



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

Appeal Number: PA/10375/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 4th April 2018**

**Decision & Reasons Promulgated
On 19th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MISS L.A.W.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person accompanied by her mother

For the Respondent: Ms Ahmad (Counsel)

Anonymity

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

An anonymity direction is made. As a protection claim, it is appropriate to do so.

DECISION AND REASONS

1. The Appellant is a citizen of Uganda (born [] 1999). She arrived in the United Kingdom on 7th April 2017 (aged 17 years) and claimed asylum on the same day. She appeals to this Tribunal against the decision of the

Respondent dated 28th September 2017 refusing her claims for asylum and humanitarian protection and her human rights claim. Her appeal was heard by Judge of the First-tier Tribunal Geraint Jones QC and dismissed on all grounds in a decision promulgated on 20th November 2017.

2. An application for permission to appeal was lodged and permission was granted by the First-tier Tribunal on the following grounds:

It was found arguable that the Tribunal;

- (i) failed to make reference to two letters, one from Kesta Desmond, a High Intensity CBT Therapist, and one from Rosa Benato, a Senior Lecturer at the City of London University School of Health Sciences. It was arguable as to whether the judge took these documents into account when coming to his findings;
 - (ii) failed to properly assess the Appellant's Article 8 claim taking into account her age (17 years on entry) and dependence on her mother; and
 - (iii) made no reference in its decision to the Appellant's diagnosis of PTSD.
3. There is a Rule 24 response on file from the Respondent, the relevant part of which says, "The Judge made adequate findings of fact and has given adequate reasons for the findings made. This is set out at paragraphs 30 and onwards. The Judge also sets out findings in relation to the various letters and documents as set out at paragraphs 28 and 29."
 4. Thus the matter comes before me to decide whether the decision of the First-tier Tribunal discloses such error of law that it must be satisfied and be remade.

The Hearing

5. Before me Ms Ahmad appeared for the Respondent. The Appellant appeared in person, unrepresented. Because the Appellant was aged 17 years when the Respondent's decision was made and because she was unrepresented, I allowed her mother to speak on her behalf although I also heard from the Appellant herself. Ms Ahmad who was in agreement with this course outlined that it may be helpful if the Respondent's case was set out at the beginning of submissions in order to enable the Appellant to better respond.
6. I heard submissions from Ms Ahmad first. Ms Ahmad referred to case law particularly the decision in **VW (Sri Lanka) and SSHD [2013] EWCA Civ 522**. She referred to the FtT's decision and said that the core of the Appellant's claim was that she could not return to Uganda on account of her sexuality. The judge set out the Appellant's claim over several lengthy paragraphs [7] to [22].

7. He then recorded that the Appellant gave oral evidence by adopting her witness statement [23] and that he took account of her mother's evidence [27].
8. The judge's findings are contained in [30]. He goes into great detail setting out why he comprehensively disbelieved the Appellant's account and found:

"That the appellant's claim to be a lesbian is not established, even keeping in mind the modest standard of proof in asylum appeals."
9. He followed this up by finding:

"That the appellant's mother was complicit in making the appellant's travel arrangements for her to come to this country and funded her travel. It is not claimed that the appellant's father provided any funds. The appellant does not claim to have had any funds of her own. The appellant's mother works as a nurse at a London hospital and given her history of travel (detailed in her witness evidence) she plainly had the wherewithal with which to fund the appellant's travel and, as I find, the inclination so to do."
10. Ms Ahmad submitted that the judge had made findings which were open to him. She referred to the grounds granting permission and specifically to the two letters mentioned therein. She said, referring to **VW**, that it was not necessary for a judge to refer in his decision to each and every piece of evidence placed before him. She invited me to consider the letter from Rosa Benato and to find that it is not a letter that is capable of materially affecting the decision. Ms Benato has not even met the Appellant. She was the personal tutor for the Appellant's mother and simply records details of what she has been told by the Appellant's mother. So far as the letter dated 9th November 2017 from Kesta Desmond is concerned, it depended upon a history given by the Appellant. The FtTJ had made a clear finding on the Appellant's credibility, and that is a matter for the judge.
11. I then heard submissions from the Appellant and her mother. The Appellant handed in a statement which was in fact her statement referring to her historical claim. She also handed in a further report from Kesta Desmond, the High Intensity CBT Therapist from South London and Maudsley NHS Foundation Trust. I note with concern that this letter is neither signed nor dated. I was told that it is of recent origin, and the content is consistent with the assertion that it post-dates the report of 9th November 2017. It expands upon the original letter from Kesta Desmond (also unsigned) which it was said was before the FtTJ. It sets out the treatment which the Appellant is undertaking in respect of a diagnosis of PTSD, said to be on account of what happened to her in Uganda. It was said by the Appellant's mother that the judge had not looked at all the evidence properly in the light of the diagnosis that the Appellant was suffering from PTSD. She asked for the decision to be set aside and for her daughter to be given a fresh hearing.

