



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

Appeal Number: PA/10230/2019

THE IMMIGRATION ACTS

**Heard at Field House (remotely)
On: 24 May 2021**

**Decision & Reasons Promulgated
On 16 June 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

TLT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Barton, counsel instructed by Lei Dat & Baig Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Raikes, promulgated on 4 December 2019. Permission to appeal was granted by on First-tier Tribunal Judge Keane on 27 January 2020

Anonymity

2. No direction has been made previously, however given the nature of the appellant's protection claim which is based on her sexuality and her fear of the authorities of her country for that reason as well as owing to political opinion, such a direction is now made.

Background

3. The appellant entered the United Kingdom in January 2011 with leave to enter as a Tier 4 migrant, which was valid until 23 January 2015. The appellant returned to Cameroon in 2014. She was issued with a visit visa on 11 December 2018 and arrived in the United Kingdom on 6 March 2019. The appellant applied for asylum on 27 April 2019.
4. The respondent refused that claim by way of a letter dated 8 October 2019 and it is this decision which is the subject of this appeal. In refusing the appellant's claim for international protection as a supporter of the Southern Cameroon National Council (SCNC), the respondent referred to a failure by the appellant to raise this issue in her screening interview, the appellant's lack of knowledge of the organisation or the role of her relatives within it and unclear responses. Accordingly, it was not accepted that she was politically active or of adverse interest to the Cameroonian authorities. While it was accepted that the appellant had some problems with her husband owing to her relationships with women, it was not accepted that this amounted to persecution.

The decision of the First-tier Tribunal

5. Prior to the hearing before the First-tier Tribunal, the appellant sought to add a "new matter," that of her sexuality. The respondent consented to this being raised at the appeal hearing. The appellant gave evidence along with two witnesses, AB and EE. The latter was a representative of the Southern Cameroons Community UK. The judge did not find the appellant's claim to be credible and rejected her entire account. In particular, the judge stated that the appellant had neither mentioned nor alluded to her bisexuality during her asylum interview. Her sur place activities were found not to put her at risk, in view of the guidance in *MF (Cameroon)* [2004] UKIAT 00341.

The grounds of appeal

6. The grounds raised issues with the judge's credibility findings and a failure to assess all the evidence relied upon.
7. While permission to appeal was not limited, the judge made the following remarks:

"the judge arguably accorded weight to an irrelevant consideration in findings at paragraph 70 of the decision that the omission of a witness with whom the appellant was previously party to a bisexual relationship to attend the hearing, "casts doubt on the veracity of the

appellant's claim to be bisexual." The judge arguably should have treated the omission of the witness to attend the hearing as a neutral factor. The judge's consideration of the appellant's claim to be a bisexual (sic) arguably received limited consideration by the judge. The judge's consideration was to be found at paragraphs 69 or 70 of the decision and aside from the judge's concern at the omission of the supporting witness to attend the hearing the only other concern expressed by the judge was as to the appellant's late disclosure of her sexual orientation. The judge's treatment of the issue of the omission of the supporting witness to attend the hearing was not suggested as a ground on which the application for permission might be based but was just arguably a "**Robinson** obvious" point."

8. The respondent did not file a Rule 24 response.
9. This matter was not listed for an error of law hearing promptly. Permission to appeal was granted on 27 January 2020 and it was not until the appellant emailed the Upper Tribunal on 2 March 2021, making reference to her poor mental health, that a hearing date was provided.

