



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2022-005886

First-tier Tribunal No:
RP/00063/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

LT

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 26 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant and/or any member of his family 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 and/or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This decision should be read with the earlier error of law decision issued on 13 September 2023, in which Upper Tribunal Judge Lane and I set aside the decision of First-tier Tribunal Judge Plowright on the basis of error of law.
2. As we explained at para. 26, the effect of our error of law decision was that the remaking of the decision was to look at the narrow question of how the Appellant would reasonably likely behave on return to Gambia set into the context of his own views about the current president, as well as the background evidence about the current government's view of political dissent.
3. The resumed hearing was initially listed to be heard on 18 October 2023 but had to be adjourned because both parties sought to rely upon further evidence which had not been produced in accordance with the Upper Tribunal's general directions.

The relevant background

4. In brief, the Appellant was originally granted refugee status in the UK by the Respondent on the basis of his anti-government activities carried out in the UK. The Respondent also accepted that the Appellant was a journalist in Gambia and that he had been a member of the CCG (which was an anti-government organisation in that country).
5. The Respondent has equally not challenged Judge Plowright's finding that the Appellant is a member of the UDP and that he has posted comments on Facebook which are critical of President Barrow.
6. As explained in the error of law decision, the Respondent's underlying reason for seeking to revoke the Appellant's refugee status was based primarily around the change of president in 2016.
7. In the interim the Appellant has been granted periods of limited Leave to Remain (the first until 18 May 2023) and more recently a further grant until 18 May 2026.
8. The Appellant's appeal is therefore brought under s. 82(1)(c) read with s. 84(3) of the NIAA 2002.

The remaking hearing

9. The Appellant was not represented and confirmed that he was not expecting a representative; I therefore concluded that it was fair and in the interests of justice to continue to conclude the appeal.
10. I confirmed with the Appellant that he had received and had had time to read and absorb the two reports submitted by the Respondent: the Freedom House report on Gambia from 2023 and the US State Department's human

rights report in respect of Gambia covering 2022. The Appellant confirmed that he had received those reports and had read them.

11. Mr Wain indicated that he had not seen the additional material which the Appellant served in compliance with the Upper Tribunal's directions and so I forwarded him the stitched bundle so that he could consider that material. Mr Wain confirmed that he had had sufficient time to read the additional Appellant's evidence and prepare his case.
12. The Appellant was then cross-examined by Mr Wain and at the end of those questions I firstly heard submissions from the Respondent. In order to act fairly towards the Appellant, and bearing in mind that he was not represented, I gave the Appellant time to consider those submissions, after which he confirmed that he was ready to make his own representations.
13. Again, in order to assist the Appellant, I took him through the new material which he had provided for the remaking hearing and asked him questions in order to fully understand their relevance and the Appellant's overall case at the date of the hearing.
14. In essence, the Respondent relies upon the Freedom House and US State Department reports as showing a material improvement in the general political conditions in Gambia in recent years; the Appellant's case is that there is clear evidence of the current president seeking to use persecutory acts in order to suppress political dissent.

Findings and reasons

15. In coming to my conclusions, I have had careful regard to the Upper Tribunal's stitched bundle of 227 pages which includes the two additional reports served by the Respondent for the remaking hearing as well as the original Respondent's bundle of 106 pages. This bundle also contains the Appellant's new evidence at pages 12 to 24.
16. I have also factored into my assessment the evidence provided to the First-tier Tribunal in an email dated 25 August 2022 which included evidence of violent crackdowns of protests against President Barrow's decision to stay beyond his promised term of 3 years (the Memorandum of Understanding, dated 1 December 2016). Some of these demonstrations have been led by the 'Three Years Jotna' movement.
17. I also note that the 2017 CPIN (Gambia: political opinion) relied upon by the Respondent in the decision letter is no longer publicly available and appears to have been removed from the Respondent's website on 17 June 2021. The Respondent does not currently have a published guidance document on political dissidence in Gambia.
18. In assessing the revocation issues, I have applied PS (cessation principles) Zimbabwe [2021] UKUT 283 (IAC):

"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 non-temporary 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.”

Have the previous circumstances ceased to exist?

General political conditions in Gambia

19. I have considered the Respondent’s well-structured submission that the current background evidence shows a durable change in the political conditions in Gambia such as to justify the assertion that the Appellant would not be persecuted and should therefore have his refugee status revoked.
20. I am prepared to accept that there has been some change in Gambia and overall there is evidence of improved conditions for NGOs and *to some extent* political criticism. In other words, the conditions are not as oppressive as during the President Jammeh era when the Appellant was recognised as a refugee.
21. However, in my view the two reports upon which the Respondent relies, do not provide sufficient evidence, when also taking into account the evidence submitted by the Appellant, in showing that there has been a durable change such as to eradicate the reasonable likelihood of persecution.
22. In coming to that conclusion, I note that there is clear evidence of those who are publicly critical of President Barrow being subject to detention and, I accept (as I detail below) it is reasonably likely that this involves mistreatment. In the 2023 Freedom report I have especially noted the following:

“The media environment has improved under Barrow’s presidency. More people are entering the profession, exiled journalists have returned to the country, and there has been a proliferation of private media outlets. Nevertheless, a number of laws that restrict freedom of expression remain in effect. Media outlets have been subject to arbitrary suspensions and journalists have at times faced arrest or physical assault in the course of their work.”

