



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005187
First-tier Tribunal No:
PA/52302/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

JN
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE
HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Renfrew, Counsel instructed by SI Legal Services
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 29 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. The First-tier Tribunal made an anonymity direction and that protection must remain in place as a result of the appellant's status as an asylum seeker.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Barrowclough ('the Judge') who dismissed her appeal on 15 August 2022 against the respondent's decision to refuse her protection claim.

Background

2. The appellant is a citizen of Uganda. She arrived in the UK in November 2013. She claimed asylum in November 2019 on the basis that she is a lesbian. Her claim was refused on 29 July 2020. She appealed, and the case came before the Judge on 5 August 2022. Her claim was rejected for the following reasons:

34. In my judgment, Ms Atas is correct when she says in her skeleton that the sole and indeed determinative issue in this appeal is whether the appellant would be at risk if returned to Uganda because of her sexuality. I bear in mind that, as the respondent's CPIN makes clear, if the appellant would in fact conceal aspects of her sexual orientation if returned, it is necessary to ask why, and whether that would be as a result of a well-founded fear of persecution. I am also quite correctly reminded that the standard of proof required of an appellant in international protection appeals is a low one, simply whether there is a reasonable chance or serious possibility that her account and evidence is true.

35. As in many asylum appeals, the outcome of this claim depends to a great extent upon the credibility of the appellant and the reliability of her evidence and account. That is particularly so in this case, since there is very little if any objective or documentary evidence to support or substantiate the appellant's account. I am grateful to [Mr S] for the assistance he has provided both to the appellant and the Tribunal, and I do not doubt that his views are genuinely and sincerely held, although, as he recognizes, it can be very difficult if not impossible to be certain about an individual's sexual orientation, and credibility is ultimately a matter for the Tribunal.

36. The respondent raises and relies upon a perceived vagueness, lack of detail and a number of inconsistencies in the appellant's answers to questions raised in her screening and asylum interviews about her sexuality, her relationship with Eva, and the problems and difficulties she encountered as a result of her past history becoming known to her husband. I think it is certainly fair to say that the appellant was not particularly forthcoming about recognising and accepting her orientation and that relationship, but I accept that there may be a number of possible explanations for that, and I am prepared to give the appellant the benefit of the doubt. Secondly, the alleged inconsistencies seem to me to have arisen mostly through possible confusion or uncertainty, for example about dates, bearing in mind that a number of the matters being explored had happened a long time before those interviews took place.

37. What concerns me more are what I find to be significant contradictions and inconsistencies, together with implausible features, in the appellant's main witness statement and her oral evidence, at a time when she had had the benefit of legal representation. By way of example, the appellant stated that [E] had been sent to a convent by her parents having been dismissed from college, but also that she had been kicked out of her home by them and was living on the streets until rescued and placed in the convent by a helpful stranger. Both accounts cannot be true. The appellant says that she was beaten and abused by her husband from the time that they were married in 1991, but does not explain

why, particularly bearing in mind that on her account he did not become aware of her past sexual history until June 2012 and that they had three children together in the interim. It also seems to me very improbable that the police would call the appellant in for questioning on the morning after her house had burnt down, when they already had in custody someone who had confessed to the arson involved; and above all that the appellant's husband of 21 years should decide to kill both the appellant and their children based only on what he had heard from a disgruntled relative and without even speaking to his wife to ascertain whether what he had heard was or might be true. Additionally, the appellant was prepared to leave her young children in Uganda when she came to the UK in 2013 because (she says) they were not her husband's targets, whilst on her account he had paid someone to kill them approximately 18 months earlier.

38. Perhaps the most obvious inconsistency is that in her statement, the appellant said that it was by means of an unidentified tour group that she came to the UK, and it was they who had introduced her to [CL]; whilst in her oral evidence, the appellant said that it was her friend [R] who had decided and arranged for her to come to the UK because he knew [Ms L] and that she would help the appellant. Once again, both versions cannot be true, and there is the additional contradiction in the appellant's evidence of whether she escaped and ran away from [Ms L] home due to her domestic servitude, or whether she was kicked out having told [Ms L] that she was a lesbian and the reasons why she had fled Uganda.

39. That takes me to the most troubling aspect of the appellant's evidence. On her account, she and her children fled their home and went to live in hiding with her friends [RL] and his wife from June 2012 until November 2013, despite her husband's attempts to locate them, and the appellant then left her three children (then aged between 8 and 12) in their care and came to the UK, where she has remained. Yet there is no letter, affidavit or witness statement from [Mr or Mrs L] to corroborate or confirm any of those significant matters, or the details in the preceding paragraph; nor has any explanation or reason for the absence of any such material been put forward. That failure is particularly marked, since the appellant says that she is currently in regular contact with her children in Uganda, at least two of whom are now adults; and nor have any of them provided any evidence to confirm their mother's account and to set out what happened to them in 2012 and thereafter.

