



IAC-BH-PMP-V1

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

Appeal Number: PA/07706/2016

THE IMMIGRATION ACTS

**Heard at Bradford UT
On 25th August 2017**

**Decision & Reasons Promulgated
On 5th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MS C.P.N.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Khan of Counsel

For the Respondent: Mrs Petterson, Senior Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant a citizen of Cameroon (born [] 1984) appeals with permission to the Upper Tribunal against the decision of a First-tier Tribunal (Judge N M K Lawrence) dismissing her appeal against the Respondent's refusal to grant her asylum on account of her sexuality.
2. The Appellant was initially refused permission to appeal by the First-tier Tribunal but on a renewed application before the Upper Tribunal, UTJ Rintoul granted permission saying the following:

"It is arguable that the First-tier Tribunal Judge N M K Lawrence erred in requiring corroboration (Ground 2) and in not taking account of the Appellant's evidence regarding difficulty of contacting her daughter (Ground 3). It is also arguable that the judge failed to have proper regard to guidance in assessing the Appellant's sexuality, in particular at [26] and [34].

All grounds are arguable."

3. The Respondent filed a Rule 24 notice opposing the grant of permission. Neither party made any application to adduce further evidence. Thus the matter becomes before me to decide whether the FtT's decision discloses such error of law that the decision must be set aside and re-made.

Error of Law

4. The main thrust of Miss Khan's argument before me centred upon the failure of the FtT in its assessment of the Appellant's sexuality. She said proper account had not been taken of the relevant guidance issued by the Respondent when assessing a matter of this nature. She said further that the judge's approach was incorrect when dealing with:
 - (i) the fact that the Appellant had not heard of LGBT groups [26]
 - (ii) nor had she engaged in a lesbian relationship in the UK [27] and [34].

Those were not factors which should be held against her, nor were they ones which entitled the judge to make adverse credibility findings against the Appellant. These errors resulted in the judge's findings as a whole being tainted and the decision should therefore be set aside.

5. Mrs Petterson on behalf of the Respondent did not seek to defend the decision. She said she was of the view that the first ground set out in paragraph 5 above had been made out. That being so, the decision was unsafe and could not stand.
6. In addition, the Appellant has now given birth to her child. The child is recognised as a British citizen. Mrs Petterson said this would now need to be factored in to any review hearing.

7. I find I am satisfied for the reasons set out in the grounds and in the grant of permission that the decision of the First-tier Tribunal contains a material error and therefore it must be set aside to be re-heard. I agree with the submissions made by Miss Khan set out above. I set aside the decision in its entirety.
8. Both parties were of the view that this is a matter which must be returned to the First-tier Tribunal. It would appear that relevant evidence has not been properly considered by that Tribunal and the effect of that error has been to deprive the Appellant of the opportunity for her case to be properly considered by the First-tier Tribunal. Moreover the extent of the judicial fact-finding exercise is such that it would be more appropriate that this appeal be remitted to the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statement of 25th September 2012.
9. Having reached that conclusion with the agreement of the parties I make the following directions:
 - (i) The decision is set aside and the appeal is remitted to the First-tier Tribunal for rehearing.
 - (ii) The appeal is not to be listed before FtT Judge N M K Lawrence.
 - (iii) The appeal is remitted to the FtT sitting at Bradford.
 - (iv) Any further directions concerning the conduct of the rehearing are to be made by the acting Resident Judge at Bradford.

Notice of Decision

The decision of the FtT promulgated on 11th January 2017 involved the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First-tier Tribunal with the directions set out above.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
September 2017

C E Roberts

Date

04

Deputy Upper Tribunal Judge Roberts