



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03784/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 20th April 2018, typed,
corrected, signed and sent
to Promulgation on 17th
May 2018

Decision & Reasons Promulgated
On 21st May 2018

Before

Upper Tribunal Judge Chalkley

Between

MR DAWDA CEESAY
(~~ANONYMITY DIRECTION MADE~~/NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Semega-Janneh of Counsel, instructed by Star Immigration Advisers

For the Respondent:

Mr Bates, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 5th January 1985 and is a citizen of Gambia. He made application to the Secretary of State for recognition as a refugee. On 30th March 2017 the respondent refused his claim for recognition as a refugee and also refused his claim for humanitarian protection for reasons set out in an Annex 2 to the Secretary of State's letter of 30th March 2017.

2. The appellant made application for a visit visa to the United Kingdom on 14th January 2010 at the British High Commission in Banjul. He entered the United Kingdom and at the end of his visa did not depart. It appears that he was detained on 15th November 2016 and interviewed by an Immigration Officer when he applied for asylum.
3. The appellant appealed the decision of the respondent to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge O R Williams, sitting in Manchester on 17th May 2017. The basis on which the appellant claimed asylum was he came to the United Kingdom in February 2010 to visit his then wife, [EB]. In order to fund this trip he borrowed 56,000 dalasi, approximately £1,000, from a Mr Ndure. The appellant's friend's brother, a Mr Jallow, acted as the guarantor for the loan secured by a piece of land then valued, so the appellant claims, at apparently 1,000,000 dalasi. An official agreement, which was never actually produced by the appellant in support of his claim, was apparently drawn up, taking the title of the land as collateral security for the loan. The appellant explained Mr Jallow helped him this way because he was a friend of his brother. The land was not solely owned by Mr Jallow, but also by his family and the agreement was drawn up with the agreement of Mr Jallow's siblings. It seems rather odd that a formal loan agreement was drawn up taking the title of the land as security without the title ever having first been investigated. This does not appear to have been ever explained. The appellant had a verbal agreement with [EB] that she would give the appellant the money in order to return the loan on his return to Gambia. Unfortunately, the relationship did not work out and nine days before he was due to return [EB] refused to give him the money and ended their relationship.
4. The judge did not believe the evidence he heard. At paragraph 17 under the heading "Evidence which supports credibility" the judge said: "Notwithstanding anxious scrutiny there is no evidence which supports the appellant's credibility of the appellant's claim." Under the heading "Evidence which does not support credibility" the judge said: "There are a number of factors that do not support the credibility of the appellant's claim. Some of these factors seriously undermine that credibility."
5. The judge then went on to make the following findings at paragraphs 19 to 22:
 19. It is not reasonably likely that the appellant took out a loan/in dispute as claimed. I reach that conclusion for the following reasons.
 20. Firstly, it is reasonably likely that the appellant would not have had to borrow 56,000 dalasi (approximately £1,000) from a Mr Ndure in the first place. I reach that conclusion since it is evident from the visa application dated from 15th January 2010 (quoted as follows) that [EB] had employment with disposable income such that she could afford to travel to see him 'many times since 2002'. Moreover, the appellant was in receipt of financial support from [EB], 'money transfers seen' and [EB] had provided sufficient evidence to the ECO of her ability to support the appellant ('seen UK bank statement') for the 'two month visit to meet wife's family'.
 21. Secondly, it is reasonably likely that the appellant has fabricated his claim that [EB] refused to honour the agreement (that is, to give the appellant the loan money) as she discovered he was married. I reach that conclusion as I have the appellant's visa application before me to come to the United Kingdom from 15th January 2010. Contained within that application are records of [EB]'s direct email communication with the Home Office, which serve to undermine the appellant's credibility s a

reliable witness. I can place weight upon these emails as record of emails as they are a detailed and contemporaneous record of what occurred. I note that [EB] makes no mention of a belief that the appellant was married; if [EB] had knowledge that the appellant was married it is reasonably likely that she would have included that detail in the correspondence – as she included all other adverse detail:

‘I recently applied for a visa for my husband to visit the UK and to stay with me until 29th March 2010 on which date he would return to the Gambia. I would like to inform you that he is no longer staying with me at [], Shropshire has moved out after finding out his real intention are coming to the UK.’

And

‘I recently emailed you to let you know that [the appellant] left home on 20th March 2010. He was meant to be staying with me for seven weeks but after I found out that everything he had ever told me was a lie including his age, well I certainly would not have married him. Within days of arriving from the Gambia he had mail delivered to my address so that he had his plan of not returning to the Gambia well sorted. He is hoping to get into the British Army, whilst he was here with me I found photocopies of false academic certificates. Since he left I have had threatening texts from his friends. I have started divorce proceedings and would like to serve the papers on him ASAP so that I am not the one that shows on the army application as his sponsor. His last known address that he stayed at is [-, Lupset, Wakefield, West Yorkshire]. I have since found out that his family knew that he would not be returning to the Gambia. He was meant to return to the Gambia on 29th March 2010. ... Regards [EB].’

22. Thirdly, it is reasonably likely that Mr Jallow/his siblings would not have allowed their only high value family asset (worth far in excess of the small loan amount) to be put at risk on the basis that at some point in the future [EB] (who did not enter into any formal agreement) would repay the monies.”

6. The appellant challenged the judge’s determination and in granting permission Upper Tribunal Judge Plimmer said this:

- “1. It is arguable that the First-tier Tribunal has inverted the lower standard of proof at [20] to [22] and permission is granted on this basis only.
2. The grounds (which do not benefit from paragraph numbers even though they have been prepared by solicitors) merely disagree with the factual assessment and do not demonstrate any arguable error of law.”

7. Before me today I explained to the representatives that I had some difficulty in understanding the basis for the grant of permission, in that it appeared to me that the judge had not reversed the burden of proof, but had demonstrated that throughout he had applied the correct low standard of proof applicable in asylum claims. The appellant’s Counsel commenced his submissions to me by suggesting that the judge had erred at paragraph 20 because the appellant had only ever met [EB] in 2007 and previous visits were not known. It appears, however, from the determination that the [EB] had travelled to see the appellant many times since 2002. It then transpired that Counsel had not been given a copy of the grant of leave. I adjourned in order that he might see a copy and on resuming the hearing he told me that he had seen it and read it. He submitted that the judge had applied the wrong standard.

8. For the respondent Mr Bates relied on his Rule 24 response, in which he pointed out that the judge has not reversed the lower standard of proof. The burden of proof remained on the appellant and the judge clearly found against the appellant's credibility, concluding that it was not reasonably likely, i.e. that there was not a reasonable degree of likelihood that the claim was genuine for the reasons given in paragraphs 19 to 23.
9. I have carefully read the determination and I am satisfied that throughout the determination the judge has applied the correct burden of proof. There was no suggestion anywhere that I can see that he has applied the wrong burden of proof or that he has misapplied the burden. The burden throughout was on the appellant. I therefore concluded that the making of the determination by Judge O R Williams did not involve the making of any material error of law and I uphold the determination.

Richard Chalkley

Upper Tribunal Judge Chalkley