That is a wholly inaccurate and unhelpful way of expressing the multi-faceted grounds of challenge. The Upper Tribunal and the Court of Appeal have expressed clearly what is expected of those who settle grounds of appeal: Nixon (permission to appeal: grounds) [2014] UKUT 368 (IAC), Joseph (permission to appeal requirements) [2022] UKUT 218 (IAC), and Municipio De Mariana & Ors v BHP Group PLC & BHP Group Ltd [2021] EWCA Civ 1156; [2022] 1 WLR 919, at [113]-[114]. It is not too much to ask of a department of state that its grounds of appeal should identify specifically what errors the FtT is said to have made and to number and plead those grounds separately. As the Master of the Rolls explained when giving the judgment of the Court of Appeal in the final case cited above, the grounds of appeal are an essential analytical tool for the appellate body. Without that tool, the real issues in the appeal are obscured and prejudice to either side may well arise.
- 33. Given that the grounds of appeal in this case fail to comply with those basic requirements, it is necessary to consider the separate challenges which were articulated within them.
- 34. Paragraphs [2]-[5] of the grounds articulate a challenge to the judge's finding that the appellant had rebutted the statutory presumption that he was a danger to the community of the United Kingdom. The challenge appears to be that the judge failed to consider material matters which militated in favour of the opposite conclusion.
- 35. Paragraph [6] articulates a challenge to the judge's finding that the respondent was not entitled to cease the appellant's refugee status. The challenge appears to be that the judge again failed to consider material matters in concluding that the circumstances in connection with which the appellant had been recognised as a refugee had ceased to exist. Given the course of the hearings before me, however, it is necessary to reproduce the precise terms in which that paragraph is expressed:

The FTTJ then goes on to consider whether the factors which led to the appellant's grant of asylum still apply. The appellant was granted asylum as a dependant of his mother, who was granted asylum on the basis of the appellant's sister's risk of FGM in Gambia. The FTTJ states that this situation may appear 'perverse' [76] indeed it does. The appellant is now an adult male, who was never at personal risk [74], indeed his father travels to Gambia regularly [74]. It is submitted that the FTTJ has failed to assess the case law cited at [75] in light of the appellant's circumstances as a convicted violent criminal. It is submitted that the case law cannot have been intended to protect such people from deportation.

36. Paragraphs [7]-[19] articulate challenges to the judge's findings that the appellant is socially and culturally integrated to the UK and that he would encounter very serious obstacles to his reintegration to The Gambia. The challenge is said to be that the judge failed to have regard to various authorities concerning the proper application of those tests and that he failed to have regard to material matters in reaching the relevant findings.

37. Permission to appeal was granted by Judge Komorowski, who stated expressly that he did so on a pragmatic basis, although he noted that there were cogent arguments which might be expressed against the grounds of appeal.

- 38. Ms Revill settled a response to the grounds of appeal on 30 November 2021. I will turn to the substance of the arguments expressed therein in due course. It suffices for present purposes to note that the appellant maintained that the grounds of appeal failed to establish (and in many respects to identify) any legal error on the part of the judge.
- 39. So it was that the appeal came before me on 20 May 2022, with Ms Revill appearing for the appellant and Mr Kotas for the respondent. The hearing was a hybrid one and some early connectivity issues were resolved promptly.
- 40. Mr Kotas indicated that he intended not to pursue some parts of the grounds of appeal. He did not seek to pursue any complaint about the judge's consideration of section 72 of the 2002 Act, and he formally abandoned [2]-[5] of the grounds. Nor did he intend to pursue the complaint made about the judge's consideration of the appellant's social and cultural integration to the United Kingdom under s117C(4) of the Act. He intimated that he intended to pursue [6] of the grounds of appeal, noting that an amendment might be necessary, and that he also intended to submit that the judge had erred in concluding that there would be very significant obstacles to the appellant's re-integration. The Secretary of State had given no prior indication of this refinement of the grounds of appeal, although Mr Kotas had spoken to Ms Revill about it before the hearing began. That discussion had highlighted a disagreement as to whether [6] of the grounds was sufficiently widely-framed to incorporate the point which Mr Kotas wished to develop in relation to cessation.
- 41. I invited Mr Kotas to frame the argument he wished to develop in reliance on [6] of the grounds of appeal. He submitted that the judge had erred in accepting the submission recorded at [75] of his decision (as reproduced above), since the approach described in that paragraph was too narrow and contrary to the wider analysis required by <u>IS (Uganda)</u>.
- 42. Ms Revill submitted that the argument which Mr Kotas wished to develop was outside the scope of [6] of the grounds. The inadequacies in the grounds had been set out in the rule 24 response in November and the respondent had only sought to provide this 'clarification' of her position six months later. An adjournment would be necessary in the event that the respondent was able to pursue these arguments and an application for wasted costs would be made. Neither of those outcomes were desirable or appropriate and Mr Kotas should be confined, she submitted, to the arguments expressed in the grounds of appeal.
- 43. Mr Kotas submitted that Ms Revill had failed, in expressing her objection, to read [6] of the grounds as a whole and that although the arguments 'might have been pleaded better', the critical point was that the judge had erred in law in his approach to Article 1C(5).
- 44. I agreed, in part, with both advocates. It is thoroughly unsatisfactory that a disagreement such as this should have occurred on the day of the hearing. By that point, the areas of controversy between the parties should have been defined. Ms Revill is entirely correct in her submission that the difficulty has been brought about by the discursive and unfocussed manner in which the grounds of appeal are expressed.

