



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

Appeal Number: PA/07907/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
On 17 August 2018**

**Decision & Reasons
Promulgated
On 25 October 2018**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE CONWAY**

Between

[M B]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Friel, instructed by McGlashan MacKay Solicitors.

For the Respondent: Ms M O'Brien, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, a national of Uganda, appeals to this Tribunal against the decision of Judge Farrelly in the First-tier Tribunal dismissing her appeal against the refusal of her asylum claim.
2. The appellant came to the United Kingdom aged nearly 20, in January 2006, as a student. She obtained further leave for study purposes until February 2010. Following the expiry of that leave she remained without leave: she had a relationship with a Polish man, whom she sought permission to marry, but the application was subsequently withdrawn, the

relationship broke up, and in June 2011 she reported him to the police for domestic violence and sought leave to remain on the basis of domestic violence. That was refused, but she was granted discretionary leave until August 2014. When that was about to expire, she sought a review of it seeking its extension, but also claimed that she had a well-founded fear of persecution based on a claimed conversion from Islam to Christianity, and further that she was at risk from her family because of her relationship with the Polish national and her change of religion. That claim was refused and the appellant appealed. In the First-tier Tribunal Judge Bradshaw dismissed her appeal, for numerous reasons set out in the decision: he did not regard either of the elements of her claim as credible. Permission to appeal to the Upper Tribunal was refused. The appellant became appeal rights exhausted in the autumn of 2015.

3. She has not said that she did not know she was remaining without leave. In early 2017 the Secretary of State served her with notices requiring her to report to an Immigration Official. She failed to do so. In March 2017 she made a new asylum claim on the basis that she was bisexual and would be at risk on return to Uganda. That claim was refused in August 2017 and Judge Farrelly's decision is on the appeal against that refusal.
4. It is apparent from Judge Farrelly's determination that the appellant attempted to reargue her previous claims: Judge Farrelly decided that there was no basis for him to reconsider the decision taken by Judge Bradshaw; no question is now raised about that. In relation to her claim to be bisexual and at risk as such, Judge Farrelly said this:

"23. I also do not find the appellant has established she is bisexual. I do not find her account to be credible. I am influenced by the late stage at which she introduced this claim. I do not accept she was unaware this could form the basis of a claim. She has highlighted how same-sex relationships were considered in her home country. She refers to being reprimanded on occasion by her half sister and at school for what they said was inappropriate behaviour. She was aware, on her account, this was something not displayed in public and could get her into trouble in Uganda. She describes how in the company of Africans, even the United Kingdom, she would be guarded. Consequently, on her evidence she knew being attracted to the same sex behaviour was something of significance in her home country yet she did not raise this earlier.

24. On her account, she was aware from her early teens that she was bisexual. She came to the United Kingdom and said she carried out some research on the internet. Her first relationship did not occur for a number of years. She said she was able to advise her girlfriend's mother about how to progress with her own claim to remain in the United Kingdom. She advised her to change lawyers. The appellant herself had a lawyer. She made application to remain on the basis of domestic violence. She then introduced a claim about religion. If there were substance to her claim of bisexuality it should have been introduced at this stage.

25. The chronology is significant. The inference is that she is desperate to remain in the United Kingdom and having been unable to remain on the basis of previous applications she is now trying another avenue of claim.

26. I find she has attempted to bolster this claim for the appeal. This is evidenced by her detailed statement in contrast to her earlier vagueness. She also provided statements from a woman she claims was her former girlfriend and a former boyfriend about his suspicions. Neither has attended to support the statements and I draw an adverse inference from this.

27. She said [she] did not join any Gay organisations because she could not find groups in the Glasgow area. It is not credible that she was unaware of any LGBT groups given her ability to use the internet and contacts. There has been no independent evidence to support her claimed sexuality.”

5. Judge Farrelly thus dismissed the appeal, concluding, as Judge Bradshaw had done, that the appellant’s claim was not credible.
6. The grounds of appeal to this Tribunal, on the basis of which permission was granted, are twofold. First, in reference to the appellant having, according to Judge Farrelly, waited too long before making her claim, the grounds say that waiting too long would have been a sufficient reason had the appellant not sought to explain why she did not previously refer to or found on her sexuality. She had explained how she first learnt of it and the circumstance in which it developed. Further, while she had another reason for remaining in the United Kingdom, she had no need to refer to it anyway. The second ground relates to Judge Farrelly’s treatment of the statements of the two individuals who were not called as oral witnesses. It is asserted in the grounds that no inference could be drawn from their evidence without seeing what it was that they said. It was wrong to draw an adverse inference simply from their absence.
7. There is a rule 24 response from the Secretary of State, which argues that the appeal is simply disagreement with the judge’s findings. In relation to her sexuality the response reads as follows:

“Given that, as is recorded, the appellant’s own account is that she was aware from her early teens that she was bisexual, it is reasonable for the judge to draw inference from the fact that the appellant only raised the matter as part of her claim following previous failed attempts to gain leave to remain in the UK, despite her knowledge that bisexuality would be a significant issue in her home country. The appellant’s account is not, as the grounds of appeal suggest, that the realisation of her sexuality was a gradual process that has only recently become clear, particularly as the appellant is now in her thirties and therefore her awareness dates back around fifteen years or more.”

8. So far as the second ground is concerned, the respondent's response points out that the judge clearly had the whole of the evidence in mind and was entitled to reach the view that he did about it.
9. We heard oral submissions from Ms Friel and Ms O'Brien. In relation to the first ground, Ms Friel's difficulty was made apparent when it became clear that although the ground of appeal is founded on the appellant's having good reasons for failing to mention her sexual orientation in any previous claim, there is no detectable reason for her failure to mention it either during the appeal in 2015 or immediately after that appeal failed, when she became liable to removal to Uganda. After that appeal failed, as we have said, the appellant was not in contact with the Home Office, and indeed was formally an absconder when she did not respond to the notices requiring her to report. She only got in touch with the Home Office when she was ready to make her new claim on this new basis. That delay is perhaps not wholly inconsistent with the truth of her claim, but it is a factor of very great importance in determining her credibility, and despite the judge's conclusions about it, nothing that was provided in the course of the appeal before us offers any explanation for the appellant's failure to claim on this basis until March 2017. In our view, both the respondent's points and the judge's points are well made, and the appellant's arguments do not undermine them in any way.
10. In relation to ground 2, the position is that the judge was shown two pieces of paper which were said to be statements by individuals supporting the appellant's claim. No information about the individuals was provided, other than that which could be derived from the pieces of paper produced. There was no other oral evidence supporting the appellant's claim.
11. It seems to us that the judge was amply entitled to treat the evidence before him in the way he did. Despite the appellant's claimed bisexuality for a long period of time, nobody was prepared to support her claim by oral evidence, and the written support was confined to these two unattested letters. The authors of the letters could not be cross-examined; but the very sparseness of the evidence was itself, in our judgment, a matter that entitled the judge to draw an adverse inference as he did. The fact that the appellant wholly implausibly claimed to know nothing of LGBT organisations in Glasgow, a matter not referred to in the grounds or Ms Friel's submissions, helps to confirm the decision the judge made.
12. For the foregoing reasons we are entirely unpersuaded that the judge erred in law in his conclusions in relation to the appellant's credibility and his dismissal of the appeal. His judgment dismissing the appeal therefore stands.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 19 October 2018.