



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: AA/00726/2015**

**THE IMMIGRATION ACTS**

**Heard at Columbus House,  
Newport  
On 25 April 2016**

**Decision and  
Promulgated:  
On 1 July 2016**

**and Reason**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

**Between**

**R N  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Dirie, instructed by the Migrant Legal Project (Cardiff)

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Uganda. She applied for asylum in the United Kingdom and that application was refused by the Respondent in a Reasons for Refusal Letter ("RFRL") dated 14 December 2014. The Respondent made a decision to remove the Appellant as an illegal entrant under section 10 of the Immigration and Asylum Act 1999. The Appellant appealed that decision under section 82 (1) of the Nationality, Immigration and Asylum Act 2002

and the appeal was dismissed by First-tier Tribunal Judge Page in a decision promulgated on 16 October 2015. The Appellant sought permission to appeal against this decision and permission was granted on 16 November 2015 by First-tier Tribunal Judge Frankish on the basis that the First-tier Tribunal had miscalculated the Appellant's age and that this led to a number of adverse credibility findings.

## **The Grounds**

2. Ground 1 contends that the First-tier Tribunal gave insufficient reasons for rejecting the medico-legal report prepared by Dr Alison Battersby, a psychiatrist. The First-tier Tribunal concluded that due to the discrepancies and inconsistencies in the Appellant's evidence he could discount the possibility of her story being true. It is submitted that in the light of the conclusions of the medico-legal report the First-tier Tribunal failed to give sufficient reasons for its conclusion. It is asserted that the Judge failed to engage with the substance of her expert evidence which it is asserted was suggestive of her account being true.
3. Ground 2 contends that the First-tier Tribunal accepted that the Appellant's date of birth was 22 December 1974, stated that the Appellant in her screening and substantive interviews said that she realised that she was a lesbian in 1988 and then concluded that she had been aware that she was a lesbian since the age of 23-24 years. The Appellant submits that the calculation was wrong and a correct calculation would put her age at 13/14 in 1988. It is argued that this is a material error because the Judge refers to this erroneous calculation at paragraph 59 as demonstrating that the Appellant had made a false claim. He stated that her evidence was irreconcilable with her claim to have realised she was a lesbian in 1988 and then that she could not have been in secondary school in 1988. It is submitted that the Judge places heavy weight on the miscalculation and concludes that the Appellant had invented her account. The error is said to be material because the Upper Tribunal could not be confident that the Judge would have reached the same conclusions had he properly taken account of the evidence.
4. Ground 3 asserts that the Judge failed to give sufficient reasons for findings of fact. The Judge concluded that the Appellant was inventing her evidence in relation to staying in White City 18 days before claiming asylum. The Judge accepted that there was an address called MacKenzie Close but held the Appellant's ability not to remember more against her. It is also submitted that the Judge erred in failing to consider Dr Battersby's report where she stated that memory and recall were impaired in PTSD and that the Appellant may find it difficult to give a stage by stage description of her experiences. Further it is stated in the grounds that the Judge did not find the Appellant's evidence that she had been raped credible. It is submitted that the Judge did not give sufficient reasons for rejecting the Appellant's account; merely that it did not have "the ring of truth" to it. He did not

consider the Appellant's account that the matter was dealt with within the community by the Local Council.

5. Ground 4 asserts that the Judge failed to apply relevant guidance. It is asserted that the Judge failed to consider the plausible explanations for the Appellant's conduct. The UNHCR Guidelines on International Protection No: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity are cited as is the Respondent's document "Sexual Identity Issues in the Asylum Claim" dated 11 February 2015. The Appellant had been diagnosed with moderate PTSD and it is asserted that the Judge erred in failing to consider Dr Battersby's report and the relevant guidance when considering why the Appellant did not provide further details. It is argued that this is a material error of law as it forms a basis for the Judge to conclude that the Appellant fabricated her evidence.

### **The Hearing**

6. Ms Dirie submitted that the Judge gave substantial weight to the findings flowing from the miscalculation of age. It was material and had infected the rest of his findings. The most pertinent was that he said her account had the hallmarks of invented stories. This conclusion was based on his miscalculation and mathematical error.
7. The points taken in Ground 1 in relation to the medico-legal report were linked with Grounds 3 and 4, although they were distinct and separate grounds. The report was provided by Dr Battersby who had a specialism sexual trauma. The Judge did not outright reject it but it countered what he was saying. He says she would have PTSD and discounted that her account was true. He had made his own clinical findings and supplemented them with his findings. Dr Battersby carried out a critical and clinical analysis. In the light of the guidance in **JL (medical reports-credibility) China** [2013] UKUT 145 (IAC), he was not obliged to accept it but further reasons could have been given.
8. Ground 3 asserted that there were insufficient findings of fact. The Judge stated at paragraph 57 that the Appellant was having difficulty with regard to the address in White City. That finding was erroneous and at the same level as the error with regard to the age. It was clear that memory and recall were affected by PTSD. The Judge had not taken that into account. He made statements that had no basis saying that it did not have a ring of truth to it. He did not give full reasons for the adverse findings. The reluctance that the Appellant would have shown talking about her identity needed to be looked at in the light of her suffering PTSD. The Judge did not take account the guidance and when sexual identity was an issue it came out in stages.
9. Mr Richards submitted that there was an error of fact. That error was confined to paragraph 59 and then at paragraphs 60 to 66 he made a series of findings against her credibility for reasons totally unconnected with the age issue. He found for example that the Appellant had applied to come to

the UK to join her husband, a matter which she denied, but she went on to claim to be a lesbian and he found that she gave birth to a son in circumstances that were not the result of a rape as claimed undermining her claim to be a long term lesbian. He found that she did not return to Uganda as claimed and went into the circumstances of her alleged arrest in Uganda and found against her on that for reasons that were independent of the unfortunate error in paragraph 59. That single error was not such as to displace the other well-reasoned adverse findings of credibility set out in the determination and it could not be argued that the Judge gave insufficient reasons. It was a comprehensive analysis of her evidence and he had specifically taken account of the expert's report. The conclusions of Dr Battersby were not binding and he was the arbiter of fact and having taken account of the report and conclusions he came to the conclusion that the Appellant was not a witness of truth. Those findings were properly open to the Judge who was not making as asserted clinical findings but making findings of fact. There was no material error of law and the decision ought to stand.

