Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08366/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke on Trent	**Decision & Reasons Promulgated**
On 8th June 2016	**On 21st July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MISS SATANG SANKAREH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar (Counsel)
For the Respondent: Mr A McVeety (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Somal, promulgated on 1st March 2016, following a hearing at Nottingham on 18th February 2016. In the determination, the judge dismissed the appeal of Miss Satang Sankareh, whereupon the Appellant applied for, and

was granted, permission to appeal to the Upper Tribunal, whereupon the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Gambia, who was born on 6th January 1972. She appeals against the decision of the Respondent Secretary of State, dated 13th May 2015, refusing her application for asylum and for humanitarian leave to remain. The Appellant had entered the UK on a visit visa on 9th February 2007, valid until 9th July 2007, and she failed to leave the UK when her visa expired. She had initially claimed that she could not return to Gambia because she did not have sufficient funds to buy a return ticket.

The Appellant's Claim

3. The Appellant's claim is that in the UK, she began to attend demonstrations outside the Gambian embassy, and attended three demonstrations. Students had been killed in Gambia although, she asserted that she did not know why students were killed in Gambia despite a feeling that she had "to act upon news of the deaths and demonstrate in the UK" (see paragraph 13 of the determination). She also protested because Gambia had been removed from the Commonwealth and, "she did not know why Gambia was removed from the Commonwealth" (paragraph 13). Her claim now was that, she believed that as she had demonstrated in the UK the authorities in Gambia "would have her name and a photograph of her" (paragraph 14). She had also attended meetings for the PPP or CDC - G (paragraph 14).

The Judge's Findings

4. The judge rejected the Appellant's claim on the basis that the Appellant had become politically active in the UK five years after she arrived. And this was after she had overstayed her visit visa. She had conceded that she had not been politically active in Gambia. Her distinct lack of knowledge and awareness of Gambian political issues and a sudden interest in becoming politically active pointed towards her "having acquired an ulterior motive to suddenly become politically active with a view to staying in the UK" (paragraph 35).

Grounds of Application

5. The grounds of application state that the judge erred in law because the Appellant's sur place activities came under the rule in **Danian [2000] Imm AR 96** so that even if the Appellant's activities politically in the UK were self-serving, it was arguable that the judge should have considered her claim in the context of the case law relating to sur place activities.

6. On 30th March 2016, permission to appeal was granted.

7. On 15th April 2016, a Rule 24 response was entered by the Secretary of State to the effect that the evidence relied upon by the Appellant that the Gambian authorities would put her at risk of persecution was unpersuasive because all that it showed was that the authorities have an unfavourable view of persons portraying the country in a negative light. The Appellant was a person who had limited knowledge of current politics in Gambia (see paragraph 13), and a lack of previous involvement in politics whilst in the Gambia (see paragraph 15), together with the poor knowledge of her purported political party (see paragraph 25), all of which fortified the finding by the judge that, "I find the Appellant has conjured up her alleged political activity in the UK in a disingenuous ploy to remain in the United Kingdom" (see paragraph 51). There was no arguable error of law.

Submissions

8. At the hearing before me on 8th July 2016, Mr Jafar, appearing on behalf of the Appellant, submitted that at page 71 of the Appellant's bundle there was clear objective evidence that the government had a zero tolerance policy towards people who portrayed the Gambian government in a negative light. People who did so would "pay a high price" and be convicted of treason. At page 98 there is the OGN report that those who are perceived to be insurgents would be persecuted. Even those who took refuge abroad by taking part in demonstrations would be at risk. Mr Jafar accepted that each case must be considered individually, but upon consideration of this particular case, it was clear that the government authorities had a zero tolerance policy which was very severe against its detractors. At paragraph 32 the judge refers to an article from Jollof News dated 7th August 2014, "Canada based Gambian flees Gambia" and this contains the report of a young man who took part in anti-government demonstrations and who was targeted by the authorities and mistreated. Such is the prospect that awaits this present Appellant.

9. If one looks at the nature of the demonstrations that the Appellant attended (at page 46) it was clear that she would be at risk (see page 47) because these are small demonstrations whereby the Appellant would be easily identifiable. The photographs are such that the Appellant would be identified. Finally, in **YB (Eritrea) [2008] EWCA Civ 360**, the Court of Appeal stated that, as has been seen, 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".

10. Mr Jafar submitted that what **YB** pointed to was a scenario whereby the suppression of political opponents by a named government would require,

> "little or no evidence or speculation to arrive at a strong possibility that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among ex-patriot oppositionist organisations who can name the people who are filmed or photographed."

In these circumstances, and given what the Court of Appeal had said, the judge was wrong not to have considered the possibility of the Appellant being persecuted upon return, simply because she would be perceived as a threat by a government that was known to be suppressing political opponents.