45. I have reproduced [6] of the grounds of appeal in full. It is poorly expressed. The final two sentences are not even a disagreement with the findings of the judge; they are merely an expression of disbelief at the outcome. I agree with Mr Kotas, however, that the remaining parts of that ground of appeal raise an argument that the judge failed to consider adequately or at all the significance of the fact that the appellant has attained the age of majority since being granted refugee status.

- 46. I was concerned to ensure, however, that the development of that argument should not place Ms Revill at a disadvantage. She had prepared written and oral argument based on the grounds of appeal as pleaded and was entitled, in my judgment, to submit that she would be at a disadvantage if the point which was to be taken by Mr Kotas was not expressed in writing. Given the public interest in the outcome of any such case, and given the potential unfairness to the appellant in proceeding without a properly particularised ground of appeal, I adjourned the hearing to enable Mr Kotas to reformulate [6] of the grounds. I gave him a calendar week within which to do so, and gave Ms Revill a further 28 days (as requested) in which to provide any amended rule 24 response or skeleton argument. (Ms Revill indicated that an application for wasted costs might also be made, as it subsequently was). I ordered that the hearing would be reconvened after the parties had exchanged the reformulated pleadings, and that it would be an in-person hearing.
- 47. Mr Kotas filed a reformulation of the cessation ground of appeal on 25 May 2022. The point taken was that the judge had erroneously focused on the circumstances in which the appellant's mother came to be recognised as a refugee, rather than taking into account relevant aspects of the appellant's personal characteristics. Such an approach was said to be contrary to the authorities, including <u>SSHD v MM (Zimbabwe)</u> [2017] EWCA Civ 797; [2017] 4 WLR 132, <u>JS (Uganda)</u> and <u>KN (DRC)</u>. On the second page of the reformulated grounds, however, there was also a footnote in the following terms:

For completeness it is also arguable that as a 'derivative refugee' AK is not in fact a refugee for the purpose of Article 1C(5) of the convention and entitled to the protection of Article 32 – see [71] and [145] of JS.

- 48. Ms Revill's response was filed on 23 June 2022. She maintained that the point taken was not within the scope of [6] of the original grounds and that it was unmeritorious in any event. She took particular exception to the footnote which I have reproduced immediately above, which she submitted represented an attempt to depart from the concession previously made in the FtT.
- 49. The hearing reconvened before me on 21 July 2022. Having heard Ms Revill's objection to the reformulation of the cessation ground of appeal, I indicated that I remained of the view (as explained above) that the ground originally pleaded was wide enough to encompass the point pursued by Mr Kotas, albeit that it lacked clarity.
- 50. In the alternative, and in the event that it was necessary, I gave Mr Kotas permission to amend the grounds of appeal so as to include the point taken in his reformulation of [6] of the original grounds. I considered that it was in the interests of justice to permit such an amendment and I was satisfied that the appellant would not be prejudiced by that course, since Ms Revill had been given 28 days in which to respond in writing to the reformulated (or amended) ground.

51. Mr Kotas recalled that he would not be pursuing any argument that the judge had erred in his consideration of s72 and s117C(4)(b) of the 2002 Act. He did contend, however, that the judge had erred in his consideration of Article 1C(5) of the Refugee Convention and s117C(4)(c) of the 2002 Act.

