



IAC-AH-CO-V1

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

Appeal Number: AA/08069/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 25th January 2016**

**Decision & Reasons
Promulgated
On 1st April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MISS M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Din, Solicitor instructed by Duncan Lewis & Co Solicitors

For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. This is an appeal, with permission, against the decision of the First-tier Tribunal promulgated on 20th October 2015 dismissing the appellant's

appeal against the Secretary of State's decision dated 6th May 2015, refusing her asylum, humanitarian protection and protection under the European Convention. The Secretary of State considered the application under the Immigration Rules.

History

2. The appellant is a national of Gambia born on [] 1976 and she claimed that she would be perceived as a member of a particular social group on the basis of her links to a relative who was President of Gambia, because of her advocacy and opposition to the Gambian government and because of her advocacy on behalf of the lesbian, gay, bisexual and transgender community (LGBT). The appellant claims that she has engaged in public broadcasts and demonstrations in opposition to the Gambian government and she claims she was the granddaughter of a former Gambian President and had experienced difficulties for this reason.
3. The First-tier Tribunal Judge considered her immigration history, the documentation supplied and the oral evidence together with the representations made on her behalf.
4. The grounds for permission to appeal were not drafted entirely clearly. They noted, however, that the appellant entered the United Kingdom as a student and subsequently claimed asylum on 1st December 2014. The respondent refused the claim on 6th May 2015 and the appellant's appeal was heard on 30th September 2015 by the First-tier Tribunal who issued the relevant impugned determination on 20th October 2015.
5. The grounds set out some of the findings of the judge and submitted that notwithstanding the judge's findings at paragraphs 70 to 71 the appellant had sought to rely on documentation to support her media activities with Kibaro. The judge did not make a finding that he did not accept the appellant's media commitment and he *accepted the association* of the appellant with Kibaro a radio station.
6. Therefore, it was asserted, that regardless of whether the appellant's activities were self-serving, at paragraph 71 the judge was not entitled to conclude that the appellant had "a genuine political profile" [sic] (I think this was meant to read no genuine political profile') or that she has not "come to the adverse attention of Gambian authorities".
7. In the light of her public profile it was asserted she was at real risk of being interviewed upon her arrival in Gambia and especially as she would be documented failed asylum seeker.
8. There was evidence to support this fear in the form of a letter from the Sene-Gambian Human Rights Defence, a report from the Gambian Consultative Council and country background evidence. Against the background of such an oppressive regime and given the appellant's public profile it was submitted that even if the appellant's position was self-

serving the Gambian authorities may nonetheless “be of interest to her should she return to Gambia - again especially as someone who would be documented as a failed asylum seeker.”

9. Therefore she was somebody who held a number of risk factors which would expose her to persecution upon return. The judge failed to consider the factors of the appeal by relying on adverse credibility findings and neglecting the risk factors to find that she may be of interest to the Gambian authorities.
10. At the hearing before me Mr Din submitted that on the basis of the evidence the appellant did have a public profile and the judge accepted her association with Kibaro and it was clear that she would be returned as a failed asylum seeker to an oppressive regime. She would not be expected to lie on her return.
11. Ms Sreeraman relied on the Rule 24 response and submitted that looking at the decision in its entirety which started at paragraph 51 the judge rejected the core of the appellant’s claim and noted at paragraph 57 that the authorities did not monitor online activities. There was an absence of her evidence at demonstrations. The judge found that her *sur place* activity was not credible. There were manifest inconsistencies with the level of activity here. The judge had considered the witness evidence but found that wanting. The association with Kibaro was merely a self-serving attempt to bolster her claim. There was no reliable evidence of her involvement with the opposition to the Gambian government and the decision was reasoned as to why on the evidence it was considered that she would not be at risk. **HJ** had been addressed paragraph 73. The judge had looked at the *sur place* activities and found that they were not genuine in relation to her politics or her LGBT activities.
12. Mr Din submitted that Ms Sreeraman had attempted to piece together the evidence but the judge had not put the risk factors together systematically.
13. In conclusion it is clear that the judge has set out the key elements of the appellant’s claim as to whether she would attract the adverse attention of the Gambian authorities on her return because of her public opposition to them in her broadcasts and demonstrations. It is recorded that she claims that she is the granddaughter of the former Gambian President and has also experienced difficulties for this reason. The judge referred to the appellant’s advocacy on behalf of the LGBT and whether it will be perceived to be a member of the LGBT community. The judge considered those various factors of the claim in sequence.
14. Turning to the experience of the appellant from her connection with a previous president, in fact it was her claim in her witness statement that the President was a great uncle, not her grandfather, and there appeared to be no mention of him in her representations of November 2012.

