Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07486/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 January 2020	**On 30 January 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MALIK/MALICK FAYE
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield, of Counsel, instructed by Camden Community Law Centre
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge Lindsley on 11 December 2019 in respect of the determination of Designated First-tier Tribunal Judge Woodcraft, promulgated on 28 August 2019 following a hearing at Hatton Cross on 20 August 2019.

2. The appellant is a Gambian national born on 1 January 1992 who arrived here on 1 December 2016, using falsified documents, and claimed asylum. He appeals the decision of the

respondent dated 18 July 2017 to refuse to grant him protection.

3. The appellant claims to have been a member of the police force in Gambia where he worked as a constable in the serious crimes' unit. He maintains that he was involved in the investigation of the Gamcotrap case which related to the misuse of international funds provided by a Spanish NGO. Having concluded there was no evidence to prosecute, the appellant and other officers were detained by the NIA and a senior officer was dismissed. The appellant claims to have been held for three days and beaten. He then returned to his duties. A further incident arose in July 2016 when he was involved in the investigation of a former assembly member, accused of tax evasion and fraud. Again, it was found there was no evidence to prosecute and again the appellant and others were detained. After 24 hours, during which time the appellant claims to have been tortured, he was released and resumed his duties. In August 2016, he was sent to Tunisia on an official trip. On his return he was ordered to report to the NIA. Fearing for his safety, he fled Gambia in early September 2016 and made his way to the UK via Senegal, Malaysia, back to Senegal and Tunisia. He claims that his wife was detained for three days after his departure. She was released on bail but admitted to hospital some months later in February 2017 where she died of injuries said to have been sustained when she was in custody. The appellant's children remain in Gambia. The appellant claims also that he has converted from Islam to Christianity and that he fears persecution because of his new faith.

4. The judge heard the evidence and assessed the claim. He found that the application had been fabricated and, accordingly, the appeal was dismissed.

5. The grounds for permission to appeal essentially complain about the judge's credibility findings, arguing that he *"approached the evidence...with a view to finding fault with it as opposed to considering it in the round"*. It is maintained that the Red Crescent letter (AB:149) was rejected as having an "impossible" date, but the date was not specified, and no explanation was provided for what the judge meant. It is argued that this shows bias. It is maintained that the judge dismissed all the police documents because they contained "errors" but that some of them did not in fact contain any. It is argued that the judge erred by not placing weight on the expert reports which supported the account and that no regard was had to the email correspondence between the appellant and his sister.

6. I have not had sight of a Rule 24 response.

The Hearing

7. The appellant attended the hearing at which I heard submissions from the parties. Ms Benfield greatly expanded the grounds on which permission had been granted. She submitted that there was an overall failure on the part of the judge to follow a structured approach with regards to his credibility assessment and to follow the guidance set out in KB and AH (credibility – structured approach) Pakistan [2017] UKUT 00491 (IAC). The determination did not engage with the sufficiency of detail given by the appellant or the consistency of his account. The only reference to the appellant's own evidence was at paragraph 60. It was unclear what the judge considered as vague. No reasons had been given for the rejection of the claim. There had been a detailed asylum interview and five witness statements but there was no analysis of the appellant's account. Given the positive finding that the appellant was a police officer it was even more important to give clear reasons for why the remainder of his account was rejected. No reasons were given as to why the judge did not accept that the appellant would be treated as he was. The expert supported the operational dysfunction of the police in Gambia. The determination was based solely on speculation and was not grounded in the evidence.

8. Ms Benfield submitted that the judge had erred in placing no weight on the expert reports. Dr Kodi's expertise was not in dispute. It was insufficient to for the judge to find the report had no evidential basis. The situation in Gambia may be inexplicable to the judge sitting in the UK but not to an African. The description of a five-year sentence was seen as serious by the judge, but it was open to Dr Kodi to find it was not, given the Gambian context.

9. It was also argued that the judge had failed to consider the evidence from the appellant's sister which included an affidavit, albeit unsigned by her. There had been a failure to consider the evidence in the round. The letter from the Tunisian Red Crescent gave the date in a reverse format. The appellant had provided an explanation for the incorrect date but the judge had not taken it into account. There was nothing erroneous about the chronology in the Bench Warrant. Whilst the documents contained spelling errors these were to be expected in a country such as Gambia where there was illiteracy amongst the police force. The determination was flawed and the matter needed to be decided afresh.

