



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

Appeal Number: PA/05938/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision and
Promulgated**

Reasons

On 2nd June 2017

On 9th June 2017

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**A A
(Anonymity Direction Made)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Sobande, instructed by OA Solicitors.

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on [] 1978 and she appeals, with permission granted by First-tier Tribunal Judge Grant-Hutchison, against a decision of First-tier Tribunal Judge J McMahon dismissing her appeal against the Secretary of State's refusal of her asylum, humanitarian protection and human rights claim.
2. The permission recorded that it was arguable that the Judge had misdirected himself by finding at paragraph 31 of his Decision and Reasons that the Appellant is bisexual but then contradicted himself by

finding at paragraph 50 that she is not bisexual and is heterosexual. It was noted that whether the appellant was heterosexual or not could make a difference to the weight to be placed on other aspects of the appellant's evidence such '*as the appellant's skeleton argument*' (sic) and her private life in terms of Article 8.

3. At the hearing before me, Mrs Sobande also referred to the grounds for permission to appeal which referred to the error in not applying an anonymity direction. I am not persuaded that permission was granted in this respect and the judge granting permission merely re-applied the anonymity direction which I maintain. This is not a specific ground of error and indeed it was open to the judge, bearing in mind his findings, to choose not to make an anonymity direction. This is not a ground as to the substance of the decision under appeal and indeed was not and could not be part of the grounds of appeal before the First-tier Tribunal Judge.
4. I considered that no grant had been made in respect of the ground cited at 2.4 of the permission grounds in that the judge failed to apply the test in the case of **Beoku-Betts v SSHD** [2008] UKHL 39. It was argued that the family and friends of the appellant were 'victims' of any such decision to remove the appellant from the UK. I refused an application to renew that ground before the Upper Tribunal. The judge addressed the issue of Article 8, such as it is in his decision, Article 8 was not specifically a ground of appeal before the First-tier Tribunal Judge although it was noted in the skeleton argument and the evidence placed before the First-tier Tribunal Judge disclosed no close family or friends in the UK such that the judge should have particularly addressed this issue. On the evidence I am not persuaded the judge could have done more.
5. In relation to the ground of appeal which was granted permission and as identified above, there was no contradiction in the judge's finding. As set out clearly by Mr Nath and the Rule 24 response from the Secretary of State the judge made cogent findings on the appellant's sexuality and this can be discerned from the judgment as a whole. At [31] the judge merely identified that '*in my assessment there is an aspect of the appellant's claim which has been maintained on a consistent basis*'. The judge does not indicate that he accepts this assertion in the claim at this juncture but fairly sets out that account in which the appellant has been consistent. The judge does not accept her sexuality he accepts that she had been *consistent* in this regard and there is a difference between accepting a consistency and accepting a particular fact.
6. The judge directed himself appropriately on the standard of proof and gave sound reasons at [37] [38] and [39] for not accepting that the appellant was anything other than heterosexual. She did not produce any statement from a female friend with whom she claimed a relationship between 2009 and 2016, and more importantly did not produce evidence of trying to make contact to attain such evidence. She failed to demonstrate that she had made attempts to put evidence of her

sexuality before the tribunal and there was no information as to the appellant's sexual orientation in the letters from her friends. The judge directed himself appropriately appreciating that it is not a requirement that an appellant provided confirmatory evidence but found there was a reasonable expectation that where evidence may be available that an appellant would take reasonable steps to put it before the Tribunal. The judge found she did not.

7. There is no error of law in the judge's findings in relation to the appellant's sexuality. There is, therefore, no error which would infect the findings in relation to Article 8. In that respect the judge made relevant and pertinent findings in relation to Article 8 not least that the appellant's private life was established at a time when she was in the United Kingdom unlawfully. On the evidence the judge's conclusions that the decision of the Secretary of State was proportionate was lawfully made.
8. There is no error of law in the decision of the First-tier Tribunal Judge and that decision will stand.

Signed Helen Rimington

Date 2nd June 2017

Upper Tribunal Judge Rimington