Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05793/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 April 2015	**On 17 June 2015**
Prepared 29 April 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

EBRINA NJIE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar, Counsel, instructed by Queen's Park Solicitors
For the Respondent: Miss A Brocklesby-Weller, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of the Gambia, date of birth 25 May 1989, appealed against the Respondent's decision, dated 25 July 2014, to refuse to vary leave to remain in the United Kingdom by reference to a claim

under the Refugee Convention under paragraph 336 of the Immigration Rules HC 395 and a refusal of the claim under humanitarian protection ground, paragraph 339C and with reference to Article 8 of the ECHR.

2. An appeal against that decision came before First-tier Tribunal Judge P Wellesley-Cole (the judge) who, on or about 25 September 2014, dismissed the appeal. Permission to appeal that decision was given by Deputy Upper Tribunal Judge Bruce on 18 February 2015.

3. Ground 1 seeking permission essentially challenged the judge's conclusion that the Appellant's Facebook entry of various items was not open to the public. The argument in the grounds as drafted was simply that the Appellant's Facebook page showed he had 1,015 friends, the majority of whom are Gambians, and that each of these friends has direct access to his 'postings' and 'sharings' on his Facebook page and by inference the likelihood of discovery increased.

4. It is clear that as a matter of approach the Facebook page can be protected from access by restrictions to friends, friends of friends, and a discrete group of nominated persons. Similarly, there is nothing to suggest that a country's security service could not get access to Facebook and have their own account as well as access others. It is clear that the issue was not apparently raised before the judge by direct evidence that it was a public site, but rather an inference that was drawn.

5. Accordingly it was said the judge's assessment of risk to the Appellant from the security services of the Gambia underestimated the likelihood of awareness of matters and articles which he has posted on his site. Mr Jafar argued from a general position that because the Appellant has a Facebook page upon which various matters are posted, it followed that his page could and would be accessed by the authorities.

6. In this respect, Mr Jafar argued, in contrast to other countries where there was more detailed information, it was not clear on the evidence that was put to the judge that there was a general access to Facebook to suggest the Appellant would be identified as critical of the authorities. Further, the judge took the view that the Appellant's activity on Facebook in the United Kingdom did not give rise to risk, not least for what appears to be a similar reason, of lack of public access or by the authorities in Gambia.

7. At the hearing before me Mr Jafar relied upon the Appellant's asylum interview record (annex B in the Respondent's bundle) particularly Q/A 85 – 103 to demonstrate the Appellant's activities. In short Mr Jafar asserted that the Appellant had no protective filters on his site to prevent anyone from having access to it: A point which does not appear to have been drawn out before the judge bearing in mind the Appellant's age.

8. The way this issue was presented to the judge appears to have been over-simplified and shows a lack of preparation of the relevant evidence. There needed to be an assessment of the photographs and 'posts' or 'postings' on the Facebook page of the Appellant, in terms of their political significance.
   Secondly, there needed to be evidence as to why, or if, there were no protective filters so as to prevent scrutiny by third parties maintained.
   Thirdly, there needed to be evidence, expert if need be, of the extent of Gambian state scrutiny of Facebook.
   Fourthly, if it was said one of the Appellant's Facebook friends could reveal his 'postings' or 'posts' why there was a real risk of that happening.
   Fifthly, whether there is a basis to conclude how the Gambian state authorities were likely to scrutinise his Facebook messages.

9. It seemed to me that as the matter was put to the judge she dealt with the evidence [D11, 12, 13, 14 and 15] and why she rejected it. Indeed the grounds simply assert the Appellant's Facebook page is open to his friends. This is not the same as being open to the public. It may be that

‘postings’ and ‘sharing’s’ are available to 1015 friends (and others) as Appeal Ground 1 Part A asserts but that is a long way from establishing a real risk of the state taking an adverse interest in, let alone knowing of the relevant page or the Appellant's identity given his partly concealed Facebook identity.

10. I find the above points indicate a failure by the Appellant to show why there is a real risk that his Facebook page and its contents would attract the adverse attention of the State.

11. Ultimately it seemed to me that these challenges were essentially trying to put the case in a different way than it was put to the judge as to the significance of the Facebook page and the entries upon it. I do not find that the way the judge considered the matter was at odds with the way it had been put to her. Accordingly I do not find ground 1 part A disclosed an arguable error of law.

