



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01073/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 24 May 2017

Promulgated

On 25 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

**MR ABOULIE (AKA LAMIN K) JAMMEH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J M Rene, Counsel (instructed by Queen's Park Solicitors)

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Grant-Hutchison on 11 April 2017 against the determination of First-tier Tribunal Judge Pears who had dismissed the protection and human rights appeal of the

Appellant. The decision and reasons was promulgated on 15 March 2017.

2. The Appellant is a national of Gambia. His identity and date of birth were disputed. The Respondent further disputed the Appellant's assertion that he had entered the United Kingdom clandestinely in 1997 and had not left since then. It was common ground that the Appellant has always been in the United Kingdom illegally. His immigration history is set out in detail at [3] onwards of the decision and reasons and need not be repeated here.
3. The judge dismissed the Appellant's protection appeal. That dismissal has not been challenged by the Appellant and is of no further concern.
4. The judge found that the Appellant had been living with his British Citizen partner since 2012 and was integrated into her and her family's lives. It was accepted before the judge that the Appellant was unable to satisfy the requirements of Appendix FM of the Immigration Rules. The judge also found that the Appellant was unable to meet paragraph 276ADE. In effect the judge applied section 117B of the Nationality, Immigration and Asylum Act 2002 as well as Chen [2015] UKUT 00189 (IAC) and found that a temporary separation pending entry clearance was proportionate in Article 8 ECHR terms. The judge ultimately dismissed the appeal on that basis.
5. Permission to appeal was granted because it was considered arguable that the judge had accepted the Appellant's identity as Abdoulie Jammeh at the start of the hearing and had thus forestalled submissions on that issue which would otherwise have been made. It was also arguable that the judge had erred in his approach to Article 8 ECHR because he had failed to consider the Appellant's partner's circumstances in being able to relocate and integrate into Gambia.
6. Directions were made by the tribunal, including that the judge provide his comments on the assertion that the Appellant's identity had been categorically accepted by him at the start of the hearing. The judge robustly dissented from any such assertion.
7. A rule 24 notice opposing the appeal was filed by the Respondent, in letter form dated 26 April 2017. There it was

stated that the Home Office Presenting Officer who had appeared before the judge had no note supporting the assertions made on the Appellant's behalf.

Submissions

8. Mr Rene for the Appellant relied on the grounds of onwards appeal and grant. He submitted an email with accompanying manuscript notes of the First-tier Tribunal hearing, prepared by his instructing solicitors. He accepted that the notes were difficult to decipher. Mr Rene also submitted that the Home Office had failed to support their identity evidence sufficiently, in that photographs of the Appellant on visa matches had not been provided. The other "Mr Jammeh" had entered the United Kingdom as a spouse.
9. Mr Duffy for the Respondent relied on the rule 24 notice and submitted that there was plainly no material error of law. It had been accepted that Appendix FM had not been met and the judge's Article 8 ECHR findings were open to him. The onwards appeal should be dismissed.

No material error of law finding

10. In the tribunal's view the grant of permission to appeal was far too generous, and was not based on a proper reading of the decision and reasons. The heading of the appeal merely reproduced the title of the case for administrative purposes and was not part of the judge's decision. It was plain from any sensible reading of the decision that the Appellant's identity was one of the central issues in this appeal. There was no reliable independent documentary evidence before the tribunal which could possibly have led to the very experienced judge making a statement that he accepted that element of the Appellant's case before hearing the oral evidence and submissions. The decision and reasons shows that the summary of the evidence as to identity was followed by a discussion and findings: see [56].
11. The manuscript note of the hearing produced on the Appellant's behalf fails to support the assertion made in the permission to appeal application. The Home Office Presenting Officer had no note supporting the assertion, which was above all refuted by the judge. At best, the tribunal finds that

the Appellant and his solicitors were subject to a misunderstanding for which the judge had no responsibility and heard what they had wanted to hear, rather than what was said. There was no procedural unfairness.

12. Mr Rene's submissions (or perhaps observations, as he made it clear that he was following his instructions) as to evidence from the Home Office tended towards rearguing the appeal, an appeal which, it must be observed, had been heard and dismissed previously, and to which **Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka *** [2002] UKIAT 00702 applied. They were not points which had been taken before Judge Pears. It is too late for them to be taken now, and in any event they take the identity issue no further as the burden was on the Appellant to prove long residence.
13. There was no suggestion that the very experienced judge had misunderstood any of the evidence. He examined the family situation with care and was entitled to find that the obvious, reasonable and proportionate option was for the Appellant to return to Gambia and to seek entry clearance from there under the Immigration Rules.
14. Mr Rene did not seek to argue that there were any exceptional circumstances applicable to the appeal which had been overlooked by the judge.
15. Plainly, as the judge securely found, the Appellant and his partner have several reasonable options open to them for the continuation of their family life, i.e., to travel to Gambia together on a visit while entry clearance is sought or to separate on a temporary basis while the Appellant obtains entry clearance on the terms prescribed by the Immigration Rules. The tribunal finds that the onwards appeal has no substance and that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed

Dated 24 May 2017

Deputy Upper Tribunal Judge Manuell