



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

Appeal Number: AA/08008/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

Promulgated

**On 22 September 2015
Oral decision given**

On 25 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MS R C C
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Pickup, Counsel instructed by Southwark Law Centre
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is technically a cross-appeal by both the respondent and the appellant in this matter. I start with the respondent's appeal first because that will impact on whether or not the appellant pursues their grounds of appeal.
2. This is an appeal by the Secretary of State in respect of decision by First-tier Tribunal (Judge Harrington) who allowed the appellant's appeal for

asylum on the grounds of her sexuality, finding that as a lesbian she would face a real risk on return to Jamaica of persecution. That determination was promulgated on 3 June 2014. The respondent appeals on the grounds that the First-tier Tribunal reached findings and conclusions that were based on speculation rather than evidence that was before the Tribunal and failed to make findings on contradictions or conflicts in the evidence that were left unresolved. Permission to appeal was granted by First-tier Tribunal Judge Chohan. He granted permission to both the appellant and the respondent. The terms of the grant of permission to the respondent was that it was arguable that the Tribunal made conclusions or reached conclusions on speculative evidence. The Appellant appealed on the grounds that the Tribunal had not dealt with Articles 3 and 8 which were pursued in the event of the respondent's appeal being allowed as regards the asylum matter.

3. I have heard submissions this morning by both representatives and have had an opportunity to look through the appellant's detailed written Rule 24 response. I have also been assisted by Ms Pickup who has identified the specific aspects of evidence that were before the Tribunal when the case was heard in support of her submissions that the findings made were sustainable and based on evidence before the Tribunal. Ms Isherwood placed considerable emphasis on the fact of the appellant's changed claim from fear of repercussions from a gang to her sexual identification by way of background in support of her submissions.
4. The First-tier Tribunal placed weight on the psychiatric report of Professor Katona who diagnosed that the appellant was suffering from major depressive disorder. The Tribunal found the appellant's own account to be broadly consistent and found her reasons for leaving Jamaica to be broadly consistent. The Tribunal also accepted that the appellant had other reasons for leaving Jamaica which have been set out at [35]. The Tribunal accepted the reasons for the late disclosure of the appellant's sexual identity as a lesbian. The Tribunal found that the appellant was lacking in credibility in certain aspects of her claim [37-38] but found that she was credible in the majority of the aspects of her claim. The Tribunal found that the appellant was in an on-off relationship for six years with a man whom she described as her "boyfriend" and did not accept her explanation for describing him as a friend who she slept with. However, the Tribunal went on to conclude that the fact of having heterosexual relationships in the past made no difference to the findings as to the appellant's sexuality and risk on return as at the date of hearing. It found that the appellant identified as a lesbian and that she would have to hide her sexuality if returned to Jamaica [40-43].
5. The respondent focused in particular on [39] arguing that the findings were speculative. I acknowledge that on the face of it the Tribunal's approach appears to import a degree of speculation. However, I have now been referred to and as set out in the Rule 24 response (see para 14), particular aspects of the evidence that were before the Tribunal. I am satisfied that the findings made in paragraph 39 are supported by evidence before the Tribunal, albeit worded in somewhat speculative

terms. In any event I am satisfied that such findings (even if speculative) are not material to the outcome of the decision and do not detract from the main findings of fact and reasons given that the appellant as a lesbian faces a real risk of persecution on return to Jamaica.

6. I now turn to the second issue raised by the respondent that there were evidential conflicts left unresolved. The Tribunal considered other reasons why the appellant would leave Jamaica and has taken these into account at paragraph 35. This was given in terms of an explanation for leaving Jamaica in fear of gangs. The Tribunal accepted and dealt with the core of the appellant's claim that she was at risk because of her sexual orientation. I am satisfied that the Tribunal considered carefully all the relevant evidence and resolved any material conflicts including the appellant's past heterosexual behaviour, the delay in disclosure of her sexual identity and claim, the on-off relationship with N over six years. I am satisfied that the Tribunal engaged with all the evidence in the round and issues and reached sustainable findings and conclusions that were open to it. The Tribunal fully addressed the background to the appellant's claim and the fact of her changed claim and reasons for the delay in disclosure of her sexual identity and why that now formed the basis of her claim as at the date of hearing.
7. I conclude therefore that the grounds do not disclose any material error of law in the decision of the First-tier Tribunal. In view of my decision there was no need for the appellant to proceed with her appeal on the Article 3 and 8 point. In the event that the Secretary of State apply for permission to appeal this decision, the Appellant has permission to cross appeal.

Notice of Decision

There is no material error of law in the decision which shall stand.

The Respondent's appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. The matter discloses sensitive personal detail about the appellant which could place her at risk.

Signed
G. Black

Date 25.9.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award. A hearing was necessary to fully address all relevant issues raised.

Signed

Date: 25.9.2015

G. Black
Deputy Upper Tribunal Judge G A Black