



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

Appeal Number: IA/32658/2013

THE IMMIGRATION ACTS

Heard at Field House

On 18 July 2014

Determination

Promulgated

On 10 November 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**N T D
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones, Counsel instructed by Farani Javid Taylor
Solicitors

For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant or her alleged partner. Breach of this order can be punished as a contempt of court. I make this order because the appellant claims to need international protection and I do not want there to be any chance of her being persecuted because this determination comes to the attention of the authorities in her country of nationality.
2. The appellant is a citizen of Sri Lanka. She challenges the decision of the First-tier Tribunal dismissing her appeal in a determination dated 9 April

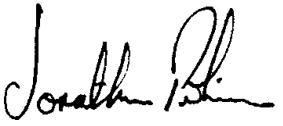
2014 against the decision of the respondent on 16 July 2013 to refuse to vary her leave to remain and to remove her by way of directions. The appellant had entered the United Kingdom lawfully as a student in February 2005. She had leave to enter as a student until 4 May 2013. On 3 May 2013 she applied for further leave to remain on a discretionary basis.

3. In simple terms it was the appellant's case that she is entitled to international protection. She is gay and has a gay partner and could not safely express her sexuality in Sri Lanka.
4. The First-tier Tribunal Judge dismissed the appeal because she did not believe that the claimant was in a gay relationship.
5. The findings are challenged in two ways. Firstly, it is the appellant's contention that the First-tier Tribunal Judge failed to determine the appeal properly. When concluding that the appellant was not involved in a gay relationship in the United Kingdom it did not decide if she is in fact gay and, if she is gay, if she would be at risk in Sri Lanka. Secondly, the grounds contended that the findings that were made were legally flawed because they were perverse.
6. Legally, in simple terms, it was the respondent's case that the decision to disbelieve the appellant about her claimed relationship in the United Kingdom was reasoned sufficiently and in context it must have amounted to a finding that she was not telling the truth in her claim to be gay.
7. Before saying anything else it is appropriate to consider exactly what the First-tier Tribunal Judge did decide and her reasons for so doing.
8. It was the appellant's case that she had had a boyfriend and that her present gay relationship was her first gay relationship.
9. The first reason given for doubting the appellant's credibility (the fact that it was the first one mentioned in the determination does not mean it was regarded by the judge as the most important or was the first one that she considered) was the lack of detail in the oral evidence which contrasted with the detailed witness statements and the lack of supporting documentary evidence. The judge noticed that the appellant and her partner had claimed to have lived together since January 2012 although their relationship was not intimate until May 2012. They gave evidence in March 2014 but although there was a letter from a letting agent there were no bank statements, utility bills, council tax bills or other documents suggesting the cohabitation which was said to go with their intimate relationship.
10. Photographs were produced but the judge said that "the majority of these simply show the appellant and [her partner] with friends". All of the photographs were at least a year old and there were only "a couple" of photographs of the appellant and her purported partner which, the judge found, was insufficient to show that they were in a same sex relationship. The judge did not accept that none of the friends shown in the photographs were available to give evidence or that they would not have been called if they could help on a contentious point.

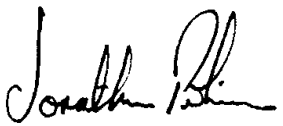
11. The judge was unimpressed with two witnesses who were called as close friends of the appellant. One of them had only visited the appellant's house on one occasion and her accounts about when she had last met the appellant were inconsistent saying, variously that it was a week before the hearing and a day before the hearing.
12. Another witness had not seen the appellant and her partner together since May 2013. The judge did not find this suggested a close relationship. She found that neither witness was in a position to give useful evidence about the nature of the relationship between the appellant and her alleged partner.
13. I read the evidence. I am not satisfied that the First-tier Tribunal Judge's findings deal adequately with the evidence given. For example the photographs include a photograph on a drinking mug of the appellant with another woman (I assume this to be her purported partner) and it is marked to refer to "Valentine Day". This is not a picture of friends. It is a picture of lovers. It could of course be a posed picture not representing the relationship at all but that is what it purports to do and that is not reflected in the determination. Further, at least two of the photographs show the appellant and (I assume) her purported lover very close to each other and not in a way I would expect between women who were merely friends unless the photograph gave a very unfair impression which I know can happen. Again the photograph could be posed but its utility does not appear in the determination.
14. Further, as the grounds point out, the witness statements do give considerable detail about the nature of the relationship between the appellant and her purported lover. The First-tier Tribunal Judge turned this against the appellant by contrasting it with the oral evidence. This point needs to be explained. If it is the case that very detailed and intimate (the statements are not overly intimate but they are personal) evidence adduced with the assistance of solicitors is quite different from the evidence in cross-examination and may be a point to be made but it could be explained in several ways that are not to the appellant's discredit including embarrassment.
15. The grounds are also right to point out that the supporting witness statement included a clear declaration of opinion that the appellant and her purported partner were lovers. I am not satisfied that the reasons given in the judge's determination deal adequately with the positive elements in the appellant's case.
16. It is quite clear that the judge did not decide in terms if the appellant was gay. The respondent submits that rejection of this claim can be implied, indeed *has* to be implied into the findings generally because it is plain that the appellant is not believed. I see the strength of that but I also feel the weight of Ms Jones's submission that it would have been very easy for the judge to say if she did not accept the appellant was gay and it is undesirable to decide international protection issues by inference or in clear findings could have been made.

17. I remind myself that I must not interfere unless there is a material error of law. Almost all decisions could, with the benefit of hindsight, have been done better and the fact that Counsel, with the benefit of hindsight, could find something to criticise does not mean the decision was inadequate. The truth is that I find the reasons given by the judge for disbelieving the appellant's claim to be living in a gay relationship in the United Kingdom are unpersuasive and this makes her failure to give a clear finding on the core claim, namely whether or not the appellant is gay, still more concerning.
18. In my judgment if I upheld this decision the appellant would have a justifiable sense that her evidence had not been considered properly and her case not decided fairly. There is absolutely no definite finding on the issue of whether or not she is gay. In the circumstances I find the appellant's case is made out and I set aside the decision of the First-tier Tribunal. I think the natural consequence of this decision is the case has to be decided again in the First-tier. My conclusion is the appellant has not had a proper hearing and she is entitled to one. I therefore set aside the decision of the First-tier Tribunal, I allow the appeal and I direct that the case be decided again in the First-tier.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 22 October 2014



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