



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

Appeal Number: PA/10669/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7<sup>th</sup> January 2019**

**Decision & Reasons**

**Promulgated**

**On 16<sup>th</sup> January 2019**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**FBS**

**(ANONYMITY DIRECTION MADE)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr S Rungasamy (Lawrence & Associates Solicitors)

For the Respondent: Ms K Pal (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 Feeney) promulgated on 19<sup>th</sup> October 2018.
2. The Appellant is a national of Guinea born on 5<sup>th</sup> October 1987. She had appealed to the First-tier Tribunal against a decision by the Secretary of State, taken on 29<sup>th</sup> August 2018, to refuse her Protection claim.

3. The Appellant came to the UK in 2008 with leave as a student valid until January 2011. Her asylum application based on her sexual orientation, namely that she was a lesbian, was submitted in March 2018.
4. The issue before the First-tier Tribunal was whether or not the Appellant's claim to be lesbian was credible and if so whether she would be at risk for that reason on return to Guinea.
5. The First-tier Tribunal found the Appellant was not a lesbian; she had not been disowned by her family because of her sexual orientation and she is free to establish contact with them on return if she chooses.
6. Permission to appeal was granted on the basis it was arguable that the Judge had erred in overlooking the Appellant's evidence of an earlier relationship, detailed in her witness statement. The earlier relationship referred to was a relationship the Appellant claimed to have had in Guinea before leaving.
7. Before deciding whether or not the First-tier Tribunal made a material error of law in its Decision and Reasons I need to decide a timeliness issue. The deadline for submission of the application for permission to appeal to the Upper Tribunal was 2 November 2018 and the application was not in fact received until 9 November. That is a period of seven days which is a significant amount of time given that the time allowable for lodging an application is 14 days.
8. The First-tier Tribunal did not consider the timeliness issue; believing the application to have been in time when plainly it was not.
9. The matter of whether or not the application should be dealt with at all therefore falls to be decided by me.
10. The original application states that as a result of the Appellant's financial circumstances she could not instruct a legal representative to submit the appeal and the representatives decided to prepare the grounds on a pro bono basis. It is said that the Appellant expresses her sincere apologies for the delay and inconvenience caused to the Tribunal and that the Tribunal is urged to exercise discretion and admit the application.
11. Now that some time has passed since the grant of permission and the Appellant has clearly been under the impression that time was extended it would, I find, be unjust at this stage to refuse to admit the application. The Secretary of State has made no objection on timeliness grounds. I therefore extend time.
12. So far as the grounds to the Upper Tribunal are concerned, the first ground asserts that the Judge's finding that there is no reasonable explanation why the Appellant did not give a more detailed account at an earlier stage as to her lesbian relationships, ignores the fact that at the asylum interview the Appellant answered a number of questions. The Appellant's

explanation was that she answered the questions she was asked and gave more detail in her statement.

13. It is also suggested that the First-tier Tribunal's findings in relation to her claim that she wanted her parents acceptance of her being a lesbian before she moved in with her partner were irrational.
14. Irrationality is a high hurdle for those making the assertion to climb and I will deal with that as I deal with the overall findings.
15. The second ground refers to the fact that the First-tier Tribunal had indicated that it had taken into account the totality of the evidence before reaching a decision on the Appellant's credibility when it was clear that the First-tier Tribunal had not considered her claimed previous relationship in Guinea.
16. Before me Mr Rungasamy relied on those grounds, in particular the Judge's failure to deal with the relationship the Appellant claimed to have had in Guinea.
17. From paragraph 13 of the Decision and Reasons the First-tier Tribunal set out the basis of the Appellant's claim. It set out that the Appellant claimed to have developed an attraction to women in her teenage years and began a relationship with a childhood friend, Yvonne Cisse who, she said, kissed her in a platonic way during a shopping trip. Thereafter, they decided to use their existing friendship as a guise to continue their relationship. That relationship ended amicably when the Appellant came to the UK to study.
18. It was then claimed that in 2009 the Appellant had a relationship with another woman called Mariam Diallo. Marion was scared of being found out and the relationship ended.
19. Then, in 2011, the Appellant met Anna on a bus and they began a relationship. At that time the Appellant lived with her cousin. She did not live with Anna as the Appellant did not want her family or friends to find out. In 2017 the Appellant found out Anna was cheating on her and the relationship ended acrimoniously.
20. The Appellant said that she decided to tell her parents that she was a lesbian in October 2015 because there was constant pressure on her to get married. She was able to do so with Anna's support but her parents disowned her. She attempted to reconcile with them to no avail. After that she took the decision to live openly in the UK, particularly amongst the Guinean community.
21. The Judge then from paragraph 18 set out the Respondent's case. The Respondent relied on the fact that the Appellant had entered the UK with valid leave and following an unsuccessful attempt to extend her stay in 2011 and she became appeal rights exhausted she overstayed. She only claimed asylum several years later

