



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003481
First-tier Tribunal No:
PA/51881/2021
IA/04333/2021

THE IMMIGRATION ACTS

Heard at Bradford IAC
On the 25th November 2022

Decision & Reasons Promulgated
On the 06th February 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

YC

(anonymity direction made)

Respondent

For the Appellant: Mr Young, Senior Home Office Presenting Officer
(by video)

For the Respondent: Mr Selway, Immigration Advice Centre Ltd

DECISION AND REASONS

1. The Respondent YC is a national of Gambia born in 2000. He has been recognised as a victim of trafficking, and unchallenged medical evidence confirms that he suffers from mental ill-health. He is

therefore to be treated as a vulnerable witness, and this decision is subject to an order preserving his anonymity in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Decision of the First-tier Tribunal

2. YC arrived in the United Kingdom on the 27th September 2018. He had sought asylum as an unaccompanied child migrant in Italy, but was permitted entry to the UK in order to be reunited with his father, who was living here with a grant of Discretionary Leave. He made a claim for protection here, which was refused by way of letter dated the 24th March 2021.
3. The basis of YC’s claim was that he and his family faced a real risk of persecution in Gambia because of their imputed political opinion. His father had been involved in politics in the country and had fled when YC was only five years old. YC asserted that the authorities had thereafter harassed and persecuted family. This included an incident in 2007 when he was detained, then aged only seven, with his mother. YC had left Gambia aged 14 and had found himself in successive trafficking situations in Senegal and Libya, a matter that was subsequently to be recognised by the Competent Authority.
4. Under the heading ‘Material Facts Consideration’ in her decision letter the Secretary of State addresses YC’s case as follows:

37. You state that you fear the security forces. Your father was working in the presidential office. In 1994 there was a coup and the military overtook the country. They arrested your father because he was in politics. They took him to prison for more than two years without seeing any lawyer or justification. Every time they came to the house, they would take him for three to four days, so he feared for his safety and left the country (AIR Q83-84). Since your father left when you were five years old you and your mother were also detained (AIR Q81).
5. The letter does not, at any point, dispute those asserted facts, nor the claim that YC and his mother were persecuted after his father’s departure. What it does do is set out extensive background material capable of showing that the government, and situation, in Gambia has changed. The Secretary of State concludes from this that YC would no

longer face a risk from the people he claims to fear. It was for this reason that the claim was rejected.

6. YC appealed and on the 20th April 2022 the Secretary of State conducted a pre-hearing review, the central conclusions of which were expressed as follows:

The grounds of the refusal are maintained. The R continues to rely on RFRL [RB/ pg. 11-26]. It is maintained that the previous government that the A and his family members were targeted by have been replaced by a new government. Therefore, it is not accepted that the A would be at risk of persecution on return to Gambia based on his imputed political opinion.

7. On the 23rd June 2022 the matter came before First-tier Tribunal Judge Turner sitting in Newcastle. Having set out the Secretary of State's position (as I have summarised it above) Judge Turner's decision notes the following about the approach taken by the Presenting Officer:

46. It came as something of a surprise that the case was then put differently at the appeal hearing. Mr Aniето provided to the Tribunal at the start of the hearing a document which demonstrated that the Appellant's father had been refused refugee status and was in the UK based on discretionary leave with his partner. I had not been provided with the First-Tier tribunal determination from 2010 that the Respondent effectively relied on.

47. Mr Aniето submitted at the conclusion of the evidence that the Appellant had not made out his case that he was at risk on return based on his father's political activity. It was submitted that the Appellant had not given a credible account about his situation prior to leaving Gambia. He submitted that his father had not been granted refugee status in the UK and it was on this basis that the Appellant made the present claim. Mr Aniето made the point that if the Tribunal had not accepted that the Appellant's father was at risk on return, it followed that the Appellant was also not at risk. Ms Rogers however submitted that this was not necessarily the case given that the Tribunal were determining the Appellant's case and not his fathers.

