



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04993/2018

THE IMMIGRATION ACTS

Heard at Field House
On 7 September 2018

Decision & Reasons Promulgated
On 24 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

[S M]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Norman of Counsel

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 15 January 1979. She is a citizen of Kenya. She appealed against the respondent's refusal to grant asylum dated 26 March 2018. The appellant's appeal against the respondent's refusal was dismissed by Judge C H Bennett (the judge) in a decision promulgated on 23 June 2018.
2. The grounds claim judicial bias or the appearance of bias, failure to assess the risk from society within the context of the appellant having been trafficked and a victim of

corrective rape, failure to consider the background material in the round, failure to give proper reasons and failure to follow **HJ (Iran)**.

3. Judge Grant-Hutchison granted permission to appeal on 27 July 2018. She said inter alia:

“2. It is arguable that the judge has erred in law for the following reasons:-

- (a) By placing entirely inappropriate weight on the appellant’s “mannish” appearance in determining whether the appellant is reasonably likely to be a lesbian;*
- (b) By placing too much weight on the CPIN on sexuality in Kenya from which the judge ascertains that lesbian sex is rarely prosecuted when it is unclear what background material other than the CPIN was considered;*
- (c) The appellant has been subjected to corrective rape in the past. She is particularly vulnerable as a result of having been trafficked into the UK for the purposes of exploitation as a domestic worker in modern slavery and a conclusive grounds decision confirms this. The judge has not taken into account the appellant’s particular facts and circumstances when considering

 - (i) Her credibility and the fact that she told a lie on her visa application form when she had been trafficked, and*
 - (ii) The transient relationships she has only been able to form in the UK as a result of her experiences;**
- (d) By placing too much weight on statistics when considering the background material in the round, and*
- (e) By failing to consider **HJ (Iran)** in light of the above.”*

Submissions on Error of Law

4. Ms Norman relied upon the grounds.

5. Mr Tufan, whilst acknowledging the judge’s use of unfortunate phraseology, submitted that there was no material error of law given the judge’s other adverse credibility findings.

Conclusion on Error of Law

6. I find that the judge has materially erred in his approach which is at odds with the Equal Treatment Bench Book. See [33]:

“33. Stereotypes are simplistic mental short cuts which are often grossly inaccurate, generate misleading perceptions and can cause mistakes. It is important not to:

- Assume that, because people meet particular criteria (e.g. they are of South Asian origin or wheelchair users), they will behave in a particular way or have particular limitations.*

- *Attach labels to people (e.g. learning disabled or youths) and then use the label to undermine their rights (e.g. assume they are incapable of giving evidence or that they will lie or be disrespectful)."*

7. The judge fell into the trap of stereotyping. Instead of weighing the evidence as he was bound to do, he strayed into speculation based upon stereotyping. Whilst the judge referred to **HJ (Iran)**, he failed to approach his analysis appropriately. Rather, he found that because the appellant was discreet and not currently in a relationship, she was not to be categorised as a lesbian. See [44]. He reached that finding taking into account what he had to say at [36]:

"36. Although Miss M has a slightly 'mannish' appearance, I place no real weight on that, in determining whether she is reasonably likely to be a lesbian, if only because

- that slightly 'mannish' appearance was substantially attributable to the manner in which her hair was cut and the fact that she wore no (or very little) 'make up' and, to a degree, to her age (she is now 39 years old),*
- the manner in which Miss M's hair was cut and her appearance are (obviously) very much matters over which she has substantial control,*
- Miss M is not a large, muscular and/or well-built woman, but on the contrary, is slightly built, so that her appearance is not striking, and*
- since her claim to asylum is based on the contention that she is a lesbian, it would not be surprising if, whether or not she is, in reality, a lesbian, she would take steps to ensure that, at the hearing of her appeal, her appearance was consistent with her claim."*

8. At [45] the judge went on to further consider the appellant's appearance. I am not at all clear the point he was trying to make, however, it seems that in material error, he was attempting a pre-**HJ (Iran)** approach to see whether the appellant could live discreetly in Kenya. He concluded that she would not be thought to be a lesbian on return such that she would not be at risk.

9. It had been accepted by the respondent that the appellant was trafficked and consequently vulnerable (see Equal Treatment Bench Book at [2.8]) which the judge failed to take into account in terms of his adverse credibility findings. See [40]-[41] of the decision.

10. I find the judge selectively assessed the background material in the CPIN and ignored the appellant's account of corrective rape and vulnerability as a result of having been trafficked which was significant in terms of risk on return.

11. The judge materially erred for the reasons I have set out above. The remaking of the appeal will require significant fact-finding. Having regard to [7.2](b) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, I consider this is an appeal which is appropriate to remit to the First-tier Tribunal for rehearing de novo, by any judge other than Judge C H Bennett.

No anonymity direction is made.

Signed

Date 7 September 2018

Deputy Upper Tribunal Judge Peart