Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/00565/2015**

THE IMMIGRATION ACTS

Heard at Field House
On 9th October 2015

Decision and Reasons Promulgated
On 20th October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

ABDUL MOHAMMED BADJIE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Sesay of Duncan Lewis, solicitors
For the Respondent: Ms E Savage, senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judges Cheales and Woodward promulgated on 11 March 20015, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 18 November 1980 and is a national of Gambia.

4. On 24 December 2014 the Secretary of State refused the Appellant's application for asylum.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. A panel comprising First-tier Tribunal Judges Cheales and Woodward ("the Judges") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged, and on 7 July 2015 Upper Tribunal Judge Lindsley gave permission to appeal stating *inter alia*

> "The first-tier tribunal have not examined, at paragraph 31 of the decision or elsewhere, the risks the appellant may face even if his political activities in writing articles is correctly assessed as self-serving, which is something they must do – see Danian v SSHD [1999] EWCA Civ 3000……. It is arguable that insufficient reasons for a lack of risk are given at paragraph 31 of the decision as it is not clear why lack of a photograph of the appellant would mean the appellant could not be identified."

The Hearing

7. Mr Sesay, for the appellant told me that the decision is tainted by material errors of law because inadequate reasoning is set out in the decision. He adopted the terms of the skeleton argument which had been lodged, and drew my attention to [23]. He told me that the starting point of the Judges' reasoning commences with an attack on the appellant's credibility. He told me that [24] to [31] lacks any reasoning and that those paragraphs of the decision are devoid of findings of fact. In summary, he submitted that the decision is not adequately reasoned, and that the appellant is not given adequate notice of the reason his appeal was dismissed. He relied on MK (duty to give reasons) Pakistan 2013[UKUT]000641 & ML (Nigeria)v SSHD [2013] EWCA Civ 844. Mr Sesay focused on [27] and told me that, at best, only lip service has been given to the principles set out in Danian v SSHD [1999] EWCA Civ 3000.

8. Miss Savage, for the respondent, told me that the judges were correct to focus on the appellant's credibility and that the decision does not contain a material error of law. She told me that between [8] and [19] the Judges set out the appellant's account in detail and between [23] and [31] they specify why the appellant's claim is not considered credible. She relied on R *(*Iran*)* v SSHD [2005] EWCA Civ 982, arguing that there is no duty on the Judges to carry out a clinical exegesis of every single point raised. She told me that the decision is a careful, well-reasoned decision containing findings of fact which were properly open to the panel of Judges on the basis of the evidence led. She urged me to dismiss the appeal.

Analysis

9. The Judges carefully set out the appellant's detailed account between [6] and [19]. Between [23] and [31] the Judges set out the reasons for rejecting the appellant's claim. They commenced by finding that the appellant's apparent delay in claiming asylum damages his credibility. Between [27] and [31] the Judges deal with the appellant's sur place activities. It is crucial to the appellant's claim that he has been active in opposition politics in the UK, & that he published an open letter calling for the impeachment of the Gambian President. At [27] the Judges take guidance from the case of BA (demonstrators in Britain -risk on return) Iran CG [2011] UKUT 36 (IAC). At [31] the Judges find that the articles written by the appellant are self-serving and place that finding in the context of the findings that the appellant is not a credible witness before reaching a conclusion that *"....the appellant is not a committed opponent of the Gambian regime with a significant political profile*"

10. Although the judges to guidance from the case of BA, it is not obvious from the decision that they consider the fundamental principles set out in the cases of Danian v SSHD (2002) IMM AR 96 & YB (Eritrea) v SSHD 2008 EWCA Civ 360**.** The absence of appropriate self-direction and the lack of reference to the guidance contained in the case law is an indicator that the judges have not correctly directed themselves in law

11. In Danian v SSHD (2002) IMM AR 96 the Court of Appeal said that there is no express limitation in the Convention in relation to persons acting in bad faith, despite Counsel's attempt in Danian to have one implied. In the court's opinion the answer to the '*riddle*' lay in the judgement of Millet J in Mbanza (1996) Imm AR 136. Millet J said "*The solution does not lie in propounding some broad principle of abuse of the system....but in bearing in mind the cardinal principle that it is for the applicant to satisfy the SSHD that he has a well-founded fear of persecution for a Convention reason. Whether he can do so will largely turn on credibility and an applicant who has put forward a fraudulent and baseless claim for asylum is unlikely to have much credibility left*."

12. In YB (Eritrea) v SSHD 2008 EWCA Civ 360 the Court of Appeal sounded a note of caution in relation to the argument that, if an appellant was found to have been opportunistic in his sur place activities, his credibility was in consequence low. "*Credibility about what?",* said the Court of Appeal. If the appellant had already been believed ex hypothesi about his sur place activity, his motives might be disbelieved, but the consequent risk on return from his activity sur place was essentially an objective question.

13. In BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) the Tribunal held that, given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking

asylum in Britain. It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.

14. Although the Judges find that the appellant is not a credible witness between [23] and [26], apart from declaring that the appellant's delay in claiming asylum damages his credibility the Judges do not say why they find the appellant to be neither credible nor reliable witness. They simply reject his account. At [30] & [31] the judges find that the political articles written by the appellant are self-serving, but they do not go on to assess any risk which may be created to the appellant as a result of political activities, regardless of the motivation for those activities. Such an assessment is required by the case-law narrated at [11] [12] and [13] above.

15. The net effect is that when the appellant reads the decision the appellant can see that his appeal has been dismissed, but he is not told exactly why his appeal was dismissed. I therefore find that the decision is tainted by material errors of law because it is not clear that the Judges have properly directed themselves in law, nor is it apparent from the decision that the guidance contained within the case-law has been followed.

16. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

Conclusion

17 I find that the Judges' decision is tainted by material errors of law. The Judges' decision cannot stand and must be set aside in its entirety. All matters to be re-determined afresh.

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. In this case I find that the case should be remitted because of the extent to which judicial fact finding is necessary for the decision in the appeal to be re-made. In this case none of the findings of fact are to stand; the matter requires a complete re-hearing.

20. I consequently remit the matter back to the First-tier Tribunal to be heard before any First-tier judge other than First-tier Tribunal Judges Cheales and Woodward.

Signed Date 16 October 2015

Deputy Upper Tribunal Judge Doyle