10. Ms Dirie submitted with regard to the age being an issue, it was quite clear that this point with regard to age was the lynch pin of his findings and it was material to his findings.
11. The parties agreed that if I were to find error agree that the appeal should be remitted for rehearing.

### **Discussion and Findings**

12. Permission to appeal in this case was not limited, but it is clear from the grant of permission that First-tier Tribunal Judge Frankish considered that the fact that the First-tier Tribunal had made a miscalculation as to the Appellant's age leading to adverse credibility findings was the ground with the most force.
13. It is evident from the decision in this case that the First-tier Tribunal heard extensive evidence, as he stated at paragraph 52 of the decision that his notes of evidence ran to 32 pages. He disbelieved the Appellant's account to be a lesbian and to have been arrested and detained as a result. He came to that conclusion on the basis of what he found to be numerous discrepancies in the evidence. Those conclusions are largely well-reasoned and grounded in the evidence. However, at paragraph 34 the First-tier Tribunal miscalculated the Appellant's age. At paragraph 59 of the decision he noted that the Appellant had said in both her screening interview and her asylum interview that she realised that she was a lesbian in 1988. He accepted that she was born in December 1974. He then embarked on the following reasoning and came to the following conclusions:

“At paragraph 9 of her witness statement dated 14 September 2015, prepared carefully for the appellant as her evidence in chief at the hearing, she gave information that is irreconcilable with her claim to have realised she was a lesbian in 1988. In 1988 she was 23-24 years old. In her witness statement

dated 14 September 2015 she said at paragraph 7 that she attended primary and secondary school then went to college to do her O levels, and then did her teacher training. It was at secondary school that she realised she was attracted to girls and not boys and her first relationship (paragraph 9) was with "S M", a relationship which started at secondary school. They were friends initially and that developed into something more serious. They shared a dormitory at school. The appellant could not have been at secondary school in 1988. In both her screening interview and at question 57 of her asylum interview she said that she came to realise that she was lesbian in 1988 and realised that this was because she "fancied girls". In her interview with Dr Battersby on 11 September 2015 she said she had her first relationship aged about 15/16 when she met a girl at boarding school and they began a relationship they kept secret. This was the relationship with S because she said to Dr Battersby that this relationship continued clandestinely until her partner was killed in 2012. The appellant gave the years as 1988 that she realised that she was a lesbian in both her screening interview and full asylum interview. This story has all the hallmarks of an invented story, only to be expected when a story is invented. She has invented one version, forgotten it and then invented another impossible to reconcile with the earlier version. It is invention upon invention."

14. It is clear from the Appellant's age that she would have been at secondary school in 1988 and that her account of when she realised that she was gay tied in with the chronology she had provided in her interviews, witness statement and to Dr Battersby. It is also clear, in my view, that the miscalculation of age led the First-tier Tribunal to conclude that her account of her realisation of her sexual orientation could not have been true.
15. Mr Richards urges me to conclude that despite this adverse credibility finding being flawed due to being premised on a false factual basis the remaining adverse credibility findings nonetheless render the decision a safe one. It is right that the Judge roundly rejected the Appellant's account and otherwise gave rational reasons that were open to him on the evidence. However, due to the nature of the evaluation of evidence in asylum claims and the heightened scrutiny required in such claims I do not consider that it is possible to excise the adverse finding and conclude that the decision remains safe.
16. In **Karanakaran v SSHD v Secretary of State for the Home Department** [2000] 3 All ER 449 the Court of Appeal held that in asylum cases in the evaluation of evidence "no probabilistic cut off operates". Everything capable of having a bearing has to be given the weight, great or little, due to it. The Court of Appeal also said that importantly the Convention issues from first to last are evaluative, not factual. The facts, so far as they can be established, are signposts on the road to a conclusion on the issues: they are not themselves conclusions.
17. In **ML (Nigeria) v SSHD** [2013] EWCA Civ 844 Moses LJ held at paragraph [10]

“A series of material factual errors can constitute an error of law. It is trite in not only the field of judicial review but also statutory appeals and appeals by way of case stated that factual errors, if they are significant to the conclusion, can constitute errors of law.”

18. At paragraph [18] Sir Stanley Burton added:

“A material error of fact is an error as to a fact which is material to the conclusion. If there is any doubt as to whether or not the incorrect fact in question was material to the conclusion, that doubt is to be resolved in favour of the individual who complains of the error.”

19. The First-tier Tribunal concluded that the Appellant was inventing her account based on what he found to be numerous discrepancies of which her age at the realisation of her sexual orientation was clearly a major one. It is not possible to conclude that it was not material to his conclusion in the overall assessment of credibility and any doubt is to be resolved in the Appellant’s favour. I therefore find that there was a material error of law in the decision of the First-tier Tribunal.

### **Notice of Decision**

There was a material error of law in the decision of the First-tier Tribunal. I set it aside.

Due to the extent of judicial fact finding this matter should be remitted to the First-tier Tribunal for complete rehearing.

### **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.

Signed

Date **1 July 2016**

Deputy Upper Tribunal Judge L J Murray