



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04393/2018

THE IMMIGRATION ACTS

Heard at Field House
On 1st August 2018

Decision & Reasons Promulgated
On 29th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS SJ
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms N Willocks-Briscoe, Home Office Presenting Officer
For the Respondent: Mr J René, Counsel, instructed by Toltops Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State I refer to the parties as they were in the First-tier Tribunal.
2. The Appellant, a national of Gambia, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 16th March 2018 to refuse her application for

asylum in the UK. First-tier Tribunal Judge Heatherington allowed the appeal in a decision dated 9th May 2018. The Secretary of State appeals against that decision with permission granted by First-tier Tribunal Judge O'Garro on 7th June 2018.

3. The background to this appeal is that the Appellant entered the UK on 5th May 2007 on foot of a visit visa. She was encountered on 23rd January 2016 working illegally using a false identity. She was served with a Notice of Liability for Removal and claimed asylum. She was charged with offences of fraud in relation to possessing a false ID card and possessing and controlling an ID card with intent and on 10th March 2016 was sentenced to eight months' imprisonment. Her asylum claim was based on her claim that she is a lesbian and that she cannot live freely and openly in the Gambia.
4. In the reasons for refusal letter the Secretary of State rejected the Appellant's claim that she was lesbian or bisexual and that she had a same sex relationship in Gambia. The First-tier Tribunal Judge decided that the Appellant's evidence was credible and accepted that she is a lesbian as claimed and that the woman in the Gambia with whom she had a relationship was murdered there in 2007. The judge accepted that the Appellant could not live freely and openly in the Gambia if returned there. The judge concluded that the Appellant has a well-founded fear of persecution in the Gambia.
5. There are two main grounds of appeal set out in the application for permission to appeal. The first ground the Secretary of State contends that the First-tier Tribunal Judge failed to appraise all of the material facts, omitted material aspects of the case and failed to provide adequate reasons. It is contended that the Appellant failed to discharge the burden of proof. Ms Willocks-Briscoe submitted that in essence the grounds argue that the judge did not seem to engage with evidence on both sides of this case. She accepted that the judge engaged with the reasons for refusal letter but contended that there are significant issues identified there which were not dealt with in the judge's overall assessment of the Appellant's credibility. She contended that the judge failed to engage with the Appellant's conviction for deception. She accepted that the judge did not need to make findings on minutiae or on every aspect of the claim but contended that the judge needed to deal with the arguments on both sides. She accepted that the judge had not ignored any specific piece of evidence but contended that the judge had not identified the issues linked to the Appellant's particular claim. She submitted that the judge had failed to engage with the issue of the marriage certificate in her name found in her possession when she was arrested. Ms Willocks-Briscoe said that it was not being argued that the judge would have definitely found in favour of the Respondent had the appeal been considered differently but submitted that the judge had not encompassed a holistic approach in assessing the evidence in the round and did not engage with the Respondent's position at all except as to the issue as to whether the Appellant claims to be lesbian or bisexual. In her submission the judge had not applied anxious scrutiny to the issue. Ms Willocks-Briscoe accepted that the death certificate produced in relation to the Appellant's claimed sexual partner in Gambia had not been challenged but submitted that the judge had failed to examine whether that death certificate supported the Appellant's claim.

6. The second main ground is that the judge had failed to engage with **HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31**. However, when I pointed out to Ms Willocks-Briscoe that the judge had concluded at paragraph 8.2; “there is ample evidence in the Home Office Country Information and Guidance January 2016 and in the objective evidence that LGBT persons are at risk of arbitrary arrest and detention” she withdrew that ground.
7. Mr René submitted that there had been no submission that the judge ignored any evidence, there was no argument that the findings were not open to the judge and in his submission there was no material error. He submitted that it is clear from the decision that the judge referred to bundles by both parties referring to the documentary evidence at paragraph 1.5. The judge referred to the evidence from those supporting the Appellant at section 6 of the decision. In his submission the judge’s approach was correct in that he had to determine whether the Appellant is a lesbian as claimed and the judge accepted the Appellant’s evidence on this matter. He highlighted paragraphs 8.5 and 8.6 where the judge dealt with issues raised in the reasons for refusal letter including the conclusion that the Appellant’s credibility was damaged by her confused claim that she is bisexual and/or a lesbian and the conclusion that the Appellant’s credibility was damaged by the delay in claiming asylum.

Error of Law

8. As accepted by Ms Willocks-Briscoe, the judge did engage with the objective evidence at paragraph 8.2 and there has been no challenge to the judge’s conclusion that those in the LGBT community are at risk of arbitrary arrest and detention in the Gambia. Accordingly, the grounds really take issue with the judge’s assessment of credibility.
9. It is clear from reading the decision that the reasons for the judge’s decision have been adequately articulated. The judge dealt with two main issues raised in the reasons for refusal letter at paragraphs 8.5 and 8.6 and decided that those issues did not damage the Appellant’s credibility. The judge analysed the documentary evidence at section 6, noting that only two of the letters of support referred to the Appellant’s sexuality and dealt in more details with that evidence at 6.3 and 6.7. It is clear from paragraph 8.7 that the judge attached significant weight to these statements.
10. The judge engaged with the death certificate at paragraph 8.7 and took this into account along with the Appellant’s evidence and accepted on the basis of the death certificate and the Appellant’s oral evidence that the Appellant’s former partner had been murdered in 2007. It is clear from paragraph 8.7 that the judge attached significant weight to the Appellant’s oral evidence in assessing her credibility.
11. The judge reminded himself at paragraph 8.8 of the standard of proof and made a clear finding that the evidence as set out at paragraphs 8.4 to 8.8 established that there is a reasonable likelihood that the Appellant is a lesbian as claimed. I find that these findings were open to the judge on the basis of the evidence. The judge has not and is

not required to examine every piece of evidence and it is clear that the judge has given sufficient reasons based on the evidence for reaching the conclusions reached.

12. The judge went on to consider the risk to the Appellant upon return in light of the findings as to her credibility and the background evidence as set out at 8.2 and concluded that the Appellant has a well-founded fear of persecution. The judge's findings at 8.2 have not been challenged. It is clear that the judge accepted all of the Appellant's claim and this was a finding open to the judge on the evidence, accordingly the conclusions at paragraph 8.12 were open to the judge.

Notice of Decision

The decision does not contain a material error of law. The decision of the First-tier Tribunal shall stand.

An anonymity direction is made.

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 her or any member of her 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: 9th August 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

I maintain fee award made by the First-tier Tribunal.

Signed

Date: 9th August 2018

Deputy Upper Tribunal Judge Grimes