IAC-TH-LW-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/33201/2014

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 1st September 2015** | **On 18th September 2015** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR MODOU SANNEH**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Mr R Parkin (Solicitor Advocate)
For the Respondent: Mr T Melvin (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. In a decision promulgated on 19th March 2015, the appellant's appeal against a decision to remove him from the United Kingdom, made on 7th August 2014, was dismissed by First-tier Tribunal Judge Mailer ("the judge").

2. In brief summary, the judge found that the requirements of the Immigration Rules ("the rules") were not met, both parties accepting that paragraph 276ADE(vi) was engaged in the appeal. The judge applied the rules in the form they took on and after 28th July 2014. Having weighed the evidence regarding the appellant's ties to the United Kingdom and

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regarding the presence of family members in Gambia, and having reviewed the Secretary of State's conclusion that there were no circumstances warranting the grant of leave outside the rules, the judge concluded that no Article 8 assessment was required outside the rules. He took into account section 117A to C of the 2002 Act in his assessment.

3. The appellant applied for permission to appeal on two grounds. First, he contended that the application he made to the respondent on 20th August 2010, when he applied for leave to remain outside the rules, required the judge on a proper analysis to apply the rules as they were before the changes introduced in July 2012. The Secretary of State refused him further leave in a decision made on 3rd October 2010 which did not attract a right of appeal (the appellant had no leave to remain at the time). On 8th May 2012, the appellant sought a reconsideration of that decision. In due course, the Secretary of State responded in a letter dated 28th July 2014 in which she considered the earlier decision made in 2010, took into account paragraph 322(1) of the rules and went on to assess the appellant's circumstances in the light of paragraph A277C, Appendix FM and paragraph 276ADE. Her overall conclusion was that the appellant was not entitled to any leave and that there were no compelling or compassionate circumstances warranting the grant of leave to him outside the rules. As noted above, the Secretary of State made a removal decision a few days later, on 7th August 2014, the notice of decision in form IS.151B being served on the appellant on 11th August 2014.

4. In the application for permission to appeal, the removal decision is described as "the outcome of the initial refusal ... of 3rd October 2010", giving rise to the assertion that the earlier rules fell to be applied.

5. In a second ground, which was advanced on the basis that paragraph 276ADE(vi) did, after all, fall to be applied, it was contended that the judge failed to make a well-rounded assessment of the appellant's circumstances. The judge failed to consider whether his familial ties, consisting of his parents in Gambia, were such that he might expect to be supported on return. The judge's findings in fact showed the extent of the ties established in the United Kingdom, their strength showing how diminished his ties in Gambia were. The appellant's uncle gave evidence at the hearing and several "testimonials" were provided, showing the appellant's work experience in the United Kingdom. The strength of his ties in this country would prevent him from being able to receive the kind of support he would require in Gambia, "as identified by Ogundimu" (Ogundimu [2013] UKUT 60).

6. Permission to appeal was granted on 19th May 2015. In a response from the Secretary of State under rule 24, the appeal was opposed. The Secretary of State indicated that she would submit that the judge directed himself appropriately. The removal decision made in July 2014 was clearly a fresh decision and so, in the light of Singh and Khalid [2015] EWCA Civ 74, the relevant rules were those which came into effect on 28th July 2014. The rules required the appellant to show very significant obstacles to his integration into Gambia. The judge had taken into account the evidence

and made clear findings of fact regarding the appellant's relationship with his family in Gambia and his presence there during his formative years. The judge's decision contained no error of law.

7. Mr Melvin handed up written submissions in which the Secretary of State's response was developed. The judge's clear findings showed that there were no obstacles to the appellant's integration into Gambia. The judge was entitled to find that there were no compelling circumstances warranting an assessment outside the rules. It was clear that the judge applied the right rules, being those in force on the date of decision in August 2014.

**Submissions on Error of Law**

8. Mr Parkin said that the judge applied the wrong version of the rules. The appellant's application for leave outside the rules, made in 2010, was refused in October that year. Even though the Secretary of State made no "immigration decision" at the time, refusal of the application was, nonetheless, a valid decision. It was the appellant's case that the removal decision made in August 2014 arose from the refusal of leave in 2010 and could not properly be treated as a "stand alone" decision.

9. The decision to refuse leave in 2010 lay at the heart of the case and amounted to a substantive decision prior to the changes to the rules introduced in July 2012. Taking into account the guidance given in Singh and Khalid, the Secretary of State should have made her decision in accordance with the pre-July 2012 rules. This would have opened the way to a different proportionality assessment. The removal decision in August 2014 was contingent on the 2010 application.

10. So far as the second ground was concerned, the judge erred in relation to the 2014 rules, if they fell to be applied. There was no rounded assessment and the judge placed excessive emphasis on family ties. There was no proper assessment of the obstacles to the appellant's integration, should he be returned to Gambia. There was insufficient on this aspect.

