



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

Appeal Number: PA/02116/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 3 December 2019**

**Decision & Reasons Promulgated
On 10 December 2019**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**GN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Representative

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a citizen of Uganda. Her date of birth is 10 September 1979. There is a direction to anonymise the Appellant. This was ordered by the First-tier Tribunal. I continue that order.

In a decision which was promulgated on 14 August 2019, following a hearing at Taylor House on 26 July 2019, the Appellant's appeal was dismissed by First-tier Tribunal Judge Hoffman. The Appellant appealed against the decision of the Secretary of State dated 22 February 2019 to refuse her claim on

protection grounds. The Appellant's case was that she would be at risk of persecution on grounds of her sexuality.

Permission was granted by Upper Tribunal Judge Stephen Smith on 10 October 2019. Judge Smith's decision reads as follows:

- “1. The application is a day out of time. The appellant appears to have been mistaken as to the time limits. There is a good reason to extend time on this minor breach.
2. The evidence of Ms Tanah was key. The criticism at [10] of the grounds about the judge's concerns at [95] about her evidence being 'rehearsed' have merit. The operative reasoning of judge at [95] was based on the demeanour of the witness which is arguably an unreliable method of assessment: see SS (Sri Lanka) [2018] EWCA Civ 1391 at, for example, [41]. There, the Court of Appeal said, *'the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence...'*. The judge appeared to adopt the polar opposite approach, which was arguably unlawful: *'While on paper this might not read as being particularly damning, having had the opportunity to see Ms Tanah give the oral evidence... the impression I obtained was that her responses had been delivered in a rehearsed way...'*
3. At [27], the appellant contends that the judge was mistaken in his treatment of the medical evidence, discounting it on the basis the appellant no longer experienced PTSD. The judge's failure to consider whether the past history of PTSD supported the appellant's overall account arguably led to the judge overlooking past PTSD as a significant piece of supporting evidence. A further and significant difficulty with the judge's analysis of the medical evidence is that it features at [105] to [109] *after* the judge has already reached significant adverse credibility findings of the appellant's evidence, infected by his approach to demeanour, as a whole: see [91] to [104]. It is arguable that the judge's operative reasoning demonstrates that his analysis was conducted only once he had already reached adverse credibility findings: Mibanga [2005] EWCA Civ 367.
4. The other criticisms have less merit. However, given the centrality of the judge's analysis of Ms Tanah's evidence, and his dismissal of the medical evidence, it is arguable that his overall credibility assessment was tainted. I grant permission on all grounds.

DIRECTIONS

It is my preliminary view that the decision of First-tier Tribunal Judge Hoffman did involve the making of an error of law capable of affecting the outcome, and that the decision of the First-tier Tribunal should be set aside, the appropriate course of action being to remit the case to the First-tier Tribunal for a fresh determination on all issues.

Unless within ten working days of the issue of these directions there is any written objection to this course of action, supported by cogent

argument, the Upper Tribunal will proceed to determine the appeal without an oral hearing and will remit it to the First-tier Tribunal.

In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed.”

At the hearing before me Mr Clarke conceded that the Secretary of State had not responded to the directions. In these circumstances, I conclude that in accordance with Judge Smith’s decision the decision of Judge Hoffman to dismiss the Appellant’s appeal is set aside and the matter is remitted to the First-tier Tribunal.

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 Joanna McWilliam

Date 5 December 2019

Upper Tribunal Judge McWilliam