

3. First, it is not clear from a reading of the decision whether or not the judge found that the issue of internal flight should be considered because the appellant is at risk in her home area. The appellant is from Bulawayo. The judge at [21], in a series of findings which have been rendered very unclear in part by poor proof reading, finds that the appellant whilst in Bulawayo 'probably did practice her sexual leanings discreetly' and that 'given her bisexual status are not satisfied she would be any more than harassed were she returned to her home area (*sic*)' I am not entirely sure what that sentence means. The judge seems to be saying that the appellant would not be at real risk in her home area and that the worst problem she might experience there is harassment rather than serious harm. If that is what he is saying, then no adequate reasons have been provided. Later in the decision, the judge at [34] agrees with the appellant's counsel that the 'key issue' is internal flight. However, internal flight need not have been addressed if the judge had found that the appellant would be safe in her home area. It is, of course, common practice for a Tribunal to find that there is no risk to an appellant in the home area and then to consider internal flight in the alternative (i.e. in the event that the findings regarding the home area may be incorrect). I am not persuaded that that is what the judge has done in this instance. The appellant was entitled to know why she lost her appeal and, in my opinion, the judge has not provided a sufficiently clear explanation.
4. Secondly, I find that the judge has failed to give cogent reasons as to exactly why the appellant would choose to conceal her sexuality on return to Zimbabwe. It is unclear whether the judge found that the appellant would behave discreetly and not reveal her bisexuality because she feared ill treatment or that she would do so solely out of loyalty to her husband (see *HJ (Iran)* [2010] UKSC 31). The judge seems to find that the appellant may be able to engage without real risk with 'bisexual/LGBT' persons and organisations 'in so far as they exist secretly' but finding that the appellant may 'continue to seek sexual adventures' is not consistent with the finding that the appellant would remain loyal to her husband.
5. Thirdly, as Upper Tribunal Judge Norton Taylor observed when making directions and as I have already observed regarding the judge's discussion of internal flight, parts of the decision are, frankly, barely intelligible. For example, at [25] the judge writes:

The Tribunal is invited Not to apply a burden but ask whether it would be on appellant to the lower standard. The 'unduly harsh' test is not the same as the test for persecution, however.

The judge starts the next paragraph with the words, 'Applying that standard...' One might reasonably ask: what standard? I can just about understand what the judge is trying to say but the decision should be written in such a way that the appellant can understand it. Issues addressed in a decision may be complex but a reader should not have to struggle to understand the reasons why a Tribunal decides upon a particular outcome.

6. In the light of what I have said, I find that the decision should be set aside. There will need to be a fresh fact-finding exercise and that is better conducted in the First-tier Tribunal to which this appeal is now returned for it to remake the decision.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*. Both parties may rely on new evidence provided copies of any documentary evidence (including witness statements) are sent to the other party and the Tribunal no less than 10 days before the next hearing.

LISTING DIRECTIONS: Bradford; not Judge Hanbury; 2 hours; No interpreter; first available date; First-tier Tribunal to decide if remote or face to face hearing.

Signed
2021
Upper Tribunal Judge Lane

Date 7 April

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.