



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

Appeal Number: PA/04970/2018

THE IMMIGRATION ACTS

Heard at Field House

On 4th January 2019

**Decision & Reasons
Promulgated
On 15th January 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MISS THERESE [J]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi (instructed by Toltops Solicitors)

For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer}

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, in relation to a Decision and Reasons of the First-tier Tribunal (Judge Mailer) promulgated on 2nd July 2018.
2. The Appellant is a national of Gambia born on 28th July 1974. She had appealed to the First-tier Tribunal against a decision by the Secretary of State, taken on 28th March 2018, to refuse her Protection claim.

3. The Appellant had originally arrived in the United Kingdom in January 2008 as a domestic worker in a diplomatic home. That leave was extended until January 2013. During that period of leave she returned to Gambia for two weeks in 2009.
4. Her application to renew that leave in 2012 was refused. She then applied for leave to remain as a Tier 5 migrant which was also refused. She was then granted leave as a Tier 5 migrant in September 2013 until August 2015. An application for indefinite leave to remain on that basis was refused in June 2015. In August 2015 she made an Article 8 application for leave to remain, which was refused in January 2016. In October 2017 she was arrested while reporting with a view to removing her to Gambia the following day. She then claimed asylum and her removal directions were deferred.
5. She claimed asylum on the basis that she was a bisexual woman in a lesbian relationship with a partner in the UK. She claimed to have been in that relationship for more than two years.
6. At the First-tier Tribunal hearing the Judge accepted that if the Appellant was a lesbian and would conceal her relationships in Gambia, this would be as a result of fear and the Judge accepted that there was hostility towards gay people in Gambia.
7. The issue for the Judge to decide therefore was whether or not the Appellant was in truth a lesbian.
8. In that regard the Judge heard evidence from the Appellant and her claimed partner, Ms Kore. The Judge concluded that the Appellant was not gay and dismissed the Protection claim. Having found the Appellant and her claimed partner not to be in a relationship the Judge also dismissed the human rights claim.
9. Permission to appeal was granted on the basis of three grounds. The first ground asserts the Judge erred in noting at paragraph 149 of the Decision and Reasons that in her application made in August 2015 the Appellant made no mention of having any partner. The Judge said there was no mention of Ms Kore and it was only after that application was certified that she claimed to have a partner. The error asserted there was that the evidence was that the Appellant's relationship with Ms Kore only commenced in October 2015 which explained why no mention of it was made in August 2015.
10. Mr Bramble accepted that error but submitted that the error was not material.
11. Ground 2 argues that the Judge erred in that, while making several adverse credibility findings against the Appellant, he made no adverse credibility findings against the witness in the case, Ms Kore.

12. The third ground asserts that the Judge erred in making an adverse finding against the Appellant on the basis of contradictions with regard to the dates when the relationship started. With regard to that ground, Mr Bramble also conceded there were errors but again submitted that these were not material.
13. Mr Bramble is correct to concede that the decision does contain errors, as asserted by grounds 1 and 3 but for the reasons which follow I also agree with him that those errors are not material.
14. I do not find that the Judge made an error in not making a finding, in terms, that Ms Kore's evidence was not credible.
15. The Decision and Reasons in this case is lengthy. The Judge set out the Appellant's immigration history, her evidence, the evidence of Ms Kore and the documentary evidence in the form of photographs submitted. He set out the submissions made by both representatives and his findings start at paragraph 120 and continue to paragraph 159.
16. Mr Pipi took me to paragraph 127 of the Decision and Reasons where the Judge stated that a Judicial Review claim made in April 2016 was dismissed and the Appellant asserted that the matter was currently under consideration before the Court of Appeal but that no further information was given as to the progress of that application. With regard to that Mr Pipi produced an order of the Court of Appeal refusing permission sealed on 3rd September 2018. It is clear from that document that before the Court of Appeal the Appellant was arguing that she was providing financial support to her relatives in Gambia.
17. The Judge noted the Appellant's claim to have had one relationship whilst in the Gambia, with Catherine. She claimed to have been seen by her uncle with Catherine and that her uncle reported the incident to Catherine's uncle who beat her as a result. The Appellant claimed that Catherine had died of her injuries but was inconsistent and contradictory as to the dates when these incidents took place.
18. The Judge noted that the Appellant claimed to have travelled to the UK in 2008 in order to escape the problems in Gambia but nevertheless made no attempt to claim asylum. It was her case that she did not claim asylum because she had a visa.
19. The Judge noted the Appellant had in fact returned to Gambia for two weeks in 2009 and claimed to have been in fear and to have had to move away from her home area. Again, upon her return to the United Kingdom she did not claim asylum.
20. At paragraph 139 the Judge found the Appellant's evidence regarding Catherine's death to be problematic due to contradictory evidence. The Judge also noted that the Appellant had been able to successfully relocate