- 52. As to the first of the first of those points, Mr Kotas submitted that the judge had erred in conducting the 'mirror image' analysis of cessation. There was a need, he submitted, to focus on all of the circumstances in which the individual had been recognised as a refugee. There was correspondingly a need to consider the personal circumstances of the individual whose status was the subject of cessation consideration. So much was clear, Mr Kotas submitted, from [190] of JS (Uganda). Were it otherwise, a legal absurdity arose in which an individual who was demonstrably at no risk of ill-treatment was entitled to retain their refugee status. The judge had found in terms that there was no risk of persecution to the appellant in the event of his return to The Gambia. There was an indication of the basis on which the appellant had been recognised as a refugee and the judge was required to conduct a wider analysis of whether or not those circumstances had come to an end.
- 53. As for the analysis under s117C(4)(c), Mr Kotas accepted that the judge had directed himself correctly but he submitted that he had not applied those self-directions accurately or at all. Paragraph [85] was inadequate; the appellant's ties to the UK were relevant but the necessary assessment was a forward-looking one. Applying what was said in AS (Iran) v SSHD [2017] EWCA Civ 1284; [2018] Imm AR 169, it was not at all clear from the judge's decision why the appellant would not be able to find a job and establish a private life within a reasonable period of time. It was generally unhelpful to compare the facts of reported decisions. The judge had overlooked that and had based his analysis on a comparison with the facts in Lowe v SSHD [2021] EWCA Civ 62; [2021] Imm AR 792. In reality, this case bore little similarity to Lowe's, not least because this appellant's father accepted that he travelled regularly to The Gambia.
- 54. Ms Revill relied on her rule 24 response and on her more recent written submissions. The difficulty running through the appeal was that the precise basis on which the appellant had been granted refugee status had not been made clear by the respondent. That was a difficulty for the respondent, who bore the burden of showing that the circumstances in connection with which the appellant had been recognised as a refugee had ceased to exist.
- 55. Be that as it may, there was no merit in the respondent's contention that the judge's assessment was too narrowly focused. The judge's analysis was precisely in accordance with what had been said in JS (Uganda), at [164] in particular. The real question was what the judge was said to have left out of account. There seemed to be three points taken at [6] of the original grounds: that the appellant had attained his majority; that he was not at personal risk; and that he was a 'convicted violent criminal'.
- 56. The first of those arguments proceeded on a misunderstanding of JS (Uganda), JN (DRC) and SSHD v Mosira [2017] EWCA Civ 407. Insofar as the respondent sought to maintain that the appellant was merely a 'derivative refugee', it was too late to take that point, as was clear from [20] and [25] of the decision under appeal. The FtT had proceeded on the basis that the appellant was what Haddon-Cave LJ had in (JS (Uganda)) called a 'Refugee Convention refugee' and that was the basis on which the appeal should also proceed. The respondent was unable to show, whether by reference to [74] of the judge's decision or

otherwise, that there had been a durable change in the circumstances in which the appellant was recognised as a refugee.

- 57. Ms Revill submitted that the respondent merely attempted to re-argue the case in relation to s117C(4)(c). All relevant matters had been considered by the judge, including the possibility that the appellant could secure some sort of support from his family. There was a finding that the appellant would be an 'outsider' at [85], which showed the judge's conscientious application of the test in <u>SSHD v Kamara</u> [2016] EWCA Civ 813; [2016] 4 WLR 152. The judge had not based his assessment on a comparison of this case with that in <u>Lowe v SSHD</u>. The findings reached were brief but adequate and displayed no other legal error.
- 58. In response, Mr Kotas submitted that the judge's finding that the appellant was not at risk should have been all but determinative of the appeal in relation to cessation.
- 59. I reserved my decision at the end of the submissions.

Legal Framework

60. Given the refinement of the issues in this case, it is only necessary for me to reproduce two provisions. The first is Article 1C(5) of the Refugee Convention, which provides materially as follows:

This Convention shall cease to apply to any person falling under the terms of section A if: ...

- (5) He can no longer, because the circumstances in connexion with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality...
- 61. Article 11(1)(e) of the Qualification Directive and paragraph 339A(v) of the Immigration Rules are in materially identical terms.
- 62. The second provision which it is necessary to set out is s11C(4) of the 2002 Act, which provides an exception to deportation in the case of a 'medium offender' such as the appellant where:
 - (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

Analysis

- A. The Appellant's Status
- 63. I should deal first of all with the controversy raised by Mr Kotas' footnote, as reproduced above. By that footnote, he sought to take the point which was first raised as a possibility by the judge in the First-tier Tribunal. Based on the history of the case, he sought to submit that the appellant was not a 'Refugee

Convention refugee' but a 'derivative refugee', to whom the United Kingdom owes (presumably) no obligations whatsoever. If that is the case, the appellant is not owed the obligation of non-refoulement and the cessation provisions set out immediately above do not, and have never, applied to him. If that is correct, then the judge's finding that the appellant is not currently at risk on return to The Gambia was determinative of the protection grounds advanced by the appellant.

