



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

Appeal Number: PA/09684/2016

THE IMMIGRATION ACTS

Heard at Field House

On 4 January 2018

**Decision & Reasons
Promulgated**

On 10 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**BM
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvan, counsel.

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer.

DECISION AND REASONS

An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court.

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing her appeal against the respondent's decision of 23 August 2016 refusing her application for international protection.

Background.

2. The appellant is a citizen of Pakistan born on [] 1980. She first arrived in the UK on 8 February 2011 with leave to remain as a student valid until 3 June 2012. She was granted further leave to remain in the same capacity until 30 September 2013. However, a further application for a residence card as the spouse of an EEA national was refused on 3 July 2015. On 10 December 2015, she applied for asylum and her application was refused in the decision of 23 August 2016, the subject of this appeal.
3. Her application for asylum was based on her claim that she was a lesbian and was in a lesbian relationship with her partner, a citizen of India. Her partner has also applied for asylum but her application was refused and certified in a decision made on 26 August 2016. However, the respondent did not accept that the appellant was lesbian and for that reason found that she would not be at risk of persecution on return to Pakistan. Her application was refused accordingly.
4. The appellant appealed to the First-tier Tribunal. The judge did not find that the evidence of the appellant or her partner was credible or that the evidence of a further witness was sufficiently cogent for him to conclude that the appellant and her partner were in a lesbian relationship. For these reasons, her appeal was dismissed.

The Error of Law.

5. Permission to appeal was granted by the First-tier Tribunal. At the hearing before me it was agreed by Mr Chelvan and Ms Fijiwala that the First-tier Tribunal had erred in law such that the decision should be set aside. Firstly, the judge erred in law by entering into a fact-finding exercise to decide whether the respondent had meant to concede that the appellant's partner was lesbian (para 27 of the decision letter relating to her claim where such a concession is recorded) without following the procedure approved by the Court of Appeal in NR (Jamaica) v Secretary of State [2009] EWCA Civ 856. Secondly, the judge erred in law by failing to analyse the evidence of the appellant in the context of the DSSH model as set out in the respondent's policy documents including API Sexual Orientation in Asylum Claims, 3 August 2016.
6. Both representatives agreed that the proper course was for the appeal to be remitted to the First-tier Tribunal for reconsideration by way of a full rehearing and the directions set out in [7] below were also agreed save that Mr Chelvan submitted that the finding of fact made by the judge at

[72] of his decision that “the appellant and her partner may well share a room together” should be preserved whereas Ms Fijiwala argued that it would be artificial for this fact alone to be preserved if the appeal was to be heard afresh. I am satisfied that the right course in the light of the errors of law made by the judge is for there to be a full rehearing with no preserved findings of fact. Ms Fijiwala indicated that she intended to consider whether the concession relating to the appellant's partner should be withdrawn and also that she would be reviewing the decision relating to the appellant as the evidence had not been assessed in the context of the DSSH model.

7. Accordingly, I make the following directions:
- (a) the appeal is to be remitted to Taylor House for reconsideration by way of a full rehearing before a different judge on the basis that as at the date of this hearing the concession that the appellant's partner is a lesbian still stands.
 - (b) if the respondent wishes to withdraw the concession that the appellant's partner is a lesbian, she must provide reasons why the concession should be withdrawn based on the evidence in her protection claim. These reasons are to be filed with the First-tier Tribunal on or before 18 January 2018, a copy being served on the appellant.
 - (c) the decision on the review of the appellant's claim in the light of the concession about the failure to use the DSSH model is to be filed with the First-tier Tribunal on or before 1 March 2018, a copy being served on the appellant.
 - (d) the respondent is to file the relevant documents relating to the appellant's asylum application on or before 1 March 2018, copies being served on the appellant.

Decision.

- 8. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for reconsideration by way of a full rehearing by a different judge.
- 9. In the light of the issues raised in this asylum appeal, I am satisfied that this is a proper case for an order to be made under rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I make an order prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

Signed: H J E latter

Dated: 8 January 2018

Deputy Upper Tribunal Judge Latter