



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006537
First-tier Tribunal No: PA/50474/2020
IA/00096/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 September 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

IN
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M McGarvey
For the Respondent: Mr C Howells

Heard at Cardiff Civil Justice Centre on 15 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant should not be identified and is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge CE Roblin heard on 16 March 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge D Brannan on 28 June 2022.

Anonymity

3. An anonymity direction is now made as this appeal concerns a protection claim.

Factual Background

4. The appellant is a national of Namibia now aged thirty-seven. She entered the United Kingdom as a visitor on 28 July 2019 and was subsequently encountered working without permission following which she applied for asylum. The basis of the protection claim is that the appellant is bisexual, had been forced to marry her cousin, had experienced domestic violence and that she feared further violence at the hands of her husband. The Secretary of State rejected the credibility of that claim by way of a decision letter dated 22 June 2020.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, only the appellant gave evidence. The appeal was dismissed. The judge did not accept that the appellant was bisexual or that she was at risk of ill-treatment on return to Namibia. The Article 8 claim was dismissed, with the judge concluding that the appellant's child who was born in the United Kingdom would accompany her to Namibia.

The grounds of appeal

6. The grounds of appeal can be summarised as follows.

The Tribunal erred in considering the appellant's asylum interview which was agreed to be unreliable.

Inadequate weight was attached to an expert report which was considered after the judge came to her credibility findings.

There was a failure to consider a marriage certificate showing that the appellant's cousin was also married the appellant's husband or the text messages between the appellant and her former partner and photographs.

The Tribunal erred in placing weight on the fact that the author of a letter, the appellant's former partner, the father of her child, did not attend the hearing.

Inadequate reasons were provided for finding the appellant was not bisexual.

7. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

All the grounds effectively relate to the overall assessment of credibility. While none on its own discloses an arguable error of law because it is not incumbent on the Judge to mention ever piece of evidence, the cumulative effect of the approach to the evidence mentioned in grounds a. to d. leaves very little evidence on which the finding that the appellant was not bisexual (ground e) can hang. The adverse credibility finding means that the Judge found the appellant was lying about her sexuality, yet the reasoning for that finding in paragraphs 71 to 75 does not address what the appellant said about her sexuality. Rather it relates to third party evidence about her sexuality. Overall this discloses an arguable error of law under ground e.

8. The respondent filed no Rule 24 response.

Decision on error of law

9. At the outset, Mr Howells confirmed that there was no rule 24 response but that the Secretary of State considered that at least 3 of the 4 grounds were made out for the following reasons.
10. Addressing ground one, Mr Howells submitted that it was unclear what happened at the hearing and whether concessions were made but the decision letter relied on responses given by the appellant at an interview which was terminated because of her illness. The judge made no reference to a concession by a Presenting Officer that the interview should be disregarded. While the matter was unclear, the respondent accepted that the interview should be disregarded as the appellant had expressed being unwell, the interview was terminated abruptly, and the appellant attended a nearby hospital for an assessment. It was therefore not appropriate for the First-tier Tribunal to rely upon it, and it should not be relied upon at any future hearing.
11. The respondent accepted that the judge made the clear error set out in the second ground, in that a negative decision on credibility was arrived at in advance of the judge's consideration of the expert reports.
12. As for the third and fourth grounds, Mr Howells stated that the respondent accepted that the judge's findings in relation to the appellant's sexuality were based solely on an absence of corroboration. Furthermore, the judge failed to consider the credibility of the evidence the appellant had provided which included the marriage certificate of her cousin, the WhatsApp messages as well as photographs said to show intimacy between the appellant and an ex-partner. Mr Howells submitted that the grounds sufficed to undermine the decision of the First-tier Tribunal, that new findings of fact were needed and invited a remittal to the First-tier Tribunal.
13. Unsurprisingly, Mr McGarvey had nothing to add.
14. At the end of the hearing, I informed the representatives that I was satisfied that the concessions made by the respondent were rightly made, that the decision of the First-tier Tribunal was set aside with no preserved findings, and the matter would be remitted to the First-tier Tribunal for a de novo hearing.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error 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 by any judge except First-tier Tribunal Judge CE Roblin.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 September 2023