



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

Appeal Number: PA/10305/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 30th January 2017**

**Decision & Reasons Promulgated
On 11th May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**LN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. A Benfield, Counsel, instructed by Wimbledon Solicitors

For the Respondent: Mr. L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal made an anonymity order. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication

thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. This is an appeal against the decision of First-tier Tribunal Judge Walker promulgated on 8th November 2016.
3. The appellant is a national of Uganda. She claims to have arrived in the UK on 15th December 2002 on a passport that did not belong to her, and which she claims, was provided to her by an agent. On 21st March 2016, she claimed asylum. The claim for asylum was refused for the reasons set out in a decision dated 12th September 2016. That was the underlying decision that was the subject of the appeal before the First-tier Tribunal (“FtT”).

The decision of First-tier Tribunal Judge Walker

4. The Judge heard oral evidence from the appellant and witness called by the appellant to give evidence. The appellant’s immigration history is set out at paragraph [10] of the decision of the FtT Judge. At paragraphs [24] to [36] of his decision, the Judge sets out the appellant’s case. I borrow a summary of the matters giving rise to her claim, from paragraph [36] of the decision;

“The Appellant cannot return to Uganda because she fears persecution there because of her sexuality. She believes she will be easily recognised in Uganda on return due to her attendance at various LGBT activities and protests in London.”

5. The findings and conclusions of the Judge are to be found at paragraphs [38] to [54] of the decision. The Judge notes at paragraph [40] that the primary issue is whether or not the appellant is a lesbian. The overall findings of the Judge are set out at paragraphs [53] and [54] of his decision. He states:

“53. For all the above reasons, I do not accept the Appellant’s claims about her sexuality, her longstanding lesbian relationship in Uganda and that she was forced to flee as a result of actions by her husband and the community at large. Following from that I find that there would be no real risk of persecution if the Appellant were to return to Uganda. It might well be that she has had a long and unhappy marriage so if she did not want to return to her home area she could relocate within Uganda. She would have the support of her seven children or at least some of them, available to her. Neither do I accept her evidence of coming out in 2015 and 2016 and having a lesbian relationship with Monica.

54. The Appellant has claimed to have attended LGBT events but there has been no claim that in doing so she would have come to the knowledge and attention of the Ugandan authorities and therefore be perceived as a lesbian. Attending these events has not caused the Appellant to be placed in any place of risk.”

The appeal before me

6. The appellant advances two grounds of appeal. First, the appellant submits, the Judge failed in his assessment of credibility, to consider relevant evidence. Second, the Judge failed to resolve a matter at issue between the parties. The appellant refers to the evidence concerning her involvement in the UK as a campaigner within the LGBT community. The appellant claimed in her skeleton argument before the FtT that there was an additional risk to the appellant on the grounds of her activities as an LGBT activist.
7. Permission to appeal was granted by FtT Judge Andrew on 8th December 2016. The respondent has filed a Rule 24 response opposing the appeal. The matter comes before me to consider whether the decision of the FtT involved the making of a material error of law, and if so, to remake the decision.

8. The appellant submits that the Judge does not appear to have considered the evidence that was in the appellant's bundle. It is said that the Judge fails to refer to the photographs of the appellant and Monica, photographs of the appellant showing her attendance at protests and demonstrations in the UK, the evidence of Margaret Ferguson, a letter from Jill Power, a statement of Mable Nalule and a letter from Samuel Kiwanuka. The appellant submits that the Judge limited his consideration of the evidence to the witnesses who attended the hearing of the appeal, and the letter from Ray Harvey-Amer, but without referring to his supplementary statement that was in the appellant's bundle.
9. Ms Benfield submits that the appellant's bundle comprised of a number of pieces of evidence that is to be found at pages [7] to [65] of the appellant's bundle, to which the Judge makes no reference. Similarly, within the respondent's bundle there were letters from Jill Power of Micro Rainbow International, Mable Nalule, and Samuel Kiwanuka that do not appear to have been considered by the Judge. She submits that despite the wealth of evidence before the FtT, the Judge fails to refer to many key pieces of evidence, or, to give any reasons why the evidence from those independent sources, was could not be relied upon. Ms Benfield submits that the Judge relies solely upon the evidence given by the witnesses whose oral evidence he heard, or that had been referred to in the respondent's decision. She submits that the failure to engage with the evidence demonstrates that the Judge failed to give anxious scrutiny to the evidence. She submits that it cannot be said here, that if the Judge had considered all of the evidence before him, the outcome would have been the same.
10. In reply, Mr Tarlow submits that at paragraphs [38] to [40] of his decision, the Judge notes that he has considered all of the evidence. He submits that there is no reason to believe that the Judge has not done so. Mr Tarlow submits that at paragraphs [42] and [43] of his decision, the Judge reached findings that were properly open to him. He submits that