8. In response to these competing submissions the Judge concluded as follows:

48. I considered the guidance in the case of R (on application of Sivapalan and another) v SSHD [2008] EWHC 2955 (Admin) which concerned an appellant who, as in this case, brought their own protection appeal after their parent had previously had their protection appeal dismissed. The case concluded that a subsequent Tribunal was not bound by the earlier decision for several reasons. In Sivapalan it noted that there was no clear basis presented as to the basis of the earlier findings. The appellant in Sivapalan was also a minor at the time of her

mother's appeal. There were several other points made. I find that I am very much in the same position in the present appeal. I am told that the Appellant's father's appeal was dismissed but am not provided with any detail as to the determination. I am not told whether any aspect of the claim was accepted, i.e., was it accepted that the Appellant's father was politically active at all, whether he held the position in the previous government prior to the coup as claimed, whether he had been arrested for two years. I am not told whether the Appellant's father was represented or whether he was present at the appeal. The Appellant himself was clearly not present as he did not enter the UK until September 2018 and was a minor in 2010. I can see no safe basis to rely on the previous determination made in relation to the Appellant's father's claim. The Respondent sought to rely on this earlier determination, and it was a matter for her to produce it. Mr Aniето confirmed that the determination could have been obtained from the hard copy file yet was not.

9. Having reached that view the Tribunal went on to make its own assessment of the evidence before it. It found YC's account to be proven to the lower standard. It then went on to conduct a risk assessment based on country background evidence going to the situation in Gambia in the years immediately preceding, and since, YC's father fled. Having had regard to that evidence the Tribunal accepted that YC's father had been detained as a political opponent. It then says this:

66. The above evidence sets out how political opponents were treated. Given the evidence available that the same personnel are in situ under the new regime, there is a potential for similar behaviour in the future. I find that paragraph 399K of the Immigration Rules has some relevance in this regard. The Appellant has not claimed that he has been harmed in the past however he was a young boy prior to leaving Gambia. He may be treated differently as an adult on return. As such, I find to the lower standard that any risk to the Appellant on return would amount to persecution for the purpose of the Refugee Convention.

10. The decision goes on to set out background material showing that the "personnel" referred to there include senior figures in the security apparatus who remain accused of horrific human rights abuses against political opponents; the Tribunal also notes the evidence that although YC's mother remains in Gambia she moves frequently and tries to keep a low profile; her home was raided as recently as last year. This adverse attention being from the state there is no reasonable internal flight alternative, nor any sufficiency of protection. This being the case the appeal is allowed on protection grounds.
11. There were two remaining features of the case: the fact that YC has been recognised as a victim of trafficking, and the fact that he is suffering from mental health conditions including depression, anxiety and PTSD. As to this the Tribunal concluded:

70. I do accept that the Appellant has been trafficked as claimed and as found by the NRM. The Appellant claimed that he was tricked by his friends which resulted in him being trafficked to Senegal and elsewhere. If the Appellant was to return to Gambia, he would be more susceptible to the risk of being trafficked. I accept his account that he is unlikely to be able to reunite with his mother due to the adverse attention from the authorities. If he returned on that basis, he would need to continually move from place to place which would not be conducive to any prospects of the Appellant being able to access mental health services, which is slim in any event. His mental health causes him to be more vulnerable, as noted by Mr Walker who made that point in his oral evidence. The Appellant relies on several articles as set out in the Appellant's bundle which notes the poor systems in place to tackle trafficking in Gambia which is on the increase because of the increasing levels of poverty. It is noted that there is only one shelter for victims of trafficking with a bed capacity of 80.

71. I find that there is a real risk that the Appellant would be re-trafficked on return given his lack of support and mental health conditions.

12. The appeal was therefore allowed on all grounds.

The Secretary of State's Appeal

13. The first ground of appeal is that the First-tier Tribunal erred in its approach to the evidence relating to the persecution of YC's father, and by extension, YC. The grounds point out that the father had lost his own asylum appeal and suggest that the Judge should, of her own motion, obtain that determination from 2010. It is submitted that there being a material overlap in the two accounts, Judge Turner should have taken a *Devaseelan* approach to the evidence of the earlier Tribunal.