The hearing

10. At the outset, Ms Everett indicated that her focus would simply be that the judge was entitled to attach little weight to the evidence of an absent witness.
11. Ms Barton was content to proceed to make submissions in the absence of the appellant, whom she had expected to join the hearing. In essence, she argued that the First-tier Tribunal had attached weight to an irrelevant consideration, in that doubt had been cast on the appellant's claim to be bisexual owing to the absence of a witness with whom she had been in a relationship. Ms Barton submitted that the appellant was treated unfairly in this regard. Furthermore, the consideration of the appellant's sexuality received limited determination and without these errors the outcome might have been different.
12. I drew the parties' attention to the judge's findings at [69], where he found that the appellant had never raised the issue of bisexuality until shortly before the hearing. Having considered the appellant's substantive interview record in advance of the hearing, it is the case that at questions 21-30 the appellant volunteered that she was having marital issues because of her "*girlfriends*," that she was forced to marry her husband and that she had "*interest from friends that are girls*." While the interviewing officer explored whether the appellant was at risk from her husband owing to these issues, there was no attempt to explore what she meant by her responses or why she was afraid of the Cameroon government rather than her husband (Q30).
13. Ms Everett indicated that owing to the appellant's reference to her sexuality during the interview she would not seek to defend the decision in this case.

14. In relation to the remaining grounds, regarding which permission was not explicitly refused, Ms Barton took issue with the judge's decision to proceed without medical evidence. That evidence was now being available, along with an expert opinion.
15. At the end of the hearing, I announced that the decision of the First-tier Tribunal would be set aside in its entirety and the appeal remitted for a de novo hearing.

Decision on error of law

16. The judge's consideration of the evidence regarding the appellant's claim to be bisexual was materially flawed. Firstly, the judge failed to consider the clear indication on the face of the interview record, over several questions, that the appellant was relying on her sexuality and owing to this failure the judge was mistaken in stating that the appellant only raised her sexuality shortly before the hearing. It is also, regrettably, the case that the Home Office interviewing officer failed to adequately explore the appellant's responses on this topic and that her own representatives classed her sexuality as a new matter.
17. In addition, as argued in paragraph 7 of the grounds, the judge failed to assess the evidence of the appellant's previous same-sex relationship which was provided in the form of photographs and text messages. As for the lack of attendance by the appellant's witness, the judge decided that this alone "*cast doubt on the veracity*" of the appellant's claim to be bisexual despite an explanation having been provided for the witness's unwillingness to attend. While the judge was entitled to attach little weight to the statement of the witness who did not attend, it was step too far to use her non-attendance to find that the appellant was dishonest about her sexuality.
18. I have carefully considered whether the judge's findings as to the remainder of the appellant's claim, based on imputed or actual political opinion, can be preserved. I find that they cannot for the following reasons. The judge places weight on the answers provided by the appellant when she was interviewed at [42] onwards and uses those answers to conclude that she has not given a credible account of her circumstances in Cameroon. The difficulty with that approach is that the interview record raises a number of serious concerns. Firstly, when asked if she was well enough to be interviewed, the appellant states that she is not because she was in pain. She also raised mental health concerns throughout the interview and was sufficiently upset for this to be noted on several occasions. At the end of the interview, the appellant reiterated that she was not fit and well and still in pain. This was an interview which lasted from 1330 until 1740 hours, with one 6-minute break after 3 hours. At the time of the interview, the appellant was not registered with a GP and was struggling to access medical help. There is also an obvious lack of understanding of the issues which the appellant was trying to articulate on behalf of the interviewing officer who was struggling to accurately spell

the towns or cities named as well as the political organisations. Nowhere, in the decision and reasons is there any assessment of the appropriate weight to be attached to this interview record.

19. At the time of the appeal hearing, three months after her substantive asylum interview, the appellant was distressed and mentioned that she had contemplated taking her life. This was consistent with her presentation during her interview. Nonetheless the appeal proceeded as the appellant still had no medical evidence to submit. According to the appellant's account, she has suffered a miscarriage shortly before her screening interview and her parents and children are either dead or missing. She also refers to her mental health suffering while she was awaiting the outcome of her appeal to the Upper Tribunal.
20. Given the foregoing, it is imperative that the appellant receives a proper psychiatric assessment as well as any treatment she may need before the re-hearing of this appeal.
21. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of her asylum appeal at the First-tier Tribunal and it would be unfair to deprive her of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Manchester IAC, with a time estimate of 4 hours by any judge except First-tier Tribunal Judge Raikes.

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:

Date 25 May 2021

Upper Tribunal Judge Kamara