



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13029/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 13 September 2018**

**Decision & Reasons Promulgated
On 8 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Young, Counsel instructed by Wimbledon Solicitors
For the Respondent: Mr P Deller, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Uganda born on 2 February 1959. She is appealing against the decision of First-tier Tribunal Judge Hussain promulgated on 20 June 2018 to dismiss her appeal against the decision of the respondent on 17 November 2016 to refuse her application for asylum.
2. The appellant claimed asylum on the basis that she is a lesbian and would be at risk on return to Uganda as a consequence. The respondent did not accept that she was telling the truth about her sexuality. Nor did Judge Hussain, who found the appellant's account to not be credible. Judge Hussain described various aspects of the appellant's account as being inconsistent or implausible, and on that basis dismissed her appeal.

3. The appellant submitted in support of her claim a report from a clinical psychologist, Sarah Kasule, and a psychiatrist, Dr Hajioff. This evidence was considered by the judge at paragraph 58 where the judge stated that he accepted the medical evidence that the appellant suffers from depression and posttraumatic stress disorder, but found that this did not meet the high threshold for an Article 3 or Article 8 claim on the basis of her health.
4. Seven grounds of appeal were advanced, but it is not necessary for me to consider these in detail as at the error of law hearing it was accepted by Mr Deller that the decision of the First-tier Tribunal should be set aside.

Analysis

5. There was clear evidence before the First-tier Tribunal to indicate that the appellant had memory and concentration problems. The psychologist, Dr Kasule, in a letter dated 31 October 2016, stated that the appellant has memory and concentration problems. In his report dated 25 March 2018 Dr Hajioff, a consultant psychiatrist, stated that the appellant's concentration is impaired. The judge himself refers to the appellant claiming to have memory lapses and concentration issues and her inability to give coherent answers to certain questions. There are also references in the decision to the appellant not understanding questions and giving an incoherent answer.
6. Despite the medical evidence before the Tribunal, the judge determined the issue of the credibility of the appellant's account without considering her mental health and concentration/memory difficulties. Both Mr Deller and Ms Young were of the view, which I accept, that the judge fell into error by failing to have regard to the medical issues when considering credibility and only addressing them as a separate matter in respect of whether they were of sufficient gravity to meet the threshold for Article 3 or Article 8 as a basis in their own right to resist removal from the UK. The medical issues needed to be considered in the context of credibility and taken into account so that the overall assessment of credibility was made having regard to the mental health of the appellant.
7. Having delivered my decision as to there being an error of law I invited the parties to comment on whether the appeal should be remade in this forum or remitted to the First-tier Tribunal. Ms Young strongly advocated for remittal on the basis that credibility would need to be considered afresh, that evidence may need to be taken from multiple witnesses, and that the appellant would feel more comfortable in the setting of the First-tier Tribunal. Mr Deller did not give a strong view either way but indicated that given the level of fact-finding required the First-tier Tribunal may be a more appropriate forum. I am satisfied, in light of extent of further fact finding that will be required, that this is a matter that should be remitted to the First-tier Tribunal.

Decision

- (a) The decision of the First-tier Tribunal contains a material error of law and is set aside.
- (b) The appeal is remitted to the First-tier Tribunal to be heard afresh before a different judge

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 him or any member of their 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



Deputy Upper Tribunal Judge Sheridan Dated: 1 October 2018