



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/13846/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House London**

**Decision & Reasons  
Promulgated**

**On 22 August 2017**

**On 7 September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY**

**Between**

**FN**

**(ANONYMITY ORDER CONTINUED)**

**Appellant**

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms A Benfield, instructed by Wimbledon Solicitors

For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission to the Upper Tribunal against the decision and reasons statement of FtT Judge Farmer that was issued on 23 May 2017.
2. Judge Farmer decided the appellant was not a refugee from Uganda or otherwise in need of international protection. Judge Farmer also decided the appellant does not benefit from articles 3 or 8 ECHR because she is HIV+. The appellant alleges Judge Farmer legally erred in her assessment of the facts and therefore she could not draw the conclusions she has.

3. Judge Farmer imposed an anonymity direction. Given the contents of this appeal, it is appropriate that direction is continued, and I make an order so doing, the full terms of which appear at the end of this decision.
4. After hearing from the representatives, I announced that I would allow the appeal and set aside Judge Farmer's decision because I find it is legally flawed. Given the errors that exist, and with the agreement of the parties, I have decided that the interests of justice require the appeal to be remitted for a fresh hearing in the First-tier Tribunal before a judge other than Judge Farmer. My reasons are as follow.
5. At the crux of this appeal is the question of whether the appellant is lesbian. I am satisfied the decision and reasons statement does not show that Judge Farmer approached the evidence as required by paragraph 339L of the immigration rules, which of course transposes article 4(5) of the Qualification Directive (2004/83/EC). Those provisions are matters to EU law and reflect the earlier extensive jurisprudence of the senior courts. The provisions require anxious scrutiny of the evidence and identifies that before an assessment of credibility is undertaken evidence from other sources should be assessed.
6. Although Judge Farmer cited these provisions at paragraph 23 of her decision, she jumped straight in to deciding whether the appellant's own evidence was infected by any of the five factors listed. In so doing, Judge Farmer failed to have regard to the opening provision, which requires decision-makers, including judges, to look separately at those parts of a person's statements supported by documentary or other evidence. In the appellant's case, she had provided statements from other people and documents, including medical evidence, from independent sources. It is evident from the decision and reasons statement read as a whole that Judge Farmer used her negative assessment of the appellant's overall credibility to undermine the other evidence; that was the incorrect approach.
7. Judge Farmer's approach to the medical evidence is perhaps the most significant failure. The medical report identified the appellant suffered from PTSD. It was supported by other medical evidence. Yet the judge decided she could give little weight to the medical report because the appellant's account and history displayed factors that suggested she was not credible. In so doing, Judge farmer failed to take proper account of how the appellant's mental health condition might affect her ability to obtain or give evidence.
8. Similarly, Judge Farmer decided to reject the evidence from independent organisations about the appellant's sexual orientation because she did not find the appellant to be credible. Again, in so doing, Judge Farmer failed to explain how she came to that conclusion in light of the appellant's medical evidence.
9. These problems with Judge Farmer's findings were so obvious that Mr Singh conceded that her approach to the medical evidence was confused. He pointed out that Judge Farmer failed to make an appropriate finding as to how the appellant's PTSD was caused and thereby failed to consider whether it was reasonably likely to be linked to her claimed sexuality.

10. Other issues were discussed, such as whether Judge Farmer had had regard to the Presidential Guidelines regarding Vulnerable Appellants. I reminded the representatives that since Judge Farmer heard the appeal, the Court of Appeal had identified the importance of such guidance (see AM (Afghanistan) v SSHD [2017] EWCA Civ 1123). Ms Benfield suggested that Judge Farmer's reference to such guidance was insufficient to show that she appreciated the need to enable a vulnerable person to give their best evidence. I do not find this argument to raise any matter not already covered in the general concern as to how Judge Farmer approached the evidence.
11. The last matter to be considered is whether the appellant's HIV+ status would be a very significant obstacle to her integrating into Uganda. This is a factor that needed to be considered in terms of article 8 ECHR (particularly with a view to paragraph 276ADE of the immigration rules) but was not examined or assessed in detail by Judge Farmer; the only reference is the last sentence of paragraph 38 of the decision and reasons statement, which does not include any analysis or reasoning. It is a further basis to allow the appeal since the judge failed to make adequate findings on a relevant issue.
12. It was obvious to the representatives that the nature of the failings meant the appeal must be remitted to the First-tier Tribunal for a fresh hearing on all matters. I agree.

### **Decision**

Judge Farmer erred in law.

Her decision is set aside.

I remit the appeal to the First-tier Tribunal to be heard by a judge other than Judge Farmer.

### **Order regarding anonymity**

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as "FN".

Signed

Date

6 September 2017

Judge McCarthy  
Deputy Judge of the Upper Tribunal