



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

Appeal Number: PA/13629/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
On 23 January 2019**

**Decision & Reasons Promulgated  
On 13 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**M L W S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Pountney, GMIAU

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of Judge of the First-tier Tribunal Foudy who dismissed the Appellant's appeal against the Respondent's decision of 6 December 2017 refusing her protection claim. The Appellant's immigration history is protracted. She herself asserted that she entered the United Kingdom in the year 2000. She made a claim for asylum at that time. That application was refused and the Appellant has made numerous sets of further representations to the Respondent in the intervening time. The latest set of representations resulted in the decision of the Respondent dated 6 December 2017. The Respondent

disputes the identity of the Appellant. The Respondent's view is that the true identity of the Appellant is LNK, and that she is a citizen of Kenya. The Appellant has also claimed to be a citizen of Somalia and Sudan. The Appellant claimed to fear serious harm on return to Kenya for a number of reasons, including that she feared serious harm from persons who trafficked her to the United Kingdom, and for reason of her sexuality, asserting that she was lesbian. The Appellant has also historically claimed to fear serious harm in Kenya because of her past alleged political activity in that country.

2. The judge disbelieved the entirety of the Appellant's account. Her reasons are given at paragraph 10 onwards. The judge's reasons may be summarised as follows:

(i) The Appellant's evidence as to whether she was sentenced to imprisonment in Kenya for eighteen years was inconsistent with other evidence that she had never been charged or tried with any offence.

(ii) The Appellant had referred to a woman in Kenya named [MM] (and had alleged that this person had informed the Appellant that threats had been made against her in Kenya) but the Appellant had given inconsistent evidence about the identity of that person.

(iii) The Appellant gave inconsistent evidence about the identity the person said to have trafficked her to the United Kingdom, being a policeman, two strangers, or a gang.

(iv) The Appellant had consistently refused to participate in the National Referral Mechanism for victims of trafficking.

(v) The Appellant had given significantly differing answers about the identity of a person named L K (paragraph 12, first four bullet points).

(vi) The Appellant had previously, in August 2011, been convicted of being in possession of a false identity document with intent, being a forged French passport in the name of [KD]; His Honour Judge Foster had found the Appellant had forged identity documents in the name of [KD] going back to 2007 and that she had been working since at least that time in the UK under that identity.

(vi) The Appellant had asserted three different nationalities in the past.

(vii) The Appellant had given inconsistent evidence about what siblings she had.

(viii) In relation to a claimed detention in Kenya in relation to her political activity, she had been inconsistent as to the period in detention.

(ix) She had been inconsistent about the duration of her education in Kenya.

(x) Her claim to have had FGM inflicted upon her whilst in prison in Kenya whilst being detained in dirty conditions was inconsistent with her not having complained to have suffered any illness whilst in prison, the judge finding that it was implausible that a surgical procedure in such rudimentary conditions would not have resulted in the Appellant suffering a serious infection.

(xi) The Appellant had, as late as in cross-examination in evidence before the judge, stated for the first time that she had been attracted to women whilst still living in Kenya and that the Kenyan authorities knew that she was lesbian; whereas during the whole of her claims for asylum in the UK prior to that point this had never been mentioned.

(xii) The Appellant also gave evidence in cross-examination that the political pressure group which she claimed to be a part of in Kenya knew that she was a lesbian, that she had told them, which resulted in her house in Kenya being burned down with her lesbian partner inside, killing her; the lateness of the disclosure of that matter was not credible.

(xiii) Little weight was given to a country expert report of Ms Young on the basis that she was an attorney rather than an academic or a scholar in any relevant field.

(xiv) The medical report of Dr Leslie Lord lacked objectivity.

3. The judge concluded at paragraph 13 that she could not be satisfied even to the lower standard who the Appellant really was, although it was likely that the Appellant had entered the UK in April 1999 as L K. The judge found the Appellant to be a wholly dishonest witness, and the extent of her inconsistency and implausible evidence could not be explained by depression, anxiety or simple lapse of memory. In the absence of clear medical evidence to explain the extraordinary contradictions in the Appellant's claim the judge attributed it to her persistent dishonesty.