12. As to ground 1 part B, the judge’s finding that the sharing of banned articles was a criminal activity, the point is perhaps not as straightforward as the judge may have thought because producing articles of that kind may be made criminal offences, but it is the reason for making it a criminal offence and the extent it is used to suppress freedom of speech and thought that is relevant.

13. The significance of it really turns on the likelihood of the Appellant's Facebook activities, being a matter of interest to the authorities and identified by them. It appears the Appellant infers from the activities of the Gambian National Intelligence Agency (NIA) that they were taking an interest in him in 2013 when they visited his sister Kaddy in December 2013 and when his brother, a resident of Sweden, paid a visit to the Gambia to enquire into the Appellant's circumstances in 2014 but was detained.

14. It is to be noted that whatever the Appellant had claimed to have taken place, when he and others entered the Gambian Embassy in 2012, and his involvement at a demonstration, that had not presented a risk when he returned to the Gambia in 2013.

15. In those circumstances the question is really was the evidence sufficient before the judge to show that were the Appellant to come to the attention of the authorities and for them to be interested in what he had done in the United Kingdom, he was at risk of proscribed ill-treatment, persecution or torture and similar ill-treatment. It seemed to me that it was an error by the judge to categorise postings of critical articles about the government as not significant. I do not find that error amounts to a material error of fact or law or raised the likelihood of risk.

16. Part C of ground 1 is critical of the judge because whilst she accepted that high ranking categories of human rights activists may be subject to monitoring and security forces' activities, but that the Appellant did not fall into such category. It is said that as a generality the government takes an adverse interest in anyone who is critical of it, be they high or low in position. I was taken to a particular reference which asserted the proposition that citizens generally may face adverse attention. It seems to me that the judge has simply pinpointed the greater likelihood of attracting adverse attention depending on seniority and societal position. As such, I do not find that that amounted to an error of law.

17. Ground 2 essentially amounts to the point that the judge having found the Appellant's claim was unmeritorious and that his sur place activities were simply to bolster or embellish his claim, failed to recognise that such insincerity and such activities may nevertheless give rise to risk because of how the matter was perceived by the country to which an Appellant was to return. What is said is that Gambia is one such country where such matters are taken very seriously and give rise to the real risk of material ill-treatment.

18. Ultimately the fact that the judge may not have remarked on how the Appellant's home authorities might embark upon it, including some fairly aggressive assertions of how people would be treated. For Gambia there was not the same background evidence before the judge of the kind, for example identified in relation to Iran, to show the extent to which the security forces are using Facebook, social media or the internet in order to suppress criticism of the authorities.

19. There was limited background evidence on the evidence as to the extent to which the scrutiny of blogs, articles on the internet, social media sites and so forth are actually visited by the security services. It is at least reasonable to infer that there must be some interest in those particular media. However, the relevance of the matter was really back to the issue of the likelihood of the Appellant being found by that route. Part of that assessment was not unrelated to the issues considered about the national intelligence list maintained by the government in respect of anti-government activities. I do not think the evidence before the judge showed that there was no risk, but rather that there was no real likelihood of the Appellant coming to adverse attention bearing in mind he had, between the very significant events of attending a demonstration and intrusion into the Gambian Embassy, been able to return home for about a month. He travelled through, it seemed, an international airport and departed the same way. Yet he was not subject to adverse attention albeit it must have been apparent that he was coming from abroad and from spending at least some period of time abroad in the UK, come what may.

20. There was no challenge to the judge’s findings in relation to Article 8 of the ECHR and they did not form part of the grounds of appeal. In the circumstances, whilst the judge did not helpfully set out the assessment of the sur place claim, nevertheless at paragraph 15 made findings which show that she did assess the risks associated with his claimed activities in

the United Kingdom and the likelihood of them coming to the attention of the Gambian authorities.

21. The Original Tribunal made no material error of law. The Original Tribunal's decision stands.

22. No anonymity order was sought or appropriate. The appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

No anonymity direction is made.

Signed Date 10 June 2015

Deputy Upper Tribunal Judge Davey