Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08853/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons issued**
On 2 February 2016	**On 10 February 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A

Respondent

Representation:
For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mrs F Farrell of P G Farrell Solicitors

DECISION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The appellant is a citizen of Nigeria. Having exhausted previous appeal procedures, she made a fresh claim, asserting for the first time that she is bisexual and would be at risk on the basis of the lesbian aspect of her identity if returned to Nigeria. The respondent refused that claim for reasons explained in a decision dated 28 May 2015. First-tier Tribunal

Judge P A Grant-Hutchison allowed her appeal by determination promulgated on 17 November 2015.

3. The SSHD obtained permission to appeal on one ground, which is headed "failing to resolve conflicts or opinion on a material matter". The ground might be better expressed as failure to give reasons for the crucial conclusion in the determination, which is at paragraph 20:

> "… she would be returning as an outspoken bisexual with a young child. There is a real risk of persecution …"

4. Mrs O'Brien submitted as follows. The determination contained no examination of the evidence to explain why the appellant might behave as an "outspoken bisexual" in Nigeria. That conclusion did not follow from and indeed went against the rehearsal and consideration of the evidence before it, in particular at paragraphs 17-19. The appellant did not claim to have so behaved when in Nigeria previously. She was found to be in a relationship with a female partner in the UK but that was a discreet one, in a country which did not impose the same limitations on behaviour. There was nothing in the determination to explain why the appeal succeeded in terms of the tests in *HJ and HT* [2010] UKSC31, an issue raised in the respondent's decision. On all the evidence, the appeal should have gone the other way. The outcome should be reversed. Alternatively, the case should be remitted for a rehearing.

5. Mrs Farrell submitted that the judge was entitled to come to the finding he did, and by reference to the background evidence that clearly resulted in a risk of persecution. The discretion in the relationship in the UK arose from the particular reasons explained by the appellant's partner, not from the nature of the appellant's general behaviour. There had been support from other witnesses and in supporting letters for the way the appellant said she expressed herself in the UK. The witness whose evidence was quoted at paragraph 19 had been found to be a candid and considered witness who gave the most convincing evidence in the case. Those were sufficient reasons. Alternatively, on the basis of the country background information provided by the respondent and quoted at paragraph 19 of the determination, even if she were not found to be "an *outspoken* bisexual" the situation for LGBT persons in Nigeria is so dire that protection was merited in any event.

6. Mrs O'Brien in response said that the evidence provided by the respondent and cited at paragraph 19 does not serve to provide protection for all LGBT persons from Nigeria. As to the interpretation of paragraph 19 offered by Mrs Farrell, she submitted that the two sentences were not written so as to be read in the way suggested.

7. I reserved my determination.

8. I do not accept the submission that the background evidence is such that all LGBT persons from Nigeria are entitled to protection.

9. It is hardly surprising that the respondent was loath to accept the appellant's claim, coming after the lengthy and unedifying immigration history set out in the papers on file. On the merits of that claim, the judge recognised considerable force in the respondent's criticisms (paragraph 18). He declined to accept the appellant's claims regarding the results of her bisexuality while she was in Nigeria. He then went on to note various supporting evidence, the most convincing of which was from Ms PA. Paragraph 19 includes the following:

> "The appellant is now in a relationship with a female partner albeit a discreet one. As Ms PA states at paragraph 12 of her written statement:
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> > "For me she is inspiring about how loud and open she is talking about her sexuality and clearly she could not live as an openly bisexual woman in Nigeria.""

10. Mrs O'Brien contended that those two sentences do not sit well together, that they do not justify the finding at paragraph 20, and that it has no other underpinning. She submitted that to bear the interpretation sought by Mrs Farrell, the two sentences would have to be run together "... a discreet one, but as Ms PA states ..."

11. The question is whether the judge has given legally adequate reasons to support the conclusion at paragraph 20. He has carefully considered what goes against that conclusion. He recites some of the support for it at paragraph 18, and explains why he accepts that the appellant is indeed bisexual. There is rather less to support the conclusion that she would live as an openly bisexual woman in Nigeria, but that material is there, from an individual witness found to be particularly impressive, and in supporting letters. The case may, on the face of it, have been "touch and go", such that another judge might well have concluded differently. However, the judge had the advantage of hearing from the appellant and her two witnesses - her partner FA, and Ms FA. I do not think that the SSHD shows that the judge failed either to resolve the issue before him or to give legally adequate reasons for coming down on the side which he did.

12. The determination of the First-tier Tribunal shall stand.

Upper Tribunal Judge Macleman

5 February 2016