4. The judge then held as follows:

“14. The remaining issue is one of the Appellant's sexuality. Even if I found that her account of political activities, arrest, torture and trafficking to be incredible (which I do), she may still require international protection on the basis of her sexuality.

15. At this stage I wish to address the evidence of the four witnesses and the several other friends who came to the Tribunal to support the Appellant. I find that they gave honest evidence, that they are kind and well-intentioned people and that they have taken the

Appellant into their lives as a friend. However, I also find that they have been deceived by her, just as she has deceived employers, medical professionals, legal representatives, Immigration Officers, a Crown Court and the Tribunal. Yes, she has attended LGBT meetings and events. Yes, I can accept that she has made her profile 'fit' with theirs. Perhaps they have seen her kissing a woman or women; that too is quite believable. However I find that it was merely an act; a callous attempt to garner support for her fraudulent attempts to stay in the UK. It is a pity that these witnesses are unaware of the true extent of the Appellant's dishonesty, some of which I have referred to in this decision."

5. At paragraph 16 onwards within the judge's decision the judge considers the Appellant's private life under Article 8 of the European Convention on Human Rights. The judge directs herself that the relevant Rule is paragraph 276ADE(1) of the Immigration Rules. The judge noted that the Appellant had been in the UK for a long time, albeit that for a significant part of that time she was "underground". The judge was also of the view that the main part of her private life had been built upon deception: the deception that she is a trafficked lesbian woman. "I find that the quality of her private life must be considered against that backdrop because it is unlikely that her LGBT friends will wish to continue the friendship when it is revealed that they have been duped by the Appellant".
6. The judge also noted at [17]:

"Not only has she used multiple identities in the UK, but she has claimed three different nationalities. She knows exactly what her true identity and nationality are. It cannot be correct that a person can benefit from uncertainties over their nationality that are born of their own dishonesty. I am satisfied that the Respondent will now, with the benefit of this decision, make further enquiries to ascertain the true nationality of the Appellant and to remove her to her country of origin."
7. At paragraphs 18 to 23 the judge considers an argument advanced on the Appellant's behalf that the Respondent had delayed the consideration of the Appellant's protection claim, and that such delay was relevant for the purposes of determining whether any interference with her private life was proportionate. However, the judge sets out in detail in those paragraphs how the Appellant had spent the various periods of time since her arrival in the UK and held that the Respondent had not significantly contributed to any delay in decision making.
8. At paragraph 24 the judge had regard to a medical report by Dr Farrington which suggested that the Appellant had complex PTSD. The report suggested that the Appellant endured self-imposed social isolation, inability to develop relationships and needing encouragement to participate in activities. The judge opined that it appeared that Dr Farrington knew nothing of the Appellant's history of dishonesty. The judge then set out at paragraph 25 of her decision that the description of

the Appellant in Dr Farrington's evidence stood in stark contrast with the description of the Appellant from her supporting witnesses, who had described the Appellant as vibrant, friendly and relaxed, and who attended every social event she could, being very comfortable gossiping about who was seeing who, going out for meals and having a laugh together. The judge found at paragraph 26 it was difficult to reconcile Dr Farrington's picture of the Appellant with that given to the judge by the Appellant's friends. The judge found that there must be a significant possibility that the Appellant had chosen to present herself to her medical team in a different way, and that given her propensity for deception the judge could not accept that the Appellant has been honest about her symptoms with Dr Farrington.

9. At paragraph 27 the judge holds as follows:

"27. Looking at all the paragraph 276ADE factors, I find that the decision to remove is correct, proportionate and necessary. I am not satisfied that the Appellant has established a genuine private life in the UK because her private life is a tissue of lies."

10. The judge then made various directions in law at paragraphs 28 to 30, and held at paragraph 31 that she was not satisfied that there were substantial grounds for believing that the Appellant would face deprivation of life, torture, inhuman or degrading treatment if removed to Kenya; at paragraph 32 that she was not entitled to humanitarian protection under paragraph 339C of the Immigration Rules; and at paragraph 33 that the removal of the Appellant to Kenya would not amount to breach of the UK's obligations to her under Articles 2 and or 3 of ECHR, and there was no merit in any other argument relating to the ECHR.

