



IAC-HW-AM-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/00419/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12 April 2016**

**Decision & Reasons  
Promulgated  
On 15 April, 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**SORIBA SANYANG  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Rene of Counsel instructed by Queen's Park Solicitors  
For the Respondent: Mr C Avery, Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a national of the Gambia born on 19 February 1967. On 8 December 2007 he had arrived and was given leave to enter as a visitor until 24 April 2008. He states he is a widower with four children in the Gambia born in 1990, 1992, 1995 and 1998. He also had a brother and three sisters in Gambia. There was neither information nor documentary evidence about his wife's death. On 8 October 2015 he entered into an

Islamic form of marriage with Cheryl Lee Miles a British citizen born on 7 December 1973. She has a daughter born in 1997.

2. The Appellant stated he had joined the Gambian National Army in 1987 and had risen from the ranks to become a captain.
3. Following arrival, he remained in the country but did not come to the attention of the immigration authorities until he attended the Asylum Screening Unit at Croydon on 8 December 2014 when he sought asylum because he feared return to the Gambia on account of imputed political opinion, namely that he was associated with those involved in the unsuccessful coup of March 2006: see paragraph 10 of the Appellant's statement of 15 January 2015. He had brought himself to the attention of the Respondent following the advice of a solicitor given to him and his partner Cheryl Miles in October 2014: see paragraph 24 of his unsigned statement December 2015 .

### **The Respondent's Decision**

4. The Appellant was screened on 16 December 2014 when he was detained. On 5 January 2015 the Respondent conducted a substantive interview and on 7 January 2015 she refused his claim for asylum under the Refugee Convention and for humanitarian protection under the Qualification Directive. She also proposed to make directions for his removal to Gambia.
5. On 8 January 2015 the Appellant through his then solicitors lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds asserted the Appellant was at risk on return because anyone suspected of involvement in a coup in the Gambia is executed or imprisoned, whether or not the suspicions are justified. The Appellant had fled while being investigated in connection with the abortive 2006 coup and the authorities in the Gambia have stated that army deserters, in particular with reference to a failed coup attempt of December 2014, will be severely dealt and were at real risk of serious ill-treatment or death. The grounds also raised claims under Articles 2, 3 and 8 of the European Convention in response to a notice previously given to the Appellant under Section 120 of the 2002 Act. The grounds refer to his relationship with Cheryl Miles.
6. The Appellant's claim was dealt with pursuant to Rule 1(3) and Schedule Rule 1(3) to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and refused. The appeal was heard on 2 February 2015 and dismissed by as determination promulgated on 8 February 2015.
7. On 12 October 2015 the President of the First-tier Tribunal (Immigration and Asylum Chamber) issued a Notice of Decision under Rule 32 stating that in the light of the judgment in the *Lord Chancellor v Detention Action [2015] EWCA Civ 840* the 8 February 2015 decision should be set aside.

8. By a decision promulgated on 8 January 2016 Judge of the First-tier Tribunal Robinson made credibility findings adverse to the Appellant and dismissed the appeal on all grounds.
9. On 4 February 2016 Judge of the First-tier Tribunal Fisher refused the Appellant permission to appeal. He noted that in *YL (rely on SEF) China [2004] UKIAT 00145* it had been held that the answers given at screening may be compared with answers given later and also that Judge Robinson was entitled to make his adverse finding by way of reference to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 because the Appellant had not sought asylum until more than six years after expiry of his leave to enter as a visitor and at paragraph 64 of his decision he had highlighted what he found to be material inconsistencies in the Appellant's account. The Judge's conclusions were sustainable and so permission was refused.
10. The application for permission to appeal was renewed to the Upper Tribunal on the same grounds and on 26 February 2016 Upper Tribunal Judge Finch granted permission to appeal relying on paragraph 19 of *YL* that "it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the SSHD to ask supplementary questions". She considered Judge Robinson had made an inference adverse to the Appellant because he had not named his friends who had been prosecuted for their part in the abortive coup of 2006 when he had been screened. Further, it was arguable Judge Robinson had given disproportionate weight to the Appellant's delay in claiming asylum as to which she cited *SM (Section 8: Judge's process) Iran [2005] UKIAT 00116*.
11. The third ground for permission to appeal was that Judge Robinson had given inadequate reasons for his conclusions that the documents supplied by the Appellant did not show he was an army deserter and the mere fact of his lengthy absence from his military job in the Gambia did not mean he was a deserter. Further, a man of his rank and length of service would not have fled his home country to the uncertain life of an asylum seeker and nine months' immigration detention in the United Kingdom without substantial reason.

