



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

Appeal Number: AA/00936/2013

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 4 November

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

**HS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Rene, Counsel, instructed by Hetheringtons Solicitors Ltd.

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make a direction prohibiting disclosure of publication of a matter likely to lead members of the public to identify the appellant in these proceedings.

2. The appellant is a citizen of Uganda, born in 1978, who arrived in the United Kingdom as a visitor on 27 September 2004. Following expiry of her visa, the following year, she remained in the United Kingdom illegally. She claimed asylum on 12 December 2012, on the basis that she was a lesbian, wanted by the authorities of Uganda for alleged offences relating to her sexuality. The appellant claimed that she would be arrested, ill-treated and possibly killed, if returned to that country.
3. The respondent refused the appellant's asylum application on 20 January 2013. The appellant appealed to the First-tier Tribunal, which dismissed her appeal. That determination was, however, set aside by the Upper Tribunal, which remitted the matter for re-determination in the First-tier Tribunal. Following a hearing on 29 July 2013 at Taylor House, First-tier Tribunal Judge Talbot dismissed the appellant's appeal on asylum and human rights grounds. It is this determination that is the subject of the present appeal.
4. Judge Talbot made comprehensive adverse credibility findings regarding the appellant. At the hearing, the respondent adduced written "application details" regarding the application the appellant had made in 2004 for her visit visa. The details, if correct, contradicted the appellant's claim not to have had "any contact with her father for some three years prior to [2004] and indeed that he had disowned her because of her lesbianism" [31]. The "application details" recorded the appellant's father, NM, as the sponsor, giving a telephone number for him.
5. The "application details", which I am fully satisfied were before the First-tier Tribunal Judge, recite the correct VAF number. The issue, accordingly, is whether the judge was entitled to place "substantial" weight on this evidence. I am in no doubt that he was. The "application details" were directly contradictory of an important strand in the appellant's account of her alleged experiences in Uganda, prior to arriving in the United Kingdom. Mr Rene criticised the document for not being the actual application form; however it is manifest that the document purports to be a record made by the High Commission in Kampala, drawing on the information supplied in the application. There is no dispute that the photograph accompanying the details is of the appellant. Neither before the judge nor before me has any matter been raised, which casts doubt upon the veracity of the document. In all the circumstances, the appellant has not begun to show that the judge was acting irrationally or otherwise unlawfully in giving the matter the weight he did.
6. Criticism is also made of [32] of the determination, in which the judge noted a discrepancy between the date of the so-called "arrest warrant" and the date on which the appellant was allegedly informed about it by her mother. The grounds contend that, whilst the judge was in fact correct to note that this discrepancy existed as between the appellant's oral evidence and the date on the warrant, in her interview she had stated that she was informed two weeks after her arrival. It is, however, trite law that

it is for a judicial fact finder to make what he or she may of the evidence, absent irrationality or other illegality. In the circumstances, the First-tier Tribunal Judge was perfectly entitled to place weight on what the appellant had said in oral evidence. A person's inability to be consistent about a concocted story is, after all, capable of being exposed in oral evidence.

7. It was a central aspect of the appellant's claim to be a lesbian that she was in a same-sex relationship with a Ugandan citizen in the United Kingdom. That lady gave evidence before the First-tier Tribunal Judge. As recorded at [30] of the determination, the judge noted discrepancies between the evidence of the appellant and her witness. Again, he was, I find, entitled to place weight on those matters. The judge also made use of the determination which another judge had promulgated in respect of the witness, based on her own asylum claim to be a lesbian, in which that other judge found that the witness "is not a lesbian and that she has concocted a story which I find cannot be believed... I do not accept that she is a lesbian or has been in a relationship with [HS]". Judge Talbot found that he was, in all the circumstances able to "agree with the finding made by Judge Kaler about that relationship".
8. Mr Rene criticises this approach. There is, however, nothing remotely problematic about it. It was plainly highly material for the judge to be given access to a judicial finding (which has not been shown to have been overturned) about the very relationship which the appellant was putting forward as an important aspect of her own claim to be in need of international protection. It is clear from a reading of the determination in the present case that the First-tier Tribunal Judge has not blindly followed the conclusions of Judge Kaler.
9. At the hearing before me, Mr Rene submitted that Judge Talbot should have considered whether, even if the woman with whom the appellant was having a lesbian affair was not, in fact, a lesbian, that matter was not known to the appellant. I entirely agree with Ms Everett that this is to concoct a substantially different claim, to the one put forward by the appellant at the hearing. That claim involved third parties giving evidence to the effect that they believed the couple were lesbians.
10. Mr Rene criticised the determination, as regards the treatment of the evidence of two witnesses, Mr G and Ms L. He contended that their evidence was not challenged by the respondent at the First-tier Tribunal hearing. There is some uncertainty about whether it was so challenged; but, in any event, it is manifest that the judge has not erred as regards his treatment of these witnesses. Their evidence is fully set out at [20]-[21] of the determination. At [35] the judge found that their evidence "constitutes very limited corroboration that this is a lesbian relationship (as opposed to a mere friendship)". In all the circumstances, the judge was entirely entitled to that conclusion.

11. Mr Rene asked me to examine various photographs of the appellant and a lady, said to be her lesbian partner in Uganda. These photographs were before Judge Talbot and are referred to at [35] of his determination. Having looked at them, I do not consider that the judge can be said to have erred in law in failing to give the photographs any material weight. They are all at least as indicative of two female friends as they are of two women in a sexual relationship.
12. At [33] the judge noted a discrepancy between the appellant's claim that she had joined an organisation in Uganda called "Freedom to Roam" and her response at interview, that she had not joined an organisation in that country. Mr Rene submitted that, at one point in her interview, the appellant had asserted she had joined that organisation whilst in Uganda. Whilst that is so, what the judge had in mind was question 99: "Did you join any organisation yourself in Uganda?", to which the response was "No". Once again, the judge was fully entitled to place weight on that undoubted contradiction.
13. At [34] the judge placed significance on the fact that the appellant did not claim asylum until eight years after her arrival in the United Kingdom. He noted but rejected her explanation, that she did not have information about how to go about this and that she was "afraid of being sent back". Once again, the grounds seek to challenge this, on no better basis than that the judge ought to have found to the contrary.
14. In conclusion, I find that there is no merit whatsoever in any of the grounds of challenge to the determination of the First-tier Tribunal. The appellant has quite properly been found not to be a witness of truth, who has manufactured a story about being a lesbian, merely in order to resist the proper application to her of the Immigration Rules of the United Kingdom.

Decision

15. The determination does not contain an error of law. The appellant's appeal is dismissed.

Signed
Date

Upper Tribunal Judge Peter Lane