



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

Appeal Number: PA/00287/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd February 2018**

**Decision & Reasons
Promulgated
On 27th March 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**T S M (NIGERIA)
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Dirie, Counsel, instructed by Freemans Solicitors

For the Respondent: Ms A Everett, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to,

amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with permission against the decision of Judge Paul in the First-tier Tribunal, dismissing her appeal against the Secretary of State's decision to refuse refugee recognition, humanitarian protection or leave to remain on human rights grounds, on the basis of her assertion that she is lesbian. It was common ground both at the First-tier Tribunal and today that if the appellant is a Nigerian lesbian there is a risk requiring international protection in Nigeria.
2. The First-tier Judge disbelieved the core of the appellant's account. He did so without making a finding on the credibility of the evidence of her witness Mr James, and stating that there was before him no evidence that the appellant had been cohabiting with her claimed lesbian partner while in the United Kingdom.
3. It was not the case that there was no evidence of cohabitation: on the contrary, there was the appellant's own evidence, the corroborative evidence of Mr James, and a large number of documents in the appellant's bundle, which were jointly addressed to the appellant and her claimed partner at the address where she says they both live. There is no assessment of that evidence in the First-tier Tribunal decision.
4. The Judge's decision is contrary to the evidence before the First-tier Tribunal. That is capable of amounting to an error of law as set out at [90] in the judgment of Lord Justice Brooke of *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 and in this appeal, the error is plainly material.
5. There is no alternative but to allow the appeal and remit it to the First-tier Tribunal for remaking, with no findings of fact or credibility preserved.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed: **Judith A J C Gleeson**
2018

Date: 26 March

Upper Tribunal Judge Gleeson