11. Mr Melvin said that reliance was placed upon the rule 24 response and the written submissions. Neither ground had merit. So far as the first was concerned, the judge correctly applied the rules which came into effect in July 2014. The appellant had been without any leave since 2005. He was unable to attach his case to a particular rule and the decision was not made with the benefit of transitional provisions in the period between July and September 2012, identified by the Court of Appeal in Singh and Khalid. Applying YM (Uganda), the judge applied the rules in force as at the date of the hearing.

12. So far as the second ground was concerned, the judge made a full, in the round assessment in the light of the evidence available. He took into account the last grant of leave in 2005, considered the appellant's circumstances, took into account the evidence regarding his ties in Gambia and had regard to the important fact that the appellant was 21

years old when he left to come to the United Kingdom as a student. The judge made a careful assessment of the family ties in both the United Kingdom and Gambia. His decision was sustainable. There was no material error of law.

13. Mr Parkin had nothing to add to his earlier submissions.

**Findings and Conclusions on Error of Law**

14. I am grateful to the two representatives for their careful submissions.

15. I turn to the first ground. I find that it has no merit. Refusal of the appellant's application for leave to remain outside the rules, in a decision made with no right of appeal on 3rd October 2010, has no substantive impact at all on the immigration decision made by the Secretary of State on 7th August 2014, following the appellant's request that the earlier decision be reviewed. The earlier decision was fully reasoned and the Secretary of State had regard in October 2010 to the appellant's family and private life ties, such as they were, and the absence of leave to remain in the United Kingdom. The decision made on 7th August 2014 and the explanatory letter dated 28th July 2014 show that an entirely freestanding and up-to-date assessment was made following the appellant's request for a reconsideration of his case. The Secretary of State took into account and applied the current rules, including paragraph A277C, Appendix FM and paragraph 276ADE. As explained by the Court of Appeal in Singh and Khalid and also in YM (Uganda) [2014] EWCA Civ 1292, she was perfectly entitled to do so and was doing no more and no less than applying the general principle established in the earlier case of Odelola [2009] UKHL 25. There was no requirement to explain the immigration decision giving rise to the present appeal by reference to the earlier rules in force before the substantial changes introduced in July 2012 and July 2014.

16. Similarly, the judge did not err in law in having regard to the current rules. Indeed, it appears that both parties accepted that paragraph 276ADE(vi), as amended with effect from 28th July 2014, fell to be applied. Whether or not there was in fact agreement between the parties on this, the judge correctly identified the relevant rule at paragraphs 106 and 107 of the decision. The appellant could only succeed if he were able to show that there would be very significant obstacles to his integration into Gambia, following his removal. This was the correct starting point for the judge's assessment.

17. So far as the second ground is concerned, which was advanced on the alternative basis that if paragraph 276ADE(vi) was the correct rule to apply, there was, nonetheless, no well-rounded assessment, this too has no merit. The decision has been prepared by an extremely experienced judge and the assessment he made of the evidence before him is admirably clear and fully reasoned.

18. The judge began by considering the extent of the appellant's ties in Gambia, in the light of his contention that he would not be admitted to his

parents' household and would be without means of support. In so doing, he took into account evidence given by the appellant himself and by his uncle and his younger sister. He properly took into account the appellant's immigration history and his presence in Gambia until he was 21 years old. The judge also took into account and assessed the evidence regarding the appellant's ties in the United Kingdom and the presence here of several family members.

19. The judge also had the Secretary of State's case clearly in mind, as set out in the letter dated 28th July 2014. He noted the clear adverse findings regarding Appendix FM and paragraph 276ADE of the rules. The Secretary of State considered whether there were any exceptional circumstances warranting a grant of leave outside the rules and concluded that there were none. The judge reached a similar conclusion that there were no compelling or compassionate circumstances in the case. The final paragraphs of the decision show that he correctly applied the guidance given by the Court of Appeal in SS (Congo) & Ors [2015] EWCA Civ 387. No assessment outside the rules was required as all relevant considerations had been weighed under them. The judge's approach is entirely consistent with further guidance given by Mr Justice Edis in Sunassee [2015] EWHC 1604 (Admin), at paragraphs 33 and 36 of the judgment, where the current state of the law is summarised. In the present appeal, the judge was entitled to conclude that no more was required and that the appellant could not succeed under Article 8 of the Human Rights Convention. The decision shows that he did not give undue weight to the ties the appellant has here or in Gambia. He gave due weight to the evidence of the appellant's circumstances overall, in relation to both countries, and reached a sustainable conclusion that the requirements of the rules were not met and that the appeal fell to be dismissed.

20. In summary, the decision of the First-tier Tribunal contains no material error of law and shall stand.

Signed Date

Deputy Upper Tribunal Judge R C Campbell

**ANONYMITY**

There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed Date

Deputy Upper Tribunal Judge R C Campbell

**TO THE RESPONDENT**
**FEE AWARD**

This is a fee exempt appeal.

Signed Date

Deputy Upper Tribunal Judge R C Campbell