### **The Upper Tribunal Hearing**

12. The Appellant and his partner attended the hearing. I explained to the Appellant the purpose of the hearing and the procedure to be adopted.

### **Submissions for the Appellant**

13. Mr Rene dealt with grounds 1 and 2 of the permission application together. His submissions focussed on the weight to be given to the screening discussed at paragraphs 50 and 54 of the Judge's decision. Mr Rene referred to page 2 of the record of the screening which required the following to be read out to the Appellant:

The questions I am about to ask you relate to your identity, background and travel route to the United Kingdom. The information you will be asked to provide will be used mainly for administrative purposes. You will **not** be asked at this stage to go into detail about the substantive details of your asylum claim as, if appropriate, this will be done at a later interview. However, some details you will be asked to provide may be relevant to your claim.

He said Judge Robinson had erred in taking any credibility point in respect of the replies given at the screening. Such failure affected the weight which could be given to the reasons the Judge gave for making a credibility finding adverse to the Appellant. Mr Rene made a generic reference to the determination in *Chiver [1997] INLR 212* explaining that what mattered was the core of the Appellant's claim. Mr Rene suggested that Judge Robinson having erred in taking a credibility point on the screening had mis-directed himself with regard to his other findings.

14. He pointed out there was no dispute on the objective material or on the expert report referred to in paragraphs 68 and 69 of the decision. Further, the Respondent accepted in reliance on the substantive interview that the Appellant had served as a captain in the Gambian National Army.
15. Mr Rene then turned to the Judge's treatment of the Appellant's delay in claiming asylum and Section 8 of the 2004 Act. He referred generically to the determination in *SM* and submitted that having regard to Section 8 of the 2004 Act, the issue was what weight was the Judge to give to the evidence.
16. Turning to the third ground, Mr Rene said it was accepted the Respondent's treatment of the documents which the Appellant had produced could not be criticised but it had been incumbent on the Judge to look at the evidence in the round and the essential document was the record of the substantive interview of the Appellant and the background material about the treatment of army deserters in the Gambia to be found at pages 23-126 of the Appellant's bundle for the hearing before Judge Robinson. As the Respondent had accepted the Appellant was an officer in the Gambian Army there was no reason why he should have left the country unless what he asserted in his asylum claim was true.
17. He continued that the Judge had given inadequate reasons for the conclusions reached at paragraph 69 which formed the basis for his rejection of the assessment of risk contained in the expert report of 28 January 2015 prepared by Ebrima Ceesay. The Appellant was a deserter or a political opponent of the then President. At interview reply 135 he had said he had not gone to work on the day he was due to report but had informed his employers he was ill and consequently there was no reason to suggest he was then suspected of desertion. He only became a deserter when he fled the Gambia. He concluded that the decision should be set aside.

### **Submissions for the Respondent**

18. Mr Avery submitted the decision contained no material error of law. The screening was obviously not a full interview but the Judge was entitled to comment on the omission of key elements in the Appellant's account from mention at screening. At paragraphs 50, 54 and 62 of his decision the Judge had identified a number of implausibilities or credibility points which went to the core of the Appellant's narrative and had noted at paragraph 62 that the screening did not take place on or shortly after the Appellant's arrival but that he had had time to prepare and marshal in his mind details of the most important element of his claim. The claim was based at least in part on guilt by association with unsuccessful coup plotters but he had not mentioned them when screened.
19. Turning to the issue of the Judge's treatment of Section 8 of the 2004 Act, the delay of six years in claiming asylum was in itself and by itself damaging to the Appellant's credibility. The Judge had made a full and proper assessment of the substance of the Appellant's claim and had given sustainable reasons for his adverse findings. There were issues about the connection of the Appellant to the coup plotters and the Judge had identified a number of credibility issues in that respect. At paragraph 64 the Judge had referred not only to the Appellant's delay in claiming asylum but also to inconsistencies in his own account and the absence of any evidence other than bare assertion of his connection to the coup plotters. The Judge had given proper reasons for not accepting the expert's risk assessment as applicable to the Appellant. There was no error of law in the decision which should be upheld.