during her visit to Gambia in 2009 without any interference from the authorities or her family.

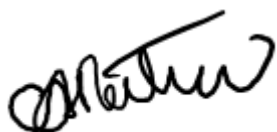
21. The Judge noted that she had lived openly in Gambia at the time she had a relationship and he also noted that she had had no lesbian relationships in Gambia after Catherine died and nor had she had any lesbian relationships prior to that.
22. The Judge noted that was no evidence that the Appellant's son or adult brother were in any way hostile towards her on account of her sexuality and in that regard, I note the evidence that she claims to be supporting them financially.
23. The Judge considered in some detail the evidence regarding the claimed relationship with Ms Kore and at paragraph 146 noted that they had never lived together as a couple. It was argued by Mr Pipi that they had never claimed to have lived together as a couple and the case was not put on that basis. The fact that they had not lived together did not mean that they were not in a relationship. Whilst that is correct, the fact that they have been in a relationship for in excess of two years and have never lived together is a factor that can detract from the credulity of their claim to be in a relationship. The Judge also noted the Ms Kore had said that she had many relationships with men.
24. The Judge noted that a few photographs had been produced but they were all very recent notwithstanding the relationship was said to have subsisted for over two years. The Judge also noted that the photographs appeared to have been staged
25. The Judge noted, at paragraph 150, that notwithstanding the fairly lengthy relationship, no evidence was produced by way of any texts, photographs or any other form of communication such as emails to substantiate the assertion. The Judge noted there was nothing to show any ongoing commitment.
26. At paragraph 151 the Judge noted that no evidence was produced from any friend claiming to know them. Ms Kore did not herself claim to have had any previous lesbian relationships and the Judge also noted in that paragraph that the Appellant and Ms Kore had very little knowledge about each other's personal details.
27. At paragraph 152 the Judge noted that there was no corroborating evidence from any friend or associate who knew the Appellant and Ms Kore and nor was there any evidence of any social links to any groups or organisations such as LGBT confirming the nature and extent of the asserted relationship.
28. The Judge concluded at paragraph 154 that he was not satisfied, having considered the evidence as a whole, that the Appellant was gay or that she would be treated as gay by potential persecutors in Gambia. He found

the Appellant to have fabricated a claim to prevent her removal, having failed on earlier occasions to have her leave extended on non-asylum grounds and it was only after she was detained in October 2017 that she made the claim based on her alleged sexuality.

29. Whilst the Judge has not specifically found Ms Kore to be lacking credibility or not to be a lesbian it is abundantly clear from the findings that the Judge has found that the Appellant and Ms Kore are not in a lesbian relationship and has done so for numerous sustainable reasons. The errors as to the length of time since they met and the fact she made no mention of it earlier do not materially affect that finding. The Judge noted the lack of knowledge each had for the other, the lack of any corroborating evidence from anybody save the mere assertions by the two of them. The Judge noted the lack of previous relationships in relation to Ms Kore and the fact that both had relationships with men and indeed the Appellant has a son. The Judge's conclusions, even without those tainted by error, are firmly based on the evidence, or lack of it, and are sustainable.

Decision

30. The Decision and Reasons of the First-tier Tribunal does not contain any material errors of law and the appeal to the Upper Tribunal is dismissed.
31. The First-tier Tribunal did not make an anonymity direction. There was no application for one to be made before me and I see no justification in making one and do not do so.



Signed
Upper Tribunal Judge Martin

Date 4th January 2019