



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001732

First-tier Tribunal No: PA/54075/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31st October 2023

Before

UPPER TRIBUNAL JUDGE WILDING

Between

**SECRETARY OF STATE FOR THE
HOME DEPARTMENT**

Appellant

and

FK

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Ms E Stuart-King, Counsel

Heard at Field House on 12 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Trevaskis ('the Judge') who allowed the appeal on protection grounds. To avoid confusion, I refer to the parties as they were before the First-tier Tribunal.

Background

2. The appellant is a national of Ethiopia. She entered the UK on 2 September 2020 illegally concealed in the back of a lorry. She had left her country of origin in March 2015. She spent time in Kenya, Tanzania, Mozambique, Italy, Germany and Belgium before arriving in the UK.
3. She claims to be at risk on return to Ethiopia because of both her sexuality, she is a lesbian, and her political activities. Her claim was refused by the respondent who did not accept that she was a lesbian, nor that she had had any problems in Ethiopia due to her political activities. Reasons were given in the reasons for refusal letter for not accepting these central features of the account.
4. The appellant's appeal came before the Judge on 29 March 2023. In his decision the Judge allowed the appeal, finding the appellant's narrative to be credible. Under the heading "My Findings on Credibility", he set out as follows:

85. Applying the above criteria, I have found the Appellant to be a credible witness whose evidence, considered in the round, provides a credible account of her experience in Ethiopia as a lesbian and Wolkiyat political supporter which is, to the required standard, internally consistent, plausible and consistent with external factors. She has been consistent and has provided as much detail as can reasonably be expected in the accounts which she has given.

86. With regard to the inconsistencies identified by the Respondent, I have considered these but I find that they have been adequately explained and they do not undermine the overall credibility of the Appellant.

5. The Judge went on to find as a consequence that the appellant would be at risk due to her sexual orientation given she would have to conceal her sexuality on return due to her fear of ill treatment.
6. The respondent was dissatisfied with the decision and appealed. The summary of her complaint is that the Judge's reasoning is inadequate in concluding that her narrative account was credible. Given the reasons given in the decision letter the respondent submits that she does not understand the basis upon which the appellant was found credible. Secondly, the respondent's reasons for rejecting the credibility of the appellant have not been considered at all by the Judge, and as such he has failed to resolve material matters between the two parties.

Decision and reasons

7. I have given careful consideration to the submissions made, and notwithstanding Ms Stuart-King's eloquent submissions I find that the Judge did materially err in law.
8. The Judge fails to reconcile in his decision the credibility issues relied on by the respondent. The Judge does not address them anywhere in his decision. Those reasons for refusing the claim were neither minor matters nor plausibility points. Between paragraphs 18 and 38 the

respondent set out the reasons why her sexuality was not accepted, the Judge does not address any of these reasons in his decision.

9. The respondent then rejected the claim to being detained and tortured in Ethiopia. This aspect is central to the claim because on the appellant's narrative it is when she was interrogated about her sexuality by the authorities, as well as the claim that she was detained following a political meeting. It is therefore of central importance to the claim, in particular it is said that these acts of persecution show the likely action of the State on return. The respondent rejects these claims between paragraphs 39 - 44. The respondent then rejects the claim that the authorities have an arrest warrant for her between paragraphs 45 - 48. Again, the Judge does not address any of these reasons in his assessment.
10. The Judge simply gives no adequate reasons for finding the appellant credible. No reasons are given for accepting the narrative, and critically the Judge finds that the account is internally consistent, plausible and consistent with external factors, without resolving the claimed discrepancies raised by the respondent. The Judge then further fails to outline what external factors the claim is consistent with.
11. The Judge's error is perhaps attributable to his misunderstanding of the reasons for rejecting the claim. At paragraph 75 the Judge says:

75. It is submitted by the respondent that the appellant's claim is not credible because it contains inconsistencies; those which are relied upon by the respondent in this decision are set out in full in the reasons for refusal.

The above summary is an accurate, albeit very brief, synopsis of the respondent's decision. However, the Judge then says:

79. She is not accepted to be a lesbian, or to have been arrested and detained because of her sexuality or her political opinion because although some aspects of her claim are generally consistent, these accounts lack sufficient specificity necessary to substantiate her claim when everything is considered in the round.

12. The above summary is not accurate. The respondent attacked the appellant's credibility on both an internal and external inconsistency basis. She further criticised for not giving credible answers in relation to the woman she was in a relationship with, and how she became involved with the political group. All in all, the respondent's refusal letter was a comprehensive rejection of her claimed sexuality and history of persecution. The Judge's summary at paragraph 79 is simply inaccurate.
13. This inaccuracy has then infected the credibility finding outlined above. The Judge has not given any clear or reasoned findings on why the narrative is accepted. This is an error of law, and is material such that his decision has to be set aside. The respondent does not know the reason why she lost the appeal.
14. There are no findings of fact capable of being preserved, the decision is set aside in its entirety and will need to be reheard. I consider the appropriate forum for this back in the First-tier Tribunal.

Notice of Decision

The decision of Judge Trevaskis fell into legal error such that it is set aside. The case is remitted to a differently constituted First-tier Tribunal.

Judge T.S. Wilding

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 28th October 2023