### **Further Submissions for the Appellant**

20. Mr Rene referred to the record of the screening and submitted that the Appellant at screening had given an adequate outline for the basis for his claim which he had fleshed out at the substantive interview. He referred to paragraph 13 on page 9 of the expert report. This states:-

Question iii The Appellant was not arrested and questioned in connection with the foiled coup till September 2007, is it true that the enquiry into the foiled coup was still ongoing at that time?

Some of the men alleged to have taken part in the March coup attempt were being investigated up to late 2009. For example, Lt General Lang Tong Tamba and the other who were accused of conspiring to stage a coup d'etat and overthrow President Jammeh were convicted of treason and sentenced to death in 2010.

The Judge had not taken into account at paragraphs 53-57 of his decision the delay of the authorities in dealing with all the plotters referred to in the expert report. The decision should be set aside and the appeal heard afresh.

### **Findings and Consideration**

21. I turn to what might be termed “the screening point”. The determination in *YL* was about the treatment of the record of the substantive interview of the applicant by the SSHD. The Tribunal detailed the relevant part of the process which of course included reference to screening. The Tribunal stated at paragraph 19:-

When a person seeks asylum in the United Kingdom he is usually made the subject of a ‘screening interview’ (called, perhaps rather confusingly a “Statement of Evidence Form – SEF Screening –). The purpose of that is to establish the general nature of the claimant’s case so that the Home Office official can decide how best to process it. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated.

22. The Tribunal found that information given at the screening was to establish the general nature of a claim and that it was not “done to establish in detail the reasons a person gives to support her claim for asylum”. The Tribunal also found that it did not amount to an examination or investigation to ascertain the full details of the claim.
23. The Judge noted the Appellant had been in the United Kingdom for over six years before he declared himself to the Respondent and then was given an appointment several days later to attend for screening which would have enabled him calmly recollect the events which happened before he left the Gambia. Additionally, this was a screening that did not take place immediately on the Appellant’s arrival at port when he might have been weary from a journey from the Gambia and in a strange country and perhaps still partly in shock at what had caused him for fear of persecution to leave his home. I note that the Immigration Appeal Tribunal stated that the purpose of the screening is to establish the general nature of an asylum claim. The Appellant’s asylum appeal is based on his specific fear of persecution or ill-treatment on return to the Gambia because he is perceived to be associated with the March 2006 failed coup. The Appellant could not have been physically involved in the attempted coup because at the time he was in Sudan on Gambian Government business.
24. I take into account the opening rubric for the screening which I have already recited. The Appellant was asked what caused his fear of arrest to which he replied simply that there was a military coup in March 2006 by a

former army chief of staff. He expressly stated he was in Sudan at the time and did not return to the Gambia until November. He stated that on return he was arrested and questioned in connection with the coup and he was then asked what happened next and said "they suspected me of being involved". He then detailed his two detentions and the requirement that he report fortnightly. He was asked what happened in the coup while he was away and he replied "for example some soldiers were killed and the head of the (NIA) was amongst them. And some soldiers were put in prison". He was then asked what else happened and stated that some of the plotters were court martialled and sentenced to death and others were sentenced to life in prison: see part 4 of the screening. I find that generic references to the March 2006 coup without more do not identify the real grounds on which the Appellant has based his asylum claim. I do not consider the Judge attached too much weight to what was said or not said at screening and so has not made a material error of law in this connection.

25. I also note that at 2.3 the Appellant referred to losing his passport in about 2011 and that "I did not report it to the police as I was afraid as I am illegal here". He then went on to mention he had obtained a new passport from the Gambian Embassy.
26. Taking these matters into account, I find there was no error of law on the part of the Judge to place weight on the failure of the Appellant to mention his connection with the coup plotters at screening. The core of his claim is that he is at risk because of his perceived association with the coup plotters, some of which he stated were his friends, not because there was an abortive coup in March 2006 while he was out of the country.
27. In any event, the Judge found material inconsistencies in the Appellant's account as detailed in his substantive interview, two statements and oral testimony. These matters were noted at paragraphs 51-58 together with the fact that the Appellant had been questioned but not ill-treated or detained and had been able to leave Gambia without difficulty on his own passport. Further, the Judge made the finding that the Appellant had obtained a replacement passport from the Gambian Embassy in London. He took this point against the Appellant and the reason is clear from the submission made by the Presenting Officer recorded at paragraph 24 of his judgment referring to paragraph 121 of the UNHCR Handbook.
28. There remains the challenge to the Judge's treatment of the application of Section 8 of the 2004 Act. Paragraph 339L of the Immigration Rules and paragraphs 205 of the UNHCR Handbook impose an obligation on a person claiming asylum to cooperate with the authorities in the host state. Paragraph 339 M and section 8 of the 2004 Act expressly provide that a claimant's delay in claiming asylum may be adversely relevant to his credibility.
29. The Appellant admitted he knew he was illegally present in the United Kingdom: to see 2.3 of the screening interview. This does not sit easily