15. Even if that were not the case the judge rejects her claim regarding the risk from this association. He recalls at paragraph 43 that the appellant relied on the evidence that a family had been merely caused distress by the appellant's political activities in the UK and that that stems from one verbal warning issued to the appellant's sister shortly after the after the appellant attended a demonstration in 2012. The judge recorded that the appellant confirmed that she had received no other warnings paragraph 44. On the one hand the appellant claimed alleged restrictions on communication but on the other hand the judge found the appellant 'appeared to be available at will' on social media (45). Indeed the judge rejected the fears based on a "random encounter between the appellant's sister and a stranger who approached the appellant's sister when she was selling food near her home in 2012". The appellant had made no enquiries about why the family should place weight on an encounter with a stranger. The judge found this to be an entirely speculative fear and not based on any reasoned conclusion.
16. As to her political profile, the judge rejected the appellant's evidence about her image being published at [48] finding that on the one hand she claimed to have her image in a newspaper and on the other hand it was printed on line in the UK. Even then the judge found at [49] that the Gambian authorities do not monitor on line activities in the UK and would not have knowledge of her activities in the UK [50]. The judge found at [58] that the appellant was engaged with Kibaro on an informal basis, at best, because of her reliance on Ms C for financial and domestic support. Indeed the judge commented on the lack of interest by the authorities in Ms C, because she had passed through the Gambian borders without incident, and therefore the appellant.
17. Although the judge concluded at paragraph 50 that the Gambian authorities had no knowledge of the appellant's alleged political activities he *nonetheless* continued to consider the appellant's claim that she was actively engaged for the Gambian political community in the UK and that she was an active member of the council and attended meetings on a weekly basis at minimum. That said, the judge found it was not credible that the appellant would be unable to provide any meaningful evidence of the demonstrations that she had claimed to attend since 2012 despite claiming to be actively involved in the organisation of those demonstrations [52]. Mr Din confirmed the evidence in support of the appellant's claim that she was actively involved essentially relied on her own witness statement. The judge found clearly at paragraph 53 that the appellant's evidence was vague in relation to her involvement with demonstrations in the UK and considered the "limited number of demonstrations and her alleged role in these events," undermined her claim. Indeed the judge found at paragraph 52 that the appellant was unable to provide any meaningful evidence as to the demonstrations that she had claimed to attend. This the judge found damaged her credibility and in relation to her *sur place* activity, or rather lack of it, and he did not find her to be at risk on return [52].

18. The judge at paragraphs [54] to [56] considered the representations made on the appellant's behalf dated 8th November 2012 which referred to the membership of the United Democratic Party and her activity in Gambia. The judge refers in paragraph 55 to the difference in the representations between 8th November 2012 and those currently, whereby she claimed she had been a member of the party since its was founded in 1996 and campaigned at opposition rallies and helped to recruit new members into the party in Gambia. In her previous representations the appellant claimed that she engaged in political activity in Gambia whilst her current claim was now essentially claiming *sur place* activity in the UK. In effect the appellant had ample time to claim asylum and did not – she had applied for leave as a student on 16th September 2000 and subsequently extended her leave until 15th April 2009 when she applied for leave to remain on thirteen separate occasions between 24th February 2008 and 11th August 2014 all of which were refused (in some cases she made two applications). She did not claim asylum until 1st December 2014 and the judge took the Section 8 point against her.
19. The judge also considered the evidence of the witnesses in turn and found that they too undermined the evidence of the appellant. In relation to her activities in the UK the judge found that Miss C, one of the witnesses, was able to pass through the Gambian border control without incident despite her claimed close association with the appellant and marriage to the appellant's family, which, in the judge's view, did not demonstrate sophisticated surveillance on the part of the Gambian authority. The judge further, found at paragraph 60 that the witness contradicted the appellant's own claim that she had received many warnings (witness statement paragraph 8 of the appellant's bundle page 15).
20. The judge also considered the evidence of Mr B D noting his absence at the hearing, the absence of a signature on his witness statement and noted the disparity in the number of demonstrations that were said to have been attended. The judge noted there was a lack of coherence and consistency between shared political ideology and the presentation of the evidence of Mr B D did not assist the appellant's appeal.
21. Indeed the judge found that the witnesses appeared to have no knowledge of the appellant's allegiance to the LGBT community and this in turn undermined her claim that she was indeed active on their behalf and would come to the attention of the Gambian authorities as a result [71].
22. The judge referred to the letter of the Sene-Gambian Humans Rights Defence League [65] and noted that the letter referred to the appellant's participation in a demonstration on 22nd August 2015 but that event was not within the appellant's reasonable contemplation and thus genuinely occur. This in turn undermined of the contents of the letter and the credibility of the appellant.

