



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-000908  
First-tier Tribunal No: HU/59896/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 13 May 2024**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**CA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family 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 or any member of her family. Failure to comply with this order could amount to a contempt of court.**

**Representation:**

For the Appellant: Mr Bandegani, Counsel instructed by Hackney Community Law Centre

For the Respondent: Mr Parvar, Senior Presenting Officer

**Heard at Field House on 3 May 2024**

**DECISION MADE PURSUANT TO RULE 40(3) OF THE**

**TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S J Clarke (“the judge”) sent on 29 November 2023 dismissing her appeal against the decision dated 23 November 2022 refusing her protection and human rights claim.
2. Negative credibility findings made in a previous appeal in 2018 formed the judge’s starting point in this appeal. The judge found that new documents submitted in support of her claim in relation to the individual who sexually assaulted her in the Philippines were not reliable. The judge placed no weight on an expert report submitted in support of her claim and instead preferred the evidence in the Home Office Country of Origin Response; Lesbian, gay, bisexual and trans-transgender sexual orientation dated 2018, extracts of which were quoted in the decision letter. The judge found that the individual who sexually assaulted the appellant was not a serving police officer; that although the appellant is a lesbian who is seeking sex reassignment surgery, she would not face a risk of serious harm on account of this and that she would not face very significant obstacles on return to the Philippines. The judge dismissed the appeal on all grounds.
3. At the outset of the error of law hearing, Mr Parvar for the respondent conceded that grounds 1 to 3 are made out.
4. I am in agreement that this is an appropriate concession in respect of these grounds.
5. The appellant submitted an expert report from Dr Vina, an associate professor, in relation to the risks and discrimination faced by lesbians, females and transgender people in the Philippines. The judge at [23] rejected the report because the expert did not set out their credentials as a country expert. I am satisfied in accordance with Mr Parvar’s concession that this conclusion is unsustainable because the expert set out her qualifications and experience which included former and current academic posts and experience, scholarly research, publications and personal ties to the country.
6. On this basis I am also satisfied that the judge failed to give adequate reasons for preferring the information provided in the refusal letter over the conclusions of the expert.
7. Finally, I agree that the judge misdirected himself in law in relation to the expert report by failing to refer to the principles in MH (review; slip rule; church witnesses) Iran [2020] UKUT 00125 and failed to consider the claim holistically against the background of the expert evidence. For instance, the expert provided an opinion on whether it would be possible for a convicted sex offender to become

a police officer and also provided more information on discrimination that the appellant might potentially face. At the very least this was relevant to the assessment of credibility and also to whether the appellant would face “very significant obstacles” in the Philippines.

8. I am satisfied that grounds 1 to 3 are made out. These are material errors which vitiate the decision which is set aside in its entirety. On that basis, there is no need for me to consider Ground 4 which is not conceded by the respondent.
9. The negative credibility findings are undermined as a result of the incorrect approach to the expert evidence, and I do not preserve any findings.

### **Disposal**

10. Both parties agreed that the appeal should be remitted to the First-tier Tribunal because of the extent of the factual findings needed in line with Begum v SSHD (Remaking or remittal) Bangladesh [2023] UKUT 46. I am satisfied that this is the appropriate disposal of the appeal.
11. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing, but I have summarised the reasons above for the benefit of the parties.

### **Notice of Decision**

12. The decision of the First-tier Tribunal involved the making of an error of law.
13. The decision of the First-tier Tribunal dismissing the appeal is set aside in its entirety with no findings preserved.
14. The decision is remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Tribunal Judge S J Clarke and First-tier Tribunal Judge Mayall.

Signed

Date: 3 May 2024

R J Owens  
Upper Tribunal Judge Owens