



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10750/2017

THE IMMIGRATION ACTS

Heard at Liverpool  
On 25 July 2018

Decision & Reasons Promulgated  
On 06 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

LINDA [M]  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Chimpango, Solicitor

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. No anonymity direction is made.
2. The appellant is a national of Malawi. She arrived in the United Kingdom on June 1, 2000 for as a visitor and was subsequently granted leave to remain as a student until January 31, 2010. She was then granted permission to remain as a Tier 4 (General) Migrant until June 28, 2011 at which time her leave expired. She lodged an application for asylum on April 15, 2017 and this was refused by the respondent on October 11, 2017 under paragraphs 336 and 339M/339F HC 395.

3. The appellant lodged grounds of appeal on October 23, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. Her appeal came before Judge of the First-tier Tribunal Siddiqi (hereinafter called “the Judge”) on November 22, 2017 and she dismissed the appellant’s appeal on protection and human rights grounds on December 12, 2017.
5. The appellant appealed this decision on December 22, 2017. The grounds argued the Judge had failed:
  - (a) To take into account the generality of the evidence and instead placed undue weight on the fact the appellant had failed to provide corroboration to show she was a lesbian. The Judge therefore applied too high a standard of proof.
  - (b) To put evidence to one of the witnesses in order to test the genuineness of her relationship with the appellant.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Parker on April 25, 2018 who found the grounds are arguable.
7. A Rule 24 response was served on June 20, 2018. The respondent argued that the Judge had self-directed herself to the appropriate burden and standard of proof as well as the issue of corroboration. The fact the Judge made an adverse finding due to a lack of documentary evidence was a finding open to her because such evidence was reasonably accessible by her but had not been adduced. The principles of TK (Burundi) v SSHD [2009] EWCA Civ 40 applied to this issue. The Judge was entitled to make findings about the evidence and make a negative finding under section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

### **PRELIMINARY ISSUES**

8. By letter dated July 17, 2018 the appellant’s representative advised the Tribunal that one of the key witnesses who had given evidence at the original Tribunal had now been granted refugee status on the basis she is a lesbian. This witness had told the original Tribunal she was in a relationship with the appellant. The representatives provided a copy of the witnesses’ interview records, letter granting refugee status and a copy of her Residence Permit. Mr Chimpango invited the Tribunal to have regard to this information even though it post-dated the appellant’s original hearing.
9. Having raised the issue with both representatives I indicated that this evidence would not be admitted for the purposes of an error of law hearing but in the event there was an error permission would be granted to lodge this evidence.

### **SUBMISSIONS**

10. Mr Chimpango adopted the grounds of appeal and submitted that the Judge had erred when considering the evidence of witnesses. Both Mr [B] and Ms [C] had given evidence about the relationship between the appellant and Ms [C] and the Judge had not sought to question their evidence until making adverse findings in her decision.

The appellant had not produced evidence of her relationship because she did not know her relationship would be challenged. The finding at paragraph 21(f) of the decision was flawed because Mr Banda knew about the appellant being an “openly lesbian woman for more than five years” and this did not contradict the appellant’s own evidence or that of Ms [C].

11. Mr McVeety adopted the content of the Rule 24 letter dated June 20, 2018. He submitted the Judge’s finding that the appellant was not a lesbian would not have been a surprise to the appellant because it was contained in the respondent’s decision letter. It was a matter for the appellant what evidence she adduced but the failure to provide evidence of text messages between her and Ms [C] or printouts of phone calls meant the Judge was entitled to make a finding that she did. There was no onus on the Judge to revisit the issues because she was not making a finding that had not been presented to her. She accepted the respondent’s submissions and rejected the appellant’s account. The Judge’s findings did not raise the burden of proof and the Judge was entitled to expect other evidence bearing in mind the relationship was said to have taken place over a number of years. The finding at paragraph 21(f) of the decision was also open to the Judge because the appellant had claimed she had always been discreet and did not want her friends to know as she was uncomfortable in “coming out”. This has to be contrasted with the evidence of Mr Banda who claimed he had known her as an “openly lesbian woman for more than five years”.

### **FINDINGS**

12. In considering the evidence the Judge had regard to the oral evidence of the appellant and two witnesses. The Judge found significant the fact that there was little evidence of a personal relationship between the appellant and Ms [C]. This was not a relationship that had existed in Malawi but is one which is said to have taken place in the United Kingdom.
13. According to their evidence they were in a relationship and the Judge considered that evidence, and that of Mr Banda, against the background of there being little or no supporting evidence. Corroboration is not a requirement in a protection claim but where such evidence is readily accessible and is not produced that is a factor the Judge can have regard to. It is clear this was a factor the Judge placed weight on as she was entitled to do.
14. The Judge also found that the evidence provided by the appellant and Mr Banda was inconsistent. The appellant claimed that she had acted discreetly and had not disclosed she was a lesbian and in her interview she stated she had not told anyone about her relationship with Ms [C] as she did not want people to know. This contradicts Mr Banda’s claim that she had been an openly lesbian woman and the Judge was therefore entitled to make that finding.
15. Some evidence was adduced of her involvement with the LGBT community but attending a Pride event in Leeds is hardly evidence that a person is gay. Many people attend such events and being gay is not a requirement.

16. Having a few photographs with Ms [C] also proves little. The Judge found it significant there were no text messages of any form adduced and the Judge was entitled on the evidence before her to find she had not proved her case.
17. I am now aware that Ms [C] has been granted protection status. I have already ruled that such evidence cannot be used for the purposes of deciding whether there has been an error in law. The information was not before the Judge and neither was Ms [C]'s asylum interview. Perhaps, if that interview had been adduced in evidence or the decision on Ms [C]'s application had been known then the Judge may have reached a different view. I was not provided with any evidence why her appeal was allowed save she was granted asylum for five years. It may well be that, with further evidence, a fresh application could be submitted by this appellant but as I have already stated this was not material before the Judge and is not something I have taken into account when considering whether there has been an error in law.

**DECISION**

18. There is no error in law and I dismiss the appeal.

Signed

Date 25/07/2018

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath it.

Deputy Upper Tribunal Judge Alis