



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000932

First-tier Tribunal No: PA/52303/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23rd of January 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

BN
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms E Atas of counsel instructed by SI Legal Services

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

Heard at Field House on 15 December 2023

DECISION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. We make this order because the Appellant seeks international protection and publishing her identity might create a risk in the even of her return.

1. The Appellant is a citizen of Uganda whose date of birth is recorded as 22 September 1974. On 20 June 2019, the Appellant, made application for international protection as a refugee on the basis that she was a lesbian [see

answer to question 37 in her substantive interview]. On 30 April 2021 a decision was made to refuse that application. The Appellant appealed to the First tier Tribunal.

2. On 31 January 2023 the appeal was heard by First-tier Tribunal Judge Hanes sitting at Taylor House, London, who in a decision dated 12 February 2023 dismissed the appeal on all grounds.
3. Not content with that decision the Appellant made application for permission to appeal to the Upper Tribunal with supporting grounds dated 24 February 2023. Though the First-tier Tribunal refused permission, a renewed application to the Upper Tribunal was successful with permission being granted by Upper Tribunal Judge Lane on 20 August 2023.
4. Though there are four individually numbered grounds, at their core in the assertion, as identified by Lane UTJ that Judge Hanes arguably failed accurately to record the evidence leading to findings based upon a “faulty factual matrix”.
5. In granting permission Lane UTJ called for the records of proceedings of Judge Hanes and the Presenting Officer to be lodged. In further directions issued by Smith UTJ, dated 23 August 2023, the recording was also called for.

Preliminary Matters

6. For reasons which were not immediately apparent the directions referred to at paragraph 6 above had not been fully complied with. Whilst the Tribunal was provided with a witness statement, dated 11 December 2023, from Kimberly Renfrew, counsel who had appeared at first instance confirming that her notes, taken contemporaneously at the hearing below, were before the Tribunal, that was the full extent of the evidence pointing to what had been said at the hearing now under appeal.
7. However, notwithstanding the lack of the actual audio recording, which we understood would have been Judge Hanes’ Record of Proceedings, both representatives were content to proceed with what was available. On that basis we were willing immediately to proceed, which we would have done but for some technical difficulties.
8. This matter had originally been listed for a face-to-face hearing but Ms Atas was allowed to present the case by video link for reasons connected to her health. It was also of note that her instructing solicitors only lodged a consolidated bundle the day before the hearing without, it would seem, thinking that it might be helpful for Ms Atas to have her own copy.
9. The Appellant attended the hearing centre in the morning with her supporters, as required. For various reasons her case ended up at the back of the list but ready to begin at 14:00. For whatever reason the Tribunal had tremendous difficulty putting in place a combination of technology which would enable Ms Atas to be heard. Knowing how long those involved in the appeal had been waiting to have the appeal heard we were determined, if at all possible, to have the technology sorted out which eventually it was. Though not entirely sure why it took over ninety minutes to secure a competent connection with Ms Atas, though we think it had something to do with bandwidth, we thank everyone for their forbearance whilst a solution was found. Notwithstanding those difficulties we are satisfied

that once the hearing eventually got underway each of the representatives was heard with the hearing proceeding as it ought.

The Appeal

10. The renewed grounds of appeal with which we were concerned are dated 21 March 2023. Ms Atas opened by observing that although the complaints had been divided up into sections giving the appearance of four grounds, there was in fact only one ground, namely that Judge Hanes failed accurately to record the evidence at the hearing before her leading her to made findings based on a “faulty matrix”. In other words, she adopted the approach of Lane UTJ when granting permission.
11. Ms Atas then proceeded to take us through the written grounds to which we have referred, the decision of Judge Hanes, and counsels’ notes pointing to what she contended were errors made by the judge. Were we to rehearse the submissions made by Ms Atas in this Decision we would have little more than that which is contained in the grounds. That is in no way intended to suggest that we were not assisted by her as she took us to the various relevant parts within the documents but is intended to explain why we think it only necessary to summarise, in due course, why we came to the view we did in this appeal.
12. Ms Ahmed with commendable diligence challenged each of the submissions made by Ms Atas. It was her case that the judge had made findings that were open to her and if, which was not accepted, Judge Hanes had erred, then such was not material to the eventual outcome.
13. At the very core of this case was whether the Appellant was lesbian. It is important to note the important concession made by the Respondent at first instance, namely that if it were proved that she were a lesbian (which was not admitted) then because of a lack of sufficiency of protection in Uganda that would be the end of the matter and the Appellant would be entitled to succeed. Everything turned therefore on this crucial finding of fact to be made by Judge Hanes.
14. In support of her claim the Appellant adduced evidence from two witness: ON and SC.
15. ON had been recognised by the Respondent as a refugee because she was a lesbian. Her evidence was that she had met the Appellant in 2019 whilst attending a meeting and that since then they had become friends. She explained in her witness statement how the Appellant opened up to her though it took time for her to do so. Of the various relationships which the Appellant had spoken of, including having been married to a man, was a relationship with a woman, Stella. Crucially it was ON’s view, as a lesbian and member of an LGBT group, that the Appellant was lesbian.
16. SC’s evidence was that she was the founder of the particular organisation at which the Appellant and ON met. Since then, she, SC, has set up a new group for lesbian and bisexual women. According to SC the Appellant has been attending that group’s meetings since 2019. The meetings were weekly. SC spoke of the Appellant having spoken to her about having been attracted to girls from a young age and her first sexual relationship with another women when a student. Like ON, SC also made reference to the Appellant having spoken to her about Stella

