



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08241/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 12th June 2017

**Decision &
Promulgated**

On 20th June 2017

Reasons

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**GEORGINA GOMEZ
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondent: Mr S Harding, instructed by J McCarthy Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Gambia born on 19th November 1984. Her appeal against a deportation order was allowed by First-tier Tribunal Judge Herbert OBE, under the Immigration Rules and on Article 8 grounds, on 9th March 2017.
2. The Secretary of State for the Home Department appealed on the ground that the judge only considered the circumstances if the family unit were returned to Gambia. The judge failed to consider the position where the Appellant's son and his stepfather remained in the UK and the Appellant was deported. Secondly, the judge failed to give adequate reasons for

finding there were very compelling circumstances which meant that the Appellant's son could not return to the Gambia. The Appellant's son was at school in Gambia until 2014 when he came to the UK. There was also evidence that the Appellant had extended family members there. The very compelling circumstances were summarised at paragraph 110 but again only refer to the family returning to Gambia as a family unit rather than the Appellant being deported on her own.

3. Permission to appeal was granted by First-tier Tribunal Judge Landes on 13th April 2017 on the grounds that it was arguable that the judge failed to consider whether it would be unduly harsh for the Appellant's husband and son to remain in the UK without the Appellant. The judge found that they would in fact return to the Gambia with the Appellant, but as that would be a matter of choice for the Appellant and her husband (as the Appellant's son was a British citizen and her husband had extant leave to remain) it was still arguably relevant and material for the purposes of Article 8 to consider the position if they were to remain in the UK.

Submissions

4. Mr Duffy submitted that there was no challenge to the judge's finding in relation to his consideration of the family unit returning to Gambia. However, the judge had failed to consider the Appellant's return without her husband and son and, had he done so, he could have come to a different conclusion. The judge was obliged to consider this separation under the Immigration Rules and following relevant authorities. The Appellant's son would not be compelled to leave the UK because he could live with his stepfather, who had leave until next year, and the relevant factors were those existing at the date of the hearing. Further, the Appellant's husband was likely to be able to remain in the UK since he had no history of criminal offending and he was the carer of a British citizen child. Accordingly, his position could not be said to be precarious.
5. In relation to ground 2, the judge failed to give adequate reasons for what amounted to very compelling circumstances. The Appellant's son had lived in the Gambia until 2014 as had the Appellant. She was the daughter of the attorney general and the family could be said to be well-off. The judge's comment at paragraph 87 was unreasoned. The judge stated:
"I find that there is therefore a significant ongoing risk to the Appellant's father and by definition to herself and her family if not from the state itself, which is less likely, and from non-state agents who would clearly be aggrieved at the role her father played."
6. Mr Duffy submitted that, had the judge concluded the Appellant would be at risk on return, he should have allowed the appeal under the Refugee Convention or on humanitarian protection grounds. He failed to do so. The decision should be set aside and remitted to the First-tier Tribunal.
7. Mr Harding submitted that the judge was not obliged to look at the separation of the family unit because, on the evidence before him, that

situation would never arise. The evidence of the Appellant and her husband had been accepted: If the Appellant was deported, her husband and son would return with her to the Gambia and they would remain as a family unit. The judge did not have to look at the consequences of separation because the judge found as a fact that there would be no separation. The Appellant is able to take her British citizen son back to the Gambia and her husband said he would return with her. That was the factual situation which the judge had to address. If the judge had gone on to speculate as to the consequences of separation, then there would have been a ground of appeal on that basis.