the Judge notes at paragraphs [44] to [52], a number of matters that relate to the core of the appellant's account, where the evidence was unsatisfactory and could not be relied upon. He accepts that the Judge does not refer to all of the evidence that was in the appellant's bundle, but, he submits, it is not necessary for the Judge to refer to each piece of evidence provided that it is clear from the decision why the Judge reached the decision that he did. He submits that detailed reference to all of the evidence was not necessary and that the outcome of the appeal would have been the same, even if that evidence had been referred to in the decision.

11. I remind myself of the observations made by Mr. Justice Hadon-Cave in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)**;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

12. I have also had regard to the decision of the Upper Tribunal in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 IAC** where it was stated in the head note that:

"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision makes sense, having regard to the material accepted by the judge."

13. I also remind myself of the test set out by Lord Hope in his judgement in **HJ (Iran) -v- SSHD [2010] UKSC 31**. Such appeals involve what is essentially an individual and fact-specific inquiry. The first stage is to

consider whether the appellant is indeed a lesbian. Unless she can establish that she is of that orientation she will not be entitled to be treated as a member of the social group.

14. The issue for me to decide is whether the Judge was entitled to dismiss the appeal for the reasons set out, because the Judge found that the appellant is not a lesbian, on the evidence before him. I have carefully read through the decision of the FtT Judge, and his findings of fact and credibility that are set out at paragraphs [38] to [54] of his decision. It is right to note that, as Ms Benfield submits, the Judge does not make specific reference in his decision to the photographs that are to be found in the appellant's bundle, the two letters from Margaret Ferguson dated 24th July 2016 and 19th October 2016 and her statement, or the statement of Samwel Kiwanuka. There were also several letters in the respondent's bundle, to which the Judge does not make express reference.
15. That however, is not to say that the Judge did not consider them when he resolved the key conflicts in the evidence, and explained his reasons in a way that the parties can understand why they have won or lost. At paragraph [38], the Judge proceeds to make his findings of credibility and fact, "*Having considered the evidence in it's totality..*". At [39], the Judge states:

"..My findings are based upon the evidence as a whole, including that to which I have not made specific reference."

16. I have no reason to doubt that the Judge did, as he says, consider the evidence as a whole, in completing an individual and fact-specific inquiry as to the appellant's sexual orientation. The Judge was plainly ware that there was evidence before him, to which he was not making specific reference. He identifies at paragraph [40] that the primary issue here is "*whether or not the appellant is a lesbian..*". It is in that context that the Judge considered the evidence and the core of the appellant's account.

17. The Judge found the appellant's evidence about what she has been doing for the last 14 years to be vague. The Judge, at [41], rejected the claim by the appellant that she knew nothing of the asylum process until she joined the LGBT groups at the end of 2015 and earlier in 2016. The Judge notes, at [42], that the appellant has been in the UK for such a length of time, yet has only recently taken up with the LGBT groups and events. He found that no reasonable explanation has been given by the appellant why she has not come out about her sexuality nor had any partners for 13 years. The Judge rejected the appellant's account that she had had a previous lesbian relationship in 2005, with a woman called Anna from Uganda.
18. At paragraphs [44] to [52] of his decision, the Judge identifies a number of other areas of the evidence of the appellant and her witnesses, that he found to be inconsistent and incredible. At paragraphs [44] and [45], the Judge considers the account of events advanced by the appellant, against the matters set out "in one of the letters" submitted by the appellant from Ray Harvey-Amer. The Judge was therefore plainly aware that there was more than one letter before him, from Ray Harvey-Amer. He did not feel it necessary to refer to the content of both letters for the purposes of his assessment, but he was clearly aware that there was more than one.
19. At paragraph [46], the Judge found it implausible, but into impossible, that the appellant has kept her sexuality hidden from her husband for a period of 22 years, during which time they have had 7 children. At paragraphs [47] to [49], the Judge identifies other areas of the appellant's evidence and account of evidence that he did not find to be credible. At paragraphs [50] of the decision the Judge refers to the evidence of the appellant and her claimed partner, Monica. At paragraph [51], the Judge refers to the evidence of Mr Lutakome and at paragraph [52], the Judge refers to, and addresses the evidence of Debbie Davies, a

Deacon of the Metropolitan Community Church of North London, who attended the hearing to give evidence.