Error of Law Consideration

12. The challenges raised against the FtT's decision are two-fold:
 - (i) that the FtTJ has failed to have proper regard to relevant evidence – specifically two documents, a letter from the Appellant's mother's personal tutor at City University School of Health Sciences and secondly a letter from a CBT therapist employed by South London and Maudsley NHS Foundation Trust; and
 - (ii) whether in view of the Appellant's age and claimed dependency on her mother, Article 8 ECHR family life is engaged.
13. I begin my consideration by dealing with the first challenge mounted. The judge's starting point in his decision was to establish whether the Appellant's claim to be a lesbian was a credible one. In taking this approach, the judge clearly kept in mind the test set out in **HJ (Iran)**. He essentially engaged in a fact-specific enquiry on whether the Appellant has established that she is a lesbian.
14. Credibility is at the heart of this appeal. The judge considered the history to the Appellant's claim and found it wanting. He comprehensively disbelieved the historical claim made and set out lengthy findings giving reasons for that disbelief.
15. The judge also found that the Appellant's and her mother's evidence was lacking, not least because of the Appellant's claim that she left Uganda in the company of an unspecified woman who armed with forged or false documents, brought her to the UK.
16. However it is well established law that in asylum appeals a judge must apply anxious scrutiny to the evidence before him. Failure to take into account relevant evidence amounts to an error capable of requiring the decision to be set aside for inadequacy of reasoning.
17. I have carefully considered both letters. I find I can discount the letter from Rosa Benato. It is based entirely upon what she has been told by the Appellant's mother. It expresses shock that evidence of homosexuality is being requested by the Home Office. She has not even met the Appellant, and the contents render it in my judgment a partisan letter. Therefore I find that the fact that the judge makes no specific reference to this letter would not materially affect his decision.
18. However it is a different matter so far as the report dated 9th November 2017 from Kesta Desmond is concerned. The same considerations discounting Rosa Benato's letter do not apply to the CBT Therapist's report. Nowhere in the decision do I see that the judge has made reference to this report. Therefore I cannot be satisfied that he has taken it into account. The report constitutes evidence which the Appellant put forward in support of her claim. She is entitled to have this evidence assessed to see to what extent if any it shows internal consistency in her

claim, and to see if it provides independent probative value to her claim. In other words the judge is required to look at the evidence holistically. I find that there is nothing in his decision to show that he has done so, and that renders the decision unsafe.

19. Miss Ahmad did her best to persuade me that the judge's findings on the Appellant's credibility were so clearly reasoned that they could stand in the face of a report which depended heavily upon a history given by the Appellant, a history which the judge comprehensively disbelieved. I disagree. That is the wrong approach. The assessment of credibility must be made in the light of all the evidence as a whole. This includes making a judgment on the Health Care Professional's report. It cannot simply be ignored. I find the decision must be set aside in its entirety.
20. So far as the Article 8 ECHR point is concerned that is bound up with the fact finding on the Refugee claim. That too will have to be considered afresh at the rehearing.

Decision

21. The decision of the First-tier Tribunal promulgated on 20th November 2017 is hereby set aside for legal error. The matter is remitted to that Tribunal (not Judge Geraint Jones QC) for a fresh hearing.

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

C E Roberts

Date

17 April 2018

Deputy Upper Tribunal Judge Roberts