Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07975/2014

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated**
On: 9th June 2015	**On: 20th July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

DS
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Rene, Counsel instructed by Queens Park Solicitors
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Gambia date of birth 16th February 1968. He appeals with permission[1] the decision of First-tier Tribunal (Judge RL Meates) to dismiss his appeal against a decision to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999. That decision followed from the Respondent's rejection of the Appellant's protection claim.

[1] Permission granted by First-tier Tribunal Judge McDade on the 11th February 2015

2. There were two planks to the Appellant's case. The first concerned his family and private life in the UK. He had entered the country as a visitor in 2003, overstayed and ten years later, on the 17th April 2013, made a claim under Article 8 on the basis of his long residence, and his relationship with a British national Ms J W. This ground of appeal was rejected by both Respondent and First-tier Tribunal, and there is no challenge to that decision.

3. The second plank of the case concerned the Appellant's claimed fear of persecution for reasons of his political opinion in Gambia. The Appellant asserts that he had been involved in politics in Gambia prior to coming to the UK in 2003; as a supporter of the United Democratic Party he had attended meetings and "observed" rallies. He had not taken a more active role because he was worried about the consequences at work – he was an employee of the state telecommunication company, Gamtel. Whilst in the UK in 2003 he had been told that his home had been searched, his car burned out and two of his close friends had been kidnapped. He decided to stay here because he was afraid to return home. He maintained his political beliefs, and was against the President of Gambia. He had attended demonstrations against the president whilst in the UK, in 2006, 2011 and 2014. He produced a DVD showing him on a demonstration which had been uploaded onto Youtube. He had blogged about political issues in Gambia.

4. The First-tier Tribunal rejected the account of political activity prior to coming to the UK. The Appellant's explanation as to why he failed to claim asylum at any point between 2003 and 2014 was rejected, and the Tribunal found there to be inconsistencies in the account. As for the *sur place* activity the First-tier Tribunal found there to be no evidence that the Appellant had attended demonstrations in the UK in 2006 and 2011. It was accepted that in 2014 he had taken part in a march from Trafalgar Square to Whitehall but the images showed this to be a "low level" demonstration and there was no evidence to suggest that the Gambian authorities had been made aware of it. The Appellant's blogs did not contain any overtly political content and again, it was not clear how the author "D" might be identified as the Appellant. The Tribunal found there to be no real risk of persecution in Gambia and the appeal was dismissed.

5. The grounds of appeal are that the First-tier Tribunal erred in:

    a) Failing to apply the ratio of YB (Eritrea) [2008] EWCA Civ 360. It is submitted that requiring the Appellant to establish that the Gambian authorities would know about, and act upon, opposition protests in foreign lands was perverse, given the evidence about the repressive nature of that regime;

    b) Failing to take account of country background material which indicated that the Gambian authorities did in fact monitor opposition activities abroad;

    c) Failing to give reasons for the finding that the demonstration of July 2014 was "low level"; the Appellant points out that the images produced show

the presence of prominent Gambian dissidents, notably the deposed Vice-President, Hon.Bakary Bunja Dabo;

d) The determination apparently accepts that the march went from Trafalgar Square to Whitehall but then finds it to "unclear" where the demonstration took place. This is contradictory.

6. The Respondent opposes the appeal on all grounds. It is submitted that the Judge gave sufficient reasons for finding that the Appellant's very limited involvement would not place him at risk.

My Findings

7. The Appellant relies on the well-known passage from the judgement of Sedley LJ in YB (Erirea) [2008] EWCA Civ 360:

> As has been seen (§7 above), the tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had "the means and the inclination" to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive.

8. This case did not concern Eritrea, but Gambia. The Appellant points to a good deal of evidence showing that the government in Gambia does suppress political dissent. There was one item in the bundle before the Tribunal concerning the arrest of a dissident who had attended a protest in the USA. The Appellant points to this as confirmation, if it were needed in light of YB, that dissident activity abroad is monitored by the Gambian authorities and that action is can be taken against protestors when they return home.

9. The First-tier Tribunal dealt with this aspect of the Appellant's case at paragraph 34. Having accepted that the Appellant did attend a demonstration in central London in July 2014 (some weeks after he had claimed asylum) the First-tier Tribunal concludes:

> "I note that the Appellant has not adduced any evidence either oral or in writing to suggest that the Gambian authorities were aware of his attendance at the demonstration. Given that he has friends within the police, National Intelligence Agency and the Immigration Department one would have expected the Appellant would have been able to adduce evidence that the authorities were aware of his attendance at this demonstration and that as a result he was at risk. He has failed to do so and as such I conclude that the authorities were unaware of his attendance at this demonstration".

10. I have considerable doubt about whether Lord Justice Sedley's logic in YB can be extended to apply to any country where human rights abuses take place. He was dealing with an appeal concerning the particular factual matrix relating to Eritrea, an exceptionally paranoid and zealously oppressive state. The country background material was such that it raised an inference that a demonstration outside of the Eritrean embassy in London would be monitored. It was accepted that photographs had been taken, but the Upper Tribunal had dismissed the appeal for the absence of the evidence that the Eritreans had the technology or inclination to identify nationals pictured in them. The inference drawn by Lord Justice Sedley therefore filled a far smaller evidential gap. The Tribunal in this case has simply accepted that the Appellant attended a "low key" demonstration in central London some miles from the Gambian High Commission. Even if I accept, applying the lower standard of proof, that some risk of identification could be inferred, the "real question" remains: would the Appellant simply be viewed by the Gambian authorities as an opportunistic hanger-on rather than an actual political opponent?

11. The First-tier Tribunal found that the Appellant had been in the UK since 2003 and that for eleven years he did not claim asylum. The Tribunal gave careful consideration to the reasons advanced for that delay, and to the Appellant's claims about his political activity prior to coming to the UK. His explanations were rejected. Having heard the oral evidence the Tribunal could not find, on the lower standard, that the Appellant had ever had any political involvement at all, or that he had ever done anything likely to attract the adverse attention of the Gambian government. In answer to Sedley LJ's "real question" the Appellant would appear to be the classic "opportunistic hanger-on". There was no evidence that he would face a risk on return to Gambia in these circumstances. Whether or not the First-tier Tribunal was entitled to dismiss the appeal for the reasons set out in the grounds, this cannot be shown to be an error such that the decision should be set aside. That is because it was the Tribunal's clear finding that the Appellant was not genuinely involved in politics; nor did he have a reason to fear return to Gambia.

Decisions

12. The determination contains no error of law and it is upheld.

13. In view of the subject matter of this appeal I am satisfied, having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential

Guidance Note No 1 of 2013: *Anonymity Orders,* that it would be appropriate to make a direction for anonymity and do so in the following terms:

> "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".

Deputy Upper Tribunal Judge Bruce
30th June 2015