



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05078/2014

THE IMMIGRATION ACTS

Heard at Field House
On 23rd January 2015

Decision & Reasons Promulgated
On 4th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MISS EMILY ELEANOR NANTAMU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Clarke
For the Respondent: Mr Tufan

DECISION AND REASONS

Introduction

1. The Appellant born on 23rd December 1979 is a citizen of Uganda. The Appellant was represented by Miss Clarke of Counsel. The Respondent was represented by Mr Tufan, a Home Office Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for asylum in 2012 and that application had been refused by the Respondent more than two years later. The Appellant had appealed that decision and her appeal had been heard by First-tier Tribunal Judge Higgins sitting at Taylor House on 21st August 2014. The judge had allowed her appeal under both the Refugee Convention and Article 3 of the ECHR.
3. The Respondent had sought application to appeal that decision on 10th October 2014. Permission to appeal was granted by First-tier Tribunal Judge Osborne on 26th November 2014. The permission found arguable the Respondent's assertion that the judge had made a material error of law in refusing the Respondent's adjournment request and further stated that all other issues were arguable.
4. Directions were issued that the Upper Tribunal should firstly consider whether an error of law had been made and the matter came before me in accordance with those directions.

Submissions on behalf of the Respondent

5. Mr Tufan relied on the Grounds of Appeal which focussed on two ways in which it was said the refusal to grant an adjournment had been procedurally unfair.
6. I indicated to Miss Clarke that I did not need to hear any submissions on the Appellant's behalf. I indicated that I found no error of law but would provide my decision with reasons. I now provide that decision.

Decision

7. Leaving aside the Grounds of Appeal brought by the Respondent there is no material error of law made in this case. The judge noted at paragraph 55 that the Respondent had accepted within the refusal letter that the Appellant would face persecution in Uganda on account of her claim to be a lesbian and to have participated in the activities of SILC and MFJ, if true.
8. At paragraph 73 the judge accepted unequivocally that the Appellant was a member of SILC in Uganda and that her involvement with both SILC and MFJ from May 2011 had not been challenged by the Presenting Officer. The judge referred to the weight of evidence in support of this part of the Appellant's case.
9. Accordingly leaving aside the question of an adjournment or potential concoction/similarities between the Appellant's evidence and that of others, there was as noted above separate and untainted evidence, largely accepted by the Respondent that would in itself have led the judge to allow the appeal as he so did.
10. Turning to the specific Grounds of Appeal they have limited merit and indeed in respect of the first ground seems somewhat surprising. The Appellant and her friend, Miss Namata had both made their asylum claims in 2010. Thereafter the Respondent, for reasons not provided, took two years to refuse the Appellant's

application. This case was being heard by the First-tier Tribunal in August 2014. That meant the Respondent had had four years to produce the documentary evidence relating to Miss Namata and to include it within the Appellant's bundle in support of their assertion that Miss Namata's evidence was strikingly similar to the Appellant's evidence and by inference therefore one or both had concocted their accounts. In those circumstances it was not wrong for the judge to refuse the adjournment request given the substantial time the Respondent had had and thus far had failed to produce evidence upon which they sought to rely. Four years is a substantial period of time. In any event the judge was aware of the substance of the assertions made by the Respondent as those assertions had been included within the Appellant's second interview and noted by the judge at paragraph 63 of the decision. The "striking similarity" features was presented by the Respondent as indicated above to no doubt claim that the Appellant and/or Miss Namata had concocted their accounts. The Respondent sought to bolster that by reference to inconsistencies between the Appellant and Miss Namata in terms of their evidence of being in a relationship together in the UK. That was noted by the judge at paragraph 61. The judge however for reasons given at paragraph 72 had found the Appellant and Miss Namata were in a relationship between July 2010 and August 2012 which in itself was evidence that went to the central issue of risk on return to Uganda of the Appellant if she was a lesbian.

11. The second Ground of Appeal refers to the refusal of the judge to grant an adjournment because of the late service of a letter from Miss Namazibwe and thereafter the judge's decision to exclude that letter, thus it is said depriving both the Appellant and the Respondent of that evidence. The judge was aware that he was to hear oral evidence from a number of witnesses on behalf of the Appellant, whose statements or letters were within both the Respondent's bundle and the Appellant's bundle which had been properly served. He accepted at paragraph 6 that the statement of Miss Namazibwe had not been served in accordance with directions. He was also aware that she was not present nor was there any intent to call her to give oral evidence. Firstly the judge was entitled to reject a statement put in, on behalf of the Appellant, if it had not been served in accordance with directions. Secondly, and perhaps in reinforcement of the first point, given that person was not providing oral evidence or being subject to cross-examination there would have been potentially little weight to be attached to her statement. The fact that the statement may have superficially have appeared very similar to the Appellant's account was of little evidential value to anyone if that individual did not give evidence, adopt her statement or have her evidence tested under cross-examination. Accordingly the statement of Miss Namazibwe had little or no evidential weight, was served late and not in accordance with directions and the judge was therefore justified in those circumstances in neither granting an adjournment nor admitting it in evidence. He had a substantial body of evidence to consider and its exclusion was not unfair to either side and indeed the Appellant did not argue at the hearing that its exclusion was unfair.
12. In summary therefore the judge made no error of law in respect of his decision not to grant an adjournment for either of the reasons put forward by the Respondent nor in

his decision to exclude a statement and in so doing he acted properly in the interests both of justice and the overriding objectives of the Tribunal.

Notice of Decision

- 13. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.
- 14. Anonymity direction is NOT MADE.

Signed

Date

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

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No fee is paid or payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Lever