



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

PA/06991/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 7 November 2019

Decision & Reasons Promulgated
On 13 November 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ISABELLA [K]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr U Aslam, of McGlashan MacKay, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is from Namibia. She sought asylum in the UK in October 2017.
2. The respondent refused the appellant's claim by letter dated 20 February 2018, declining to accept the appellant's account of events in Namibia, or that she is lesbian (whether, if she is, that would entitle her to protection, remains unresolved).
3. In a decision promulgated on 14 August 2018 FtT Judge Green found the evidence for the appellant unpersuasive, including the evidence of a supporting witness, [A]; did not accept that the appellant is a lesbian; and dismissed her appeal.
4. The appellant sought permission to appeal to the UT on grounds of alleged error in assessing the evidence of each of four claimed relationships. The

fourth of these was with [A]. The ground says that the judge's reasons in this respect were firstly based on a flawed assumption of what was meant by making a relationship "official", so that there was no real discrepancy in the evidence over dates; and secondly:

... based on an assumption that the adverse decision in [A]'s own claim in the immigration appellate process is the "last word" as to her claim. If she is contemplating raising proceedings for judicial review it is plain that she is continuing her challenge. In any event, short of seeing the decision of the judge (and the Upper Tribunal) in her claim it was an error of law to rely on it as a reason for making an adverse credibility finding in a separate case.

5. The FtT and the UT refused permission, on the view that the grounds were only disagreement on the facts. The appellant petitioned the Court for review of the UT's refusal of permission. Parties entered into a joint minute:

The FtT rejected the evidence of [the appellant] and [A] [of] ... a homosexual relationship. In doing so, the FtT took into account findings of fact by a different tribunal which had found that [[A]] was not a lesbian. No adequate explanation appears from the reasoning of the tribunal as to (i) why it decided to have regard to evidence from a different tribunal or (ii) how much weight was put on it.

6. Permission was granted to appeal to the UT in light of the Court's interlocutor, following the joint minute.
7. Mr Aslam submitted on both of the "flawed assumptions" above. He did not abandon the other grounds, but did not seek to expand upon them.
8. The first "flawed assumption" is only a disagreement. The judge was entitled to find an inconsistency over the date when the relationship was said to have formed. In any event, this is a minor point in the decision.
9. On the second "flawed assumption", neither party referred to any authority on whether and to what extent a tribunal, in assessing the veracity of a witness, may have regard to factual conclusions reached in other legal proceedings.
10. Factual decisions do not set precedents in other cases. However, it is established that where one member of a family has been granted asylum on the basis of similar considerations to those raised by an appellant, dismissal of the appeal must be very carefully reasoned; although it is important that tribunals do not treat earlier determinations of other family members' appeals as determinative: *Chicaiza* [2002] UKIAT 01200.
11. It is commonplace for appellants to advance the successful outcome of proceedings by supporting witnesses who are not relatives as a reason to accept their evidence. Such outcomes are not certificates of reliability, but are not usually thought to be entirely irrelevant. The significance of decisions in other cases must depend partly on the degree of inter-relation of the facts alleged. I see no reason why such an approach would not apply equally for and against credibility.

12. The FtT did not take the outcome of proceedings by [A] as “the last word”. That passage in the grounds misrepresents the decision.
13. The allegation that [A] was “contemplating judicial review” was vague, and took nothing away from the resolution of her case as it then stood.
14. The judge did give reasons at [22] for taking the status of proceedings by [A] into account. He also made it clear how much weight that was given.
15. I cannot see why the judge would be prohibited from taking account of the matter unless he saw the other tribunal’s decision. It was for parties to choose what to put before him, and for him to decide the case on the material supplied. That included the evidence from the witness that she had failed to establish her claim to be a lesbian, and the absence of that information from her witness statement.
16. The appellant has not shown that in resolving this issue the judge fell into any error on a point of law, as expressed either in the ground or in the joint minute.
17. The grounds, other than as dealt with above, are only disagreements with the fact-finding exercise.
18. This was a detailed and through decision, reached for multiple reasons. The appellant has not shown that the decision, read fairly and as a whole, is any less than a legally adequate explanation to the appellant of why her case was found to fall short of probation.
19. It emerged during submissions that [A] did not petition for judicial review. The tribunal’s determination of her status stands. She is thought to be about to make a fresh claim, based on a continuing relationship with the appellant. I was advised that they are to be “married in the Metropolitan Church by Pastor Jane” on 13 November 2019. While such a development might be advanced as part of a fresh claim, it cannot disclose error of law, which is to be determined on the case as it stood before the FtT.
20. The decision of the FtT shall stand.
21. No anonymity direction has been requested or made.



8 November 2019
UT Judge Macleman