



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01970/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice Centre
On: 20th November 2018**

**Decision & Reasons
Promulgated
On: 20th December 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

R

(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Wood, Immigration Advisory Service (Manchester)
For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Zimbabwe who seeks international protection in the United Kingdom on the grounds that she has a well-founded fear of persecution in Zimbabwe for reasons of her membership of a particular social group (gay women). The Respondent refused protection and in a determination dated the 9th April 2018 the First-tier Tribunal (Judge J. Austin) upheld that decision. The Appellant now has permission to appeal against that decision.

2. The facts are now uncontentious. My summary below is derived from the Appellant's own evidence, the Respondent's refusal letter and the First-tier Tribunal decision. I have omitted matters not directly relevant to the issues before me:
 - i) The Appellant is a lesbian
 - ii) Her family reacted to news of her sexual orientation with "disapproval and rejection". She was told that she would have to marry a widower in her family, a man much older than herself. When the Appellant rejected this proposal she was badly beaten and disowned. She describes herself as "broken beyond measure" after being treated in such a degrading manner;
 - iii) The Appellant enjoyed a successful career in Zimbabwe as a popular singer and actor. She is well-known throughout Southern Africa and has regularly appeared on radio, television and in film. She is particularly well-known as a gospel singer and has appeared in Christian-themed television programmes;
 - iv) In mid 2016 the Appellant was 'outed' by a Christian Pastor in whom she had confided. This took place in front of a congregation of some 1000 Christians. The Tribunal accepted that this would have been "humiliating" for the Appellant, who subsequently faced ostracization;
 - v) In 2017 a newspaper in Zimbabwe (and associated website) published an article identifying the Appellant as gay.
3. The First-tier Tribunal dismissed the Appellant's appeal. It found that lesbians suffer discrimination and difficulties, but these would not rise to the level of serious harm. Being a lesbian is not subject to criminal penalty. The Tribunal relied on the findings of the Tribunal in the country guidance case of LZ (Homosexuals) Zimbabwe CG [2011] to the effect that there is a limited gay scene, and that there are support groups available. On the basis of that evidence the Tribunal found there to be no risk of harm to this Appellant. If she wishes to avoid prejudice and abuse she can relocate to another part of the country "where a more tolerant attitude prevails".
4. Before me Mr McVeety accepted, on behalf of the Respondent that the decision of the First-tier Tribunal is flawed for material error of law, namely a failure to conduct an assessment of risk on the basis that the Appellant, a well-known figure in Zimbabwe, has since she left that country been 'outed' by a nationally- available

newspaper/website. The Tribunal appeared to premise its risk assessment on events occurring prior to that event.

5. I accept that the Respondent's concession was well-made. I would add that the Tribunal appears to have overlooked the uncontested fact that the Appellant has already been subjected to past persecution by her own family. Being beaten and forced into marriage constitutes serious harm. It was, on the accepted facts, harm that the state was unable or unwilling to protect the Appellant from. The starting point for risk assessment was therefore that past persecution. Were there good reasons to suppose that the harm would not occur again? Since the events narrated by the Appellant took place her family have continued to ostracise her, and she has been publicly, and nationally, denounced as gay. She is a celebrity who has previously been associated with Christian media and so the revelation is all the more 'scandalous'. It is difficult, in those circumstances, to see how the real risk of such harm reoccurring would be today be obviated. There is nothing in that conclusion that it is inconsistent with the findings of the Upper Tribunal in LZ. Although the Tribunal held that in general terms the "hysterical homophobia" faced by gay people in Zimbabwe does not cross the threshold to persecution, it accepted that on occasions it does. This, on the First-tier Tribunal's own findings, was such an occasion. The Tribunal in LZ further found there to be no sufficient state protection where the line is crossed. I am satisfied that in failing to direct itself to that past serious harm, and failure of protection, the Tribunal erred in law. It is reasonably likely that if she were to return to her family in Harare the Appellant would once again face persecution.
6. The question, therefore, was whether the Appellant could reasonably be expected to avoid persecution in Harare by relocating somewhere else in the country, where she could lead a relatively normal life. That is not the test that the First-tier Tribunal appears to have applied in this case: at paragraph 55 the Tribunal concluded that it was open to her to internally relocate because she had not established a "risk throughout her home country". That was a discrete error of law. As Mr McVeety realistically acknowledged before me, the general observations about internal flight in LZ cannot readily be applied to the Appellant. She is, unlike the appellant in that case, 'openly' gay. She is unable to move around the country and re-establish herself without being recognised. As her bundle illustrates, a simple 'google' search of her name reveals articles discussing her sexuality including one based on a "tell-all" interview with one of her relatives, who states that she is "living in hiding for fear of being victimised by family members". This article, and ones like it, mean that life cannot be relatively normal for the Appellant. She may be able to avoid persecution in other parts of Zimbabwe, but it is reasonably likely that in doing so she will be subjected to the "hysterical homophobia",

discrimination and harassment discussed in LZ. That would, in all the circumstances, be unduly harsh.

Anonymity

7. Having regard to the fact that this is a protection claim I am prepared to make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

“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”.

Decision

8. The decision of the First-tier Tribunal contains errors of law and the decision is set aside.
9. I remake the decision in the appeal as follows: the appeal is allowed on human rights and protection grounds.
10. There is an order for anonymity.

Upper Tribunal Judge Bruce
20th November 2018