11. The Appellant appealed against that decision in grounds dated 24 October 2018 which asserted that the judge had erred in law, in summary, as follows:

(i) in failing to set out the nature and import of evidence given by four supporting witnesses [JW], [SW], [RB] and [KS] (grounds, paragraph 6); and that the judge had failed to give reasons which were adequate in law for not accepting the witnesses' evidence (grounds, paragraph 9); further, the Appellant referred to paragraph 8 of the decision in R (on the application of NK) v Secretary of State for the Home Department IJR [2015] UKUT 00431 (IAC) which reads as follows:

"8. The further submissions made included correspondence from [KM] who wrote on behalf of the Lesbian Immigration Support Group (LISG). In a letter dated 20 December 2013 she had stated that it was the procedure of LISG not to write support letters until the person they wished to support had been to three meetings so that members of the group could be sure that the applicant was a lesbian or bisexual. She detailed those meetings. Ms Lean has argued that in fact the decision of LISG to support the applicant was merely based

on what the applicant had told them. I do not consider that that is entirely correct. It is true that members and supporters of LISG placed weight on what the applicant had told them but it is clear from the various letters that the writers of the letters, including Ms [M], accepted the Appellant as being a lesbian because, as she says, 'we could clearly see she was a lesbian from both our experience as lesbians ourselves and of meeting lesbian women from other parts of the world.' So it was not just a decision made on what the applicant had told them but because of their own experiences and their own sexuality";

- (ii) in misdirecting herself in law by failing, when considering the Appellant's private life under Article 8 ECHR, to appropriately direct herself in law as to the requirements of paragraph 276ADE(1)(vi); the judge's finding that the Appellant's removal was "correct, proportionate and necessary" it did not represent findings on the relevant consideration as to whether or not the Appellant had ties to Kenya and/or whether there will be very significant obstacles to her integration into Kenya; the grounds of appeal also asserted that the Respondent in the decision appealed against had not suggested the Appellant fell foul of the suitability requirements referred to in paragraph 276ADE(1)(i).

12. Permission to appeal was granted by Judge of the First-tier Tribunal Andrew in a decision dated 7 November 2018 on the grounds that it was arguable that the judge had erred in law in not considering paragraph 276ADE(1)(vi). Judge Andrew had stated that he was satisfied that the judge had considered the aspects of the Appellant's claim to be a lesbian, including the evidence before her of the witnesses called on the Appellant's behalf, and made sustainable findings, and that those findings do not amount to an arguable error of law. Permission to appeal was in fact granted at the top of that document generally.
13. However, those representing her made a renewed application for permission to appeal on the protection element of her claim, resulting in a decision of Upper Tribunal Kebede dated 5 December 2018 making it clear that permission was granted on all grounds; she expressed the view that the ground of appeal relating to the protection claim had little arguable merit, but she did not exclude it from consideration in the onward appeal.
14. The appeal came before me today. I heard from Mr Pountney for the Appellant, and from Mr Tan for the Respondent. Mr Pountney addressed me on the protection claim first, at my request. I asked Mr Pountney to clarify what the nature of the legal challenge to the judge's finding was. He clarified that the error of law advanced by the Appellant was that the judge had failed to give reasons which are adequate in law for rejecting the Appellant's sexuality, given the nature of the evidence that had been given by the supporting witnesses on that issue. Mr Pountney drew to my

attention a series of passages within the documentary evidence from the witnesses.

15. At page 190 of the Appellant's bundle is a letter from [KS] of the Lesbian Immigration Support Group (LISG) dated 21 August 2018 relating to the Appellant. The letter includes the following:

"We first met L in March 2013 at an LISG fundraising event which she attended with one of the LISG members. It was a women only event featuring talks, music and poetry. L seemed very happy and excited to meet volunteers and members from LISG. She told us that she had intended to join the group for a while. We subsequently arranged for one volunteer and one member of the group to meet with L. This took place the following month, just before the monthly LISG meeting. We always arrange an introductory meeting with women who are interested in joining the group in order to tell them about LISG and its constitution, and make an initial assessment as to whether she would be a genuine member of the group, i.e. that she is lesbian or bisexual. After this initial meeting she was subsequently invited to our next monthly meeting.

