



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

Appeal Number: AA/06359/2014

THE IMMIGRATION ACTS

Heard at Bradford

**Decision and
Promulgated**

Reasons

On 15th January 2015

On 16th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**N.S.
(ANONYMITY DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Tettey, Counsel instructed by Legal Justice Solicitors
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Tunisia who was born on the 3rd November 1982. She appeals, with permission, against the decision of First-tier Tribunal Judge Turnock to dismiss her appeal against the respondent's decision to refuse her application for asylum and to remove her from the United Kingdom.

The grounds of appeal

2. The First-tier Tribunal found that the Appellant is a lesbian [paragraph 54]. This finding is not challenged by the respondent. However, the Tribunal also found that this fact would not place her at risk on return to Tunisia [paragraph 85]. Permission to appeal has been granted on the basis that it is arguable that this assessment is legally flawed. The reasons given for this contention in the grounds of appeal are set out with commendable brevity in the application. They begin by summarising the background country information that was considered by Judge Turnock -
- (i) Consensual same sex activity remains illegal under the Penal Code [paragraph 79].
 - (ii) Anecdotal evidence shows that LGBT people face discrimination, police sometimes harassed openly gay people and accused them of being a source of HIV/AIDS [paragraph 79].
 - (iii) There is no known report of persons arrested for same-sex activity [paragraph 79].
 - (iv) However, local LGBT activist have reported an 'uptick' during the hear of harassment and assault by unknown individuals on persons perceived to be LGBT including multiple incidents in which individuals were followed to their homes and assaulted by alleged Salafists [paragraphs 79 and 83].
 - (v) Amnesty International has expressed concern over the televised comments of the Minister of Human Rights referring to homosexuality as a 'perversion that needed to be treated medically' [paragraph 79].
 - (vi) Anti-Homosexuality laws were being used to target political opponents [paragraph 81 to 83].

The grounds thereafter recite the fact that the Appellant had presented evidence to the Tribunal from a 'Mr Gharbi', a national of Tunisia who had been granted refugee status on account of his sexuality, and that it was her case that she had been beaten by her own family when they discovered that she was a lesbian. The grounds conclude, at paragraph 10, with the following statement -

The evidence before Judge Turnock did show that the Appellant would be subject to persecution on return as a lesbian. Judge Turnock was wrong to conclude otherwise based on the background evidence he quoted.

Analysis

3. It is apparent from the above that the grounds in this case amount to little more than an unreasoned expression of disagreement with the

Tribunal's evidence-based conclusion of that Gay Women in Tunisia are a particular social group which experiences societal discrimination that falls short of persecution. The grounds do not provide any reasons to support the rather general assertion that "the evidence ... did show that the Appellant would be subject to persecution" and that Judge Turnock, "was wrong to conclude otherwise". Rather, they appear to rely upon the assumption that these assertions are self-evident. This, however, is very far from the case. Indeed, the evidence that was before the Tribunal self-evidently supported the conclusion that is now the subject of challenge. I nevertheless set out the reasons why I consider this to be the case.

4. The background evidence upon which the Tribunal relied, and which is accurately summarised in the grounds of appeal, was principally drawn from the US State Department report, 'Human Rights Practices Report 2011 - Tunisia'. It referred to reports of random acts of harassment and discrimination by individual police officers rather than to systematic persecution by State agencies. Such reports were in any event described as "anecdotal". In other words, they were unverified. Moreover, a report by a single LGBT activist of "harassment and assaults by unknown individuals upon persons perceived to be LGBT" could not have supported a finding that membership of a sexual minority group would place the appellant at risk of being persecuted by non-state actors. It is also noteworthy that the reports of harassment and discrimination that are cited in the US State Department do not seek to distinguish between the various sexual minorities but, rather, refers to them collectively as 'LGBT'. The potential importance of this lack of discrimination can be seen from the fact that there was other evidence before the Tribunal that contradicted the US State Department's assertion that all consensual same-sex activity is illegal under the Penal Code. Thus, a report by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), which is entitled 'State-Sponsored Homophobia 2014: Tunisia', states that although sexual activity between males is illegal, sexual activity between females is legal [see page 92 of the appellant's bundle of documents]. Therefore, whilst Judge Turnock may have done little more than summarise the background country evidence and thereafter stated his conclusion, that conclusion was amply supported by the evidence.

Notice of Decision

5. The First-tier Tribunal did not err in law. The appeal is therefore dismissed.

Direction Regarding Anonymity

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Judge Kelly
Deputy Judge of the Upper Tribunal