



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07244/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 2nd February 2015

On 3rd February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MI
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Walker, instructed by Wimbledon Solicitors

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Uganda born on 19th October 1964 and she appealed against the decision to remove her from the UK following a decision to refuse her asylum, humanitarian protection and protection under the European Convention on Human Rights.
2. The appellant's claim was that she was a lesbian and that she had been an active member of the 'Say it Loud Club' an LGBT club in Uganda and that she had demonstrated on LGBT matters in the UK. She was afraid of

being returned to Uganda. In a determination dated 28th November 2014 Judge of the First Tier Tribunal Widdup refused the appellant's appeal on all grounds. Permission to appeal was granted by First Tier Tribunal Judge Robertson particularly in relation to ground 5 of the application for permission to appeal on the basis that the Judge made no findings on the evidence of two key witnesses as the LGBT activities of the appellant.

3. At the hearing Ms Walker relied specifically on grounds 4 and 5. Ms Holmes observed that the decision was a careful and thorough determination save for the omission in relation to the two witnesses.
4. At the first tier tribunal two witnesses attended the hearing in addition to the appellant. Mr Sesange from the 'Out and Proud Diamond Group' which campaigned on behalf of lesbians, (his evidence was recorded at paragraphs [14] to [17]) and Mr Ssali, the founder of the 'Say it Loud Club' which is a London based LGBT group, (his evidence was recorded at paragraph [36] to [39]).
5. The judge at [77] concluded that *'in weighing the evidence and considering it in the round, I am unable to find that she is a lesbian and she is not therefore at risk on return to Uganda'*. Despite careful and logical reasoning and despite the judge at [59] stating that he 'will consider the evidence of Mr Sesange and Mr Ssali together with all the other evidence when making a rounded assessment of the appellant's case', the judge unfortunately made no further reference to the evidence of the two witnesses. Further to AK (Failure to assess witnesses' evidence) Turkey [2004] UKIAT 00230 and MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) I find that there was an error of law which could have a material effect on the outcome. This error went to the heart of the findings on credibility and both representatives agreed that this appeal should be returned to the First Tier Tribunal.
6. I note that there were further grounds of appeal not least in relation to the treatment of the photographic evidence and the identification of appellant by her family. Ms Walker made specific reference to paragraph 2.5.6 of the August 2014 Country of Origin Information Report on Uganda, which had been drawn to the First Tier Tribunal Judge's attention in her skeleton argument but had not been addressed. In view of my findings on the witness evidence and the fact that I have set aside the determination I merely identify this as a further error.
7. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

Date 2nd February 2014

Deputy Upper Tribunal Judge Rimington