



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-002184  
First-tier Tribunal No: HU/01254/2022

**THE IMMIGRATION ACTS**

**Decision and Reasons Issued:**  
**On 1<sup>st</sup> November 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MALIK KC**

**Between**

**AJI ANNA SECKA**  
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE**  
**FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: Ms Abigail Smith, Counsel, instructed by Turpin and Miller LLP

For the Respondent: Ms Sandra McKenzie, Senior Presenting Officer

**Heard at Field House on 13 September 2023**

**DECISION AND REASONS**

*Introduction*

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Broe (“the Judge”) promulgated on 6 March 2023. By that decision, the Judge dismissed the Appellant’s appeal from the Secretary of State’s decision to refuse her human right claim.

### *Factual background*

2. The Appellant is a citizen of Gambia and was born on 14 December 1977.
3. The Appellant claims to have arrived in the United Kingdom on 22 July 2002 with entry clearance as a visitor. She made a protection claim on 25 May 2006. The Secretary of State refused that claim, with a right of appeal, on 5 March 2007 and her appeal from that decision was dismissed on 19 November 2007. She made further submissions on 15 November 2013. The Secretary of State refused those submissions, with no right of appeal, on 9 July 2014. She made further submissions on 9 February 2022. The Secretary of State refused those submissions, with a right of appeal, on 11 July 2022.
4. The Judge heard the Appellant's appeal from the Secretary of State's decision on 3 February 2023. The Appellant abandoned the protection claim before the Judge and relied only on Article 8 of the European Convention on Human Rights. She claimed to have resided in the United Kingdom continuously for over 20 years. The Judge found that she had failed to prove the claimed continuous residence and held that her removal from the United Kingdom would be not be incompatible with Article 8. The Judge dismissed the appeal in a decision promulgated on 6 March 2023.
5. The Appellant was granted permission to appeal from the Judge's decision on 16 May 2023.

### *Grounds of appeal*

6. The pleaded grounds of appeal make a short point, namely, the Judge failed to consider material evidence and gave inadequate reasons for his decision.

### *Submissions*

7. I am grateful to Ms Smith, who appeared for the Appellant, and Ms McKenzie, who appeared for the Secretary of State, for their assistance and able submissions. Ms Smith developed the pleaded grounds of appeal in her oral submissions. She invited me to allow the appeal and set aside the Judge's decision. Ms McKenzie relied on her Rule 24 response. She resisted the appeal and submitted that the Judge's findings of fact were open to him and disclosed no error of law. She invited me to dismiss the appeal and uphold the Judge's decision.

### *Discussion*

8. The Judge, at [26], gave these brief reasons for holding that the Appellant was unable to prove that she has resided in the United Kingdom continuously for over 20 years:

“Her representatives have provided a helpful schedule of events in this country together with medical records. I note that there is very little evidence of her presence between October 2003 and 2005 which I note comes just after the time when she says she sent her daughter to Gambia. I note that there is no explanation for how she was able to send a baby from this country to Gambia. The medical records, which are not of course in her name, show regular attendance with her doctor but nothing between December 2008 and January 2010. The schedule also lacks detail for the period May 2009 to October 2010.”

9. The Appellant gave evidence before the Judge as to her claimed continuous residence in the United Kingdom. Her evidence was supported by statements made by Fatou Far and Laim Far. There is no engagement by the Judge in his reasoning as to the evidence given by those two individuals. The Judge, at [14], made a brief reference to those statements but made no reasoned decision as to whether to accept or reject the evidence. The Judge was not bound to accept those statements or to find that the Appellant has lived in the United Kingdom continuously for over 20 years. The Judge was, however, required to take those statements into account and engage with them in his reasoning. It appears from the Judge’s record of the submissions, at [15], that the Secretary of State did not seek to cross-examine those individuals and made no submissions about their evidence. I am satisfied that the Judge either failed to take into account these statements in making his findings or gave inadequate reasons in respect of the evidence contained in the statements.
10. The Judge also made no reference in his findings to the Appellant’s passport that was in evidence. The only stamp in the passport concerned her entry to the United Kingdom on 22 July 2002. The fact that there were no other stamps in the passport does not necessarily mean that the Appellant has resided in the United Kingdom continuously since her entry. It was, however, a piece of evidence that, on one view, was capable of supporting the Appellant’s account. It was for the Judge to decide as to how much weight to attach to the passport. The Judge could have attached no or little weight to it. The Judge, however, simply failed to take it into account or engage with it in his reasoning.
11. I entirely accept that I should not rush to find an error of law in the Judge’s decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this

instance, for the reason set out above, I am satisfied that the Judge's decision is materially wrong in law.

### *Conclusion*

12. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision and preserve no findings of fact.
13. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Broe.

### *Decision*

14. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

### *Anonymity*

15. In my judgement, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective, an anonymity order is not justified in the circumstances of this case. I make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Zane Malik KC  
**Deputy Judge of Upper Tribunal**  
**Immigration and Asylum Chamber**  
**Date: 18 October 2023**