



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07183/2017

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham
On 4th June 2018

Decision & Reasons Promulgated
On 22nd June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

M-N

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Forbes as McKenzie Friend
For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Uganda born on 15th February 1971. The Appellant has a lengthy immigration history. Suffice it to say that apparently she first arrived in the UK sometime in 2004 and was subsequently given leave to remain as a student until 31st December 2009. She returned to Uganda, but came back to the UK on 15th May 2011 after which she made a series of unsuccessful applications for asylum. Finally she made further submissions on 24th February 2016 which were treated as a fresh application for asylum. That application was refused for the reasons given in a Decision dated 2nd March 2017. The Appellant appealed and her appeal was heard by Judge of the First-tier Tribunal Graham (the Judge) sitting at Birmingham on 30th

August 2017. She decided to dismiss the appeal for the reasons given in her Decision dated 22nd September 2017. The Appellant sought leave to appeal that decision and on 8th November 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The hearing before Judge Graham took place in the absence of the Appellant. There had been an earlier hearing before Judge of the First-tier Tribunal Birk which Judge of the First-tier Tribunal Graham took as her starting point in dismissing the appeal. At paragraph 27 of the Decision, Judge of the First-tier Tribunal Graham found that “the Appellant’s claimed sexuality cannot be an obstacle to her reintegration into Uganda”. The Appellant had claimed to be a lesbian. The Judge dismissed the appeal accordingly and also found that the Appellant had no family life nor relevant private life in the UK. Finally the Judge found that the Appellant’s medical issues were not sufficient to engage Articles 3 and 8 ECHR, and in the alternative that for the purposes of Article 8 ECHR outside the Immigration Rules, there was no disproportionate interference with the Appellant’s right to respect for her private life.
4. In the grounds of application, it was argued that the Judge had erred in law in coming to these conclusions because she had made no finding in respect of the Appellant’s sexuality. Further, the Judge had failed to take into account the decision in **Paposhvili** when considering the Appellant’s medical issues.
5. At the hearing before me, Mr Forbes referred to these grounds and submitted that the Judge had erred in law by failing to make a finding as to whether or not the Appellant was a lesbian. Further, Mr Forbes argued that **Paposhvili** was still good law following a decision which he named as **AM (Zimbabwe)**. Mr Forbes failed to give me a citation for this decision, and he failed to produce a copy of it to me. Mr Forbes concluded his submissions by arguing that the Judge had failed to sufficiently examine the human rights situation of the Appellant.
6. In response, Ms Aboni referred to the Rule 24 response and said that the Judge had directed herself appropriately and had made findings open to her on the evidence before her. The Judge had properly applied the **Devaseelan** principle and found that there was no new evidence for her to take into account. In this way she confirmed the earlier finding that the Appellant was not a lesbian.
7. I find no material error of law in the decision of the Judge which therefore I do not set aside. It was decided in **EA and Others [2017] UKUT 00445** when it was decided that the decision in **Paposhvili** was wrongly made so that that decision no longer had any application. I am not aware of any jurisprudence to the contrary.
8. I find no error of law in the Article 8 ECHR decision of the Judge. It is apparent from what the Judge wrote at paragraph 33 of the Decision that she made appropriate findings of fact open to her on the evidence before her, and carried out the balancing exercise necessary for any assessment of proportionality. She found that the public

interest carried the greater weight having taken account of the factors set out in Section 117B Nationality, Immigration and Asylum Act 2002. This again was a decision for the Judge.

9. For these reasons I find no error of law in the decision of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal Judge made an order for anonymity which I continue for the same reasons as given by the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 18th June 2018

Deputy Upper Tribunal Judge Renton