



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05966/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport
On 06 March 2015

Promulgated on:
On 11 March 2015

Before

The President, The Hon. Mr Justice McCloskey

Between

JM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mr B Hoshi (of Counsel), instructed by Migrant Legal Project (Bristol)
Respondent: Mr K Hibbs, Senior Home Office Presenting Officer

ANONYMITY

I maintain the anonymity direction made at first instance and give effect to this by describing the Appellant by the use of initials above.

DECISION

INTRODUCTION

1. This appeal originates in a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), the Respondent herein, dated 01 August 2014, whereby the claims of the Appellant, a national of Uganda aged 25 years, for asylum and humanitarian protection were rejected. The Appellant's ensuing appeal to the First-tier Tribunal (the "*FtT*") was dismissed.

2. The cornerstone of the Appellant's asylum claim is her asserted lesbian sexuality. She further based her claim on the homophobic nature of Ugandan society which is manifested in, *inter alia*, the amended Penal Code Act of 1950, whereby sexual relations which are "*against the order of nature*" is an offence punishable by life imprisonment, coupled with the more recent legislation.. The Appellant's claim for asylum was refused by the Secretary of State because it was disbelieved in all material respects. Fundamentally, the assertion of her lesbian sexuality was considered untrue. On appeal, the FtT upheld the Secretary of State's decision and, in doing so, adopted several of its key findings.
3. Permission to appeal was granted on the twofold grounds that the FtT had arguably erred in law in respect of the fairness of the Appellant's hearing and the rational sustainability of certain findings. I gave judgment at the conclusion of the hearing allowing the Appellant's appeal for the following reasons, in summary.
4. The crucial passage in the determination of the FtT is [17]. This begins with the Judge's overarching conclusion:

"I have not found the Appellant to be a credible witness for the following reasons"

This is followed by nine separate subparagraphs. These contain a mixture of findings of facts *per se* and matters of evaluative assessment. The Judge's listed "*reasons*" included the following:

- (a) A lack of corroboration of the Appellant's case from three specified sources - her former school, her grandmother and a relative.
- (b) The absence of "*difficulties with the authorities*" in Uganda at a "*much earlier*" stage.
- (c) The failure of the police to take action against the Appellant following an incident described by her.
- (d) The implausibility of the Appellant being able to secure a second level educational qualification in Uganda.
- (e) The absence of any evidence of active lesbian relationships during the Appellant's sojourn of approximately 21 months in the United Kingdom.

It is not disputed that none of these factors either formed part of the Secretary of State's decision or was put to the Appellant or was otherwise canvassed during the hearing. Giving effect to elementary fairness principles, I consider that the

conclusion that the Appellant was denied her common law right to a fair hearing follows inexorably.

5. The second ground of appeal relates to the rational sustainability of the reasons given by the FtT for, in essence, dismissing a letter bearing the date 28 March 2014 and on its face emanating from a local Council in Uganda as a fabrication. The addressee of the letter is the Appellant's grandmother. The letter is stamped and purports to bear the signature of the Chairman of the Council in question. The contents of the letter arouse some interest and, in my judgment, it was incumbent on the FtT to engage with them in assessing the authenticity of the document. It was also incumbent on the Tribunal to take into account the evidence of the new homosexuality laws in Uganda, which create a duty of denunciation of offenders, together with the Home Office CIG report and the "Sexual Minorities" report. These were all sources of evidence bearing on the discrete issue of whether the letter was authentic. There is no indication, express or oblique, that the Tribunal took them into account. This *per se* constitutes an error of law. Furthermore, viewed through a somewhat, though not radically, different lens I concur with the submission of Mr Hoshi that this reason is unsustainable as irrational. I further consider that the absence of evidence of homosexual relations during the Appellant's sojourn in the United Kingdom did not, without more, constitute a rational freestanding reason for disbelieving her claim.

ORDER

6. For the reasons elaborated above, the decision of the FtT cannot be sustained and I order:
 - (a) The decision of the FtT is set aside.
 - (b) Given that the Appellant was deprived of a fair hearing, remittal is appropriate.
 - (c) I remit the appeal to a differently constituted FtT for rehearing and fresh decision.
 - (d) Any application for the adduction of fresh evidence will be made at least 14 days in advance of the further hearing.

I record that, at the appeal hearing, I received, without objection from either party, copies of Counsel's note of the hearing at first instance, a letter dated 13 January 2015 from the Appellant's solicitors conceding the merits of her complaint about certain aspects of the handling of her first instance appeal and offering compensation of £600 and, finally, the Home Office CIG report "Uganda: Sexual Orientation and Gender Identity", dated August 2014.

Bernard McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 06 March 2015