



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

Appeal Number: PA/13403/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 2 March 2020**

**Decision & Reasons Promulgated
On 18 March 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**G S B
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, of Counsel, instructed by Elder Rahimi Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by Designated Judge Shaerf on 17 December 2019 against the determination of First-tier Tribunal Judge N A Malik, promulgated on 30 May 2019 following a hearing at Manchester on 14 May 2019.

Background

2. The appellant is a national of the Democratic Republic of Congo, born in 1994. 2000. In June 2010, she made an entry clearance application to enter the UK. That does not appear to have been successful. She then travelled to Belgium where she claimed asylum. It is not clear what transpired in respect of that application. The appellant then returned to the DRC. She sought to enter the UK by road in March 2014 using a passport which did not belong to her but leave to enter was refused. In April 2015 she flew to the UK via Nairobi. It is not clear how she entered. She claimed asylum some three weeks later on the basis of her political activities for the UDPS and her sexuality.
3. The appellant gave different names for herself at the asylum screening interview and the substantive interview. She has also used different dates of birth.

The grounds

4. The grounds are not presented in any succinct, numbered format nor has any summary of the points been prepared. Instead, it is maintained that insufficient or unsustainable reasons for the judge's adverse credibility findings have been given and various paragraphs of the determination are selected for criticism.
5. It is maintained that at paragraph 23 the judge "*makes the disappointing assertion that the appellant would not have been happy with her sexuality*" and that in so doing she displays a materially flawed analysis.
6. It is argued that the judge was wrong to have found that the appellant's claim to have stopped being a lesbian was determinative. It is maintained that the appellant had not understood the questions she had been asked and the judge erred in relying on her answers.
7. The judge is said to have misrepresented the appellant's evidence at paragraph 24. It is maintained that the appellant had disclosed her sexuality at the earliest opportunity.
8. It is argued that at paragraph 25 the judge failed to consider the appellant's clarification with regard to her gay relationship in the DRC.

9. The judge is accused of erring in her analysis of the appellant's corroborative evidence at paragraph 26 and of giving inadequate reasons for rejecting the appellant's political activities at paragraphs 28-31. It is argued that the judge did not give reasons as to why the photographic evidence of the appellant's attendance at demonstrations was rejected at paragraph 32.

The Hearing at Field House

10. The appellant attended the hearing and I heard submissions from the parties.
11. Mr Gayle took me through certain paragraphs of the judge's determination which, in his view, contained flawed reasoning.
12. He submitted that the judge had misrepresented what the appellant had said about her state of mind at being gay, that her uncle had not known about her sexuality whilst she was in the DRC, that she had mentioned her sexuality at the screening interview, that her evidence as contained in the supplementary bundle had not been fully considered, that as her partner lived in Coventry it was reasonable to assume that she had been unable to travel to the hearing in Manchester, that there was supporting evidence that had been disregarded, that the appellant could not be expected to recall events from an election held eleven years ago, that people did engage in risky activities under oppressive regimes, that details about the appellant's escape had been given in her evidence and that inadequate weight was placed on the evidence pertaining to her sur place activities.
13. Mr Whitwell submitted that the appellant's poor immigration history was relevant to the assessment of her claim. There had been an obtuse reading of the judge's observations on the appellant's sexuality; what he had meant was that the judge had expected that the appellant would feel disconcerted at being a lesbian in the DRC. The judge had been sceptical about the appellant's assertion that she had changed her sexuality. The judge had plainly been aware of what the appellant had said at her screening interview as there was reference to it in the determination. Any misunderstanding by the appellant could have been cleared up after the interview by the appellant's representatives. There had been proper self-direction. The appellant's partner had not attended and there had been no adjournment application to enable her to do so. It was open to the judge to take that into account.

14. On the political aspect of the claim, Mr Whitwell submitted that several reasons had been provided by the judge as to why the claim had been rejected and he took me through these. He submitted that the grounds were a disagreement with the decision and asked that the decision be upheld.
15. Mr Gayle responded. He accepted that the appellant had claimed to be attending a demonstration in the DRC when she was actually in Belgium but submitted that that did not undermine her credibility. He submitted that she had made her fear about return to the DRC clear at her interview, that if the judge had seen the appellant's answers at the screening interview then it was unclear why she had claimed that her sexuality had not been mentioned, that the appellant had signed the interview record but it had not been read back to her, that people could not alter their sexuality and that she may have misunderstood questions asked about that. He submitted that she had been waiting a long time for her appeal to be heard so may not have wanted an adjournment and there was no guarantee her partner would be able to attend even if the appeal had been relisted. He repeated some aspects of his earlier submissions and concluded by submitting that the appellant may have known how to leave the airport and that the UDPS had fragmented since it had taken power. He submitted that the findings were unsafe and that the decision should be set aside.
16. At the conclusion of the hearing, I reserved my decision which I now give with reasons.