23. Overall the judge found that the appellant's evidence was contradictory and undermining of her claim. It is right to say that the judge at paragraph 70 found the appellant's association with Kibaro was self-serving. The question is whether the appellant had demonstrated that she had been at risk whilst in the Gambia, which the judge clearly found that she had not, whether she had demonstrated reliable evidence of a genuine political conviction in which case how would she have been act and be perceived on her return.
24. The judge found that the appellant had failed to demonstrate genuine political conviction or that she had or would come to the attention of the Gambian authorities on her return. With regard to her involvement with the Kibaro radio at paragraph 71 the judge stated that this was the facilitation of other's opinions at best and there was no reliable evidence to demonstrate that she was of interest to the Gambian authorities. Indeed the judge's finding regarding the evidence of the appellant's activities as a whole were that she was not credible and this would include Kibaro and further that the association was only 'informal' through her reliance on domestic arrangements with Ms C [58].
25. As the judge states at paragraph 57 the representations referred to active monitoring by the Gambian authorities and the murder of a family member but the appellant consistently maintained in her current claim that her public activities were online and *therefore outside the knowledge and control of the authorities*. He found that "her current fear is based upon hearsay evidence."
26. In some of the appellant's witnesses also appeared to have
- "no knowledge of her commitment to the LGBT community or simply refer to this issue in a cursory manner" (72).
- He concluded that there could be no assumption that the author of the statement was homosexual and secondly that the appellant had imported "the most tenuous of inferences to promote her claim in this regard."
27. In effect the judge concluded that there was no reliable evidence of the appellant's profile or her activities. The appellant's evidence was contradictory and the letters and witness evidence was undermining. The judge, however, stated that notwithstanding her lack of genuine political conviction he addressed the question of whether she would be at risk but found on the evidence that she had and would not come to the risk of the authorities [71].
28. There is no identifiable firm evidence that a failed asylum seeker would be of interest to the authorities for that reason. The OGN on Gambia 2013 as produced at the First tier Tribunal specifically states

6.1 There is no policy which precludes the enforced return to the Gambia of failed asylum seekers who have no legal basis of stay in the United Kingdom.

29. As there was no evidence that the Gambian authorities had the power to survey within the UK and because the judge finds that her political and sexual advocacy was not genuine for the reasons given throughout the determination it is reasonable to conclude that he has dealt with the **HJ** point. Indeed at paragraph 73 the judge states the following.

“The evidence demonstrates that the appellant is associated with a discussion of visa marriages (respondent’s bundle page H2) yet there is no suggestion that she endorses such practice. It is reasonable to apply the same principle to the assertion of perceived sexual orientation. When the evidence is considered in the round it is reasonable to conclude that the appellant has imported the most tenuous of inferences to promote her claim. She also contrives circumstances to promote the appearance of political opinions and ideology which d not exist.”

30. On an overall reading of the determination as the judge concluded that she had no genuine political commitment or to either the UDP or the LGBT cause such that she would not need to lie on return as a failed asylum seeker should she be interviewed. This is not the case of *sur place* activity which was genuinely believed or which had been surveyed or which would cause her to be perceived as a political opponent on her return to Gambia. On a reading of the determination as a whole I find that there is no error of law and the decision shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 10th March 2016

Deputy Upper Tribunal Judge Rimington