and the importance she attached to being involved with LGBT+ organisations. Like ON she was of the opinion that the Appellant was genuinely a lesbian, explaining how she came to that view including her own observations of the Appellant. SC concluded her statement by saying that “as a bisexual women herself, even in the UK, one learns early on to recognise who it is safe to be out with”.

17. Whilst, as we have said, Ms Atas took us through the various sub-paragraphs of what she contended was just one ground, she rightly in our view, placed great store in submitting that the analysis of the evidence of ON and SC by Judge Hanes was inaccurately recorded and in any event the analysis of their evidence was lacking.
18. The Grounds of Appeal begin on this point by noting that at paragraph 8 of her Decision, Judge Hanes had recorded, “The appellant told her [ON] about her experiences in Uganda and that she had not claimed asylum earlier as she was afraid and did not know how to make a claim. They did not speak about [her relationship with] Stella.”
19. It is clear from counsel’s note that ON adopted her witness statement and contrary to what is recorded in the Decision did reference, at paragraph 5 of her witness statement, the relationship of the Appellant and Stella.
20. Though Ms Ahmed invited us to find that the Judge had made sound findings and dealt with whether the Appellant was lesbian, finding at paragraph 18 of the Decision that the Appellant was vague about certain aspects of her claim and noted that there were only two relationships of which there was some supporting evidence, both of which were with men, noting importantly also that in 2011 the Appellant had made an EEA application on the basis of a relationship with a male EEA national and therefore prepared to lie having admitted that it was not a true relationship, and had only raised being a lesbian as a basis of claim at the “eleventh hour”, we come to the view that the analysis of the evidence of ON and SC is lacking.
21. The Upper Tribunal will be very slow to interfere with findings of fact and of course will only do so if there has been an error of law. We are also acutely aware of the number of times that the Upper Tribunal has admonished appellants for dressing up disputes of fact as errors of law. There is much learning which guides against doing that: R (Iran) [2005] EWCA Civ 982; VW (Sri Lanka) [2013] EWCA Civ 522 per McCombe LJ; Volpi v Volpi [2002] EWCA Civ 464; HA (Iraq) (Respondent) v Secretary of State for the Home Department (Appellant) [2022] UKSC 22; Riley v Sivier [2023] EWCA Civ 71.
22. However, the question in this appeal was whether the Appellant was lesbian. The question was not whether she was in a lesbian relationship. The Appellant’s witnesses explain as lesbians (it not being suggested by Judge Hanes that they were not) the difficulties in “coming out.” That is an aspect of the evidence which does not appear to us to have been addressed adequately, if at all. There does not appear to us to have been any or any adequate consideration of cultural impediments to the Appellant having been more forthcoming at an earlier stage. The Judge does not appear to have asked herself, given the findings made why the two witness who profess to be able to identify others like themselves are able to do so and why, if they are, they were both wrong in this case. There does not appear to us to have been sufficient consideration to the possibility of the

Appellant being a bisexual person which might in part explain the relationships with men to which Judge Hanes appears to have given considerable weight in finding against the Appellant.

23. Whilst it is not necessary for a Judge to deal with each and every point taken in a case (we are acutely aware of ourselves conspicuously not having done so in this case) where, as in this case the evidence of witnesses, was so fundamental to the very core of an appeal then we take the view, that a Appellant is entitled to a much fuller analysis of the evidence provided by these witness than was given by the Judge in this case.
24. Although therefore there was said only to be one ground, it is because of paragraphs 3(ii) and 9 that we allow this appeal.

DECISION

25. The appeal to the Upper Tribunal is allowed on the basis of inadequate reasoning. The decision of the First-tier Tribunal is to be set aside and with the agreement of the parties were we to find as we have, the matter is remitted to the First tier Tribunal to be remade.

A handwritten signature in black ink, consisting of stylized initials and a long horizontal flourish.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 January 2024