



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/02169/2013

**THE IMMIGRATION ACTS**

**Heard at North Shields  
on 14<sup>th</sup> August 2014**

**Determination  
Promulgated  
On 15<sup>th</sup> Aug 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**KARAMO BOJANG  
(Anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person.

For the Respondent: Mrs Rackstraw – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of a panel of the First-tier Tribunal composed of First-tier Tribunal Judge Metzger and Mr B D Yates (hereinafter referred to as 'the Panel') who in a determination promulgated on 25 March 2014 dismissed the Appellant's appeal against the order for his deportation from the United Kingdom.
2. The Appellant was convicted on 27 February 2013 following his arrest at the Channel Tunnel in Folkestone for attempting to leave the United Kingdom on a false document. He was charged with possession and

control of an identity document, with intent, and theft and was sentenced to 14 months imprisonment. On 19 April 2013 the deportation order was made against him. On 29 May 2013 his previous representatives sent a letter stating he could not be returned to Gambia as he is a gay man. The Appellant had previously signed a form under the Facilitated Return Scheme in which he stated that there was no reason why he should not be deported and that he wished to leave the United Kingdom as soon as possible. Following his representatives letter he withdrew that request and stated he now wished to claim asylum. He was interviewed and his claim refused on 17 October 2013.

3. The Appellant opposes the deportation order claiming that exceptions provided by UK Borders Act applied to him, namely that he was entitled to be recognised as a refugee and for leave to remain under Articles 3 and 8 of ECHR.
4. The Panel assessed the evidence which they had been provided with and set out their findings from paragraph 23 of the determination. They correctly identify the relevant question as being whether the appellant has established to the lower standard that he is gay in relation to which there was a subsidiary question of whether he will be at risk on return to Gambia if he is gay [23].
5. The Panel did not find that the Appellant had established that he is a gay man. They note in paragraph 24 that such a claim was not made until very late in the proceedings, in May 2013, after the deportation order had been signed. The fact he has two previous female partners with whom he has fathered children was noted and that, although he claimed in his oral evidence to be divorced from his wife, this was not supported by any other evidence. The fact the Appellant had signed the Facilitated Return Scheme form claiming there was no reason he could not return and did not raise any issue of risk as a result of sexual identity at that time is also noted in that paragraph.
6. The Panel find the Appellant to lack credibility. They state they were not impressed by his evidence and did not find credible the claim to be in relation carrying out a double life, being married and having a gay relationship, which they specifically found was a claim raised at a late stage to seek to create an asylum and human rights claim.
7. The finding the Appellant lacks credibility is important for it was found that the claim he is divorced from his wife and that he had a gay relationship with an individual named Michael was not supported by any evidence other than the Appellants own claims. As he was found not credible the little weight the Panel attached to that evidence was a matter for them and does not disclose arguable legal error.

8. The Appellant stated during the course of the hearing before the Upper Tribunal that he has now contacted Michael. He accepts there was no evidence from this source before the Panel. It appears that on 14<sup>th</sup> March 2014 his representatives wrote to the First-tier Tribunal seeking an adjournment for a number of reasons, one of which was to obtain additional evidence, but this was refused for reasons that do not disclose any procedural irregularity sufficient to amount to an error of law. The application to adjourn to obtain further evidence was not renewed at the hearing. If material is now available that does not prove arguable legal error based upon the information the Panel were asked to consider, but may support the Appellant making a fresh claim so such material can be considered by the Secretary of State.
9. The Appellant also accepted that he failed to provide any evidence to the Panel to support his claim that as a gay man he will be at risk if returned to Gambia. In relation to Gambia, in R (on the application of Darboe) v Secretary of State for the Home Department [2010] EWHC 880 (Admin) the Respondent had included Gambia in the list of designated “safe” states under s 94(4) of the 2002 Act. Mr Justice Beatson in reviewing the decision to designate Gambia as a “safe” state, said that the evidence submitted, indicated that the situation in Gambia was troubling and needed to be reviewed regularly. That evidence, however, indicated that there had been improvements in Gambia since the coup in 2006 and was not such as to put the designation into question. Accordingly, the application in relation to the safe state issue had to be dismissed (paras 16 and 44).
10. No legal error material to the finding the Appellant failed to substantiate his claim to be a gay man has been established. This is not a finding based upon sexual conduct but an assessment of the evidence in the round, of which previous relationships are one element.
11. In relation to the Article 8 element, it is accepted that the Panel erred in failing to consider this ground of appeal at all. In discussing with the Appellant the nature of the Article 8 rights he seeks to rely upon it transpired that these are limited to the fact he has a cousin in the United Kingdom and that he has been in this country for thirteen years and so has established a private life. The Appellant confirmed he has a brother in Gambia and that, bar his claim relating to risk arising from his alleged sexual identity, there was no reason why he could not return to live in Gambia. The fact the Appellant may have been in the United Kingdom for thirteen years does not mean he is able to succeed for under Paragraph 276 ADE of the Immigration Rules the minimum period is 20 years within the United Kingdom unless an individual has lost ties with his home state, which is not the case in this appeal. The Appellant was not able to succeed under the Immigration Rules and has not established unjustifiably harsh consequences as a result of a refusal of his Article 8 appeal sufficient

to warrant Article 8 being considered outside the Rules. Therefore, although the Panel failed to deal with this element, such error is not material as the decision under challenge is to their decision to dismiss the appeal which is the correct decision in relation to the human rights element of the claim too.

12. Having considered the submissions made, the available evidence, and the sustainable adverse credibility finding, I find the Appellant has not satisfied this tribunal that there is any arguable legal error material to the decision to dismiss the appeal proved, and accordingly the determination must stand.

**Decision**

13. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 14<sup>th</sup> August 2014