22. When asked when she became aware of her feelings towards women her answers had been vague at interview. She said that her first relationship was with Yvonne. The fact that she had said that she reacted to Yvonne's disclosure normally is at odds with the background information suggesting that being a lesbian in Guinea is taboo and that it is the least tolerant country in Africa. She provided no detail about how she conducted her relationship with Yvonne in secret for a year.
23. The Secretary of State noted the Appellant had given limited detail as to how she felt having to forcibly hide her feelings in Guinea and was unable to give an account of how she reconciled her sexual orientation with her religion.
24. The Secretary of State said that her account of being in an open relationship with Anna while in the UK was inconsistent.
25. The Secretary of State noted that there was no record of a bar she claimed to have attended.
26. The Secretary of State noted that the letters in support were unreliable; in particular one stating that the Appellant was in love on a date when the Appellant was not in a relationship. Another letter indicating that the Appellant kept her sexual orientation secret was at odds with the Appellant's own claim that she lived openly.
27. The Judge's findings commence at paragraph 28. The Judge noted that the Appellant had been asked to provide information about the first time she realised she was attracted to women and her responses were brief and general. The Judge noted that she provided a fuller description later in her witness statement but there had been no reasonable explanation as to why the account was not given immediately. The Judge rejected the Appellant's explanation that she had not realised the Respondent wanted more detail. The Judge did so on the basis that it was clear to the Appellant that the asylum interview was her opportunity to put forward her case in full. Also, the Judge noted that she was not a novice when it came to legal proceedings as she had made applications to the Home Office and mounted legal challenges in the past.
28. Secondly, the Judge noted that when she was asked how she felt when her friend in Guinea had disclosed her own feelings to her the Appellant said she had felt normal. The Judge found that inconsistent with what is known about the attitude to lesbians in Guinea and the fact that the Appellant claimed she concealed that relationship. The Judge noted the Appellant had been brought up in a strict Muslim family but was only able to describe the tension between her religion and sexuality in general terms. Her replies were vague.
29. The Judge noted that the Appellant claimed she had been open about her relationship with Anna which the Judge did not accept. The Appellant had provided limited evidence of the relationship with Anna despite it having

supposedly subsisted for seven years. The Appellant claimed to have disposed of all souvenirs of that relationship. The Judge did not accept that this Appellant, realising she would be unable to return to Guinea as a lesbian, would have disposed of all such evidence.

30. Her witness's evidence was unsatisfactory about the relationship in that she said that she had the impression that Anna was the Appellant's friend and she was unable to explain how or when she became aware that in fact she was her partner. Nor did the witness give evidence about how frequently Anna came to visit or about the interaction between Anna and the Appellant. The Judge noted that the witness would have been well placed to provide first-hand evidence to support the Appellant's claimed long-term relationship but that it was only addressed in a very brief paragraph in her statement.
31. The Judge also noted that the Appellant said she did not want to move in with Anna until her parents were aware of the relationship. The Judge found that to lack credibility as her family was a strict Muslim family and she was aware of the prevailing cultural attitudes in Guinea. If what the Appellant said about her family was correct they were never going to accept the Appellant in a same-sex relationship. The Appellant then nevertheless did not move in with Anna even after disclosing the relationship to her family.
32. The Judge noted the Appellant claimed to have lived an openly lesbian lifestyle in the UK with Anna, especially among the Guinean community. Notwithstanding that the Judge noted a lack of supporting evidence; there were no photographs to support her claim and no other witnesses.
33. So far as the club that the Secretary of State found not to exist, the Judge accepted it did exist. However, the Appellant was unable to give any information about events that took place at that club whereas the website gave details of a number of events such as karaoke nights and drag shows. The Judge found that had the Appellant attended the club as claimed, she would have been able to describe those kinds of events.
34. The Appellant had sought to distance herself from difficulties by saying the transcript of the interview was wrong but the Judge noted she had never previously challenged the transcript of the interview.
35. The Judge noted that whilst engagement in LGBT activities is not a requirement, she did note that the Appellant said she had not contacted LGBT groups because she was hiding and did not want to meet people she knew would tell her parents. That, the Judge found to be at odds with her claim that she lived openly for some of her time in the UK.
36. The Judge noted that the timescales given by the Appellant did not match and were inconsistent.

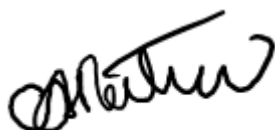
37. The Judge noted confusing evidence about the name of her partner in the UK particular being the same as the person named as her cousin.
38. The Judge noted the three letters of support and the significant difficulties with those letters; in particular some of the contents did not tally with the Appellant's own claim.
39. Finally, the Judge looked at the issue of the delay in her claiming asylum and found that there had been no reasonable explanation as to why she did not claim asylum at an earlier date.
40. It is quite clear that the Judge did take into account her claim to have had a relationship in Guinea, contrary to the assertion in the grounds. None of the Judge's findings are irrational and are plainly based on the evidence, or lack of it, before the Tribunal. The Judge did not say there had been no explanation for the late submission of the asylum claim: rather the Judge did not accept the explanation given to be reasonable.
41. The Judge's findings are firmly based on the evidence and plainly not irrational.
42. I find that there is no material error of law in the Judge's reasoning or conclusions.
43. There having been no anonymity direction previously and no application for one before me I do not make one.

### **Decision**

44. I extend time and admit the application for permission to appeal.
45. 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.
46. The First-tier Tribunal made an anonymity direction. I also make one.

### **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

Date 7<sup>th</sup> January 2019

Upper Tribunal Judge Martin