



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/10783/2015

Appeal Number:

THE IMMIGRATION ACTS

**Heard at North Shields
On 5 July 2016
Prepared on 6 July 2016**

**Determination
Promulgated
On 7 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**E. N.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, instructed by Halliday
Reeves Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant claimed asylum in the UK in January 2015 upon her arrest. She claimed to have entered the UK in March 2007 using false documents, and that as a citizen of Cameroon she faced a real risk of harm as one who was already perceived to be a lesbian, and had suffered serious persecution as a result. She said that she would in any event be unable to live openly as a lesbian upon return, since the perception of her homosexuality would lead to further violence and persecution by members of the general public

against which the state would offer no protection. That risk was also said to be countrywide so that internal relocation would not avoid it. The credibility of her claim to be a lesbian therefore lay at the core of her claim.

2. The asylum application was refused on 21 July 2015, and a decision was made to remove her from the UK in consequence. The Appellant duly appealed that immigration decision and her appeal was in due course heard by First Tier Tribunal Judge O'Hanlon. The appeal was dismissed in a decision promulgated on 11 May 2016 in the course of which her claim to be a lesbian, and her account of her past experiences in the Cameroon were rejected as untrue.
3. The Appellant lodged an application with the First Tier Tribunal for permission to appeal. The application asserted first that the Judge had ignored a newspaper article that had been produced in evidence in which she was named as a lesbian. The content of the article was also said to corroborate her account of past persecution. Second the Judge's approach to the risks facing a homosexual was said to be flawed, because he was said to have failed to follow the guidance to be found in HJ (Iran) [2010] UKSC 31.
4. The application was granted by First Tier Tribunal Judge Andrew on 26 May 2016 on the basis that it was arguable the Judge had not considered fully the newspaper article, which in turn might impact upon the merits of the second ground.
5. The Respondent filed a Rule 24 response on 16 June 2016. She pointed out that the Judge had given adequate reasons for the rejection of the Appellant's claimed sexuality, and had given adequate consideration to the newspaper article. In the light of his findings there was no error in his approach to HJ.
6. The Appellant made no application pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules.
7. Thus the matter came before me.

Error of law?

8. The record of proceedings show that it was the Judge himself who identified that the Appellant's solicitors had failed to file a legible or complete copy of the document that was said to be a genuine newspaper article. Thus the document filed in advance of the hearing was incomplete, and it did not name the Appellant as claimed. In the circumstances the Judge quite properly stood the appeal down so that the document could be produced and considered. It is ironic to reflect on the fact that if he had not done so there would have been no basis whatsoever for the criticisms that are now made of him in the grounds, since the incomplete document that had been produced in evidence did not name the Appellant.
9. The document in question as eventually produced to the Judge is on the Tribunal file. It is a screenshot of a webpage,

taken on 18 April 2016 by the Appellant's solicitors (as recorded in the ribbon bar at the foot of the screenshot). The webpage purports to be that of the "Cameroon Tribune", and to the extent that any date for the article is legible, it appears to bear the date of either 8 May 2000, or 8 May 2006.

10. Ms Cleghorn opened the appeal to me on the basis that the Judge's approach to this document was perverse, although that was not the basis upon which ground one had been drafted by her instructing solicitors, and such a criticism was not merited.
11. Ms Cleghorn ultimately accepted that the decision records that the Judge was alert to the existence and content of the complete document, and (once I had read the relevant passage of the record of proceedings to her), that it was only due to the Judge's intervention that a complete and legible copy was ever produced in evidence. She also accepted that the Judge had made specific reference to the existence and content of this document in his decision [11, 32, & 33], and that there was no basis for the suggestion that he had overlooked the complete document produced to him in favour of the incomplete version originally filed in evidence.
12. Nevertheless Ms Cleghorn argued that the Judge had given inadequate reasons for his failure to proceed on the basis that this "compelling evidence" was both genuine, and proof that the Appellant's account was true. As such her argument appeared to assume that this document should somehow hold the status of some sort of "trump card".
13. Although Ms Cleghorn made submissions concerning what the results would be of any internet searches made upon the Appellant's claimed name, she was forced to accept that no such evidence had ever been placed before the Tribunal, and that it would have been entirely inappropriate for the Judge to undertake such an exercise upon his own initiative.

Conclusions

14. The answer to the criticisms that are made of the Judge in relation to this document are in my judgement to be found in the approach taken by Ouseley J in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, where he restated the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background

evidence and in the light of all the other evidence in the case, especially that given by the claimant.

15. In my judgement, when the decision is read as a whole, it is self evident that this is precisely the approach that the Judge adopted. He looked at the Appellant's immigration history, which clearly raised a number of s8 issues concerning her general credibility as a witness of fact. He also looked at the inconsistency between the Appellant's current claim to have been a lesbian for many years, and her previous claim to be in a heterosexual relationship. (She did not present herself at the appeal as bisexual.) He also looked at the general credibility of the Appellant's claim to have been arrested in the Cameroon for kissing another woman in public.
16. Having looked at all of the evidence in the round concerning the Appellant's sexuality, it was plainly well open to the Judge to conclude that the Appellant was not a reliable witness, and that she had not told the truth about either her sexuality or her past experiences in the Cameroon. Adequate reasons were given for those findings. That being the case, as Ms Cleghorn accepted, the criticisms raised in ground 2 concerning the approach taken to the guidance in HJ simply fell away. The first step for the Appellant was to establish that she was in truth a lesbian, and she had failed to do so. That was the end of the matter.
17. This was very far from being a careless decision. Having had the benefit of hearing Ms Cleghorn's submissions, I am satisfied that notwithstanding the grant of permission, there is no merit in either of the grounds, and that the Appellant has failed to establish that there was any error of law that requires the decision to be set aside and remade. The decision to dismiss the appeal is therefore confirmed.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 11 May 2016 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Deputy Upper Tribunal Judge JM Holmes
Dated 6 July 2016