“Gambians have greater freedom to express political views under the Barrow administration. However, sedition laws that remain on the books could be used to criminalize criticism of the government, including on social media. In April 2021, a leader of the Three Years Jotna movement, which had called for Barrow to honor his earlier pledge to remain in office for only three years, was charged with sedition and violations of the Public Order Act (POA) after allegedly insulting the president and the judiciary. He was eventually cleared of the charges. In December 2022, a few days after the alleged coup attempt, the UDP’s campaign manager was arrested over a video in which he claimed Barrow would be unseated prior to the next election. He was subsequently released.”

23. Ultimately this relative improvement which has not, in my judgement, sufficiently removed the real risk of mistreatment, is also reflected elsewhere in the same report:

“Constitutional due process guarantees remain unevenly upheld, though political dissidents face less risk of persecution than during the Jammeh era. The government has pledged to arrest and prosecute security officers responsible for past human rights abuses. In 2022, five former officers from Jammeh’s National Intelligence Agency were sentenced to death for the murder of political activist Ebrima Solo Sandeng in 2016, while two other defendants were acquitted.”

“The use of illegitimate physical force by security agents has been less frequent under the Barrow administration. There have been some attempts to improve prison conditions, which remain dire...”

24. The US State Department report (2022) is in very broad terms and again, as with the other evidence, improvement is noted in comparison to the conditions under President Jammeh, but nonetheless there is also reference to mistreatment:

“Significant human rights issues included credible reports of: torture or cruel, inhuman, or degrading treatment or punishment by or on behalf of the government; harsh and life-threatening prison conditions; lack of investigation of and accountability for gender-based violence, including domestic and intimate partner violence, sexual violence, child, early, and forced marriage, and female genital mutilation/cutting and other forms of such violence; and laws criminalizing consensual same-sex sexual conduct between adults, although rarely enforced.”

25. The report also indicates that the investigation and prosecution of former Jammeh officials is inconsistent:

“The government took steps to investigate, prosecute, or otherwise hold accountable some officials who committed abuses or engaged in corruption. Nevertheless, impunity and a lack of consistent enforcement continued to occur.”

26. I furthermore accept the Appellant’s evidence in his witness statement that despite the change of president, officials loyal to the former President Jammeh remain in the government – this is in fact expressly corroborated by the US State Department report (2022) at page 7.

27. In my view this is also consistent with the overall picture of a reduction in acts of persecution but not a material removal of that risk for someone with the Appellant’s characteristics.

28. I also accept the Appellant’s understanding that some of the human rights activists who are referred to in some of the recent evidence he has provided claim to have been tortured during their detention. Whilst that is not expressly said in the online summaries, I accept that it would be consistent

with the overall evidence of an ongoing risk of mistreatment for people with a sufficient profile.

The Appellant's own characteristics

29. During the hearing, the Appellant gave detailed and unchallenged evidence about his ongoing activities for the UDP in the UK. I therefore accept that he is involved in monthly branch and chapter level meetings within the UK branch of the party.
30. I also find that the Appellant continues his criticism of the current Gambian president and government through his social media activity on Facebook and there was no challenge to his assertion that he has an accessible social media profile.
31. I furthermore accept the Appellant's evidence that there have only been two major demonstrations outside of Gambia and the Appellant attended the one which took place in London.
32. If returned to Gambia, I have no difficulty in accepting that the Appellant would seek to continue, at the very least, to criticise the current president through his Facebook account and it seems inherently likely that the Appellant would also seek to return to be a journalist. I note that the Appellant's evidence during the hearing was that he has not been a journalist since residing in the UK but I accept that this is because he feels that he can only really operate as a journalist if he is in Gambia where he would be able to carry out investigations himself.
33. I also find that he would seek to be involved in UDP political activity in Gambia.
34. There was no challenge by the Respondent to the Kerr Fatou online article at page 12 of the stitched bundle which reported that President Barrow recently called the UDP "*the biggest threat to national security*" at the opening of the NPP regional bureau on 3 October 2023.
35. This unchallenged report also goes on to describe President Barrow's threats to arrest radio station owners if callers on their programmes make disparaging remarks about him.
36. The Respondent has also not challenged the DW Africa article at page 17 which reported on the arrest of a human rights activist for criticising President Barrow on Facebook.
37. Looking at the overall evidence, I therefore find that the Respondent has not met the burden in showing that the Appellant would not face persecution on return to Gambia because of: his ongoing involvement with UDP politics which I find he would seek to continue in Gambia; his strong criticism of the president on social media and his likely return to journalism.
38. On that basis, the Respondent has failed to make out that the conditions which led to the previous grant of refugee status have ceased to exist and

therefore the decision to revoke the Appellant's status is in breach of the Refugee Convention.

Notice of Decision

The appeal against the revocation of refugee status is allowed.

Fee award

No fee was paid and so there can be no fee award.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 March 2024