10. In response Mr Tufan submitted that the grounds were not put in the way that they had been argued today. The grounds maintained the judge was biased but there was nothing to support that. The judge had not fallen foul of the guidance in KB and AH. It was difficult to see what he had done that could be criticised. He had referred to everything except the sister's evidence and that did not take things further. He had given anxious scrutiny to the evidence in a lengthy and detailed determination. It was open to him not to place weight on the expert reports; he was not obliged to accept them. He was entitled to conclude that those persecuting him would not allow him to continue in his duties and permit him to travel abroad the judge found that the appellant was not a credible witness and that was fatal to the case.

11. Ms Benfield replied. She stated that she did not intend to pursue the allegation of bias; it has not been properly made and was just a turn of phrase in any event. The appellant's credibility was indeed key, but the judge had failed to give reasons for rejecting the claim. His trip to Malaysia was not a holiday but an attempt to flee the country. He had been sent for work to Tunisia because he could speak Arabic. A structured approach had not been followed.

12. That completed the submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

Discussion and Conclusions

13. I deal first with the application for the submission of fresh documentary evidence made on 6 January 2020 by the appellant under Rule 15 (2A) of the Upper Tribunal Procedure Rules. In accordance with that provision and the Practice Directions, I agree to admit the further evidence in the event that an error of law is found in the determination and it is set aside. In this case the additional evidence consists of a statement from the appellant seeking to address the judge's findings, email correspondence from 7 January 2020, a press report and an email from Dr Kodi. Ms Benfield accepted that the fresh evidence could not be admitted for the 'error of law' stage of the proceedings.

14. I now turn to the judge's decision and the submissions made by the parties. I have had careful regard to the arguments. I reach my decision only after having considered the evidence as a

whole. I agree with Mr Tufan that Ms Benfield's submissions did not follow the grounds on which permission was granted but as he made no formal objection, I have considered them.

15. There is nothing in Judge Woodcraft's determination to support the complaint of bias and, in fairness to Ms Benfield, she did not pursue this line of arguments, preferring instead to describe this as a turn of phrase. There is also nothing to suggest that the judge approached the evidence with a view to fault finding. He confirmed at the outset of his conclusions that he had considered all the evidence in the round (at 48) and correctly noted that other than the appellant's nationality and occupation as a police officer, the remainder of his claim was in dispute (ibid).

16. Ms Benfield submitted that the judge had erred in failing to follow the structured approach recommended by KB and AH. I have had regard to the judgment which was not placed before the First-tier Tribunal and not referred to in the grounds for permission. The approach suggested by the Tribunal took guidance from the Home Office API on the assessment of credibility which identified credibility indicators as sufficiency of details, internal consistency and plausibility. The Tribunal, however, made it plain that these were merely indicators and not necessary conditions, that they were not exhaustive, that their main role was to ensure the evidence was considered but that they were no substitute for considering the evidence in the round or as a whole. There is no suggestion that judges are obliged to follow such a structure nor that other formats of assessing credibility would invalidate conclusions reached. The fact that Judge Woodcraft did not refer to this judgment and did not follow the structure it proposes does not mean that he did not consider the evidence as a whole. Indeed, he clearly states that he *had* considered all the evidence in the round but that he had to, of necessity, set out his conclusions in some form or order (at 48).

17. Ms Benfield submitted that the only reference to the appellant's oral evidence was at paragraph 60. This is not the case. It was set out at length by the judge at paragraphs 20-33. It is argued that the only finding on the evidence was that it was "vague and generally lacking in credibility" and that no reasons were given however there is nothing to support the contention that this is a reference only to the oral evidence. It is plain that the judge considered the oral and documentary evidence and that he set out numerous reasons for reaching this conclusion (at 49-64). It is simply untenable to argue that no reasons had been given for the rejection of the claim or that the judge's

findings were based on speculation rather than grounded in the evidence.

18. Much is made of the fact that the cultural context in Gambia is such that a police officer suspected of wrong doings and targeted by the NIA, detained and tortured, would nevertheless be allowed to continue in his sensitive role and even be sent overseas on a work trip. This is a matter the judge considered. It was fully open to him to find that this did not ring true despite Dr Kodi's report. It was also open to the judge to find that the five-year prison sentence handed down to the appellant amounted to a serious matter. That was a conclusion the judge reached having assessed all the evidence and the complaint that he was not so entitled to find is no more than a disagreement with the finding.

