



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

Appeal Number: AA/00332/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Newport
On 29 July 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**B S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Fenney of NLS Solicitors

For the Respondent: Mr A McVeety, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

The Background

2. The appellant is a citizen of Gambia who was born on 7 December 1979. He left Gambia on 29 April 2009 and arrived in the UK with a valid student visa. He enrolled at the Birmingham International College in order to study hotel management. However, it would appear that he did not complete his course, leaving some six or seven months later. In 2010 he unsuccessfully made an application for an extension of his leave as a student. He made a further application on 15 March 2011 and, as a result of that, was granted leave from 21 April 2011 until 31 December 2013. In fact, in November 2012 he joined the British Army but was discharged on 1 September 2013 because of failings in his weapon handling skills. The appellant temporarily left the UK on 7 May 2013, returning to the Gambia before returning to the UK on 14 May 2013 where he was able to re-enter the UK because of a residence permit in his passport.
3. On 17 September 2013, the appellant claimed asylum. The basis of his claim was twofold. First, he claimed that he was at risk because his uncle "ES", a public official had obtained sponsorship for him from a local authority "KA Council". His uncle had lost his employment and had been imprisoned. The appellant claimed that he was wanted by the Gambian police because he had illegally obtained the sponsorship through his uncle. (At his appeal hearing, he produced an arrest warrant dated 3 November 2013.) Secondly, the appellant claimed that he would be at risk on return to Gambia because he had been in the British Army.
4. On 20 December 2013, the Secretary of State refused the appellant's application for asylum and on 3 January 2013 made a decision refusing to vary his leave to enter. The appellant appealed that latter decision to the First-tier Tribunal.
5. In a determination dated 25 February 2014, the First-tier Tribunal (Judge Holder) dismissed the appellant's appeal on all grounds. In particular, Judge Holder did not accept the appellant's evidence that he was at risk on return as a result of illegally obtaining student sponsorship through an uncle, "ES". Judge Holder did not accept that the appellant was related to "ES" as he claimed or that he had been sponsored illegally by the "KA Council" and was, as a consequence, wanted by the Gambian authorities.
6. The appellant sought permission to appeal to the Upper Tribunal. On 19 March 2014, the First-tier Tribunal (Judge Kamara) granted the appellant permission to appeal. Thus, the appeal came before me.

The Submissions

7. Ms Fenney, who represented the appellant, relied upon a single matter raised in the grounds of appeal. She submitted that a central aspect of the appellant's claim was that he had obtained illegal sponsorship from the "KA Council" as a result of the intervention of his uncle, "ES" who was a public official. The appellant had relied upon a sponsorship letter dated

14 February 2011 headed "KA Council". She submitted that Judge Holder had not been informed at the hearing that the Secretary of State had accepted this sponsorship letter, submitted with the appellant's application for leave as a student on 15 March 2011, when granting him further leave from 21 April 2011 until 31 December 2013. The appellant had been unrepresented at the hearing. Ms Fenney accepted that any omission to inform the judge of this was not deliberate but that, nevertheless, had the judge been aware that the Secretary of State had accepted this sponsorship letter, that might well have affected his finding in relation to whether the appellant had been sponsored as he claimed and which was a basis upon which he now feared return to the Gambia. Ms Fenney submitted this was not a minor error but was one that changed the judge's whole perception of the appellant's claim. It did not appear, Ms Fenney submitted, that the judge was aware that the appellant had made two applications for further leave as a student - in 2010 and 2011. He had not had the full picture of the appellant's immigration history.

8. On behalf of the respondent, Mr McVeety acknowledged that the respondent must have accepted the sponsorship document in granting the appellant further leave as a student in 2011. However, the fact that the judge was not aware of this, Mr McVeety submitted, was immaterial to his adverse credibility finding. He submitted that the judge was not constrained to accept the document, even though it had previously been accepted by the Secretary of State, and the judge had given a number of reasons in para 32 of his determination for rejecting the appellant's evidence both as to his claimed relationship with "ES" and the reliability of both the arrest warrants (which had been submitted at the hearing) and the sponsorship letter relied upon by the appellant. Mr McVeety submitted that there was no basis for overturning the judge's adverse credibility finding which was sound.

Discussion

9. There is no doubt that the appellant did, in fact, make two applications to extend his leave as a student - in 2010 and then in 2011. Equally, it is clear that the appellant relied upon different sponsors for those two applications. In relation to the 2010 application he relied upon "HJ" whom he claimed was his uncle (see affidavit dated 9 August 2010). Whilst, in relation to the 2011 application, he relied upon sponsorship from the "KA Council" (see letter dated 14 February 2011).
10. It may well be, and I accept for the purposes of this appeal, that Judge Holder did not have drawn to his attention explicitly that the appellant had made two applications and, in relation to the second application, the Secretary of State had accepted the sponsorship from the "KA Council" in granting leave. I do not, however, accept that this omission amounts to a material error of law so as to fatally flaw the judge's adverse credibility finding.

