



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

Appeal Number PA/11722/2019

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

**Decision & Reasons
Promulgated**

On the 6th October 2021

On the 11th November 2021

Before

UT JUDGE MACLEMAN

Between

R B

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by Gray & Co, Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer (attending remotely)

DETERMINATION AND REASONS

1. The appellant is a citizen of Gambia, aged 26. She entered the UK as a visitor on 28 March 2018 and sought asylum on 19 October 2019. The respondent refused her claim by a decision dated 18 November 2019. She appealed to the FtT.
2. FtT Judge Farrelly dismissed the appellant's appeal by a decision promulgated on 22 January 2020. UT Judge Lindsley set that decision aside by a decision promulgated on 26 June 2020, which should be read along with this decision. The matter was retained for re-making to be completed in the UT. A direction was made to enable that to be completed by another judge.

3. I am obliged to Mr Forrest and to Mr Whitwell for their concise presentation of the case and for their helpful submissions.
4. There is no need to consider the background evidence because it was agreed that the case turns effectively on the credibility of the appellant's claim to be a lesbian (her preferred term).
5. The appellant adopted her statements and was cross-examined. She answered most questions clearly and directly, but some weaknesses in her account emerged, as specified by Mr Whitwell and as dealt with below. Those flaws went to her account of her family relationships.
6. The refusal decision found discrepancy and implausibility in the evidence provided by the appellant in a witness statement and at interview:
 - [28], circumstances of first realising same sex attraction;
 - [29], conflicting accounts of feelings on that realisation, and disclosure;
 - [30], vague account about her partner, B;
 - [31], implausibility over meetings with B, if appellant's freedom restricted by her family;
 - [32], implausibility in how discovered by her cousin, C (the father of her son) , in her relationship;
 - [33], no detailed account of how able to continue relationship after discovery;
 - [34], implausible family would wait 2 years after birth of her child to force her into marriage to W (later the father of her daughter);
 - [35], implausible appellant would divulge her sexuality to W, or that he would keep it secret;
 - [36], implausible the appellant, while with her brothers in the UK, would tell her parents by phone of her sexuality;
 - [37], children not mentioned in visa application or at screening interview; statement of being single on visa application, but at interview that she was married;
 - [38], no "objective evidence" of relationships in Gambia or the UK or of participation in LGBT activities in the UK.
7. The matters at [28 – 36] do not amount to much more than repetition of declining to believe what was said, and categorising it as discrepant or implausible, but specifying no strong reasons. Mr Whitwell did not stress any of those points. I see no significant self-contradictions. I find little in that chapter of analysis which undermines the claim.

8. The matter at [38] has been overtaken by further evidence of communications with B and of activities in the UK.
9. The decision at [37] makes a more substantial point, on which the appellant's position has not much improved in course of the case.
10. The appellant sought to explain away her self-contradiction over whether she was married. She said she had left her husband, although they were not divorced, and that the marriage was customary rather than official. She said in oral evidence that there was a ceremony in a mosque before an Imam, but no document was issued. (Islamic marriage is valid in Gambia.)
11. The applicant said in oral evidence that it was her brother who described her as single with no children in the visa application, unknown to her.
12. I thought that was a rather glib and weak explanation. There is no reason for the appellant not to have attended to her application; and even if her brother did so, no reason has been suggested for choosing falsely to describe her as single and childless.
13. At 1.18 of her screening interview, the appellant was asked to confirm details of any dependants on her claim. She answered none - recorded as "N/A". At 1.19 she was asked for details of any spouse or children not included on her claim, and the form again records her answer as "N/A".
14. The appellant says that she thought she was asked only about dependants with her in the UK, but Q/A 18 & 19 are straightforward and make a clear distinction.
15. The appellant has produced a copy of a birth certificate for her son M, born on 24 February 2012, but not for her daughter F, born on 12 January 2015.
16. While preparing this decision, I note a further oddity. Although the hearing and submissions before me were conducted by both sides on the understanding that the appellant did not say she had children in the visa application, at [29] of her statement she says that her son was mentioned; and so he was - see page 3 of 9 of the copy form in the respondent's bundle.
17. Mr Whitwell submitted that by applying as a visitor, concealing the intention to remain which she later admitted, the appellant showed herself capable of deception. That is undeniable, but it goes only a little way. It does not show that fear of persecution might not be genuine.
18. The appellant delayed in making her claim in the UK, although by 6 months not by 18 months as suggested by a slip in the refusal letter at [13] (which was partly responsible for leading the FtT into error). This is adverse to credibility, as specified in the refusal letter at [48 - 49], but it is far from decisive.