with his claim at paragraph 24 of his 15 January 2015 statement that he did not know he could claim asylum because he had not sought legal advice. He brought himself to the attention of the immigration authorities only when prompted by his partner who had sought legal advice about her position on marriage to the Appellant. There was no evidence to show that absent this the Appellant would have made any attempt to refer himself to the immigration authorities.

30. The Appellant said he had lost his passport in 2011 and obtained a new one from the Gambian Embassy: see screening 2.5 and paragraph 13 of the Judge's decision. I do not find whether the Appellant made a formal or "informal" application for a passport to be material. The fact remains that he obtained a passport from the authorities of his country of nationality and has not supplied evidence to rebut the presumption evidencing an intention to avail himself of the country of his nationality: see paragraphs 121 of the UNHCR Handbook and paragraph 339A of the Immigration Rules. The Judge properly took into account in his assessment of the Appellant's credibility these facts which go to the issue of delay as well as that of re-availing himself of the protection of his country of nationality. Consequently, I do not find of the Judge made a material error of law in his treatment of the application of Section 8 of the 2004 Act to the facts as found nor generally in his assessment of the relevance and impact of the Appellant's delay in framing asylum on his credibility.
31. I refer to ground 3 at paragraphs 14ff. of the grounds for permission to appeal. Paragraph 14 does not reflect the contents of paragraph 34 of the decision. Reference is made to the documents submitted by the Appellant at paragraph 55 of the decision. Given the Judge's extensive adverse credibility findings he was entitled to attach little weight to the documentary evidence which the Appellant had supplied. It would have been of assistance if he had referred to the determination in *Tanveer Ahmed* \*[2002] UKIAT 439 recently approved in *MA (Bangladesh v SSHD [2016] EWCA Civ.175* . The mere failure to cite by title an authority relied on is not an error of law.
32. At the hearing reference was also made to the expert report of Ebrima Ceesay and in particular paragraph 13 commenting on the question: "The Appellant was not arrested and questioned in connection with the foiled coup till September 2007, is it true is that the enquiry into the foiled coup was still ongoing at that time?" The response confirms that investigations were continuing at least until late 2009. There is no indication (and indeed such indication might not be possible) whether or not the Appellant or any of his claimed friends involved in the foiled 2006 coup were still under investigation in September 2007. In the context of the Judge's other findings at paragraphs 46-60 I do not find that this part of the expert's report has any special bearing on the Appellant's claim particularly in the light of what the Judge said at paragraph 56 of his decision. There was no request pursuant to the directions issued in relation to the Upper Tribunal hearing for the submission of any additional evidence, notwithstanding the



clear inference of an evidential deficiency to be drawn from paragraph 56 of the Judge's decision.

33. In the light of the preceding paragraph I turn to paragraphs 15 and 16 of the grounds for permission to appeal and to the Judge's treatment of the issue of desertion at paragraphs 67-70 of his decision. He gave sustainable reasons for finding the Appellant did not leave the Gambia for fear of persecution by reason of his alleged involvement with or connection to the 2006 coup plotters. Accordingly, I do not consider it would have been necessary for him to consider further the issue of his claimed desertion independently of his claimed association or perceived association with the foiled 2006 coup.

### **Anonymity**

9. There was no request for an anonymity direction and having considered the documents in the Tribunal file and having heard the error of law appeal I find none is warranted.

### **NOTICE OF DECISION**

**The decision of the First-tier Tribunal did not contain an error of law and shall stand.**

**No anonymity direction is made.**

Signed/Official Crest  
2016

Date 14. iv.

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal