



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

Appeal Number: AA/08178/2014

THE IMMIGRATION ACTS

**Heard at: Columbus
Newport
On: 28 May 2015**

House,

Decision promulgated

On: 29 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NKN

(anonymity direction made)

Respondent

Representation

For the Appellant: Mr D Mills, Home Office Presenting Officer

For the Respondent: Mr W Evans, Duncan Lewis & Co

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Suffield-Thompson in which she allowed the appeal of NKN, a citizen of Kenya, against the Secretary of State's decision to refuse asylum. I shall refer to NKN as the Applicant, although she was the Appellant in the proceedings below.
2. The Applicant arrived in the United Kingdom in September 2010 with a visa giving leave to remain until 25 February 2011. She claimed asylum in April 2012. Her application was refused on 26 September 2014. The Applicant exercised her right of appeal to the First-tier Tribunal. This is the

appeal which came before Judge Suffield-Thompson on 19 January 2015 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by Designated First-tier Tribunal Judge Murray on 10 February 2015 in the following terms

“The grounds of application state that the judge erred when at paragraph 30 of the determination she states that the representative for the respondent did not challenge the legitimacy of a letter submitted by the appellant but at paragraph 31 the judge states that the respondent asked for a finding to be made that the appellant’s story is not credible in any way and that the appellant is saying she is gay so she is granted asylum. The grounds state that the judge erred by making contradictory findings as had she in her mind that the letters may have been fabrications she might have come to a different conclusion about the appellant’s sexuality.

At paragraph 30 of the determination the judge refers to finding letters from the appellant’s friends to be genuine based upon the respondent not challenging their legitimacy but at paragraph 31 she states that the respondent has asked her to find that none of the appellant’s evidence is credible. The judge has made contradictory findings which may well have affected her final decision.”

3. At the hearing before me Mr Mills appeared to represent the Secretary of State and Mr Evans represented the Applicant. A section 24 response was filed by the Applicant dated 7 May 2015.

Background

4. The history of this appeal is detailed above. The facts, not challenged, are that the Applicant was born in Kenya on 18 November 1982. She arrived in the United Kingdom in September 2010 and claimed asylum in April 2012 on the basis of her sexuality. In refusing her claim the Secretary of State did not accept that the Applicant was a lesbian or, if she was, that she would be subject to persecution on a return to Kenya on account of her sexuality.
5. At the First-tier Tribunal hearing the judge accepted the credibility of the Applicant’s account (see paragraphs 29 and 31). In doing so the Judge accepted that the Applicant had told the truth about her sexuality. The Judge went on to find that the Applicant has been able to live peacefully in Kenya in the past by hiding her sexuality and that if she were not to do so she could face serious reprisals and consequences from the authorities.
6. The grounds of appeal to the Upper Tribunal do not challenge the finding that the Applicant would face persecution as a lesbian only that the Judge erred in making a positive credibility finding by wrongly stating that the Secretary of State did not challenge the legitimacy of the letter(s) submitted in support of her claim when it was the Secretary of States position that the Applicant’s story was not credible in any way.

Submissions

7. On behalf the Secretary of State Mr Mills relied on the grounds of appeal to the Upper Tribunal. He said that the Judge accepts the various letters submitted in support of the Applicant's claim at paragraph 30 of the decision and places weight upon those letters in making a positive credibility finding. The Judge made this finding despite enormous discrepancies in the Applicant's account and despite stating that the letters were not challenged by the Secretary of State ignored the fact that the Secretary of State did not accept any aspect of the Applicant's account.
8. For the Applicant Mr Evans referred to the rule 24 response. He said that the grounds of appeal to the Upper Tribunal were very narrow suggesting that if the letters in support had been fabricated the Judge would have come to a different conclusion. However there was no allegation of fabrication and no evidence to back up such an allegation if it had been made. It is clear from paragraph 30 that the Judge does not simply accept the provenance of the letters because the Secretary of State did not challenge their authenticity but that she made her own assessment of the letters.

Error of law

9. The grounds of appeal to the Upper Tribunal are, as pointed out by Mr Evans, very narrow. The only error asserted is that the Judge made contradictory findings by saying that the Secretary of State did not challenge the legitimacy of the letters in support of the Applicant's claim whilst acknowledging that the Secretary of State asked for a finding to be made that her story was not credible in any way.
10. It is difficult to see how these amount to contradictory findings. To the extent that it is argued that the Judge was wrong to state that the letters were not challenged it is very clear in my judgement that this was not material to her decision. There is no suggestion in the grounds, nor in the oral submissions made by Mr Mills, that the Secretary of State made any specific challenge to any of the letters submitted in support of the Appellant's claim still less that it had been submitted that the letters were fabricated. These were letters written by acquaintances of the Applicant in the United Kingdom corroborating her claimed sexuality.
11. The Secretary of State's challenge to credibility was a general one. The decision demonstrates that the Judge considered the Applicant's account carefully before reaching positive credibility finding. Paragraph 26 of the decision shows that the Judge took into account the inconsistencies in the Applicant's account that the Secretary of State asserted should be held against her credibility. Having taken these inconsistencies into account the Judge finds at paragraph 27

“Although I acknowledge that there are some discrepancies in her various accounts I find them to be minor in nature and not matters that damage her overall credibility”.

At paragraph 28 the judge notes that the Applicant delayed in making her claim for asylum but concludes

“I find that the fact that she did not seek to regularize her stay earlier does not outweigh the merits of her case in the balancing exercise I have to carry out”.

At paragraph 29 he judge concludes

“I accept her sexuality is as she states it to be”.

12. Paragraph 30 of the decision deals with the letters. Having said that the Secretary of State did not challenge the legitimacy of the letters the Judge goes on to say

“They are in different type sets and have different content and I accept these letters as genuine”

before noting in the following paragraph that the Secretary of State asks it to be found that the Applicant is not credible in any way. There is in my judgement nothing contradictory here and nothing that comes close to suggesting that the Judge was under any misapprehension about the Secretary of State’s position. To the contrary, it is abundantly clear that the Judge fully appreciated that the Secretary of State did not accept any aspect of the Applicant’s account.

13. There is no material error of law identified here for the reasons given above only a disagreement with credibility findings that the judge was properly entitled to make.
14. My conclusion from all of the above is that the decision of the First-tier Tribunal contains no error of law material to the decision to allow the appeal. The appeal of the Secretary of State is therefore dismissed.

Summary

15. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the Secretary of State’s appeal and the decision of the First-tier Tribunal stands.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**