19. At [50], and in submissions, the respondent founded on the appellant's claim to have lost her passport. Her explanation is that she left it at her brother's house and, no longer being on good terms with him, has not sought to retrieve it. The respondent also criticised her in submissions, based on cross-examination, for not having sought a replacement. I note from the decision that the respondent has a copy of the passport. While resisting return, the appellant has no need to obtain a replacement. It is in principle inconsistent to seek assistance from the national authorities while a protection claim remains unresolved. I detect nothing sinister in the appellant's claim to have parted with her passport.
20. The appellant says that her children now live with B. In cross-examination she said that they have no formal address there, as that is not customary; but her parental home has an address. She could specify only the general area where the children and B live, and that it is about 15 - 20 minutes' drive away. The appellant's statements convey that for several years she and her children lived between her parental home and her marital home, with W; but in cross-examination she could not recall the name of the area where W lived, said she did not stay there "very long", and did not know the name of the area or how far it was from her parental home.
21. In my view, Mr Whitwell's criticisms on those points were well taken. These deficiencies are inconsistent with an entirely trustworthy account of the appellant's family history and circumstances.
22. The appellant says that she was befriended in Southampton by a stranger who paid for her bus travel to meet someone in Birmingham, with whom she stayed for 6 months before claiming asylum. Mr Whitwell brought out that the appellant did not know even the price of her ticket. Although I give little significance to the absence of that detail, this chapter of the account is vague, and unsupported by other evidence, although that should not have been hard to obtain. This may all be designed to conceal the truth of that 6-month period; but it is not impossible.
23. At [4] of her statement the appellant says that on the day of her disclosure, her brother M left the house to take his children to nursery and take them to their mother (who lived elsewhere). At [5] she says that M "left with his children". When this was put to her in cross-examination, she was clear the children were not at the house at all that day. There is a discrepancy. Mr Whitwell founded on it as showing that the alleged events of that date were an invention. I consider that gives a minor matter more significance than it can bear. The case does not turn on a slip over whether the children were at home at any point. Further, even in a carefully compiled statement it would not be hard to fall into a slip between "leaving to pick up the children" and "leaving with the children", when narrating that M was out of the house for some time.
24. Mr Whitwell submitted that it is unlikely that W, as the father of F, and having lived with her or at least having had substantial contact with her, would since the appellant's departure have abandoned all interest. It is of

course not unknown for fathers to give up on their children; but there was some force in the point.

25. The appellant's evidence struck me as self-contradictory over whether her family members have threatened to remove the children from the care of B, as per her first statement, or have shown no interest in the children, as in oral evidence.
26. While one cannot of course peer into the appellant's feelings, I found it rather puzzling that her evidence did not suggest that she is perturbed about the situation of her children.
27. Drawing the above considerations together, I find no persuasive explanation for the discrepancies in the evidence over the appellant describing herself variously as married (with or without legal formality) and as childless, or as the mother of one or of two children.
28. The evidence does not show that the appellant has painted a completely false picture, and my findings on various points are not as negative as argued for the respondent; but overall, I am not satisfied that the appellant has provided a reliable account of her family history and circumstances.
29. I accept that general credibility bears on the appellant's claim about her sexual orientation, but it is also important to guard against judging that issue only on deficiencies elsewhere.
30. The appellant has been consistent about that aspect of her claim; was not shaken directly on the matter at the hearing; has produced evidence of communications with B showing the existence of a relationship between them; and, based on the decision of Judge Lindsley at [18] and [20], has preserved positive findings on evidence from members of an LGBT organisation, including the witness M J, as "given in good faith and that they are satisfied that she is lesbian having had the advantage of seeing and hearing the appellant over an extended period in an informal setting". There is some further backing in the written evidence, although not supported by attendance of witnesses.
31. M J gave evidence before me, confirming her impressions up to the date of the hearing, based on contact and socialisation with the appellant, mainly in an LGBT orientated environment. Without the benefit of preserved findings as a starting point, I would have had no difficulty in coming to the same conclusion on that chapter of the evidence.
32. The claim to be lesbian is either genuine, or a fabrication to obtain immigration advantages otherwise inaccessible to the appellant. Although with some hesitation, given the shortcomings mentioned above, I find that there is at least a real likelihood that her sexual orientation is as she says.
33. There was a second aspect of the claim, based on the risk that the appellant's daughter might be subjected to FGM. Mr Forrest relied upon

the brief mention in the skeleton argument and did not seek to expand. Mr Whitwell pointed out that the appellant's daughter is not a dependant on her claim and is not in the UK. FGM continues to take place in the Gambia, but country guidance and background evidence does not establish a general risk to all female children. Given those considerations, and as I am not persuaded by the appellant's evidence about her family situation, the appeal does not succeed on this second aspect.

34. The decision of the First-tier Tribunal has been set aside. The decision substituted is that the appeal, as brought to the FtT, is allowed.
35. The FtT made an anonymity direction. The point was not mentioned in the UT. At this stage, the direction is preserved, as follows.
36. 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 his 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.



7 October 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.