



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00841/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 4 September 2017**

**Decision & Reasons
Promulgated
On 25 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**SIO
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Chelvan, instructed by Duncan Lewis & Co
For the Respondent: Mr E Tufan, Home Office Presenting Officer

Anonymity

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.

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 26 July 1995 who entered the UK in August 2013 on a student visa with leave until 24 October 2015. On 3

September 2015 she applied for asylum on the basis that she faces a risk of persecution in Nigeria because she is a lesbian.

2. Her application was rejected by the respondent as it was not accepted she was a lesbian.
3. The appellant appealed to the First-tier Tribunal (“FtT”) where her appeal was heard by Judge Andonian. In a decision promulgated on 28 July 2016 Judge Andonian did not accept the appellant’s account of being a lesbian and dismissed the appeal.
4. The decision of Judge Andonian was set aside by the Upper Tribunal and remitted to the FtT where it came before Judge Devittie. In a decision promulgated on 27 June 2017 Judge Devittie also did not accept that the appellant was a lesbian and dismissed the appeal. The appellant is now appealing against this decision.
5. In the appeal before Judge Devittie, the appellant relied on numerous witnesses to support her case, eight of whom (including herself) were called to give oral evidence. Oral evidence was given by the appellant’s claimed partner (Samantha), mother, brother, aunt, and several friends. The judge summarised this evidence in paragraphs 6-12. Witness statements were provided by a number of other relatives and friends, as well as the woman the appellant claims is her former partner (Jade). This evidence is summarised in paragraph 13 of the decision.
6. Only four of the 8 witnesses who gave oral evidence were cross examined by the respondent.
7. The judge concluded that the appellant’s account of being a lesbian was not credible. The reasons given for this finding include that:
 - a) The appellant’s evidence about when she realised she was a lesbian was not consistent.
 - b) There were discrepancies between the evidence of the appellant and Samantha about when the appellant told Samantha about her immigration status and when she became open about her sexuality on social media. The discrepancies indicate the relationship is contrived.
 - c) Much of the appellant’s evidence is dated shortly before or after her claim for asylum.
 - d) The appellant is an educated person who has family members who are gay, yet failed to give a coherent account in response to simple questions.
 - e) The timing of the claim is opportunistic.
8. In reaching his decision, the judge evaluated in detail the evidence given by the appellant (paragraph 15) and by Samantha (paragraph 16).

9. At paragraph 19 the judge stated:

"I have taken into account the submissions made on the appellant's behalf. I have also given full weight to all the witnesses who testified on the appellant's behalf in support of her claim that she is a lesbian. I shall consider in the round the evidence of those witnesses whose evidence was not challenged in cross examination but I must make it clear but [sic] I do not take the view that the fact that they were not challenged must lead to the conclusion that their evidence is to be accepted without further enquiry."

10. At paragraph 21 the judge stated that:

"the unsatisfactory features I have identified in this case significantly undermine the credibility and weight to be attached to the evidence that has been presented in support of the appellant's claim."

11. The grounds of appeal contend that the judge erred by failing to address the evidence of the numerous witnesses who gave evidence either orally or in writing which corroborated the appellant's account of being a lesbian.

12. Before me, Mr Chelvan stated that the evidence of six witnesses who gave oral evidence was not addressed by the judge. He commented that their evidence was detailed and went to the central matter in contention – whether the appellant is a lesbian. He noted that the evidence of four witnesses was not challenged by the Secretary of State as the witnesses were not cross examined.

13. Mr Tufan, on behalf of the respondent, accepted that Mr Chelvan had a "strong point" that the evidence of several witnesses was not addressed in the decision. However, if this amounted to an error, it was not material as the judge had made clear that he had taken into account all of the evidence and considered the evidence in the round. The judge was entitled, as he did, to focus on the most significant evidence (from the appellant and the woman she claimed was her partner) and he had reached a conclusion based on all the evidence.

Consideration

14. The only issue in contention before the FtT was whether, applying the lower standard of proof applicable in asylum appeals, the appellant was a lesbian.

15. The appellant, in order to establish she is a lesbian, submitted numerous statements from friends, family, a former partner and her present partner. Seven of her witnesses attended the hearing with her in order to give oral evidence.

16. The decision contains a detailed and thorough evaluation of the evidence of the appellant. It is apparent that the judge has carefully assessed the oral and written evidence of the appellant and for reasons that are clearly expressed reached a conclusion about its credibility.

17. The judge has similarly considered the evidence of the woman who claims to be the appellant's current partner (Samantha) and - as is entirely proper - has highlighted the discrepancies that he identified.
18. However, although in my view the judge has dealt appropriately with the evidence of the appellant and Samantha, the decision lacks any engagement with, or assessment of, the evidence of other witnesses.
19. It is apparent from paragraph 21 of the decision (as quoted above at paragraph 10) that the reason the judge did not accept the evidence of the numerous other witnesses who gave evidence was because he did not accept the evidence of the appellant and Samantha. He stated at paragraph 21 that the unsatisfactory features he identified in the decision (which all pertain to the appellant's and Samantha's evidence) undermine the credibility of the other witnesses.
20. The other witnesses gave a range of reasons to corroborate the appellant's account of being a lesbian and it was necessary for that evidence to be evaluated and addressed. The judge may well have had good reason to not accept this evidence. He may, for example, have thought that the evidence was largely based on what the witnesses had been told by the appellant. In respect of some of the witnesses, the judge might have been cautious about their evidence because they hardly knew the appellant. In the case of others, the judge might have attached little weight to the evidence on the basis that the witnesses had no first hand knowledge of the appellant's sexuality. However, no such reasoning was given in the decision and in the absence of reasons being given as to why each of the witnesses (other than the appellant and Samantha) were not believed, I agree with Mr Chelvan that there has been an error of law. The error is material because the evidence of the numerous witnesses whose evidence was not addressed is relevant to, and potentially determinative of, the question of the appellant's sexuality.
21. In order to remake the decision, a judge will need to evaluate the question of whether the appellant is a lesbian and this will turn on witness evidence. Noting the number of the witnesses the appellant has relied upon, the extent of judicial fact finding that will be necessary to remake the decision is such that, having regard to section 7.2(b) of the President's Practice Statement, it is appropriate for the case to be remitted to the FtT.

Decision

22. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside in its entirety and the appeal heard afresh.
23. The appeal is remitted to the First-tier Tribunal for hearing afresh before a different judge.

Signed



Deputy Upper Tribunal Judge Sheridan Dated: 10 September 2017