



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

Appeal Number: HU/11318/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7 February 2018**

**Decision & Reasons  
Promulgated**

**On 23 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MS MAXINE LORENE FARQUHARSON  
(ANONYMITY DIRECTION NOT MADE))**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance by or on behalf of the appellant

For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Herlihy promulgated on 27 October 2017 to dismiss the appellant's appeal on the basis that the respondent's decision which the appellant had appealed against would not cause the United Kingdom to be in breach of the law or its obligations under the ECHR.
2. The appellant is a national of Jamaica. She applied for leave to remain in the UK on the basis of her relationship with her partner Sharmaine Marie Taylor. The respondent noted that passport office records showed that

Sharmaine Marie Taylor had fraudulently obtained her British passport and that as a result it had been revoked, and found that the appellant failed to meet the eligibility requirements of E-LTRP.1.2.

3. The respondent further found that the appellant did not qualify for leave to remain in the United Kingdom on the basis of her private life under paragraph 276ADE because she had not lived in the United Kingdom for twenty years or more and was not under the age of 18. The respondent noted that the appellant had entered the United Kingdom in August 2002 having spent the first 35 years of her life in Jamaica and that she would be able to integrate back into life in Jamaica.
4. At the hearing before me there was no appearance by the appellant nor was there any appearance on her behalf. I was satisfied that the notice of today's hearing was sent to the appellant at her last known address at [ ] London [ ]. That was the address provided by the appellant when she lodged the application for permission to appeal to the Upper Tribunal. There was no explanation from the appellant for her absence. In the circumstances I proceeded with the hearing.
5. At the hearing before the judge the appellant put in an appearance. She gave oral evidence and said she was no longer in a relationship with Sharmaine Marie Taylor. She described herself as gay but had not made an asylum claim and wished to do so. She claimed that she could not return to Jamaica due to her sexuality which she had always kept secret but since coming to the United Kingdom did not wish to hide it anymore and that there are serious consequences in Jamaica if you are lesbian or gay. She said she was gay before she came to the United Kingdom. She had previously been granted discretionary leave in the United Kingdom on the basis of a relationship with a male partner whose son was a British citizen.
6. The judge said she asked the appellant why she had not applied for asylum after the refusal of her application and she said it was because she had another application which was being processed and had not sought asylum.
7. The judge accepted the respondent's decision that the appellant could not satisfy the eligibility requirements under the Immigration Rules for limited leave to remain as a partner of a British citizen.
8. The judge found that the appellant had spent her formative life in Jamaica where she was educated and lived until the age of 35 before coming to the UK as a visitor. She was not satisfied that the appellant has lost cultural, family and social ties to Jamaica. She did not find that the appellant has disclosed evidence of the existence of any unjustifiably, exceptional circumstances or insurmountable obstacles nor has she disclosed any arguable good grounds of granting leave to remain outside the Rules. As

at the date of the hearing the appellant had made no claim for asylum in respect of her claimed fear as a lesbian returning to Jamaica.

9. The judge found that the appellant was granted leave to remain outside the Immigration Rules in June 2011 to June 2014 but since June 2014 has had no lawful leave and could have had no reasonable expectation that she could remain to develop her private life when at the time she knew she had no lawful leave. The judge said the appellant was not claiming to have any family life in the United Kingdom.
10. Having considered all the factors as part of her consideration of the appellant's Article 8 claims, the judge found that the appellant has not disclosed sufficiently compelling and compassionate circumstances which would have justified the respondent in the grant of discretionary leave as the appellant does not satisfy the requirements of the Immigration Rules and therefore the respondent's decision was proportionate.
11. The appellant was granted permission by First-tier Tribunal Judge Landes. At paragraph 3 Judge Landes said as follows:
  - “3. *It is arguable that despite the fact that the appellant has not claimed asylum, the judge should have considered whether the appellant's return to Jamaica would breach Article 3 ECHR. Further it is arguable that the judge should have considered Article 8 on the basis that if the appellant is gay and if the appellant would live openly as a gay woman were it not for fear of persecution then it is arguable that there would be very significant obstacles to the appellant's reintegration into Jamaica. The judge considered that the appellant's private life could be continued in Jamaica [16] but it is arguable this finding is inadequately reasoned in the absence of findings about the appellant's sexuality and how she would wish to conduct herself in Jamaica*”.
12. Mr Wilding argued that in light of the changes in the 2014 Immigration Act to Section 85(5) and (6), the appellant's claim to be at risk as a result of her sexuality on return to Jamaica was a new matter which required the consent of the Secretary of State for the appellant to raise it.
13. He submitted that the distinction in this case is that the Secretary of State has always known about the appellant's sexuality. However, the appellant until the hearing had not raised any fear on this ground if she were to return to Jamaica.
14. He said that in the respondent's refusal letter, the appellant was told that if she has a fear of return to Jamaica, she should make the appropriate application in the manner described in the previous letter. A copy was included for her convenience. For further information she was asked to contact the Asylum Customer Contact Centre. Mr Wilding said that the appellant failed to do this.

15. The appellant was further told at Annex B – Information Notice, that if she has reasons to stay in the United Kingdom that were not part of her recent application, she must state them. The requirement was being given under Section 120 of the Nationality, Immigration and Asylum Act 2002. Again, the appellant failed to notify the Secretary of State about her fear of return to Jamaica on account of her sexuality.

### **Findings**

16. In the light of the submissions made by Mr. Wilding, I find that the appellant's claim about her fear of return to Jamaica on account of her sexuality was a new matter. Whilst the respondent was aware of the appellant's sexuality, the first time the appellant claimed a fear of return because of her sexuality was at the hearing before the judge. She needed the consent of the respondent to raise this matter. There was no evidence that the HOPO below gave the required consent on behalf of the Secretary of State. The appellant was given two opportunities to raise this matter to enable the Secretary of State to consider it. She failed to do so. Consequently, I find that the judge did not err in law in her failure to consider the matter.
17. It is now up to the appellant to make the appropriate application for consideration by the Secretary of State.
18. I find that on the evidence that was before the judge, her decision disclosed no error of law.
19. The judge's decision dismissing the appellant's appeal shall stand.

No anonymity direction is made.

Signed

Date: 21 February 2018

Deputy Upper Tribunal Judge Eshun