- 64. The distinction between these two types of refugee might at first blush seem somewhat surprising. The appellant was lawfully issued with a document which stated, in terms, that he had been recognised as a refugee by the Secretary of State. I have set out the terms of that document above. The reason that it is necessary for there to be consideration of whether a person such as the appellant is a Refugee Convention refugee or a derivative refugee was explained by Haddon-Cave LJ in JS (Uganda), however. A Refugee Convention refugee is a person who satisfies (or satisfied) the definition of a refugee in Article 1A(2) of that convention. They are, therefore, a person who "owing to a well-founded fear of being persecuted for reasons of, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country".
- 65. It is clear from JS (Uganda), as it is from Mosira, that it was not only those who were found to satisfy that definition who were 'recognised' as refugees by the Secretary of State. Pursuant to a 2003 policy cited at [53]-[56] of JS (Uganda), the respondent 'normally' recognised the family members of refugees 'in line with them', even where the family members were abroad. One might be forgiven for thinking that the policy only extended to granting the same duration of leave to remain (indefinite, in the past, but five years' leave to remain at present). It is clear, however, that the respondent did not stop at that; she gave Refugee Convention travel documents (such as that held by the appellant) to family members who had never been adjudged to meet the definition in Article 1A(2). It was those in this latter category who were described by the Court of Appeal as 'derivative refugees', whereas those who had been accepted as meeting the definition in Article 1A(2) were given the title 'Refugee Convention refugees'.
- 66. JS (Uganda) was decided appreciably before this appeal came before the First-tier Tribunal. The respondent should have decided whether or not the appellant was a Refugee Convention refugee before she initiated cessation proceedings. In the event that he was thought to be a derivative refugee, she would have saved her own time and that of the UNHCR, not to mention that of the appellant's solicitors and counsel. The point was missed, however, and it was only when the judge took it at the hearing that she sought an opportunity to address it. That opportunity was missed or ignored and the judge was unduly forgiving when he laid the blame for that failure at his own door, suggesting that his written directions had been insufficiently clear. There was a Presenting Officer at the first hearing, and she clearly understood the clarification required by the judge at that stage; had she not done so, she would surely not have sought an adjournment in order to provide that clarification. It is disturbing that the clarification was not provided in compliance with the judge's directions.
- 67. When faced with that lack of compliance, the next Presenting Officer chose not to seek another adjournment, and indicated that he was content to proceed on the basis that the appellant was not a derivative refugee and that the issue of cessation was consequently live. In so doing, he adopted an approach with was

consistent with the respondent's actions to that point, as detailed above. She had asked the appellant and the UNHCR for submissions on cessation and she had devoted a section of the decision letter to that question.

- 68. There was no attempt to submit in the grounds of appeal to the Upper Tribunal that the judge was in error in proceeding on the basis that the appellant was a Refugee Convention refugee. As Ms Revill noted orally and at [5] of her supplementary written submissions, to advance that ground of appeal would have required the respondent to apply to withdraw her concession before the FtT, and there has been no such application to date. The point was not raised by Mr Kotas at the first hearing before me and it was only raised, at the last moment and somewhat covertly in a footnote. It was not developed beyond the text of that footnote, and there was no application to adduce (under rule 15(2A) of the Upper Tribunal Rules) any evidence in support of the point, whether in the form of a contemporaneous departmental minute or otherwise.
- 69. A precisely similar situation arose before the Court of Appeal in <u>SSHD v Mosira</u>. The appeal had proceeded in the FtT and the Upper Tribunal on the basis that cessation was a live issue. The grounds of appeal to the Court of Appeal did not suggest that the appellant was not a Refugee Convention refugee and it was only in the Secretary of State's replacement skeleton argument that this point was taken. Sales LJ observed at [10] and [32] that the point had been available all along. At [44], Sales LJ noted that this new point was 'a complete departure from the way in which the Secretary of State had put her case at every stage before the Tribunal' and that it had taken leading counsel for Mr Mosira by surprise. Whilst Sales LJ (with whom Black and Henderson LJJ agreed) considered the point to be arguable, he held that justice required that permission be refused for the point to be raised 'at the eleventh hour'.
- 70. Having considered what was said about the withdrawal of concessions at [39]-[45] of <u>SSHD v AM (Iran)</u> [2018] EWCA Civ 2706, I do not give permission for the concession to be withdrawn. The application (such as it was) was made late in the day and in a very informal way. It is not in the interests of justice to permit the Secretary of State to take the point and the appeal must continue on the basis that the appellant is a Refugee Convention refugee.
- 71. I should perhaps add that approaching the appeal in that way is not necessarily an exercise in the counterfactual. It was appreciably clear in JS (Uganda) (as it should have been in Mosira) that the appellants before the First-tier Tribunal had only been recognised as refugees under the Family Reunion policy, which was in force from 2003. As I have recorded above, though, this appellant was recognised as a refugee in 2010, by which time the 2003 policy had been replaced with some new Immigration Rules, pursuant to which the family member of a refugee would be granted leave to enter or remain but would not automatically be granted refugee status: Mosira refers, at [15].
- 72. The relevant paragraph of the amended Rules was not given in Mosira but I take it to be paragraph 349, which governs the treatment of dependants of asylum seekers and those who could be dependants but instead make a claim for asylum in their own right. It provides, amongst other things, that where the principal applicant is granted asylum and leave to enter, any dependant will be granted leave to enter or remain for the same duration; there is no suggestion in that paragraph, therefore, that a dependant will automatically be recognised as a refugee in line with the principal. Given these changes, one might properly assume that a person who was recognised as a refugee at the time that the

