



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
Numbers: UI-2023-001616

Appeal

PA/52152/2022

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> August 2023**

**Decision & Reasons Issued  
On 22<sup>nd</sup> September 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE METZER KC**

**Between**

**VK  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Patel instructed by Broudie, Jackson, Canter solicitors

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

**DECISION AND REASONS**

1. The Appellant is a citizen of Namibia. In a decision promulgated on 11<sup>th</sup> April 2023, First-tier Tribunal Judge A Davies (“the Judge”) allowed the Appellant’s appeal against the Respondent’s decision to refuse the Appellant’s claim on the basis of her sexual orientation as a lesbian on human rights grounds under Article 3 of the European Convention on

Human Rights but refused her appeal on asylum grounds on the basis that her claim did not engage the Refugee Convention.

2. The Appellant was granted permission to appeal on 12<sup>th</sup> May 2023 .
3. At the hearing, Ms Everett on behalf of the Respondent rightly conceded that the Judge had made a material error of law. At the hearing, the Judge noted that the Respondent accepted that the Appellant was a lesbian women and was thereby a member of a particular social group (at paragraph 13); made findings that she would be at risk upon return to her local area 9at paragraphs 29, 33-37) and that it would be unduly harsh for her to relocate (at paragraphs 38-49) thereby establishing a clear causal nexus between the act of persecution and the Appellant's sexual orientation and yet at paragraph 50 that being a lesbian woman in Namibia does not put her at real risk of persecution for a Refugee Convention.
4. As conceded by the Respondent, that finding is a material error of law and cannot stand. I consider that the appeal on behalf of the Appellant should therefore be allowed and with the agreement of both parties that the matter should be retained in the Upper Tribunal for me to re-make the decision.

### ***Notice of Decision***

5. The Judge erred materially for the reason identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). I retain the appeal in the Upper Tribunal having considered Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) and noting that both parties agreed the matter should be retained in the Upper Tribunal and allow the Appellant's appeal on asylum grounds under the Refugee Convention.

Signed [Anthony Metzger KC](#)  
2023

Date: 25 August

Deputy Upper Tribunal Judge Metzger KC