



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

Appeal Number: AA/01451/2015

THE IMMIGRATION ACTS

**Heard at Birmingham
On 2 June 2016**

**Decision & Reasons Promulgated
On 11 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**D L
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharif, Solicitor, Fountain Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In this matter the Appellant sought permission to appeal against the decision of First-tier Tribunal Judge Meyler who had refused the Appellant's appeal against the Respondent's decision in respect of her protection claim. Permission to appeal was granted by Upper Tribunal Judge Reid by way of a decision dated 20 August 2015. It was on that basis that the matter came for hearing before me on 2nd June 2016. After I had heard the respective submissions of both advocates I had reserved my decision.
2. The grounds of appeal are wide-ranging, but in essence are well summarised by Upper Tribunal Judge Reid. Namely that the grounds contend that the Judge had failed to address the Appellant's vulnerability and its consequent impact on her evidence and overall credibility; the

Judge failed to give adequate reasons for her findings regarding the Appellant's sexual identity; the Judge made unreasonable and contradictory finding in relation to answers given by the Appellant in her Home Office interview; there was a failure to adequately assess the persecutory risk on return for a member of a Particular Social Group; there had been a failure to adjourn and the Judge had failed to make findings in respect of Paragraph 276ADE of the Immigration Rules and Article 8 of the European Convention on Human Rights.

3. Mr Sharif in his submissions before me said he relied on the grounds of appeal. In respect of ground one, the benefit of the doubt ought to have been given to the Appellant in view of her vulnerability. In respect of ground two it was said that individual's sexuality can change over time but in this case the weight that the Judge had put had tainted her findings. In respect of ground three there were contradictory findings in respect of the Home Office interview. One aspect were the findings at paragraphs 35 to 38 but then at paragraphs 44 to 48 it was said that the questions during the interview were inappropriate. The Judge had used the same answers to make adverse findings in respect of credibility. The bar was put too high as to whether she was a lesbian. In respect of ground four the Judge had expected corroborative evidence. It was a higher standard of proof that had been applied. At ground 5 there was a failure to consider the risk on return issues. The other grounds were then also referred to briefly by Mr Sharif.
4. Mr Mills made detailed submissions. In summary he said that in respect of ground one the Judge had acknowledged that the Appellant was a vulnerable person. The guidance did not say that a vulnerable person be given the complete benefit of doubt and to ignore discrepancies. The Judge needed to take into account the vulnerability and she had done so. It was impossible to say that the Judge had not considered the matter in a fair and balanced way. Nowhere does it say that if there a vulnerable person that you then ignore the discrepancies in the evidence.
5. In respect of ground two, the Judge said she was placing little weight on this and ultimately it was held against the Appellant. There was no error of law.
6. As for ground three which related to the Home Office interview, it was important to acknowledge what was actually said. The length of the interview was disproportionate due to the Appellant's distress. Nowhere was it found that the interviewer was not trying to get the Appellant to do her best in a kind and supportive way. The only aspect was that at paragraph 38 of her decision the Judge said that the interviewer ought to have insisted that the interview stop. It was a long way from saying it was an unsafe interview. The use of the term "benefit of the doubt" by the Judge was an acceptable phrase.