appellant was recognised as a refugee had been adjudged, notwithstanding his dependency on a principal applicant, to meet the definition in Article 1A(2). Had that conclusion not been reached, the respondent would have granted only limited leave to remain.

- B. The circumstances in which the appellant was recognised as a refugee
- 73. If, as I have held, it is too late for the respondent to seek to withdraw the concession that the appellant is a Refugee Convention refugee, it is then necessary to consider on what basis he was found to be one. Without that starting point, one cannot logically ascertain whether the circumstances in connection with which the appellant was recognised as a refugee have ceased to exist.
- 74. The judge was clearly cognisant of the need to understand the circumstances which caused the respondent to recognise the appellant as a refugee. He invited submissions on the point and recorded what was said by the Presenting Officer and by Ms Revill about it at [26] and [27] of his decision. I have reproduced those paragraphs in full above. The Presenting Officer said that the appellant had been recognised as a refugee because of his dependency, as a child, on his mother. Ms Revill submitted, as I understand it, that the risk to the appellant's sisters must also have been relevant and, crucially, that the ongoing presence of that risk meant that the appellant's refugee status could not properly be ceased. There is, however, no clear statement in the judge's decision of the basis on which the appellant was recognised as a refugee. The reality, in my judgment, is to be found in a combination of the submissions made by the appellant and the respondent in the FtT.
- 75. The appellant cannot have been recognised as a Refugee Convention refugee just because his sisters were at risk of FGM. He was not at risk on that basis and he could not satisfy the requirement in Article 1A(2) for that reason alone. There must therefore have been an additional ingredient which caused the respondent to make the decision that he was a Refugee Convention refugee. That additional ingredient can only have been the appellant's membership of the family by reason of his status as a minor child of that family. By the 27th recital to the Qualification Directive, such family members (as defined in Article 2 to include minor children), 'merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status'. When the respondent came to recognise the appellant as a Refugee Convention refugee in 2010, she must have applied the approach required by the Qualification Directive and concluded that the appellant was at risk of ill-treatment as the minor child of his mother, notwithstanding the fact that he could not by definition be at risk of FGM.
- 76. Ms Revill submitted that the respondent was necessarily in difficulty in a case such as the present, in which there is no clear record which demonstrates the precise basis upon which an individual was granted refugee status. Without that record, she submitted, it was impossible for the respondent to discharge the burden upon her of showing that the relevant circumstances had ceased to exist.
- 77. I agree with that submission, but only to a point. Where there is no obvious basis for the initial recognition of refugee status, and nothing which sheds any light on that question, it is not easy to see how the respondent can discharge that burden. Where, as here, the basis for the original decision is appreciably clear, the Tribunal can proceed to consider whether the circumstances in connection

with which an appellant was recognised as a refugee have ceased to exist. That is precisely what the judge in the FtT did in this case, and I consider that he was correct to do so.