From her first LISG monthly meeting L came across as very comfortable and confident with the other women, joining in the banter and flirting. She told us that she had craved "somewhere to socialise with my people" and seemed very happy to have found our group."

16. Further within Ms [S]'s letter from the LISG, she provides as follows:

"In the UK L lives an open lesbian lifestyle. She positively beams while socialising at lesbian events. She comes across as very comfortable in her lesbian identity and we get the impression that she has, in LISG and the wider lesbian community, found a sense of belonging and 'home'."

17. There was also a letter from [KS] given personally, not under the auspices of LISG, dated 21 August 2018 at page 194 of the Appellant's bundle. Ms [S] describes that the Appellant had attended LISG events and activities. Ms [S] then says:

"When I have seen L at such events I have found her to be very confident and comfortable with her sexuality ... I am in no doubt that L is a lesbian. She is entirely comfortable with physical affection with members and volunteers at LISG and within the wider lesbian community. Whilst lesbians are not a homogenous group, her body language, the way she carries herself, everything about her manner indicated to me that she is genuine and feels able in the UK to be open about her sexuality."

18. There is a letter from [JW] dated 22 August 2014 at page 201 in which Ms [W] states:

“In mid-August a friend and I volunteered to assist the Lesbian Asylum and Refugee Support Group to make a banner for the Manchester Pride Parade. We led the women only art session. L was very comfortable in a lesbian only environment where there was lots of banter about our previous and current relationships with women, what type of women we are attracted to and so-on.”

19. In a further letter from Ms [W] dated 21 August 2018 at page 197 of the Appellant’s bundle, Ms [W] states that the Appellant has been:

“... out with me and my lesbian social circle on occasions in bars in the Chorlton area of Manchester. I have also attended numerous LGBT festivals and events in Manchester’s gay village with L. I feel that L seems to enjoy being in my company and being with a friend who is lesbian who she can be open and socialise with. ... I can see how happy and at ease L feels socialising with other LGBT people.”

20. There is a letter at page 205 of the Appellant’s bundle from Ms [SW] dated 22 August 2018 in which Ms [W] states that:

*“(relating to an occasion in March 2017) L stayed overnight at my house that particular evening along with other LISG members. As a lesbian myself I am in no doubt that L is a lesbian. It was lovely to see L visibly relaxing every evening. I could see that she was very at ease and comfortable around lesbians through her body language, facial expression, she is always smiling on these occasions. ... since that evening I have seen L at the LISG members’ meeting held once a month which L attends. Again her whole way of being confirms that L is a lesbian. She is supportive of other women in the group and puts energy to bring the group together. For example at the end of year party this December L worked hard in the kitchen to cook lovely food for us all.”*

21. Finally, amongst the evidence drawn to my attention by Mr Pountney, is a handwritten letter from [RB] dated 17 August 2018 in the Appellant’s bundle at pages 207 to 209 in which Ms [B] asserts that:

“I have to say there was something about her that really impressed me. It is not only her warmth and sense of humour but I sensed a depth to her and a keen intelligence.

Subsequently as I have got to know her better I began to see her deep commitment to and love (for) women.”

22. In relation to that evidence, the judge found, as I have set out above, that those witnesses gave honest evidence, were kind and well-intentioned



people and they had taken the Appellant into their lives as a friend. However, the judge specifically found that she could accept that the Appellant has made her profile “fit” with theirs, and that they might have even seen her kissing a woman or women – that was quite believable.