7. In respect of ground 4 the Judge was not saying at paragraph 52 that there was no evidence of the Appellant going to gay clubs. The Judge was making the point that there were various sources of evidence but no one had told her why. For example there was a letter from Sandwell Women's Aid but there was nothing about the Appellant being gay. There was a letter from the Church and again nothing. All of this evidence could have said that the Appellant is gay. There was no evidence from the counsellor on this either. There was no material error of law. Mr Mills relied on the Court of Appeal's judgement in **TK (Burundi) v Secretary of State for the Home Department** [2009] EWCA Civ 40 when at paragraph 20 of the judgment of Thomas LJ (as he then was) and with whom Waller and Moore-Bick LJJ's agreed had said that there was a need for an Immigration Judge to adopt a cautious approach to the evidence of an appellant where independent supporting evidence was readily available but was not provided.
8. As for ground 5 the Judge said the Appellant had been trafficked, but it is all about what happened in this country. There is also the matter of the domestic violence.
9. As for ground 6 there was the possibility of internal relocation. There is widespread domestic violence in the Appellant's home country but there can be internal relocation. The reasoning was full and adequate.
10. As for grounds 7 it was just a "cut and paste issue" with the error of the names.
11. As for ground 8 the Appellant's counsel had not sought an adjournment so how can it be an error of law for there not to have been an adjournment?
12. Finally in respect of ground 9, there was no paragraph 276ADE pleaded and nor was it relied upon. Overall it was stressed that there was no material error of law.
13. After hearing from Mr Sharif in reply I had then reserved my decision.
14. I have considered the Respondent's Rule 24 Reply dated 27 August 2015. In my judgment Mr Mills is plainly right that the Appellant's grounds of appeal in respect of the adjournment issues are mistaken because no adjournment was sought at the hearing. Similarly the grounds in respect of the Paragraph 276ADE and Article 8 issues must also fail because the matters were not relied upon at the hearing. Mr Mills is also correct that the evidence from the supporting documents such as the letter from Sandwell Women's Aid failed to deal with the issues in respect of the Appellant's sexuality and that the Court of Appeal's judgment in **TK (Burundi)** means that the Appellant's grounds of appeal in that respect must also fail.

15. What has concerned me though is the particularly unusual details relating to this Appellant's Home Office interview. The Appellant was unrepresented at the interview. That of itself is not unusual, but the length of the interview was. It had lasted from 10.36 hours to 15.40 hours. The Interviewing Officer noted the extreme distress of the Appellant during the interview. He had sought to stop the interview but the Appellant had begged him to carry on. The Judge also noted at paragraph 40 of her decision whether the Appellant may have undiagnosed learning difficulties. Earlier in her decision the Judge had said that she noted that at the hearing the Appellant had struggled to deal with some very basic questions which had been put to her.
16. Overall, the vulnerability of the Appellant was clear.
17. The Judge quite properly highlighted the concerns about the Appellant's difficulties at the hearing. What has troubled me and ultimately which forces me to conclude that there is a material error of law is that the Judge noted the serious problems with the Home Office interview at paragraphs 34 to 38 but then some of the answers from that very interview were used to show discrepancies and inconsistencies in the Appellant's case. There were the later adverse findings at paragraph 41 onwards in the Judge's decision.
18. I conclude that there is a material error of law for the reasons set out by in the Appellant's grounds. Namely that there was an inconsistent approach to the interview. If the interview was being rejected as being unreliable for the reasons advanced, then the same interview could not later be used to find discrepancies in the Appellant's appeal in the manner that it was. The Judge was placed in a difficult position because of the Appellant's vulnerability and because of the apparent failure by the Appellant's side to seek to say that the interview ought to have had no weight placed upon it. However the Judge made the findings that she did about the interview and the Appellant and it was not open to her thereafter to use the very interview to make adverse findings.
19. It means that the decision as a whole cannot stand. The Judge's careful and detailed observations about the Appellant are admirable. However in view the relatively unusual mix of three aspects of this case, namely (1) the Appellant's vulnerability, (2) that she was apparently trafficked and (3) because of the state of the Home Office interview, I conclude that this protection claim has to be reconsidered. That will be way of a rehearing at the First-tier Tribunal. None of the findings from the Judge's decision shall stand. For the avoidance of doubt, I am not making any binding findings that the Home Office interview ought to have no weight attached to it. That will be for the Appellant's side to consider and for the Judge to decide upon at the rehearing if any application or submissions are made.

Notice of Decision

The First-tier Tribunal's decision contains a material error of law and is set aside.

There shall be a rehearing at the First-tier Tribunal.

An anonymity order is made as this case relates to a protection claim.

Signed

Date 16 June 2016

Deputy Upper Tribunal Judge Mahmood