



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

Appeal Number: PA/09023/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Promulgated**

**Reasons**

**On 21<sup>st</sup> June 2017**

**On 25<sup>th</sup> July 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**MISS L. N.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Barratt, Counsel for Wick & Co Solicitors, Middlesex  
For the Respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Uganda born on 17<sup>th</sup> December 1987. She appealed against the decision of the Respondent dated 17<sup>th</sup> August 2016 refusing her claims for asylum and humanitarian protection and also her human rights claim. Her appeal was heard by Judge of the First-tier Tribunal Miller and dismissed on all grounds in a decision promulgated on 21<sup>st</sup> April 2017.
2. An application for permission to appeal was lodged and permission was granted on the following grounds

It was found to be arguable that the Tribunal failed

- (1) to assess the risk to the Appellant on return to Uganda by reference to an article posted on the internet (pages 26 and 27 of the Appellant's bundle) in which she is named and photographed;
  - (2) to differentiate between the Appellant's motives in engaging in sur place activities and the possible consequences on return to Uganda of having done so;
  - (3) to assess the medical evidence as part of the evidence as a whole; and
  - (4) to have regard to the independent clinical assessment of the Appellant in the psychological report.
3. There is a Rule 24 response on file which states that the judge has considered all the evidence before him, including the medical evidence and has found the Appellant's account to lack credibility. The response states that he has given proper reasons for this and that there was not sufficient evidence before him to reach a different decision.

### **The Hearing**

4. The Presenting Officer submitted that if the Appellant is found to be credible then she will be in danger on return to Uganda and that is accepted by the Respondent.
5. Counsel submitted that there has been no challenge to the documents provided. There are photographs showing a demonstration in support of LGBT which the Appellant attended and was photographed at, in Croydon. There are also photographs in a United Kingdom newspaper and in "Saturday Paper", a Ugandan newspaper and evidence was provided to show that her picture and her name were put on a Ugandan website. On this website it is stated - "A mother abandons her three children and flees to the United Kingdom to meet her lesbian lover".
6. Counsel submitted that the decision lacks detail and he submitted that as the appellant is in these photographs and in particular the photographs on the website, she must be in danger on return. He accepted that it is only the article on the website in which she is named.
7. He submitted that this Appellant left her three children in Uganda and on return will be perceived to be gay and that is all that is required for her claim to succeed.
8. The Presenting Officer submitted that the First-tier Tribunal Judge found the Appellant not to be credible. He found that she is not gay and at paragraph 49 of the decision finds that she and her supposed partner Lydia are not immediately recognisable from the photographs. The judge also finds it unlikely that the Appellant would have consented to being in such photographs if she felt she would thereby be exposed to any danger.

9. The Presenting Officer submitted that other judges might well have come to a different conclusion but the conclusions Judge Miller came to were open to him and paragraph 49 of the decision does not contain an error of law. The fact that the judge states that in the photographs, when he eventually recognises the Appellant, she appears to be relaxed, is not a perverse finding.
10. Counsel submitted that the judge did not look at the documents in the round. His decision is based purely on credibility and whether the Appellant is gay or not. At paragraph 49 he talks about one protest march but he should have considered all the documents together and then assessed risk on return, in particular the risk of being perceived gay, on return.
11. He submitted that the judge should also have considered the medical report and he appears to have made his decision relating to the medical report after he found the appellant to lack credibility and after he had decided to dismiss the appeal. He submitted that the judge fails to engage with the fact that the appellant left her three children in Uganda and his comment, in paragraph 50 of the decision, that the Appellant is aware of other cases which have been successful where reliance has been placed on sexuality, so she has considered this the best path to adopt in trying to secure status in the United Kingdom, is purely speculative and is not a justified comment.
12. I was asked to find that there are material errors of law in the judge's decision and it should be set aside.

#### DECISION and REASONS

13. I have to decide if the Appellant is a lesbian or if she would be perceived as a lesbian on return to Uganda. The judge refers to this at paragraph 15 of his decision. At paragraph 15 he also refers to the Appellant's alleged partner Lydia failing her asylum claim on grounds of sexuality.
14. He refers to the photographs at paragraph 17 and he notes that the Appellant has explained the differences in her account from what she stated at interview. He goes through the evidence she has given about her relationships in detail in his decision and it is clear from this that he is aware that she left her children in Uganda with their grandmother.
15. The judge also points out that the only witness, apart from the Appellant, at the hearing, was Lydia. The judge clearly is aware of all the documentation and evidence before him and at paragraph 46 he considers all this evidence with care. He is aware of the low standard of proof but he mentions the Appellant's lack of knowledge about the people she was in relationships with. He finds the letter from her school not to be genuine (paragraph 46(1)) and explains why. He is puzzled by the fact that her husband has not taken her children away from their grandmother based

on the Appellant's evidence and he refers in particular to the letter supposedly from the Ugandan police which refers to the Penal Code Act of 1996 which is an Act that does not exist in Uganda. This is mentioned in the refusal letter and the Appellant's representative did not challenge this finding.

16. It is clear that Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 comes into play as the Appellant did not claim asylum until she had been in the United Kingdom for ten months and the judge finds that this affects the appellant's credibility.
17. The judge refers to the appellant living with Paul Buuka since February 2016 but he did not appear at the hearing as a witness. The only item from him was a statement which was handed in at the hearing. He also refers to the other letters of support, all of which are written by people who did not attend the hearing. He refers to there being significant similarities in these letters. At paragraph 46(xii) he states that the people who have written statements did not know the Appellant before February 2016 when she met Paul Buuka and commenced her claim based on her sexuality.
18. The judge goes on to refer to discrepancies in the evidence given by Lydia and the evidence given by the Appellant. It is clear that he does not find the Appellant to be a lesbian. He gives proper explanations for all his findings. Before making his decision relating to the asylum claim he refers to the psychological report at paragraph 47. The psychologist accepts the information given by the Appellant. It is not the psychologist's job to decide on credibility. It is for the judge, the decision maker, to make a decision on this and the judge finds that she is not credible and at paragraph 48 considers whether she would be perceived as being a lesbian on return. He has taken into account the photographs, the online website and the newspaper extracts from the UK newspaper and Saturday Paper. He refers to it being difficult to identify the Appellant in the photographs and with regard to the website he finds there is no evidence that any of the authorities in Uganda would look or have looked at this. He speculates by saying that it is unlikely that the Appellant would have consented to being in such photographs if she felt she would thereby be exposed to any danger. Based on what was before him I find that he was entitled to make that comment.
19. At paragraph 50 the judge refers to the appellant's claim, based on her sexuality, not being made until her visa had expired.
20. Due to a lack of credibility the judge has dismissed the appeal on all grounds and has dealt with her human rights at paragraph 51.
21. Everything has been properly explained in the decision and I find that there is no error of law and certainly no material error of law.

### **Notice of Decision**

22. There are no material errors of law in the judge's decision promulgated on 14<sup>th</sup> April 2017. The judge's decision dismissing the appeal must stand.

23. Anonymity has been directed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 24 July 2017

Deputy Upper Tribunal Judge I A M Murray