Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number**
PA/12919/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision and Reasons Promulgated**
On 5th February 2018	**On 20th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

HADDY JATOU NDOYE
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Trevelyan (Counsel, instructed by Kenneth Jones Solicitors)
For the Respondent: Ms A Aboni (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant, a citizen of Gambia, entered the UK as a student in 2005, her immigration and criminal history is set out in the Tribunal papers and summarised in the decision of Judge Borsada that is under appeal. The Appellant's claim was that she had been in an abusive marriage and would be in danger from her ex-husband on her being returned to Gambia. For the reasons given in the decision promulgated on the 23rd of March 2017 the Appellant's claim was rejected and the appeal dismissed.

2. The Appellant's claim was set out at paragraph 5 of the decision and the findings at paragraphs 8 to 11 which included the Judge's reasoning. The Judge had regard to the arrest, imprisonment and deportation of the Appellant's ex-husband in 2013, the advice and support the Appellant had access to, her mental health and the delay in making the claim. The Judge did not accept that the single email from the Appellant's ex-husband showed that she would be at risk in Gambia and there was no evidence to show that honour killings took place in Gambia.

3. The application for permission to appeal of the 4th of April 2017 argue that the Judge's approach the Appellant's credibility was flawed and focussed on section 8 issues which should not be a starting point. The Judge had not properly considered supporting evidence and the threats that the Appellant's mother had received had not been factored into the assessment. It is also argued that the Judge erred in attaching no weight to the email from the Appellant's ex-husband. Permission was granted by Judge Shaerf on the 26th of July 2017 it being arguable that the Judge's treatment of the credibility issues in paragraphs 6 and 10 were arguably deficient.

4. At the hearing it was submitted that the contents of paragraph 9 were not a rounded consideration of all section 8 matters and section 8 was not the starting point but only one factor to be considered. By paragraphs 9 and 10 credibility had already been decided. In paragraph 6 it was wrong to describe the evidence as self-serving without giving reasons.

5. For the Home Office reliance was placed on the rule 24 response and it was submitted that the Judge had directed himself appropriately and was entitled to place weight on the Appellant's delay in claiming and the Judge had considered the factors involved. There had been no satisfactory evidence of domestic violence and it was open to the Judge to reject those claims. In summary the grounds were a disagreement with findings properly open to the Judge.

6. In reply it was submitted that the Appellant's reason for not reporting the domestic violence was consistent with the objective evidence. Finding the delay to be unreasonable compounded the error. The only evidence of domestic violence would be police reports and if it was reasonable not to report there would be no evidence. The finding of risk on return was coloured by the previous credibility assessment.

7. There is guidance from Burnett LJ in EA v SSHD [2017] EWCA Civ 10 who at paragraph 27 gave made the following observations:

> *"Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention dicta from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in Piglowska v Piglowski [1999] 1 WLR 1360, 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He added that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding."*

8. Even without section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 a delay in making a claim for asylum would be relevant in the assessment of credibility. Clearly it would not be a simple exercise that delay inevitably undermines the credibility of a Appellant. In assessing the delay in the Appellant's claim the Judge had regard to a range of factors that had to be considered.

9. The Appellant's ex-husband's circumstances were relevant and as the Judge noted in paragraph 9 the Appellant had indicated that she was aware that the situation for women was different in

the UK from that in Gambia. In addition the Appellant had access to support and information and that was in the absence of her husband. In paragraph 10 the Judge considered the evidence relating to the Appellant's mental health. The medical evidence referred to suggested that there had been no physical violence and that the GP was aware of that. The Appellant would have had access to legal advice when she was facing the criminal charges over the false passport and whilst that might not have been from immigration lawyers she would have had the opportunity to discuss what she said had occurred and could have been directed to an appropriate firm for assistance.

10. The delay also indicated that the Appellant was in the UK without any leave from 2011 onwards and away from her ex-husband from 2013 onwards. The willingness to remain in the UK in such circumstances was also relevant. It is interesting to note that she was willing and able to obtain a false passport but not the advice that would enable her to remain lawfully.

11. In effect the Judge considered the Appellant's circumstances chronologically and cannot be criticised for that. Also the decision has to be read as a whole, it is clearly not the case that he simply took the delay by itself as undermining the Appellant's credibility – it was assessed in the round and I find that there is no delay in that part of the decision.

12. The reference to the oral evidence and written evidence of the Appellant's mother being self-serving is perhaps an odd use of the phrase. However the Judge was entitled to look at that evidence to see if it added to the Appellant's case and explained other evidence that was available and he took the view that it did not as he was entitled to.

13. With regard to the circumstances in Gambia these were considered in paragraph 11. It is not suggested that the Judge's observations that there was no evidence that the Appellant's "uncle" was a man violent or had used violence was an incorrect assertion or that there was evidence to the contrary. Besides the evidence of connection was a photograph of the Appellant's mother sitting next to him, that was not taken by the Judge to be significant and that a fair assessment in addition to the lack of evidence of other influence or violence.

14. The Judge was faced with a single unrepeated email from the Appellant's ex-husband and not a campaign of abuse and harassment and the single email from November 2015 had to be seen in that context. That was also in the context that there was evidence before the Judge that there had been no physical violence before they had separated. The fact that may be explanations for the Appellant not going to the police including cultural considerations does not mean that those are the only reasons she did not go, there being nothing to complain about is also a reason that had be to considered and taking an overall assessment was one that was open to the Judge.

15. I find that as drafted the grounds are no more than a disagreement with findings that were open to the Judge for the reasons given in the decision. The findings made were not undermined by errors of law and the decision was made properly on the evidence. I find that there was no error by Judge Borsada.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 13th February 2018