Discussion and Conclusions

17. Having considered all the evidence and the submissions made, I reach the following conclusions.
18. Selecting phrases from the determination in isolation and out of context is not a helpful practice and does not assist in making out a valid challenge. Having read the determination as a whole, I find that the criticisms of certain parts of the determination are not made out.
19. Taking the criticisms in turn, I concur with Mr Whitwell that that the judge's observations of the appellant's sexuality at paragraph 23 have been misrepresented. It is plain that the judge was referring to how disconcerted a gay woman would feel in the DRC where her sexuality would have been disapproved of.
20. The judge found that there was an inconsistency between the appellant's evidence that her uncle, with whom she had lived in the

DCR, did not know about her sexuality and the letter from her representatives of 17 December 2017 where an adjournment had been sought to enable her uncle, who had also come to the UK, to attend the hearing and give evidence as it is stated "he is aware that the appellant is a lesbian". Mr Gayle submitted that the uncle (whom, I note the appellant referred to as having been killed in the DRC: A11), became aware of the appellant's sexuality after he came to the UK, however there was no evidence led on this and the uncle did not attend the hearing or provide a supporting witness statement. Nor did Mr Gayle refer me to any evidence to support his submission.

21. The judge found that if the appellant had fled to the UK on account of her sexuality, then there had been no explanation given as to why she should have claimed at her interview that she had "stopped" being a lesbian (A12:4.2) or why she should have chosen to seek refuge here. Mr Gayle submitted that the appellant had not understood the question and he pointed to the two previous questions asked of the appellant where she had said she had not understood those. His submission, however, is in direct contradiction both to what the appellant said at her asylum interview at a later date and in her witness statement. At her asylum interview when asked why she had said what she did, the appellant replied she had said this because she thought being gay was not permitted in the UK either (at E7). She gave the same explanation in her witness statement (at paragraph 15). Mr Gayle's submission offering a completely different explanation does not, therefore, assist. The judge was entitled to rely on the answer given by the appellant at her earlier interview and to find that had the appellant's explanation been truthful, there was no explanation offered as to why she should have decided to seek asylum in the UK.
22. In reaching that conclusion, the judge had regard to the appellant's claim to have been stressed at her interview but nevertheless she was entitled to conclude that the appellant's replies on the matter of her sexuality undermined the claim that she was gay.
23. The judge is criticized for her finding that the appellant had not disclosed her sexuality at the earliest opportunity. Mr Gayle submitted that this had been done but when the screening interview is read, it is plain that this is not the case. When asked why she had come to the UK, the appellant said: "*I came to the UK because I needed to help my father*" (A5:1.20). when asked again to give ALL the reasons why she could not return, she stated: "*I cannot return to the Congo because I do not have anyone to stay with in the Congo. The person I used to stay with died and my parents are in the UK*" (A11). It was only at the end of the interview that she eventually stated: "*I was a lesbian and it is forbidden there so I cannot return*".

(at A12). The judge was, therefore, entitled to find (at paragraph 24) that had the appellant genuinely been in fear due to her sexuality, she would have mentioned this when first asked.

24. The judge also noted that the appellant had failed to mention her political activities and fears on that basis at her screening interview. Apart from maintaining that she had come here to look after her father, she failed to add that she feared for her life both because of her political activities and because of her sexuality. Indeed, the appellant was asked at a subsequent interview (E6) why she had only given her father as her reason for coming here and had made no mention of her political activities. She said she was asked for short answers but however stressed she may have been and however brief she may have been asked to keep her replies, it is not credible that she would have failed to make any reference at all to her life being at risk when asked why she had come here.
25. Even at her asylum interview, when asked about her fears, the appellant mentioned only her political claim (at C5). When asked if there was anyone or anything else she feared, she said: "No" (C6). When asked for any other reasons she could not return, she gave none (C6) and when asked if her fear was related only to her UDPS activities, she replied in the affirmative (C6).
26. The judge rejected the claim of the relationship the appellant claimed to have had in the DRC largely on the basis of how they were said to have met and the inconsistencies between how they conducted themselves in public (at paragraph 25). Mr Gayle argued that the appellant's clarification on this had not been taken into account but the clarification in the witness statement does not explain why a different account was given at the interview.
27. The appellant claims to be in a relationship in the UK and a letter from her alleged partner and three photographs were submitted. The partner did not attend the hearing, however, and the judge placed limited weight on the letter and photographs (of which no details were provided) in the absence of other supporting evidence. Mr Gayle argued that no reasons were given for rejecting this evidence and that it was reasonable to assume that her partner who lived in Coventry had been unable to travel to Manchester for the hearing. The appellant's claim is that the relationship has been ongoing for some two years. In the circumstances it is indeed strange that her partner would not have wanted to support her in her appeal by attending. The judge was entitled to draw inferences from the failure of the appellant to ask for an adjournment to enable her partner to attend; alternatively it would have been open for her to have sought a transfer of her appeal from Manchester to