- C. Whether the judge erred in concluding that the circumstances in connection with which the appellant was recognised as a refugee had not ceased to exist
- 78. There has been a significant number of decisions from the Court of Appeal in recent years concerning the proper approach to the cessation of refugee status. Most of those decisions are cited above and it would be unnecessary and unduly burdensome to attempt a comprehensive review of all of them.
- 79. At the outset of this part of my analysis, however, it assists to reproduce the headnote of a recent decision of this Tribunal in which the President and UTJ Plimmer drew together the most important aspects of the jurisprudence. The case is reported as PS (cessation principles) Zimbabwe [2021] UKUT 283 (IAC) and the judicial headnote is as follows:
 - (1) The correct approach to cessation in Article 1(C) of the Refugee Convention, Article 11 of the Qualification Directive 2004/83 and paragraph 339A of the Immigration Rules can be summarised as follows:
 - (i) There is a requirement of symmetry between the grant and cessation of refugee status because the cessation decision is the mirror image of a decision determining refugee status i.e. the grounds for cessation do not go beyond verifying whether the grounds for recognition of refugee status continue to exist see Abdulla v Bundesrepublik Deutschland (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08) [2011] QB 46 at [89] and SSHD v MA (Somalia) [2019] EWCA Civ 994, [2018] Imm AR 1273 at [2] and [46].
 - (ii) "The circumstances in connection with which [a person] has been recognised as a refugee" are likely to be a combination of the general political conditions in that person's home country and some aspect of that person's personal characteristics. Accordingly, a relevant change in circumstances might in a particular case also arise from a combination of changes in the general political conditions in the home country and in the individual's personal characteristics, or even from a change just in the individual's personal characteristics, if that change means that she now falls outside a group likely to be persecuted by the authorities of the home state. The relevant change must in each case be durable in nature and the burden is upon the respondent to prove it see Abdulla at [76] and SSHD v MM (Zimbabwe) [2017] EWCA Civ 797, [2017] 4 WLR 132 at [24] and [36].
 - (iii) The reference in the Qualification Directive (as replicated in paragraph 339A) to a "change in circumstances of such a significant and nontemporary nature" will have occurred when the factors which formed the basis of the refugee's fear of persecution have been "permanently eradicated" – see Abdulla at [73] wherein it was pointed out that not only must the relevant circumstances have ceased to exist but that the individual has no other reason to fear being persecuted.
 - (iv) The relevant test is not change in circumstances, but whether circumstances in which status was granted have "ceased to exist" and

- this involves a wider examination see SSHD v KN (DRC) [2019] EWCA Civ 1655 at [33].
- (v) The views of the UNHCR are of considerable importance HK (Iraq) v SSHD [2017] EWCA Civ 1871 at [41], but can be departed from.
- (2) It is therefore for the SSHD to demonstrate that the circumstances which justified the grant of refugee status have ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention. The focus of the assessment must be on: (i) the personal circumstances and relevant country background evidence including the country guidance ('CG') case-law appertaining at the time that refugee status was granted and; (ii) the current personal circumstances together with the current country background evidence including the applicable CG.
- 80. This was not a case in which the Secretary of State submitted that the risk of FGM in The Gambia had changed. It is not easy to see how she could have made that submission in light of the background material and the analysis of the situation in <u>K & Ors (FGM) The Gambia CG</u> [2013] UKUT 62 (IAC) and <u>GW (FGM and FGMPOs) Sierra Leone CG</u> [2021] UKUT 108 (IAC). The submission made to the judge was, instead, that the appellant's personal circumstances had changed because he was no longer a minor child and was a male adult who was at no demonstrable risk on return to The Gambia.
- 81. The judge chose not to resolve that submission because he accepted Ms Revill's submission that the continuing risk to the appellant's sisters was determinative of the cessation issue in the appellant's favour. In my judgment, he erred in adopting that approach. Ms Revill's submission that the respondent was required to show that there was no continuing risk to the appellant's sisters was based on a misunderstanding of the authorities, and the judge fell into error in accepting that submission.
- 82. <u>SSHD v Mosira</u> is not authority for the proposition advanced by Ms Revill. In <u>Mosira</u>, the appellant was granted refugee status as his mother's dependent relative. His mother was granted refugee status because she could not access appropriate treatment for HIV in Zimbabwe; there was no determination that she met the definition of a refugee in Article 1A(2) of the Convention: [20] refers.
- 83. As Mr Mosira was apparently a derivative refugee¹, the respondent sought to submit that he was not owed the obligations in the Convention and Article 1C(5) was of no application. That belated submission was rejected for the reasons I have already set out above.
- 84. It had been submitted before the FtT that there had been a durable change in the appellant's personal circumstances because he was no longer a dependent child. The FtT had accepted that submission: [34] refers. Before the Upper Tribunal, however, the Secretary of State had expressly disavowed that submission, preferring to submit only that the political circumstances in Zimbabwe had changed for the better: [37] refers. Whilst that may have been correct, it had no bearing on the circumstances in connection with which Mr Mosira (or his mother) had been granted refugee status and the Secretary of

¹ I use the term from JS (Uganda) because I have already explained what is meant by it; it does not appear in Sales LJ's judgment in Mosira because it had not been coined at that stage.

