



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

Appeal Number: PA/07738/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 16th October 2018**

**Decision Promulgated
On 19th October 2018**

Before

Deputy Upper Tribunal Judge Pickup

Between

**AS
[Anonymity direction made]**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr T Hussain, instructed by Lei Dat & Baig Solicitors

For the respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lloyd promulgated 9.2.18, dismissing her appeal against the decision of the Secretary of State, dated 28.7.17, to refuse her claim for international protection.
2. First-tier Tribunal Judge Bennett refused permission to appeal on 7.3.18. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Bruce granted permission on 18.5.18.

Error of Law

3. For the reasons set out below, I found no material error of law in the decision of the First-tier Tribunal such as to require it to be set aside.
4. The appellant claims to be at risk in both South Africa and Zimbabwe as a member of a Particular Social Group (PSG) as a gay woman. She claimed to be in a relationship with Ms N, also gay. The judge rejected the factual claims, including the claim to have been attacked in Zimbabwe, but went on in any event to find that even if the appellant is gay and even if she is in a relationship with Ms N, she is of South African nationality and there is no well-founded risk of persecution or mistreatment on return and could live openly as a gay woman and could continue her relationship with Ms N, who is able to visit South Africa. The judge also found that on the basis of relocation there was no risk on returning to Zimbabwe even had she been attacked there.
5. In granting permission to appeal, Judge Bruce found it arguable that the judge overlooked material elements of the evidence in relation to WhatsApp messages. It was also arguable that there were not “intelligible reasons” for rejecting the evidence of Ms N in respect of the claimed relationship, and that “the findings at paragraph 103 do not amount to a reasoned proportionality assessment.”
6. I do not understand the last sentence of the grant of permission and Mr Hussain was unable to assist, given that [103] is not a proportionality assessment. The grounds themselves do not challenge the article 8 proportionality assessment.
7. Whilst I accept that on the evidence highlighted in the grounds at [94] the judge misstated the tone of the WhatsApp messages as friendly and not intimate in tone. It is clear that the messages contain intimate sentiments.
8. I reject the submissions of Mr Hussain that the judge’s findings as to the nature of the appellant’s relationship with Ms N as friendly but not in a relationship are unreasoned. However, in the light of the error in relation to the WhatsApp messages this finding is undermined.
9. However, the difficulty with the appellant’s case on appeal, as pointed out in Mr Tan’s submissions and frankly acknowledge by Mr Hussain, is that there is no appeal against the finding that the appellant is of South African nationality; that there is no risk to LGBT persons in South Africa; and that the relationship with Ms N could continue in South Africa. Further, there was no appeal against the finding that the appellant was not attacked in Zimbabwe but in any event as she could relocate there was no risk on return to Zimbabwe. Neither was there any appeal against the article 8 proportionality assessment.
10. It follows that even if I found for the appellant in respect of each ground of appeal to the Upper Tribunal, there remains no basis for the Upper Tribunal to set aside the decision of the First-tier Tribunal as the outcome

of the appeal would have been exactly the same, a dismissal of the international protection and human rights claims.

11. In the circumstances, I find no material error of law in the decision of the First-tier Tribunal sufficient to require it to be set aside.

Decision

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances of this case, I make an anonymity order.

Direction Regarding Anonymity

Unless and until a Tribunal or court directs otherwise, each appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify that appellant or any member of her family or her partner. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated