Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13784/2016**

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 20 October 2017	**On 15 November 2017**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

J H M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Gobir instructed by Albany Solicitors
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) we make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Background

2. The appellant is a citizen of Cameroon who was born on 15 August 1997. She last arrived in the United Kingdom on 10 October 2015. On that date, she was interviewed and referred to the National Referral Mechanism as a potential victim of

trafficking. That referral was suspended on 7 December 2015 when the appellant absconded.

3. On 25 May 2016, the appellant was arrested as an immigration offender. A screening interview took place on 2 June 2016 and on that date the appellant claimed asylum. The appellant's asylum interview took place on 28 November 2016 and 29 November 2016. The basis of her claim was that she was a lesbian and that her relationship with another woman ("Y") in Cameroon had been discovered by her family and she was, as a consequence, at risk from them on return to Cameroon.

4. On 30 November 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds under Art 8 of the ECHR. It was accepted by the respondent that if the appellant was a lesbian then she was at risk on return as a member of a particular social group. However, the respondent did not accept the appellant's account of events in Cameroon including her relationship with Y or that she was a lesbian.

The Appeal

5. The appellant appealed to the First-tier Tribunal. In a determination sent on 24 January 2017, Judge Powell dismissed the appellant's appeal on all grounds. He made an adverse credibility finding and did not accept the appellant's account of events in Cameroon or that she was a lesbian and so would on that basis be at risk on return to Cameroon.

6. The appellant sought permission to appeal to the Upper Tribunal challenging the judge's adverse credibility finding. On 22 May 2017, the First-tier Tribunal (Judge Keane) granted the appellant permission to appeal.

7. On 13 June 2017, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision.

8. Thus, the appeal came before us.

Discussion

9. Mr Gobir, who represented the appellant, made a number of submissions.

10. First, relying upon the grant of permission to appeal, he submitted that the judge's adverse credibility finding was flawed as he had wrongly applied s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act"). Mr Gobir submitted that whilst the appellant had not claimed asylum until 2 June 2016 which was after her arrest on 28 May 2016, she had nevertheless first raised the substance of her claim in her initial interview on 10 October 2015. He submitted, therefore, that she had in substance referred to her claim before her arrest and that, therefore, s.8(6) of the 2004 Act did not apply even though, as Mr Gobir conceded, she had not said prior to her arrest "I'm claiming asylum".

11. The judge dealt with s.8 of the 2004 Act at paras 25-26 of his determination as follows:

> "25. I note that although the appellant entered the United Kingdom in October 2015, she did not claim asylum until 2 June 2016 and only after she had been arrested on 28 May 2016. The appellant was less than open about the reasons her entry clearance was cancelled in March 2015 and I note that she accepts that she absconded from accommodation provided to her in October 2015, resulting in the withdrawal of a referral to the trafficking mechanism. I agree with the respondent's view that this conduct brings the appellant within section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
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> 26. As a result, the appellant's credibility is damaged. This does not mean that I must disbelieve her evidence. It means I must, and do, anxiously scrutinise her claim for international protection through the lens of her damaged credibility."

12. In those paragraphs, the judge made three points concerning the appellant's conduct which, in his view, fell within s.8 of the 2002 Act. First, the appellant did not claim asylum until after she was arrested. Secondly, and this relates to part of the appellant's narrative which we shall return to shortly, she had originally come to the UK with entry clearance as a student in March 2015 but that this had been cancelled at port. Thirdly, the appellant had absconded from accommodation provided to her in October 2015.

13. The relevant provisions in the 2004 Act are contained in s.8(1), (2) and (6). They are in the following terms:

> "(1) In determining whether to believe a statement made by or on behalf of an appellant makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.
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> (2) This section applies to any behaviour by the claimant that the deciding authority thinks –
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> (a) is designed or likely to conceal information,
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> (b) is designed or likely to mislead, or
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> (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
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> ....
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> (6) this section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless –
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> (a) he had no reasonable opportunity to make the claim before the arrest, or
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> (b) the claim relies wholly on matters arising after the arrest."

14. The effect of "behaviour" that falls within s.8 is that it is "damaging [of] the claimant's credibility". A Tribunal must take that into account in assessing an appellant's credibility. In JT (Cameroon) v SSHD [2008] EWCA Civ 878, the Court of Appeal interpreted s.8 as requiring the decision maker to consider the "behaviour" as "potentially damaging [of] the claimant's credibility" (our emphasis). The weight to be attached to the "potentially damaging behaviour" is a matter for the Tribunal

and must not distort the fact-finding exercise detracting from an overall assessment of the evidence and individual's credibility (see, SM (section 8: judge's process) Iran [2005] UKAIT 00116 and JT (Cameroon) at [19]).

15. In this appeal, there is no doubt that s.8(6) applied because the appellant did not claim asylum prior to her arrest as an immigration offender. That behaviour was, therefore, "potentially damaging" of her credibility. Likewise, s.8(2) applied as the appellant's absconding was "likely to conceal information" or, possibly, "likely to obstruct or delay the handling…or taking of a decision" in respect of her. Section 8(2) was also engaged by the appellant's conduct that led to her entry clearance being cancelled in March 2015. The judge dealt with this at paras 30-33 in the following terms:

> "30. The appellant obtained entry clearance to the United Kingdom to study at the University of Portsmouth. On arrival, the appellant's leave was cancelled and she was returned to Cameroon in March 2015. The appellant said at first that she did not why her leave had been cancelled and then that she was refused entry because she was 17 and too young to study at university. This is manifestly untrue. The appellant had secured a place at the University of Portsmouth. She had been granted entry clearance to study in this country. Both the University of Portsmouth and the Entry Clearance Officer in Cameroon (or wherever entry clearance was granted) were aware of the appellant's age. Had she been too young to be admitted to the United Kingdom, it is not at all credible that she would have been given a place by the university or granted entry clearance by the relevant visa officer.
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> 31. The appellant was refused entry in March 2015 because the appellant told the immigration officer on arrival that she was being met by a man, called Francis Angbeaud Montjen who was not related to her and was not recorded as her sponsor. He did not arrive at the airport to collect the appellant. The Appellant was interviewed. She said that this man was a friend of her father's.
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> 32. The appellant was asked about her study plans. She said that she had planning to study in the United Kingdom for 5 years, since she 12 years old. However, she arrived in the United Kingdom with only £120 and insufficient clothes. She had none of the usual trappings of a student, such as books, materials or paper. She did, however, have a pen. The appellant said that her father would be sending further funds to her to enable her to study in this country.
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> 33. In the light of all that the immigration officer had heard, he formed the view that the appellant's welfare and safety could not be assured and returned her on the next available flight to Cameroon."

16. The judge was, in our judgment, entitled to regard the appellant as being disingenuous as to the basis upon which her visa was cancelled and therefore was behaviour "likely to mislead".

17. In any event, the fact of her absconding and her disingenuousness on seeking entry in 2015 would be damaging of the appellant's credibility even without s.8 of the 2004 Act.

18. In applying s.8, the judge was careful in para 26 of his determination to emphasise that the effect of s.8 was not that he "must disbelieve her evidence". Rather, he

correctly, in our judgment, emphasised that he must scrutinise her claim "through the lens of her damaged credibility". In his approach, he went no further than required by s.8 in taking into account the features of the appellant's evidence which potentially damaged her credibility. As is clear from reading the judge's determination as a whole, he said no more about s.8 but at paras 27-51 gave a number of discrete reasons why he did not believe the appellant's account and accept that she was a lesbian and at risk on return to Cameroon.

19. Consequently, we reject Mr Gobir's submission that the judge wrongly, and inappropriately, applied s.8 of the 2004 Act.

20. Secondly, in addition to the point raised under s.8 of the 2004 Act, Mr Gobir indicated that he continued to rely upon his skeleton argument and the contention that the judge had improperly relied upon a number of "minor discrepancies" in the appellant's evidence in reaching his adverse credibility finding. He did not address us further on the points raised. We can deal with them briefly as they fail to identify any material error of law in the judge's reasoning.

21. First, it is contended that the judge was wrong to take into account, in assessing the appellant's credibility in the light of the cancellation of her entry clearance that she only had £120 with her, had insufficient clothes and none of the usual trappings of a student such as "books, material and papers". We have set out the judge's reasoning above at paras 30-33, in particular at para 32. This was clearly a matter which the judge was entitled to take into account in assessing whether the appellant had been seeking entry to the UK in March 2015 as a genuine student.

22. Secondly, the judge is criticised for taking into account, if she had been a genuine student, the absence of any reaction by her family on return. The judge dealt with this at para 34 as follows:

> "34. I asked the appellant about her family's reaction to her return. She said that her father did not say anything. I find this incredible. If the plan for the appellant to study here had been so long in the formulation, it is beyond belief that her family would have nothing to say about that plan being thwarted. It is incredible that there would not have been discussion about why Mr Montjen had not met her at the airport. There would have been discussion about the money paid to the University of Portsmouth for her course and, it is reasonable to expect, conversation about how to recover it. There may well also have been discussion about the decision of the UK immigration officer to cancel her leave to enter the United Kingdom. Furthermore, it is beyond belief that there was no discussion about the appellant's future. Her long-held plans to study in the United Kingdom and the family's efforts to ensure that funds were available to allow her to do so, had come to an end. I do not find the appellant's account of her father having nothing to say at all credible."

23. Again, we see nothing untoward in the judge's reasoning which was properly open to him.

24. Thirdly, it is contended that the judge's reasoning that led him not to accept her account of her sexual relationship with Y whilst at a state school and thereafter that

they worked as prostitutes was flawed. The judge's reasoning is at paras 35-41 as follows:

> "35. However, other aspects of the appellant's account also raise significant concerns. Mindful of the way the appellant described her plans to the immigration officer at Gatwick in March 2015, it does not appear to me to be credible that she attended a state school in Cameroon rather than a private school. I say this because the appellant's account is that her family had supported her plans to study abroad for about 5 years. It is beyond belief that her father would not have wished to give her the best opportunity to reach an educational standard that would best allow her to fulfil her ambition. If the appellant's account is true, her father was a relatively wealthy man, with a house, cars and a relatively senior position in the army.
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> 36. The appellant's explanation that her father insisted she went to a state school rather than a private school as a punishment for some rebellious streak is just not credible. It is nonsensical.
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> 37. The appellant's account of forming a sexual relationship with [Y] is inextricably linked to her claim that she attended a state school because [Y] was in her mid-twenties, some 7 years older than the appellant. The appellant claims that it is common for adults to attend state schools as students and, as such, there is nothing implausible about [Y] and her meeting and forming a relationship, whereas private schools are reasonably likely to have had stricter age requirements.
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> 38. As such, I find that the appellant's account of where and how she met [Y] to lack credibility.
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> 39. The appellant claims that she and [Y] did not form an intimate relationship until after she returned from the United Kingdom. There is nothing inherently implausible about the appellant's account of how this relationship started although given the oppressive attitude to same sex relationships, it is perhaps surprising, if true, that they placed themselves in a position where discovery so easily occurred. However, I remind myself that suspicion is not a sufficient reason to find an account or part of it incredible.
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> 40. The appellant claims that she and [Y] fled to Youande where they decided to become prostitutes in order to survive. The appellant told me that she and [Y] earned good money as prostitutes. This was inconsistent with answers given in interview where she said that all of the money received from their prostitution had been retained by [Y] although she also said that the money was given to the landlord and none of it was given to [Y].
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> 41. From some answers given by the appellant (AIR Q122, PRI Q45 and PRI Q48) I find that the appellant gave inconsistent accounts of [Y's] role in her claimed prostitution, at times indicating that the decision to prostitute themselves was a joint decision or that she had just followed [Y's] previously established working practice or that she had been forced to become a prostitute. For my part, the decision to become a prostitute is likely to have been of such importance that it is not believable that the appellant would not remember the exact circumstances in which she started to have sex for money. The inconsistencies undermine the appellant's evidence of how she maintained herself after fleeing her family. In my judgment, this casts significant doubt on the appellant's account."

25. In his skeleton argument, Mr Gobir contended that the matters relied upon were minor (including the inconsistencies) which, in respect of her account of prostitution

with Y, were in part due to the first of her asylum interviews not being conducted with an interpreter.

26. It is clear that the judge had well in mind that there might be difficulties relying on the first interview which had been conducted in English rather than French because at para 28, in respect of another aspect of the appellant's account, he declined to find an inconsistency in her evidence based upon that first interview. His reasoning in paras 35-41 identifies real inconsistencies in her account and the judge was entitled to regard them as significant and to take them into account in assessing whether he believe a central part of the appellant's claim concerning her relationship with Y. Further, we see nothing irrational or improper in the judge doubting, given the appellant's evidence of her family's financial and societal position, that he did not accept that the appellant would be sent to a public school (as opposed to a private school) where the opportunity to meet Y arose.

27. In addition, the judge gave a number of further reasons at paras 42-46 why he did not accept the appellant's account about how she came to leave Cameroon and that, despite her claimed relationship with Y, she had an almost total absence of contact with Y subsequent to leaving Cameroon.

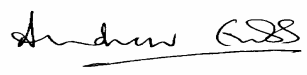
28. As Mr Richards (who represented the respondent) submitted, the judge's reasons are balanced. At a number of points he rejected arguments put forward by the Secretary of State for not believing the appellant's account (see paras 22 and 28). In addition, he recognised, in the appellant's favour, that her account of her sexual orientation has been consistent (see para 23) and her activities in the UK with a LGBT support group was consistent with her claimed sexuality (see para 50).

29. None of the points raised on behalf of the appellant establish that the judge's decision, in particular his adverse credibility finding, is legally flawed. The judge gave cogent and sufficient reasons for his adverse credibility finding which was based upon the evidence and was not irrational or otherwise unsustainable in law.

Decision

30. For these reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal did not involve the making of an error of law. Its decision stands and the appellant's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

15 November 2017