40. Finally, I consider the appellant's account of her interaction with the police during the summer of 2014, by which time she would have been an illegal overstayer, to be improbable, particularly since on her evidence she was contacted by them at at least one of the houses where she was temporarily resident following her initial complaint. It also seems unlikely that the appellant should have been homeless and living on the streets for a period of about five years without coming to the attention of the police, social services, or the Home Office.

41. Overall and for these reasons, whilst I accept that it is possible that the appellant may have been involved in same-sex intimacy and/or such a relationship at some point in her life and whilst still in Uganda, I find her evidence and account of the events and reasons prior to or leading to her departure from that country and of her subsequent life in the UK to be incredible: it consists of so many improbable or inconsistent elements and is unsupported to such an extent that no reliance can safely be placed on it, and in my judgment it is simply a dishonest attempt to avoid her being returned to Uganda. If the appellant has in

fact been involved in any such intimacy or relationship, and in the light of those conclusions, I find that any concealment by the appellant of any such sexual orientation was for reasons of her own, and not because of any fear of persecution. In relation to the appellant's humanitarian protection claim, and having rejected the appellant's evidence that her husband has tried to kill or seriously harm herself or her children, I find that there is no real risk that the appellant would face treatment amounting to a breach of either Article 2 or 3 of the ECHR.

3. The appellant appealed. She relied on three grounds:
 - a. The Judge had failed to come to a finding on her claimed sexuality
 - b. The Judge had failed to apply the criteria outlined in HJ Iran v Secretary of State for the Home Department [2010] UKSC 31.
 - c. The Judge failed to adequately reason the assessment on risk on return.
4. Permission to appeal was granted by First-tier Tribunal Judge Pickering on all grounds.

The hearing

5. We heard careful and helpful submissions from both advocates, which are contained in the record of proceedings.
6. At the end of the hearing we indicated that we would be allowing the appeal with reasons to follow and remitting the case to the First-tier Tribunal for a *de novo* hearing.

Decision and reasons

7. The Judge was correct in outlining the central issue in the appeal before him was whether the appellant was a lesbian or not. Upon coming to a finding on her sexuality, if he found in her favour, he would then have to undertake the assessment of how she would behave on return in line with the well known test outlined in HJ Iran.
8. The Judge, as can be seen from the excerpt we have set out above, came to findings on the appellant's narrative, and found that her narrative as to leaving Uganda was not credible. However, it appears to us that the Judge failed in determining the first question, namely whether the appellant has shown, to the requisite standard of the reasonable degree of likelihood, that she is a lesbian.
9. The Judge finds that "*whilst I accept that it is possible that the appellant may have been involved in same-sex intimacy and/or such a relationship at some point in her life and whilst still in Uganda*", but comes to no conclusion on it either way. Similarly, the Judge, having found her not credible in her narrative of events, purports to come to an alternative finding that "*If the appellant has in fact been involved in any such intimacy or relationship, and in the light of those conclusions, I find that any concealment by the appellant of any such sexual orientation was for reasons of her own, and not because of any fear of persecution*".

10. These two findings are, in our judgment, inadequate as to determining the issues before him. Firstly, there is no finding at all on her claimed sexuality, as a consequence the Judge has failed to make a finding on a material matter. Secondly, insofar that it is said the alternative finding shows that the failure to make a finding is immaterial, the Judge fails to make any finding as to *why* the appellant would conceal her sexuality. There is no consideration of her oral or written evidence in this regard, and no consideration of what the evidence was as to why she would conceal it. If she were to conceal it due to her own natural and innate discretion there does not appear to be any evidential basis for making such a finding. We note that the appellant's evidence in this regard was:

27. In re-examination, the appellant said that if she is returned to Uganda she would not be open about her sexuality. That is because homosexuality is illegal, and gay people are arrested, beaten up and locked up for life or killed if caught. The appellant said that there had been language difficulties at her interviews, and also that it was not done and she was not comfortable talking about her sexuality.

11. As a consequence we find that the Judge's decision is infected by a material error of law and set his decision aside. The case is remitted to the First-tier Tribunal to be heard *de novo* before any Judge other than Judge Barrowclough.

Notice of Decision

The decision of the First-tier Tribunal is set aside for containing a material error of law.

The appeal is remitted to the First-tier Tribunal to be heard *de novo* before any Judge other than Judge Barrowclough.

Judge T.S. Wilding

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 27th March 2024