11. For his part, Mr McVeety submitted that in looking at the particular individual circumstances of this case, it was clear that there would be no risk of persecution on the lower standard. The starting point here was someone who had no political involvement with anything whatsoever prior to her coming to the UK. She exhibited no political knowledge and no particular interest in political parties. She was regarded as disingenuous by the judge. Those findings are unchallenged by the Appellant in this appeal. It was all very well to place reliance upon the case of **YB (Eritrea)** but the fact was that that case did not show that there are facial recognition techniques that would be applied in situations where photographs are taken, because if one looks at the photographs in this case, (particularly at pages 75 to 76), it is clear that the Appellant is a person, who not only has her head covered, but whose face is very hard to distinguish and identify.

12. At this juncture, however, Mr Jafar interrupted to say that some of the photographs do demonstrate the Appellant as being a person who can be identified.

13. Mr McVeety continued that it was pure speculation to suggest that the Appellant would be identified, as a person who had no political involvement prior to coming to the UK, and even in the UK did so after five years' residence here, because she would simply not to be of interest to the authorities there. Unless the Appellant could demonstrate why there was a strong possibility that her photograph would be used by informers to identify her and place her at risk, she could not succeed. Even if one accepted, as one must, that one did not have to be a genuine political activist to incur the risk of persecution upon return, the fact here was that one had to be identified as such a person before that risk could attach. Nothing that the Appellant had said would demonstrate that on the facts of this case. The Appellant was not on the radar of the authorities. They would not even know that she had previous political activities when she returned.

14. In reply, Mr Jafar submitted that if one looks at the demonstrations that the Appellant had been involved in, these were small demonstrations, and were not numbering in their thousands. There is no need for facial recognition software in circumstances where one was looking at a country

which strongly suppressed political opposition because that in itself would lead to a strong possibility that the Appellant would be at risk. The OGN itself states that the authorities' attitude to demonstrators left much to be desired. The fact was that the Appellant's sur place activities had not been properly considered in terms of the risk that would attach to her upon her return to the Gambia. This was the main question.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

16. Whereas reliance is not infrequently placed upon the case of **Danian [2000] Imm AR 96** for the proposition that sur place activities, even when conducted in bad faith, can give rise to a viable claim for refugee asylum status, it must not be forgotten that Sedley LJ did emphasise in that case that the commission of sur place activities in bad faith must be understood in the context that, "nothing in it should be read as giving any kind of green light to bogus asylum seekers". That is a proper way in which the strictures of that case should be interpreted. This is a case where the judge has comprehensively considered all the evidence that has been put before her. The judge observes that the Appellant's production of an article from Jollof News dated 7th August 2014, referring to the young man who had been involved in a demonstration and who had then been detained led to the assumption that authorities can infiltrate demonstrations (see paragraph 32). The evidence produced by the Appellant (at page 46) addresses this point.

17. However, the judge considers this entire claim in the context of the fact that the Appellant only became politically active in the UK five years after she arrived, having overstayed her visa, and could not explain her sudden interest in becoming politically active, especially when she had displayed a distinct lack of knowledge and awareness of Gambian political issues. The Appellant gave details of the CDC-G in her asylum interview and presented her membership card. The site was not active and in her oral evidence she claimed that the site was down at the time.

18. The judge observed how she had produced no evidence of that from the CDC-G and given no evidence to show that it became an active website after the Home Office checks. Her membership card produced bore no photograph of her, no signature, and no email address and no landline number (see paragraph 35). These are very significant matters that the judge took into account and go directly to the observation by Lord Justice Sedley that nothing in **Danian** should be considered to give the green light to bogus asylum seekers.

19. But it does not end there. The judge considered in detail the evidence that the Appellant relied upon. She observed how, most of her evidence is that she attended political meetings which I reject as she has failed to produce any evidence of that, other than minutes showing she was not present. She has produced evidence of photographs and a YouTube video of an anti-government demonstration shortly before she made her claim for asylum. She has failed to explain why these posts would bring her to the attention of the Gambian authorities or her former husband who she claims to be an Immigration Officer, which I have rejected such that they would have any interest in her on the basis of a few posts (paragraph 41).

20. This was a conclusion that the judge was entitled to come to. This is particularly the case given that the judge observed that,

> "I have had regard to the objective evidence including the country guidance and there is nothing to show the Gambian authorities would have any interest in her or would be able to identify her on the basis of the posts which she is seeking to rely on. I find this mere speculation on her part" (paragraph 41).

That is a conclusion that the judge was entitled to come to. She did so on the evidence that was before her.

21. In the circumstances, the judge was entitled to conclude that "the Appellant has conjured up her alleged political activity in the UK in a disingenuous ploy to remain in the UK" (paragraph 41), and her return to Gambia would not lead to her persecution, on the lower standard because, having "had regard to the objective evidence including the country guidance" there was nothing to show that the Gambian authorities would have any interest in her. That was a conclusion that the judge would come to. The judge was clear that the Appellant would not be identified in the manner that she alleged. There is no error of law.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 20th July 2016