20. As to the evidence set out in the respondent's bundle, at paragraph [8], the Judge records that he has taken into account the respondent's bundle. At paragraph [37(4)] of his decision, the Judge records the submission made by the respondent that the appellant had submitted various letters from supporters, some of which are contradictory to the appellant's own account, and others that are completely self-serving, and simply corroborate the appellant's vague claim. The letters were referred to in the respondent's decision of 12th September 2016 and included the letters from Movement for Justice, African LGBTI, Micro Rainbow International, the statement of Mable Nalule, and various photographs of the appellant at various events. The Judge was clearly aware of that evidence.
21. I have carefully read the two letters provided by Margaret Ferguson dated 24th July 2016 (*which was before the respondent and referred to in the decision letter*) and 19th October 2016. I have also carefully read the statement of Margaret Ferguson dated 20th October 2016 in which she expresses the "opinion and belief that *the appellant* is a lesbian woman and her life would be at risk should she be returned to Uganda.". Her qualifications and reasons for her latter opinion are not set out. She did not attend the hearing of the appeal to give evidence before the FtT Judge. However, her colleague, Debbie Davies, a Deacon of the same Church, and who had provided a similar letter dated 26th October 2016, that post-dates the witness statement of Margaret Ferguson, but supports the appellant in much the same way, did attend before the FtT Judge and gave evidence. Consistent with the statement of Margaret Ferguson, Debbie Davies states "*..[the appellant's] choice to attend this church and her ease in associating and building relationships with other LGBT people leaves me in no doubt that she is a lesbian woman...*". The

FtT Judge notes, at [52], her evidence that she believes the appellant to be a lesbian. The Judge finds:

“..I have no doubt at all as to Ms Davies’s good intentions and the good works she has carried out. I do believe that she is mistaken and has believed what she has been told. It may be that she is too trusting and too altruistic but I believe that she is wrong in her views.”

22. Having heard from Debbie Davies and reached a view as to her evidence, in my judgement there was no need for the Judge to consider separately and make express reference to the evidence of Margaret Ferguson. The opinions of others, that did not attend the hearing before the FtT to give evidence, is no substitute for the careful assessment of the appellant’s account that was completed by the Judge.
23. The photographs relied upon by the appellant fall into two categories. There are several photographs showing the appellant and her claimed partner, Monica, together. Photographs of the two women together can hardly establish the appellant’s sexual orientation and undermine the conclusions that the Judge reached at paragraph [50] of his decision, having heard the evidence of the appellant’s claimed partner.
24. The remaining photographs show the appellant at various events and demonstrations. Although the Judge does not make express reference to those photographs, the Judge states at [54]:

“The Appellant has claimed to have attended LGBT events but there has been no claim that in doing so she would have come to the knowledge and attention of the Ugandan authorities and therefore be perceived as a lesbian. Attending these events has not I caused the Appellant to be placed in any place of risk.”

25. It is clear from the summary that is set out by the Judge at [36] of his decision, that the Judge had in mind that the appellant believes she will be easily recognised in Uganda on return due to her attendance at

various LGBT activities and protests in London. In the skeleton argument relied upon by the appellant before the FtT, reference was made to the respondent's policy guidance that states that there is restriction on civil society groups in Uganda, including the arrest of activists and restriction on registration of NGOs and other groups. It was claimed by the appellant that "it is therefore likely that the Ugandan authorities monitor individuals who support LGBT rights and are outspoken activities against Uganda's restrictive laws". In my judgement, it was open to the Judge to find that attending these events, has not caused the appellant to be placed in any risk.

26. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really cannot understand the original judge's thought process when he was making material findings. In my judgement, the Judge identified and resolved key conflicts in the evidence and gave a brief explanation of the conclusions on the central issue on which the appeal was determined. The findings made by the Judge were findings that were properly open to the Judge on the evidence before the FtT. The findings cannot be said to be perverse, irrational or findings that were not supported by the evidence. The appeal was dismissed after the Judge had carefully considered the facts and circumstances of the claim and all the evidence before him.
27. In my judgment, the appellant is unable to establish that there was a material error of law in the decision of the FtT and it follows that the appeal is dismissed.

DECISION

28. The appeal is dismissed and the decision of the First-tier Tribunal Judge stands.
29. An anonymity direction was made by the First-tier Tribunal and that direction shall continue.

Signed

Date

9th May 2017

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Mandalia