



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

Appeal Number: PA/08897/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 13 April 2018**

**Decision & Reasons Promulgated
On 17 April 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

[F N]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Ms A. Benfield of counsel, instructed by Wimbledon Solicitors

For the Respondent:

Mr. T. Melvin, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant, who was born on [] 1984, is a national of Uganda. She entered the United Kingdom on 20 September 2010 as a student with leave to remain until 31 January 2011. Her leave was subsequently extended in the same capacity until 31 January 2012.

2. On 6 March 2017 the Appellant applied for asylum on the basis that she was at risk of persecution in Uganda as a lesbian. Her application was refused on 1 September 2017 and she appealed against this decision.
3. First-tier Tribunal Judge Black dismissed her appeal in a decision, promulgated on 25 October 2017. The Appellant appealed and First-tier Tribunal Judge Macdonald refused her permission to appeal on 5 December 2017. Upper Tribunal Judge Canavan did grant her permission to appeal on 22 January 2018 on the basis that it was arguable that First-tier Tribunal Judge Black had failed to look at the cumulative effect of the evidence before her and that it was arguable that she had not given sufficient reasons to explain why she placed little weight on the evidence given by Mr. Ssali.

THE ERROR OF LAW HEARING

4. Counsel for the Appellant handed up the Home Office's Asylum Policy Instruction on *Sexual orientation in asylum claims*, which had been published on 3 August 2016. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

5. In the current case, the documents before First-tier Tribunal Judge Black were extensive and suggested that, even though the Appellant did not apply for asylum until 6 March 2017, she had started to attend London Friend in 2013, the Say It Out Loud Club in 2015 and had attended Pride events from 2013 to 2017. Her attendance at the Pride events and London Friend and the Say It Out Loud Club and Pride were also well documented by photographs.
6. In addition, two other Ugandan women, who are lesbians and who have been granted refugee status here, had provided statements of support, as a result of knowing her within the Lesbian community in London. Their statements were accompanied by proof that they had been granted refugee status. There were also three letters of support from London Friend and a witness statement by the Appellant's current partner, who was not able to attend the hearing due to being in another appeal hearing concerning her own claim for asylum that same day at another first-tier tribunal centre. Aloysius Ssali from the Say It Out Loud Club had also

submitted a detailed witness statement and gave oral evidence on her behalf. This was in the context of the Appellant herself having given very detailed answers in the asylum interview.

7. The Home Office Presenting Officer submitted that First-tier Tribunal Judge had given detailed consideration to this evidence and that her findings were one which were open to her on the evidence before her. In particular, he relied on the long period of delay before she applied for asylum.
8. However, I have reminded myself that the standard of proof in asylum cases is a low one and it is my view that First-tier Tribunal Judge Black failed to apply this requisite low standard of proof but applied a standard which was far higher. For example, it was not sufficient to discount the many photographs relied upon by the Appellant by merely stating that the photographs do not without more demonstrate that she is a lesbian. In addition, she did not form a holistic view of the totality of the evidence which was substantial.
9. The Judge's reasons for giving little weight to statements of support fall within the bounds of reasonableness but all those writing in support of an appeal cannot necessarily be expected to attend in order to give oral evidence. However, the reasons given for giving little weight to Mr. SSali's evidence are not similarly sustainable in my view.
10. In his witness statement, Aloysius Sassi gave a detailed account of his own background, as a refugee from Uganda, and as someone who had established a Say It Loud Club in London. In paragraphs 19 to 36 of his statement, he also gave very cogent consideration to how he met the Appellant and her activities as a lesbian in London
11. I have noted that in paragraph 24 of his statement he stated that "now that [the Appellant] has settled into the community, she has begun to express an interest in even more socialising with other gay men and women. This is not typical of a person who is merely looking to advance their asylum case by meeting with Say It Out Loud Club and London Friend". In paragraph 29 of his statement he also explains how he is able to distinguish between those who are genuinely from the gay community and those who purport to be so for asylum purposes. This clearly indicates that he has given detailed thought as to whether she is a lesbian. It is not evidence which indicates that he had been "duped" by the Appellant. His description of her being initially conflicted about "coming out" as a lesbian does in my view correlate with her

delay in claiming asylum as a lesbian. As counsel for the Appellant submitted there is a significant difference between attending Pride events with like-minded friends and giving intimate details of past sexual encounters to an immigration officer.

12. It is also arguable that First-tier Tribunal Judge Black gave disproportionate weight to the fact that the Appellant had trained as a lawyer when considering her delay in claiming asylum and her presumed knowledge of the asylum determination process.
13. First-tier Tribunal Black also gave weight to the fact that the Appellant's partner was not able to attend the hearing but that she did not apply for an adjournment. In particular, she noted that "the Appellant would have had the benefit of legal advice from her counsel but still decided to proceed. She would have known that the evidence of [her partner], which is untested, would be given little evidential weight as a result". However, First-tier Tribunal Judge Black did not have knowledge of the precise advice given to the Appellant, which is the subject of legal privilege, and counsel may have been in possession of other information which indicated that an adjournment may harm, not assist, her client's case. It was not for the Judge to speculate on the legal advice which may have been given.
14. Counsel also relied on a ground, which was not contained in the grounds of appeal, and which was that the Respondent was under an obligation to put relevant policies before the First-tier Tribunal Judge and had failed to do so. As a general proposition of law, this is correct but I do not need to consider granting permission to amend the grounds, as for the reasons given above, I find that First-tier Tribunal Judge A. M. Black did err in law in her decision.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to a First-tier Tribunal Judge, other than First-tier Tribunal Judge A. M. Black, for a *de novo* hearing.

Nadine Finch

Signed

Date 13 April 2018

Upper Tribunal Judge Finch