



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07486/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 24<sup>th</sup> July 2018

Decision and Reasons Promulgated  
On 30<sup>th</sup> July 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MF  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Z Harper, instructed by Camden Community Law Centre  
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed against the determination of First-tier Tribunal Judge M A Khan promulgated on 13<sup>th</sup> April 2018. The judge had dismissed the appellant's appeal, against the decision of the Secretary of State to refuse his claim, on asylum and human rights grounds. The appellant is a citizen of Gambia and he asserts that if returned he will be killed by the Gambian Police authorities. He also asserted that he had converted his religion from Muslim to Christian which put him at risk.
2. The grounds in the application for permission to appeal asserted the following:

(i) the judge failed to consider the claim with anxious scrutiny and failed to take account of the totality of the evidence before the tribunal. In particular the judge had no regard to the country expert report of Dr W Kodi dated 5 September 2017 which was directly relevant to the assessment credibility and plausibility claim. Indeed, the previous hearing on 5 September 2017 was adjourned so that a country report be obtained and at that point, the judge considered it was in the interests of justice that the report be produced. Further medical evidence submitted had not been considered.

(ii) the judge failed to give cogent reasons for rejecting appellant's credibility, asserting that the appellant had failed to explain the reason for aspects of his claim, when, in fact the appellant had given oral evidence on the point.

### **The Hearing**

3. At the hearing, Ms Isherwood conceded that the expert report had not been considered but she did identify that it had been challenged by the respondent.
4. Ms Harper submitted that it was clear that the expert report had not been even referred to by the judge. By medical evidence in fact the death certificate was the evidence identified as ignored and this gave medical reasons for the wife's death.

### **Conclusions**

5. I find a material error of law for these reasons. The judge failed to consider the expert report which is an error in itself, bearing in mind its relevance (**CM (Kenya)** [2007] EWCA Civ 312 - all aspects of the expert's evidence relied on should be addressed by a judge). This failure also indicated that anxious scrutiny was not applied. Nor did the judge refer to the death certificate, which Miss Harper submitted was directly relevant to the circumstances of the appellant's wife demise and was further illustration of his fear of return. As set out in the grounds of appeal there must be an assessment of external consistency and plausibility as per **KB and AH (credibility-structured approach) Pakistan** [2017] UKUT 00491. The judge's failure to consider the totality of the evidence contradicted the guidance in **Sivakumar v SSHD** [2001] EWCA Civ 1196.
6. The failure by the judge to consider the expert report and the death certificate, which was said to be an important aspect of the evidence, undermines the credibility findings by the judge. In view of my finding regarding the first ground, which fundamentally undermine the decision, it is unnecessary to make further observations in relation to the second. Both parties agreed that the matter should be returned to the First Tier Tribunal for a hearing de novo and so that full and adequate findings on credibility could be made.

7. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

**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 his 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 24<sup>th</sup> July 2018

*Helen Rimington*

Upper Tribunal Judge Rimington