23. The difficulty with Mr Pountney’s argument is that the judge does appear to have taken the witnesses’ evidence at face value, accepting that they are satisfied that the Appellant is a lesbian woman. However, given the litany of reasons set out previously within the judge’s decision as to why the Appellant was a dishonest witness, and given that the judge has specifically considered that the Appellant had purposely adopted a mode of behaviour such that her profile fitted with the other members of the LISG, I find that the judge has taken the evidence of those witnesses properly into account, and has given reasons which are sustainable in law for finding, notwithstanding such evidence, that the Appellant is not lesbian. The judge has not left out any relevant evidence. The judge was entitled to approach the evidence of the supporting witnesses alongside the remainder of the evidence before the judge, which had resulted in the judge finding that the Appellant had adopted different identities and had asserted different nationalities, and had, according to the Crown Court judge’s findings made in the narrative to the sentencing of August 2011, successfully lived and worked for a number of years in a totally different identity to her own. I find that the judge was entitled, taking these other facets of the Appellant’s character into account, that the Appellant had indeed deceived her “friends”.
24. I find that the Appellant’s challenge against the judge’s dismissal of the protection claim does not disclose any material error of law.
25. In relation to the Appellant’s ground challenging the judge’s decision under Article 8 ECHR, I find that the judge *does* direct herself in law as to the relevant paragraph of the Immigration Rules is 276ADE (at paragraph 16 of the decision). However, it is incorrect for the Appellant to assert that the Respondent Secretary of State had not sought to invoke the suitability clauses of Appendix FM, which are also applicable under paragraph 276ADE. For example, at paragraph 82 of the Respondent’s decision of 6 December 2017, the Respondent expressed the view that the Appellant had failed to attend the asylum interview on 5 August 2013, and therefore did not meet the requirements of S-LTR.1.7(a). Further, the Respondent had observed that the Appellant had attempted to conceal her true identity and therefore did not meet the requirements of S-LTR.2.2 (relating to the giving of false information).
26. It is to be noted that the judge herself does not make a specific finding as to whether or not the Appellant failed to meet the suitability requirements. However, such oversight was not material in my view; it is manifestly clear that if the judge had turned her mind to the question of whether or not the Appellant met the suitability requirements of Appendix FM, also applicable

under 276ADE, the judge would have found that she did not, due to her extensive dishonesty, as found by the judge.

27. It is right to note that at paragraph 27, the judge appears to dismiss the appeal under Article 8 ECHR on the basis that the Respondent's decision to remove was 'correct, proportionate, and necessary', and that this did not include specific findings as to what ties the Appellant had to Kenya, or whether there would be very significant obstacles to her integration into Kenya.
28. However, the judge had previously stated at paragraph 17 of her decision that it cannot be correct that a person can benefit from uncertainties over her nationality which were borne of their own dishonesty. The judge was in reality unable to make any findings which were any more detailed than those which she gave, about what ties the Appellant might have to Kenya, or whether there would be very significant obstacles to her integration into that country, given that the judge had found that the entirety of the Appellant's account of her past life in that country was false. In the light of the dishonest evidence given by the Appellant, the Appellant had failed to establish that she had been involved in political activity in Kenya, or had been trafficked from Kenya to the United Kingdom. It is the Appellant who has failed to meet the burden on her to demonstrate that there she lacked ties to Kenya, or that there would be very significant obstacles to her integration into Kenya. The Appellant's own dishonesty prevented any real clarity in findings on those issues. The judge could not have done anything more than she did.
29. For those reasons the Appellant has not demonstrated any material error of law in the judge's decision.

### **Notice of Decision**

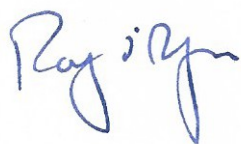
The judge's decision did not involve the making of any material error of law.

I do not set aside the judge's decision.

I dismiss the Appellant's appeal.

Signed

Date 10.2.19



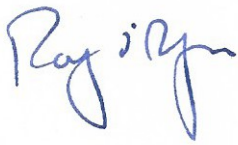
Deputy Upper Tribunal Judge O'Ryan

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

The Appellant has advanced a protection claim. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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 10.2.19

A handwritten signature in blue ink, appearing to read 'P. O'Ryan', is written over the signature line.

Deputy Upper Tribunal Judge O’Ryan