



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

Appeal Number: PA/04306/2016

THE IMMIGRATION ACTS

**Heard at Newport (Columbus House)
On 18th July 2017**

**Decision & Reasons
Promulgated
On 27th July 2017**

**Before
UPPER TRIBUNAL JUDGE A GRUBB
DEPUTY UPPER TRIBUNAL E DAVIDGE**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**S K
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Myroslav Diwnycz, Home Office Presenting Officer
For the Respondent: David Neale, Counsel
Instructed by Migrant Legal Project (Cardiff)

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) we make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the

Appellant and to the Respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

2. Although this is the Secretary of State's appeal, and she is therefore the Appellant before us, for ease of reference we refer to the parties as they were known at the First-tier.
3. The Secretary of State was granted permission by First-tier Tribunal Judge Hodgkinson to appeal a decision of First-tier Tribunal Judge Coaster, promulgated 13th December 2016, allowing the Appellant's appeal against the Secretary of State's decision to refuse her protection and human rights claims.
4. As identified in the grant of permission the grounds argue that the judge erred in the following manner:

"The grounds argue that the Judge erred in the following manner: Ground 1, in failing to resolve material conflicts in the evidence of relevance to the appellant's claimed sexuality; Ground 2, in adequately reasoning why she concluded that the appellant was a lesbian, and why she allowed the appeal; Ground 3, by failing to take into account s.8 of the 2004 Act, which was relied upon by the respondent in the refusal letter; Ground 4, when considering Article 8, by failing to consider Appendix FM and the public interest considerations set out in section 117B of the 2002 Act, or at all, as part of the proportionality assessment."

5. Judge Hodgkinson granting permission found merit in those grounds in the following terms:

"When considered in the context of s.8 of the 2004 Act, it is arguable that Grounds 1 and 2 have merit. In any event, it is correct that the judge did not consider s.8 as part of her credibility considerations which, in itself, amounts to an arguable error of law. In terms of Article 8, the Judge did not take into account the apparent fact that the appellant and her children could not meet the requirements of any Immigration Rule and demonstrably failed to take into account any public interest considerations. As a result, her consideration of Article 8 is also arguably flawed. The grounds as pleaded reveal arguable errors of law and permission is granted on all grounds."

6. In the event when the matter came to be heard in the Upper Tribunal Mr Diwnycz, for the Respondent, conceded that the decision must be read in the round, and, at paragraphs 76 to 81, in the context of a considerable setting out of the evidence and the positions of the parties in the previous 76 paragraphs, the judge recognised the hurdles for credibility teased out in the grounds caused by:
 - (a) the marriage continuing through repeat applications
 - (b) the appellant's oral evidence to a judge in an earlier hearing that her marriage was subsisting,

- (c) the chronology, in the context of the lateness of the assertion of being gay
 - (d) and the only evidence in support having arisen after making the claim.
7. As Mr Diwnycz recognised, the grounds do not stand up to critical scrutiny. In the same way that it is clear that the credibility concerns of the respondent have been adequately addressed, it is plain that the judge has done enough to explain to the Respondent why the Appellant succeeded in her appeal. The grounds do not argue perversity.
 8. In light of the fair acknowledgment made by Mr Diwnycz we indicated that we did not need to hear from Mr Neale.
 9. In short, contrary to the grounds, the judge's reasoning encompasses the adverse credibility points and is sufficiently reasoned.
 10. With regard to the Secretary of State's Grounds of Appeal in respect of Article 8, whilst on their face they have more merit, they take the case no further because the Appellant has established that she is a refugee. Accordingly, there is no public interest in her removal, and the Article 8 dispute is otiose. It does not require any reasoning, either by the First-tier Tribunal Judge or, in the context of this decision, by ourselves.

Decision

11. The decision of the First-tier Tribunal Judge does not reveal any error of law and it stands.

Signed

Date 26 July 2017

Deputy Upper Tribunal Judge Davidge

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 26 July 2017

Deputy Upper Tribunal Judge Davidge