



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

Appeal Number: PA/02839/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Tribunal
On 1 May 2018**

**Decision & Reasons Promulgated
On 8 May 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RS

(anonymity direction made)

Respondent

Representation:

For the Appellant: Mr Mills – Senior Home Office Presenting Officer.

For the Respondent: Miss H Masih instructed by Fadiga & Co Solicitors.

ERROR OF LAW FINDING AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge M A Hall, promulgated on 29 March 2017, in which the Judge allowed RS's appeal on asylum and human rights grounds.

Background

2. RS claimed international protection on the basis of a real risk on return as a lesbian in Ghana. It appears to have been accepted in the reasons for refusal letter before the Judge that the key issue in the appeal was the credibility of the claim in relation to RS's sexual identity.
3. Permission to appeal was initially refused by the First-tier Tribunal but granted on a renewed application by the Upper Tribunal; although not in relation to the Secretary of States challenge to the credibility findings made in RS's favour. Those grounds were found to be no more than a disagreement with the findings available to the Judge on the evidence before the First-tier tribunal.
4. The Upper Tribunal Judge granting permission states that the Judge's finding at [93] was arguably unclear and it is arguable that the Judge's analysis on the point of internal relocation failed to provide cogent reasons as to why the appellant could not relocate.
5. The application is opposed by Miss Masih whose Rule 24 response refers to the reasons for refusal letter in which it is written "in conclusion, it is accepted that the available country information indicates that lesbian/bisexual people may be able to demonstrate a well-founded fear of persecution in Ghana. However, it is not accepted that you have sufficiently demonstrated that you are lesbian/bisexual."
6. The Secretary State's case was based upon her not accepting the appellant is a lesbian. It is a preserved finding of the Judge that this has now been established.
7. The question of whether the appellant is entitled to the protection sought is a factual issue based upon a proper analysis of the evidence.
8. Having found it proven that to a reasonable degree of likelihood RS is a lesbian [35], the Judge was required to consider whether a lesbian who lived openly would be liable to persecution in Ghana. The Judge noted the above quote from the refusal letter together with the Guidance on Orientation and Gender Identity in Ghana document published by the Home Office in February 2016. The Judge analyses the provisions of that document at [86 - 89] before concluding at [91] that if RS attempted to live openly as a lesbian in Ghana there is a reasonable degree of likelihood that she will be liable to persecution.
9. The Judge went on to consider *HJ (Iran)* and found that if RS chose to live discreetly it will be because she was frightened of the consequences of living openly.
10. The Judge concludes there would not be a sufficiency of protection or reasonably internal relocation option open to the appellant and that the real risk she faced as a result of her sexuality entitled to her to a grant of asylum.
11. It is not made out the finding of a real risk of persecution in Ghana as a result of RS living openly as a lesbian is outside the range of reasonable findings open to the Judge on the evidence. The Judge clearly considered the material with the required degree of anxious scrutiny and has given adequate reasons in support of all the findings

made. It has not been made out the factual finding are in any way perverse or irrational or contrary to the evidence.

12. The Secretary State fails to make out any basis for the Upper Tribunal interfering with this decision.
13. Up-to-date documents produced by Miss Masih, in the event of error of law had been found, have not been considered as this was evidence not before the Judge. If it had been appropriate to do so those documents clearly support the Judge's findings which does raise the question of whether any alleged error was material in any event.
14. No arguable legal error made out. The Secretary of States appeal is dismissed.

Decision

- 15. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

16. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 1 May 2018