



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

Appeal Number: PA/08700/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7 November 2017**

**Decision & Reasons
Promulgated
On 18 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MS C K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Waithe, Counsel, instructed by Albany Solicitors
(Cardiff)

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of First-tier Tribunal Judge Farrelly (Ftj), promulgated on 30 March 2017 in which the Ftj dismissed the appellant's appeal against the respondent's decision to refuse her protection and human rights claim.

2. The grounds of appeal, which are lengthy, submit firstly that the Ftj failed to give anxious scrutiny to the appellant's asylum claim that she was a lesbian and had entered into gay relationships in Uganda. Secondly, it was argued that the Ftj failed to cite or apply the principles in **HJ (Iran) v SSHD & HT (Cameroon) v SSHD UKSC**.
3. The third ground contended that the Ftj focused on what was described in the decision as "the index event" in reaching findings as to whether or not the appellant is gay. The Ftj specifically made findings that the appellant's actions or behaviour was implausible and found her lacking in credibility without reference to the evidence in the round and failed to consider background material. Grounds 6, 7 8 essentially repeat the same grounds.

Permission to appeal

4. Permission was granted on 12 September 2017 by Upper Tribunal Judge Canavan, who stated:

"Although the judge's introductory directions relating to the general principles to be applied in assessing a claim were unarguably correct, it is at least arguable that he might not have applied those principles when he came to assess the evidence in this case. It is at least arguable that the judge may have placed undue emphasis on his view of the plausibility of the appellant's account of the 'index event', which, on the face of it, is not inherently implausible. The fact that she might have been beaten as a result is also not implausible in light of the background evidence relating to the treatment of LGBT people in Uganda. It is at least arguable that the judge's finding relating to the plausibility of the 'index event' might have coloured his view of the other evidence, which on the face of it supported the appellant's claim. The grounds are sufficiently arguable to justify further consideration at a hearing."

5. At the error of law hearing before me Mr Waithe on behalf of the appellant relied on his detailed grounds of appeal.
6. Mr Nath relied on the Reasons for Refusal Letter, which, in essence, contended that the Ftj had given adequate reasons for reaching the findings that it had as regards the appellant's sexuality and that it had given sufficient scrutiny to the evidence relied on in the round. In summary, Mr Nath confirmed that the Secretary of State's position was the same as that of the First-tier Tribunal Judge Lambert, who refused leave to appeal on 15 August 2017.
7. I was satisfied that the Ftj erred in law by, in essence, failing to look at all of the evidence in the round and by placing too much weight on what is described as "the index event", which the Ftj considered to be improbable. There was no reasoning given by the Ftj as to why the event or scenario

was improbable. The further findings made by the FtJ were similarly based on the Tribunal's view of what was probable or improbable. The grounds of appeal are made out.

Notice of Decision

There is an error of law in the decision and reasons which is set aside. None of the findings of fact can be preserved.

The matter is remitted to the First-tier Tribunal at Taylor House (excluding Judge Farrelly) for a hearing de novo.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 her 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.

Signed

Date 17.1.2018

GA Black
Deputy Upper Tribunal Judge G A Black