State was unsuccessful before the Upper Tribunal and on her appeal to the Court of Appeal. At [49], Sales LJ (as he then was) noted that 'the change in the threat posed by the authorities in Zimbabwe has no bearing upon 'the circumstances in connection with which Mr Mosira has been recognised as a refugee'.

- 85. As Baker LJ explained at [35] of <u>KN (DRC)</u>, therefore, 'Mosira does not apply to all dependents of refugees, but rather is confined to cases where the basis for granting the refugee statsus to the parent and/or the child was not covered by the Refugee Convention'. Leggatt and McCombe LJJ agreed.
- 86. What is clear from <u>KN (DRC)</u> and the other authorities cited in PS (Zimbabwe) is that a relevant change of circumstances for the purposes of Article 1C(5) might arise from a change in an individual's personal characteristics, if that change means that he now falls outside a group likely to be persecuted by the authorities of the home state. I have taken that formulation from what was said by Sales LJ in a different case (<u>SSHD v MM (Zimbabwe)</u> [2017] EWCA Civ 797) but it is a theme which runs through all of the recent authorities, as is clear from <u>PS (Zimbabwe)</u>.
- 87. JS (Uganda) does not assist Ms Revill, since that was a case in which the appellant was found to be a derivative refugee and in which, in any event, the circumstances in which his mother had been recognised as a refugee had ceased to exist. Nothing in the judgments of Haddon-Cave or Underhill LJJ (with which Newey LJ agreed) supports the submission that the respondent must always demonstrate that the risk to the principal has ceased to exist before the refugee status of their erstwhile dependent may be ceased. In accepting Ms Revill's submission that JS (Uganda) and KN (DRC) required the respondent to demonstrate that the risk to the principal applicant had ceased, the judge fell into error. That principle does not emerge from those decisions. Nor is it said in those decisions that the attainment of majority might not amount to such a change in a refugee's relevant personal circumstances as to justify cessation. As detailed above, that point was not pursued beyond the FtT in Mosira and was not raised in IS (Uganda) and KN (DRC).
- 88. Notably, the representations made by the UNHCR on 10 May 2019 also offered no support for the approach suggested by Ms Revill. There was no suggestion in that letter that the respondent was not entitled to cease the appellant's refugee status if his female family members remained at risk in The Gambia. Instead, having noted the respondent's intention to cease the appellant's refugee status on the basis that the appellant 'is now an adult and is also a male', it recommended that the respondent should focus on considering whether the appellant's fear of persecution could no longer be regarded as well founded. It urged the respondent to consider whether the appellant might still be at risk on the basis that the appellant might be perceived as Westernised or an opponent of It did not state, in exercising its supervisory responsibility under the Preamble to the 1951 Convention, that the appellant's status could not be ceased if his female family members remained at risk. Given the importance attached to the expertise of the UNHCR in this area (EM (Eritrea) v SSHD [2014] UKSC 12; [2014] 1 AC 1321 refers, at [71]-[74]), the fact that its approach was so starkly different from that urged by Ms Revill was an important consideration which was overlooked by the judge.
- 89. The judge failed to consider the appellant's personal characteristics other than his relationship to his mother and sisters, who evidently remain at risk in The Gambia. Although it was submitted to him that it was relevant that the appellant

had attained his majority, he failed to consider whether that was a relevant personal characteristic which (in combination with his finding that the appellant was at no risk on return to The Gambia) sufficed to demonstrate that the respondent had discharged the burden of showing that the circumstances had changed.

