



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

Appeal Number: PA/08801/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 30 April 2019**

**Decision & Reasons
Promulgated
On 07 May 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

BFM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, counsel instructed pro bono
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Haria, promulgated on 3 January 2019. Permission to appeal was granted by Deputy Upper Tribunal Judge Chalkley on 20 March 2019.

Anonymity

2. In view of the fact that this is a protection matter and the sponsor is vulnerable, a direction is set out below.

Background

3. The appellant applied for asylum following her arrest on 5 February 2016. Hitherto, her leave to remain expired on 3 August 2015 when she became appeal rights exhausted. The basis of her claim was that she was forced to marry in Pakistan and that her husband was emotionally and physically abusive towards her. After arriving in the United Kingdom, the appellant commenced an intimate relationship with a woman and as a result she fears for her life at the hands of her family if returned to Pakistan.
4. In the decision letter dated 5 August 2016, the respondent rejected the appellant's claim of a same-sex relationship owing to inconsistencies in her account of her sexuality.
5. The appellant appealed. Her appeal was dismissed by First-tier Tribunal Judge MB Hussain in a decision promulgated on 9 January 2017. That decision was set aside by Upper Tribunal Judge Reeds on 8 June 2017 and the appeal remitted to the First-tier Tribunal to be heard afresh.

The hearing before the First-tier Tribunal

6. The First-tier Tribunal heard oral evidence from the appellant, her claimed partner RC and other witnesses. Counsel for the appellant asked that she be treated as a vulnerable witness owing to mental health issues and specific adjustments were sought. Adjustments were also sought for RC owing to her health and disability issues. The judge considered that an anonymity direction was appropriate. The judge concluded that the appellant's account lacked credibility and that it was a fabrication designed to enable her to remain in the United Kingdom.

The grounds of appeal

7. The grounds of appeal argued that the judge found that the appellant's claimed partner provided credible evidence which was difficult to reconcile with the judge's conclusion that the appellant was not credible.
8. Permission to appeal was granted on the following basis

"The judge does appear to have made contradictory findings at Paragraph 52 onwards in relation to (RC). Either she was credible or she was not. "

The hearing

9. Both representatives agreed that the determination was confused in respect of the assessment of credibility and risk, to the extent that any error was material and that it required a fresh hearing before the First-tier Tribunal.

Decision on error of law

10. The appellant's protection and human rights cases concern her sexuality and claimed relationship with a woman. The female partner in question was found to be wholly credible by the judge, yet her evidence went to the genuineness of the relationship with the appellant. By contrast, the judge found the appellant's evidence to lack credibility in a significant number of respects including the relationship. Given the respondent's support for the appellant's grounds of appeal and the fact that this apparent inconsistency remains unresolved I am satisfied that there is a material error of law such that the decision must be set aside and remade. None of the findings of the First-tier Tribunal Judge are to stand.
11. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of her asylum appeal at the First-tier Tribunal and it would be unfair to deprive her of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of one day by any judge except First-tier Tribunal Judges Haria and MB Hussain.

Mr Paramjorthy has been representing the appellant pro-bono for a number of years. The listing clerk is directed to liaise with counsel's clerk on [~] to ascertain Mr Paramjorthy's availability.

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

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 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 01 May 2019

Upper Tribunal Judge Kamara