11. First, it is clear both from the refusal letter and the way in which the case was presented on behalf of the Secretary of State at the hearing that the Secretary of State had put in issue the reliability of the sponsorship letter relied upon by the appellant. It is difficult to see what evidential advantage could have been gained by the appellant if the judge had been aware that at one time (but not now) the Secretary of State had accepted that the appellant was sponsored as he claimed in relation to his second student application. The Judge was certainly not bound to accept its reliability now that it was contested. The Judge was required to assess its reliability in the context of all the evidence which is precisely what he did.
12. Secondly, and more significantly, in para 32 of his determination the judge gave a number of reasons for rejecting the appellant's account; in particular that the appellant was not related as he claimed to "ES" not least because the appellant's lack of knowledge of his claimed uncle's wives; features of the documents including the sponsorship letter led the judge to conclude they were unreliable and he had returned to the Gambia in May 2013 despite claiming to know that "ES" had been dismissed and was having difficulties. I set out the judge's reasons in para 32 in full which are as follows:

"32. I do not find that the Appellant has shown that he has a well-founded fear of persecution if returned to the Gambia. I do not find that he has shown that he is related to either [E] or [SS]. I do not find his account that [ES] was involved in obtaining sponsorship by the [KA Council] to be true. I do not find that he has shown that he was, in fact, sponsored by that Area Council or that he owes them money. I do not find that he has shown that he is wanted by the Gambian Police or is of any interest to the Gambian authorities on return to the Gambia. I say this given the cumulative effect of the following:

- a) I find that the Appellant has not provided any evidence showing that he is related to either [E] or [SS]. This issue was clearly contested in the Refusal Letter.

I find from his evidence that the Appellant is in contact with his brother. His brother live with the Appellant's mother and father. I do not find it credible that he could not obtain some documentation (such as birth certificates) to show that he is related. The fact that he has not undermines the credibility of his claim to be related to [E] or [SS];

- b) I find that the Appellant did not know the names of any of [ES]'s wives when asked in interview at questions 37 to 39. If the Appellant's evidence is correct, he is sufficiently close to this uncle for the uncle to commit a criminal offence in the process of illegally obtaining sponsorship for the Appellant. In those circumstances, I would expect the Appellant to know the name of his aunts. The fact that he does not undermines the credibility of his account that [ES] is his uncle and has obtained sponsorship for him;
- c) The Appellant claims in interview at question 56 that [ES] was [a public official] for about two years. However, it was not disputed by the Appellant that [ES] was, in fact, in that position for

approximately four and a half years. I find that this inconsistency does not support the Appellant's claim to be related to [ES];

- d) There is no evidence (other than the Arrest Warrant) to show that [ES] is in jail or in jail for illegally obtaining sponsorship for the Appellant.
- e) I have considered the [KA Council] documents and the Arrest Warrant in accordance with the determination in Tanveer Ahmed [2002] UKIAT 439.

I do not find these documents to be reliable given:

- i) they do not contain a contact address. I would have expected such documents to contain the address from which they were issued;
 - ii) the 14th February 2011 [KA Council] document contains spelling mistakes: 'evolved''on wards';
 - iii) Similarly the Sponsorship letter of the same date: 't be';
 - iv) Similarly the Termination letter of 8th March, 2012: 'meet''in other''but influence''is terminate';
 - v) No envelopes have been provided with the [KA Council] documents. Two of the letters appear to be photocopies containing a live signature; and
 - vi) The Warrant was produced by the Appellant at the hearing. He said that he received it a week before the hearing from his brother. He did not produce any envelope. It is a photocopy. The Appellant could not explain how the police came to obtain his photograph (he is not previously known to them).
- f) The Appellant, when he initially entered the United Kingdom to study had provided an affidavit dated from an uncle called [HJ]. Mr [J] who clearly stated that he was financially supporting the Appellant through his studies;
 - g) The Appellant returned to the Gambia in May, 2013 allegedly knowing that [ES] was dismissed and having difficulties (given the Termination letter of 8th March, 2012). Additionally, he was aware of his own alleged difficulties with [KA Council]. He talks in his interview (questions 72 and 73) of having to go there 'undercover' and 'sneaking in and out'. I would not have expected him to have returned had he believed that he was in difficulties with the authorities; and
 - h) The Appellant claimed asylum a few days after he was discharged from the army. He was discharged on 1st September, 2013 and claimed asylum on 17th September, 2013. I find, given the above, that he has fabricated his account having found himself without an income, without work and having abandoned his studies."

13. Whilst I accept that at para 32(f) the judge does taken into account a change in the appellant's sponsorship without appreciating that there

were, in fact, two applications, this was only one of a number of detailed reasons which led the judge to reject the appellant's evidence. None of those other reasons were challenged by Ms Fenney in her submissions. In my judgment, those reasons are wholly convincing and I am in no doubt that the judge would have reached the same conclusions on the evidence, even if he had been aware that the appellant had made two different applications for leave and that the Secretary of State had accepted the sponsorship by "KA Council" in granting leave following that second application. I do not accept Ms Fenney's submission that this information changed the judge's whole perception of the appellant's claim. On the contrary, the judge's reasons in paras 32(a)-(e) and (g)-(h) provide a comprehensive set of (unchallenged) reasons why the judge rejected the appellant's account and the reliability of the documents, including the sponsorship letter. Those reasons are, in my judgment, unassailable as a basis for rejecting the appellant's account and consequently dismissing his appeal.

14. For these reasons, the judge did not materially err in law in reaching his adverse credibility finding and in dismissing the appellant's appeal on all grounds.
15. This appeal to the Upper Tribunal is, accordingly dismissed.

Signed

A Grubb
Judge of the Upper Tribunal