8. In any event, any error by the judge in failing to consider the separation of the family unit was not material because the family had made a strong declaration that they would remain together. The concept of separation was not so significant that the judge had to deal with it, but had he done so he would have found that separation of the family unit would be unduly harsh on the particular facts of this case.
9. Mr Harding submitted that the judge had given adequate reasons for his conclusions. It was quite clear to the Respondent why she had lost the appeal. Reading the decision as a whole, it was thorough and the judge looked in detail at the impact that deportation would have on the family unit from paragraph 75 onwards. It was clear what the judge considered to be very compelling circumstances and he summarised them at paragraph 110.
10. Mr Harding represented the Appellant before the First-tier Tribunal and the judge had indicated that her Article 3 protection claim was not a strong one and was unlikely to succeed. However, any risk on return to Gambia was relevant to the judge's assessment of whether it would be unduly harsh for the family unit to return. It was a relevant consideration, but not a considerable one.
11. The Appellant's father was the former attorney general. The judge considered all relevant factors and had an evidential basis for the finding that he made at paragraph 87. This finding was open to the judge on the facts, which he had accepted and relied upon. This factual situation was also accepted by the Respondent in her refusal letter. There was no requirement for the judge to give any further reasons than he did at paragraph 87, but in any event this did not form a considerable part of the judge's decision in relation to deportation. The judge quite properly focused on the consequences to the Appellant's son and the circumstances of the Appellant herself.
12. Mr Harding submitted that this was one of the rare cases where there were indeed very compelling circumstances over and above those in the Immigration Rules. There was no error in the decision and the Respondent's appeal should be dismissed.

Discussion and Conclusion

13. The Appellant was sentenced to five years' imprisonment. Paragraph 399 of the Immigration Rules did not apply. The judge properly directed himself following Greenwood (No 2) (paragraph 398 considered) [2015] UKUT 00629 and concluded that there were very compelling circumstances over and above those described in paragraphs 399 and 399A. There was no error of law in the judge's failure to make a finding on whether it would be unduly harsh for the Appellant to return to the Gambia and for her son and his stepfather to remain in the UK.
14. The judge applied section 117C of the Nationality, Immigration and Asylum Act 2002. Exception 2 applies where a foreign criminal, C, has a genuine and subsisting relationship with a qualifying partner or child and the effect of C's deportation would be unduly harsh. The judge applied the correct test of very compelling circumstances over and above Exception 2. It was clear from the evidence, which was accepted by the judge, that the Appellant, her husband and her son intended to remain as a family unit in the event that she was deported.
15. The judge gave adequate reasons for why he found that they were very compelling circumstances over and above those described in the Immigration Rules and he summarised those at paragraph 110:
 - “(a) The damage that is likely to be caused to the Appellant's son's welfare.
 - (b) The fact that the Appellant herself and her son and family face some risk upon return to the Gambia because of her father's key role in supporting the former President Jammeh who had a notorious reputation for human rights abuses and corruption.
 - (c) The fact that according to Gambian culture the family are likely to face being ostracised which would have a significant impact notwithstanding the formally very privileged political circle that the Appellant's family was able to move in under the former president.
 - (d) The fact that the risk to the Appellant herself and her husband in that the association with their father had placed the whole family at risk of reprisals from non-state agents. Whilst that risk does not equate to a sufficiently serious risk to impact to engage the Refugee Convention or the ECHR it is nevertheless a significant factor that would affect their wellbeing and therefore that of her son.”
16. The judge expressed exactly why he found these reasons to be very compelling in paragraphs 75 to 108. The judge focused on the Appellant's conduct and the effect of her deportation on her son. He took into account all relevant factors and he gave a reason for why he did not allow the appeal under the Refugee Convention.

17. In any event, the judge's failure to address separation was not material to the decision. The Appellant's husband had limited leave to remain in the UK. He was not the biological father of the Appellant's son. The judge found that the Appellant had a very close and deep relationship with her son and he would face the most disruption should the Appellant be deported [77]. The judge found that there was overwhelming evidence before him of the detrimental effect the Appellant's imprisonment had on her son [78]. On the facts found by the judge, it would be unduly harsh to separate the Appellant and her son.
18. For these reasons I find that there was no material error of law in the judge's decision and he gave adequate reasons for his findings. The Secretary of State's appeal is dismissed. The decision of the First-tier Tribunal dated 9th March 2017 shall stand.

Notice of Decision

Appeal dismissed.

No anonymity direction made.

J Frances

Signed

Date: 16th June 2017

Upper Tribunal Judge Frances