14. In considering the application for permission to appeal First-tier Tribunal Judge Burnett found this ground to be unarguable. He pointed out that there had been a last minute change in position before Judge Turner, that the earlier decision was not produced by the HOPO, and no adjournment was sought for it to be obtained. He therefore refused permission for it to be argued. The Secretary of State did not renew her application on this point to the Upper Tribunal, and before me Ms Young did not seek to re-open the matter. She was right not to do so. The Secretary of State cannot hope to rely on evidence, or findings of another judge, where these materials are not produced. Had the decision been produced by the PO fairness would have required an

adjournment to enable YC to prepare this new forensic challenge. But none of that happened, and it is too late to do that now.

15. The next ground of appeal concerns the approach taken by the Judge to the country background material. It is submitted that the Judge fails to identify any evidence capable of establishing that there would be a risk to YC in Gambia today. The Secretary of State is particularly concerned that none of the evidence set out in the refusal letter is addressed.
16. I do not accept that the Judge failed to have regard to the refusal letter. Its contents, insofar as relevant to this point, are summarised at the Tribunal's paragraph 21 and it is quite apparent from the reasoning that follows that the Tribunal understood a new regime to be in place in Gambia. This was not however a binary good/bad situation where it could be said that the new government had done away with all repression. This is reflected in the refusal letter itself which is not, it is fair to say, unequivocally positive about developments in Gambia. Noting that the Jammeh regime "overwhelmingly failed to protect political rights and civil liberties" the evidence cited, from sources such as the US State Department and Freedom House, is to the effect that conditions have improved since Adama Barrow was sworn in as President in January 2017. The elections have been declared free and fair and citizens are increasingly able to express themselves politically. Problems do however remain. Seditious laws perceived as tools of political repression remain on the statute books; opposition leaders and protesters have been arrested; radio stations have been closed down and certain opposition groups have been proscribed. As the First-tier Tribunal emphasises, certain figures who played a key role in the Jammeh regime remain in post in organisations such as the Crime Investigation Bureau and the intelligence service. The Judge read that evidence in the round with the credible assertion that those the family members still in Gambia had come to the adverse attention of the security services as recently as the year before the hearing.
17. The decision reached by Judge Turner is not the decision that every judge would have reached. It was certainly arguable that the Tribunal should have done more to drill down into the objective material in conducting her risk assessment. I have however decided to uphold her decision for two reasons. The first is that the judgment was properly grounded in an application of the lower standard of proof and the benefit of the doubt to be applied when considering the evidence of minors. Although YC was an adult by the date of the hearing, all of his material evidence about his experiences in Gambia, and his understanding of his family's predicament, was gleaned through the eyes of a child. His father left when he was five; his parents never explained to him the details of why they were compelled to live as they did, constantly on the move; he left when he was only 14 and

has since that time suffered the debilitating and traumatising effects of trafficking. He was therefore in no position to give detail about his father's role, or why elements in the Jammeh regime might still seek to persecute the family. The Judge had to do the best she could with the evidence. The second reason that I have decided to uphold her risk assessment is the most important. That was the acceptance that YC's mother continued to suffer the adverse interest of members of the security services as recently as the year before the hearing. That evidence having been accepted, it was difficult to see why YC himself would today be safe, particularly since his identity, and connection to his father, would be immediately apparent upon his re-entry to Gambia; unlike his mother he may not have the opportunity to go 'underground'.

18. That being my decision it follows that I need not address the final ground of challenge, which was to the decision to accept that YC would remain vulnerable to trafficking today. I do however accept that the Tribunal erred in allowing the appeal on protection/refugee *and* humanitarian protection grounds since these outcomes are only available in the alternative.

Decisions

19. The decision of the First-tier Tribunal is set aside only to the extent that paragraph 76 is deleted. It is upheld in all other respects.
20. There is an order for anonymity.



Upper Tribunal Judge Bruce
28th

November 2022