



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02137/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Birmingham

Decision

&

Reasons

On 6 February 2017

Promulgated

On 9 May 2017

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

S M

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Pipe, instructed by Duhra Solicitors

For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, S M, was born in 1970 and is a female citizen of Gambia. The appellant entered the United Kingdom in 2004 with entry clearance valid until November 2004. Thereafter, she remained living illegally in the country having overstayed. She was arrested in March 2015 on suspicion of being an immigration offender. In May 2015, she claimed asylum. By a decision dated 16 October 2015, the respondent refused the appellant's application for asylum. The appellant appealed to the First-tier Tribunal (Judge A M S Green) which, in a decision promulgated on 2 August 2016,

dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are three grounds of appeal. First, the appellant asserts that the judge made a material direction in law. In making his assessment, the judge dealt first with the appellant's delay in claiming asylum and a criminal conviction. The appellant asserts that the judge had found that the appellant was not a credible witness before moving on to consider her account of past events in Gambia.
3. I find that the ground has no merit. The judge had to start somewhere in his assessment and I see no problem at all with his having dealt first with the appellant's immigration history. The fact that the appellant had only claimed asylum after having been arrested was plainly a material consideration in the assessment of credibility.
4. Secondly, the appellant claims that the judge made a material error of law in the treatment of evidence concerning the New Millenium Airline of Gambia. At [33] the judge had considered the appellant's claim regarding the New Millenium Airline. He wrote:

... I am satisfied on the evidence the New Millenium Airline should not be considered or regarded as a commercial airline. I was persuaded by what Mr Pipe had to say in this regard. It was little more than a single Russian built aircraft used by the president or Baba Jobe [a notorious Gambian politician] to fly around African countries facilitating illegal arms trafficking which ultimately led to the United Nations sanctions against it and Baba Jobe. Far fetched as it may seem, I am prepared to accept that the appellant was "employed" by the New Millenium Airline.

5. The judge went on to record that the appellant had claimed that she had continued working for the airline until "she fell from favour in 2004 because of her association with Baba Jobe." The judge stated categorically, "I do not believe her." The judge noted that;

according to evidence offered by the respondent, the New Millenium Airline was active between 1999 and 2002. Other than saying that 'the World's Airlines' was printed off a UK website, Mr Pipe has not offered any credible objective evidence that the airline was still active in April 2004. The fact that the airline was subject to being listed on the United Nations sanctions list on 30 November 2005 does not prove on its own that the airline was active at that time. It may suggest that the United Nations believe that the airline still exists and had assets worth freezing. But just because an entity exists does not mean it is active (i.e. operational). I believe that the airline became inactive in 2002. This undermines the appellant's claim because she said she lost her job in 2004 and was still flying at that time.

6. Before the Upper Tribunal, Mr Pipe drew attention to an entry on a website (the Independent (Banjul)) entitled "Gambia: the Sun sets on Millenium Airline; conflicting signals conjure up winding enigma." The article is dated 27 September 2004. The article refers to "conflicting signals about the operational status of the New Millenium Airline since a United Nations Security Counsel Resolution (1532) outlined punitive measures against

Baba Jobe one of which is to ground the airline.” The article then refers to the “fate of [the airline] ... hanging in the balance as reports surface ...” Reference is also made to “a probability that the government would bow to more UN pressure to discontinue the operation of the airline ...” Mr Pipe submitted that evidence in September 2004 that the fate of the airline was at that time “hanging in the balance” indicated that the airline was still operating at that date.

7. The difficulty with the internet evidence is that, whilst it appears to have been sent by fax and email from the appellant’s solicitors to the First-tier Tribunal in Birmingham, I could find no copy of the document on the Tribunal file. The copy which now appears on the Tribunal file is that which I had copied from Mr Pipe’s copy on 6 February 2017 at the Upper Tribunal hearing. The printout is dated on the same date as the First-tier Tribunal hearing (25 July 2016). I have to say that, having conducted an extensive search of the file, the fact that there is no copy of the document on the file indicates to me that it was not before the judge when he prepared his decision. Although the decision was promulgated some days after the hearing, I have no reason to believe that Judge Green did other than to prepare his decision on the same day as the hearing; the promulgation date is a matter outside the control of the judge and depends upon the administrative staff of the Tribunal. If the evidence had reached the file after it had left the judge’s hands (and following his dictation or preparation of the decision) there is no reason to believe that it would have been brought to the judge’s attention by the administrative staff of the Tribunal. I find, therefore, that the judge’s findings of fact in respect of the New Millenium Airline are entirely sound on the basis of the evidence before him. On the standard of proof of the balance of probabilities, I find that the internet document was not before the judge at any time before his decision was promulgated. Even if I am wrong, and the judge has overlooked the evidence, his conclusion remained available to him on consideration of all the evidence. The internet article does not categorically establish that the airline was still operating in 2004; indeed, having read the article, one is left with the impression that the continued existence of the airline was entirely a matter of conjecture. In other words the evidence did not compel a finding of fact different from that reached by the judge. Further, the judge had dealt with the fact that the United Nations sanctions list of 30 November 2005 (i.e. postdating the internet article) continued to refer to the airline. The judge found that this did not “prove on its own that the airline was active at the time and may suggest the United Nations believe the airline still existed and had assets worth freezing. Just because an entity exists does not mean that it is active (i.e. operational).” The internet evidence is entirely consistent with that finding.
8. The third ground of appeal challenges the judge’s use of the verb ‘convince’ when determining the credibility of the appellant’s account. At [33], the judge wrote, “I have given [the statement of the man whom the appellant claimed was her husband] little weight and I am not convinced that the appellant was married to him.” Later in the same paragraph, the

judge refers to the appellant having “not convinced the respondent and she has not convinced me.” The appellant asserts the use of the word “convinced” here indicates that the judge has applied an inappropriately high standard of proof in his assessment of the claim. I disagree. The judge has set out in considerable detail the correct standard and burden of proof at [7]. Having done so, I have no reason to believe that the judge has departed from that standard in any part of his analysis. Indeed, I find that the word “convinced” is to be read by reference to and within the context of the correct standard of proof as stated by the judge; he is, in effect, saying no more than that he was not at all satisfied that it was reasonably likely that the appellant’s account was true and accurate.

9. In the circumstances, the appeal is dismissed.

Notice of Decision

10. This appeal is dismissed.

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 20 April 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 April 2017

Upper Tribunal Judge Clive Lane