- 90. In my judgment, the judge erred in failing to resolve that submission and in failing to recognise that the appellant's age and gender now placed him in the same category as his father, who is able to return to The Gambia as and when he pleases without fear of ill treatment. What was required in this case was a consideration of 'risk and relationship'. There was a risk to the appellant's sisters and he remained their brother but those facts were not determinative of the cessation analysis. Adopting the wider approach required by the authorities, the passage of time and the absence of any risk to the appellant as an adult male were the defining features of the wide assessment required by Article 1C(5) and the judge erred in adopting the narrower focus urged upon him by counsel. In my judgment, the only conclusion open to the judge on the facts of this case was that the circumstances in connection with which the appellant had been recognised as a refugee had ceased to exist and that the respondent had been entitled to cease his refugee status accordingly.
 - D. Very Significant Obstacles to Integration s117C(4)(c)
- 91. I consider that the judge also fell into error in his consideration of whether there would be very significant obstacles to the appellant's integration to The Gambia, albeit that aspects of that decision are beyond reproach. He was evidently well versed in the relevant authorities on this provision as they are cited at [55]-[56] of his decision. He was clearly cognisant of the fact that the appellant had not been in The Gambia since he was eight years old and had (as found by Judge Morrow) been disowned by the family which remain there. He was entitled to conclude at [82] that there would be significant obstacles to the appellant's reintegration in those circumstances.
- 92. The judge returned to <u>Kamara</u> at [83] of his decision, and noted the reliance placed by Ms Revill on the question of whether the appellant would be 'enough of an insider' in The Gambia. Much has been made by Mr Kotas about the judge's citation of <u>Lowe v SSHD</u> at [84] but I cannot see from that paragraph or elsewhere in the decision that the judge concluded that the appellant was able to meet the test because his circumstances were comparable to those in <u>Lowe</u>. I am sure that the argument was not put in that way and it would be surprising indeed if the judge had accepted such an argument.
- 93. The difficulty with the judge's decision is nevertheless clear from [85], which bears reproducing in full:

While I have found this to be a finely balanced matter, I have concluded that the appellant has discharged the burden upon him to show that there are very significant obstacles to his integration in Gambia if he were to return there now. In hearing his oral evidence he came across as a typical young British man. Without knowing his background, I would have no reason to think that he is not a citizen of this country who had lived his whole life here. I consider that, if returned to Gambia, he would quite obviously stand out as an outsider. I agree that, even with the help of his parents, it would be difficult for him to do much more than survive in Gambia. The difficulties he would

face do, in my view, reach the high threshold of very significant obstacles.

- The problem with these conclusions (even when read in the context of the 94. decision as a whole) is that they fail to engage with the temporal focus of the test in s117C(4)(c) and with the submissions of the respondent. The test was not whether the appellant would, immediately upon return to The Gambia, be perceived as an outsider. It was whether he would face very significant obstacles to his longer term integration to the country. The Presenting Officer had submitted (as recorded at [82]) that the appellant speaks English, an official language of the country, and that he had relevant skills and experience which would enable him to establish himself there. It is not clear from the decision how the judge resolved those submissions in concluding that it would be difficult for the appellant to do 'much more than survive'. The reader (and therefore the losing party) is unable to discern from the decision how these relevant submissions were resolved adversely to the respondent. The judge failed, therefore, to provide adequate reasons for his conclusion and he failed to adopt the approach required by AS (Iran) by looking to the future and considering whether the 'generic factors' relied upon by the respondent (good health, employability and ability to speak a relevant language) were such, in combination with the support available from the family, to mean that the elevated threshold in s117C(4)(c) was not met.
- 95. Unlike the cessation analysis, I do not consider that there was only one rational answer to this question. Given the appellant's lengthy absence from The Gambia and the absence of any meaningful familial ties, it might well be that a judge properly directing themselves to the evidence and to the relevant test could conclude that it was met. The proper course, in those circumstances, is for the hearing to be reconvened so that the Upper Tribunal can consider that question for itself. In the event that that question is resolved adversely to the appellant, it will also be necessary for the Upper Tribunal to consider whether s117C(6) applies so as to render the respondent's decision unlawful under s6 of the Human Rights Act 1998.

Notice of Decision

The First-tier Tribunal erred in law in deciding the appeal against the respondent's decision to revoke the appellant's protection status. That part of the FtT's decision is set aside and a decision dismissing the appellant's appeal on that ground is hereby substituted.

The First-tier Tribunal also erred in law in considering the appellant's appeal against the respondent's refusal of his human rights claim. The decision on the appeal will be remade in the Upper Tribunal, with the FtT's findings on s117C(4)(a) and (b) preserved.

Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to

identify the appellant. Failure to comply with this order could amount to a contempt of court.

This order was initially made in the FtT and continues in force because the appellant has previously been recognised as a refugee. The parties should be in a position to address the Upper Tribunal on the next occasion on whether the order should remain in force, given the accepted lack of risk to the appellant and the importance of open justice.

M.J.Blundell

Judge of the Upper Tribunal Immigration and Asylum Chamber

8 September 2022