



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/09225/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**Decision**

**&**

**Reasons**

**On 19 September 2019**

**Promulgated**

**On 2 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**T O**

**(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

The appellant is a citizen of Japan who was born on 17 June 1956.

The appellant's immigration history, which I take from the respondent's decision letter in this appeal, is as follows. She arrived in the UK in 2000. She was subsequently granted leave as a student on a number of occasions

between 2000 and 2005. In 2006, she unsuccessfully applied for further leave as a student. Although it is not wholly clear from the papers, she may have successfully appealed that decision. In 2011 she unsuccessfully made an application for further leave on Art 8 grounds. In June 2013 she was served with notice that she was an overstayer. Subsequent applications for leave were refused in 2013 and 2014. She was again served with notice that she was an overstayer in May 2015. In June 2015, a further application for leave under Art 8 was refused and certified.

On 23 February 2016, the appellant applied for asylum. The basis of her claim was that she is a bi-sexual woman and would, on return to Japan, be subject to a level of societal discrimination and abuse as to amount to persecution. On 18 August 2016, the respondent refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The appellant appealed to the First-tier Tribunal. That appeal was heard on 17 March 2017. In a determination sent on 21 March 2017, Judge Juss dismissed the appellant's appeal on all grounds. He rejected her claim to be bi-sexual and to be at risk on return to Japan as a bi-sexual, lone woman.

The appellant sought, and was granted, permission to appeal by the First-tier Tribunal (Judge E B Grant) on 24 July 2017. The basis of the appellant's appeal is that the interpreter at the hearing was inadequate and mis-interpreted some of her evidence and, despite the fact that the appellant wished to give her evidence in English, she was not permitted to do so.

The appeal in the Upper Tribunal has been listed on three occasions prior to 19 September 2019. On each occasion, it had not proved possible to obtain a Japanese interpreter to assist the appellant who is representing herself in the Upper Tribunal. On 19 September 2019, the appeal was again listed before me and an interpreter was booked. Shortly before the hearing took place, I was informed by the UT's administration that they had been informed that an interpreter would not attend. Having raised this at the outset of the hearing with the appellant, she asked me to continue the hearing. She indicated she was content to do so with the proceedings in English and she handed up a detailed document in written in English dealing with the background evidence about Japan.

Having explained to her that this would only be relevant if the FtT's decision was set aside for error of law, the appellant told me what had happened at the hearing. She did so in a way which indicated clearly she understood what was being said both by me and by Mr Howells who represented the respondent. She explained that at the FtT hearing she had started to give her evidence in English but the judge had required her to speak through an interpreter. Specifically, she said that the questions were asked in English but she had to reply in Japanese and her answers were then interpreted into English and there were mis-interpretations.

There was no Record of Proceedings of the FtT hearing in the file but Mr Howells consulted the HOPO's RoP. He confirmed that it was consistent with the appellant's account in a number of material respects, in particular that the

judge had required the appellant, during her examination-in-chief, to use the interpreter. He confirmed that the appellant had been told to “Use interpreter. In Japanese”. Having heard the appellant’s account of what occurred, Mr Howells invited me to accept what she had said. He accepted that aspects of it were corroborated and that I should give her the benefit of the doubt on others which were not specifically recorded in the HOPO’s RoP. He accepted that there had been procedural irregularity at the FtT hearing, in particular in the appellant being asked questions in English but required to give her answers in Japanese through an interpreter. He accepted that this error meant that no part of the decision was sustainable. He invited me to set aside the decision and remitted it to the FtT for a *de novo* rehearing.

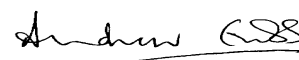
I accept the appellant’s account of what occurred at the FtT. There was no proper basis for conducting the proceedings partly in English and partly in Japanese. Either the appellant’s English was adequate both to understand the questions and to give informed answers or it was not. There are, in addition, real concerns that the interpreter was, in fact, accurately translating what the appellant said in Japanese. I accept Mr Howell’s concessions that the decision of the FtT is procedurally flawed and should be set aside.

### **Decision**

The decision of the First-tier Tribunal involved the making of an error of law. Its decision cannot stand and is set aside.

Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President’s Practice Statement, the appropriate disposal of this appeal is to remit it to the First-tier Tribunal at the Newport Hearing Centre for a *de novo* rehearing before a judge other than Judge Juss.

Signed

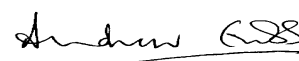


A Grubb  
Judge of the Upper Tribunal

20 September 2019

### **Paragraphs 2 and 3 amended pursuant to rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).**

Signed



A Grubb  
Judge of the Upper Tribunal

1 October 2019