Birmingham to make it more convenient for both particularly as the appellant claimed to often visit her father and her partner in Birmingham. Moreover, the reason given for non-attendance was vague; referred to as "*an issue with her train ticket/railcard*" (at paragraph 10). The judge was entitled to expect more supporting evidence of the claimed relationship and was entitled to note that the photographs did not establish anything and that no dates were given as to when they had been taken and no details provided as to the circumstances in which they were taken.

28. The supporting letter from the Armistead Centre was, as the judge pointed out, dated October 2017. No updated letter had been provided and the appellant's evidence about that was rather vague (at 13). It was open to the judge to find that the letter did not provide any helpful supporting evidence as to the appellant's sexuality (at paragraph 26). She also noted that there was no supporting evidence from any of the LGBT friends the appellant was said to have made.
29. On the political limb of the claim, the judge found that the appellant's failure to mention her party activities and fear of return on account of it at her screening interview was cause for concern. I have set out the details at paragraph 24 above. The judge fully accepted that the screening interview was a preliminary interview and that applicants were not expected to provide all the details of their claim at that stage, but nevertheless they can be expected to at least touch upon their main reason for leaving their country.
30. The appellant gave details at the asylum interview of having been at a demonstration in the DRC on 8 March 2013 when she had been arrested and had suffered a burn to her buttock (C9). That caused difficulties with her evidence as the records showed that she had been in Belgium at that time. Her evidence at a different interview was that she had been in Belgium from 31 December 2012 until 30 May 2014 (D2). At a later interview when asked to explain the discrepancy, the appellant blamed the interpreter for the inconsistency (at E4) but when it was pointed out that there had been several references to that date and that the interpreter could not have mistranslated the date every time, she said she did not know why that date came to her mind. In her witness statement said she had been stressed and had made a mistake (paragraph 17) but it is not credible if that were the case why she repeatedly gave an incorrect specific date.
31. The judge is criticized for having given inadequate reasons for rejecting the appellant's claim of political activities and problems, but the judge has provided full and sustainable reasons (at 28-32).

The appellant's account of how she escaped from the authorities is garbled at best (at interview) and her witness statement does not clarify it. The judge noted that despite claiming that the authorities had her photograph and were actively searching for her, she was able to leave through the airport (at 31). Mr Gayle argued that the appellant may have known how to make her way through the airport but there is no evidence to support that submission. It is not helpful to make submissions without any evidence to back them up.

32. A few photographs said to be of the appellant at a demonstration at an unspecified location in London have been adduced. It is unclear as to how these would place the appellant at risk in the absence of any other reliable evidence that she was involved with the UDPS. IN any event, as the judge found, the Kabila government feared by the appellant is no longer in charge and she has failed to establish why her own party would target her on return for assisting them.
33. The judge also had regard to the appellant's poor immigration history. Previous attempts to enter the UK using a false document, using a different name and date of birth were made. The appellant also failed to claim asylum on entry and initially did not disclose her asylum claim in Belgium. She initially claimed only to have been fingerprinted in the DRC (A6) and only at a later interview did she admit to having been fingerprinted in Belgium too (D2). No satisfactory explanation has ever been offered for the appellant's use of so different names.
34. It is also of note that the appellant initially claimed that she had never been detained in any country (A8), but then later admitted to detention in Belgium (C2). It was not until later in her main asylum interview that she claimed detention in the DRC (C7-8).
35. For all these reasons I conclude that the judge properly assessed and determined the appellant's appeal in respect of both the political claim and the claim based on the appellant's sexuality. I do not find there are any errors of law in the determination.

Decision

36. The decision of the First-tier Tribunal does not contain errors of law and it is upheld.

Anonymity

37. I continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read "R. Keir", with a small dot at the end.

Upper Tribunal Judge
Date: 6 March 2020