19. The first criticism in the written grounds for permission was relied on by Ms Benfield in her submissions. This relates to the judge's consideration of the letter said to be from the Tunisian Red Crescent (AB:149). This letter dated 06/06/2017 refers to an asylum application being made in Tunisia on 11/5/2016 and to the appellant's departure from that country on 12/17/2016. The judge deals with this letter at paragraph 61 of the determination where he rejects it as bearing an "impossible" date. The first of the appellant's grounds takes issue with that complaining that it is *"clearly in the format MM/DD/YYYY"* and that the judge had shown *"bias against the appellant"* by rejecting this letter. I might have had sympathy for this argument were it not for the fact that the dates, if read in the format suggested by Counsel, accorded with the appellant's chronology but they do not. As the appellant arrived in the UK on 1 December 2016, he could not have left Tunisia on 17 December 2016. Nor does his claim in his statement that he made an asylum application in Tunisia immediately after his arrival there on 3 October 2016 (B3).

20. It is maintained that the appellant offered an explanation for this matter in evidence but that it was not considered. The judge, however, set out the appellant's explanation at paragraph 28. He would, therefore, have had it in mind when assessing the document. I would note here that the written grounds do not support the explanation given by the appellant that the letter contained incorrect information. The only point made there was that the American date format was used. I have already explained why that complaint is not made out. In any event if the letter contains incorrect information, it is difficult to follow why it has been relied on. It simply reinforces the judge's overall finding that the evidence is unreliable.

21. The second written ground, also pursued by Ms Benfield, argues that the judge was wrong to reject the appellant's documents as containing errors. It is argued that the Bench Warrant (AB:47) has no errors but was not commented on. In fact, it was; at paragraph 54 the judge specifically refers to it and notes that it contains an impossible date. I have considered that document. The error is indeed very glaring. It is signed and issued on 3 October 2016 yet orders the appellant's attendance in court on 27 September 2016. There are also other matters such as *"the next adjournment"* being entered in a space for the place of the court and a grammatical error *("has no excused"*) on which I place less importance and the misspelling of the Magistrates' Court as noted by the judge. Ms Benfield argued that the September date referred to the adjourned hearing date but that is not what the document states.

22. The appellant's other documents have been addressed at length including a copy of a newspaper article containing different fonts and a crookedly placed photograph of the appellant, altered documents, the serious spelling errors in the printed forms used by the courts and the errors in numbering sequence on the police register. It is submitted that errors are to be expected in a country such as Gambia however that submission does not engage with the other difficulties such as, for example, with the newspaper article. The judge was fully entitled to reject the documents as thoroughly unreliable. It should also be borne in mind that the appellant used false documents to enter the UK, although the judge did not rely on that to assess the evidence adduced. He is, therefore, plainly no stranger to the use of fraudulent documents.

23. The judge is also criticised for not giving weight to Dr Kodi's expert report, despite his expertise on Gambia. The judge acknowledged that expertise (at 64) but at paragraphs 49, 51, 52, 53, 57, 59, 62, 63 and 64 he analyses the reports, sets out his concerns with them and provides substantial and compelling reasons for his decision not to place weight on them. The judge was entitled to voice concerns at the expert's finding that it was plausible that the Gambian police would allow an officer they had charged with serious offences (for which he had subsequently been convicted), detained and beaten to immediately resume his duties on at least two occasions, particularly when the expert provided no evidential basis for such a view (at 51-52). He noted that Dr Kodi had given no examples of other instances in which the authorities had operated in such a way. He noted that whilst Dr Kodi stated that he had seen documents in support of the appellant's claim, he did not comment upon them or refer to the many difficulties with them that the judge highlighted. Nor did he explain how, in

the context of those documents, he found the appellant's claim to be plausible. It should also be noted that although Dr Kodi refers to a supporting document dated 15 June 2017 in one report, it has become 15 July in another.

24. The last criticism in the written grounds and followed up by Ms Benfield is that the email correspondence between the appellant and his sister (at AB:35-38) was not considered. Ms Benfield also pointed to an affidavit from the sister. Whilst the emails themselves are not specifically referred to, the judge plainly had in mind the claim that the appellant's sister approached the police for documents about him (which is what the emails are adduced to show). This is plain from his finding at paragraph 61 where he rejected the claim that someone would be able to contact the police to ask for documents about the appellant, would be told that he was wanted (as in the second email) and then be questioned no further. This is particularly difficult to accept given that the appellant's wife was arrested, detained and then so badly ill-treated that she died. At paragraph 34, the judge sets out the evidence on the unsigned affidavit noting difficulties with that evidence.

25. No issue is taken with the judge's findings on article 8 or the appellant's claim to have converted to Christianity.

26. It follows that the appellant's challenge is without any merit. The criticisms made of the judge and his careful and thorough determination and unfounded and the decision is upheld.

Decision

27. The decision contains no errors of law. The appeal is dismissed.

Anonymity

28. No anonymity order was made by the First-tier Tribunal and no request for anonymity was made to this Tribunal.

Signed

Upper Tribunal Judge

Date: 24 January 2020