Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06367/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 2 May 2018

Decision & Reasons Promulgated
On: 8 May 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

[G N]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Moriarty, instructed by Luqmani Thompson & Partners Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Uganda born on [ ] 1965. She entered the UK clandestinely on 18 May 2014 and claimed asylum on 20 December 2016. Her claim was refused on 20 June 2017 and she appealed against that decision. Her appeal was heard in the First-tier Tribunal on 3 October 2017 and dismissed in a decision promulgated on 17 October 2017. She has been given permission to appeal against the decision of First-tier Tribunal.

2. The appellant's asylum claim was made on the basis that she was lesbian and feared persecution in Uganda because of her sexuality. She claimed that

she realised her sexual orientation in 1979 when aged 15 after sharing a bed with a girl, [J], at boarding school, and started a secret relationship with [J] which lasted for several years. She was expelled from school when caught with a gay magazine. She started a relationship with a man, [V], in 1997/98 in order to hide her sexuality and they had a son together in October 1999. Her family wanted her to marry [V] and burned her when she refused. [V] became violent towards her and poisoned her. In 2003 [V] found out about her relationship with [J] and reported her to the police. Her family disowned her and the local council evicted her from her village. She went to live with her cousin and later moved to Kampala. In July 2010 she was attacked at a wedding party because of her sexuality. She met a woman, [A], when working in Kampala and was in a relationship with her for several years. [A] arranged for her to come to the UK and care for an elderly man and she worked for him when she arrived here. He did not allow her to leave his home and threatened her with return to Uganda. She remained with him until he died of renal failure in August 2016, after which his friend took her in. She would be imprisoned or killed if she returned to Uganda.

3. The respondent, in refusing the appellant's claim, did not accept that she was lesbian and did not accept that she had problems in Uganda. The respondent considered that she would be at no risk on return to Uganda and that her removal would not breach her human rights.

4. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Grant on 3 October 2017. The judge heard from the appellant and three witnesses and recorded her claim to be in a relationship in the UK with a woman named [E] who was not present at the hearing. The judge did not accept that the appellant was lesbian, finding that she was not a credible witness who had told a "pack of lies". The judge did not accept the appellant's account of being locked in by the elderly man for whom she worked in the UK and did not accept that she was a victim of trafficking. The judge considered that the appellant had fabricated her claim and had tried to gain status by 'jumping on to "the gay bandwagon"'. She dismissed the appeal on the basis that the appellant was at no risk on return to Uganda and that her removal would not breach her human rights.

5. The appellant sought permission to appeal the judge's decision on the following grounds: Firstly, that the judge's adverse findings, arising from the fact that the appellant was not arrested in 2003, were contrary to the country information at the relevant time and failed to take account of the deterioration in the treatment of gay people in Uganda since that time. Secondly, that the judge failed to provide adequate reasons for rejecting the appellant's account of her background and experiences of sexuality in Uganda since 1979. Thirdly, that the judge had applied the wrong standard of proof by requiring certainty in relation to the appellant's sexuality. Fourthly, that the judge's reference to jumping on the "gay bandwagon" gave the appearance of bias. Fifthly, that the judge failed to give adequate reasons for rejecting the evidence of the witnesses.

6. Permission was initially refused in the First-tier Tribunal, but was subsequently granted in the Upper Tribunal on a renewed application, primarily on the question of whether the expression “jumping onto the gay bandwagon” left an impression of bias on a fair-minded observer.

Appeal hearing

7. Mr Moriarty confirmed that the main ground of appeal was in relation to bias but submitted that the other grounds flowed into that ground. The expression “jumping on to the gay bandwagon” was inappropriate and unnecessary and a fair minded observer, reading that together with the judge’s reference to the only person knowing for certain that the appellant was gay would be a lesbian partner, would think that the judge was biased. The judge failed to analyse and give weight to the evidence supporting the appellant’s claim. She relied on the current situation in Uganda without giving consideration to the objective evidence of the situation in 2003 and her findings were inconsistent with the relevant country guidance. A fair-minded observer may say that the judge took the refusal letter as her starting pint and rejected the appellant’s evidence without giving it proper consideration.

8. Mr Wilding accepted that the expression was inappropriate but submitted that it was not indicative of bias as the judge had already made her findings of fact and had already come to her conclusions on credibility. The judge was well aware of the correct standard of proof and was not looking for certainty. She considered the evidence of the witnesses. There was nothing to lead a fair minded observer to consider that the appellant was treated unfairly. Mr Wilding submitted that the judge’s findings were not inconsistent with the background information relating to the situation in Uganda in 2003. The judge was entitled to reach the adverse conclusions that she did and there were no material errors of law in her decision.

Consideration and findings

9. In the case of Alubankudi (Appearance of bias) [2015] UKUT 542, the President confirmed that the relevant test in relation to apparent bias was that set out in Magill v. Porter [2001] UKHL 67 at [103]:

> "*The question is whether the fair minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was bias.*"

10. The circumstances in the appellant’s case are similar to those in Alubankudi, in so far as both cases involve an inappropriate and unnecessary remark made by the judge in the decision. As with the case of Alubankudi, it seems to me that, whilst the judge’s use of the offending expression was unfortunate and inappropriate, it was not indicative of bias.

11. In line with the approach taken in Alubankudi, in particular at [10], I have considered the matter as a hypothetical fair minded, reasonable and properly informed observer. The hypothetical observer would, in this case, find no basis for concluding that this was a judge who had any predisposition against

persons such as the appellant but would find that this was a judge whose decision, read as whole, contained a full recording and assessment of the relevant evidence and cogent reasoning on that evidence. I do not agree with Mr Moriarty that the judge's observation at [29], that the only person who would know of the appellant's sexuality for certain would be a lesbian partner, was a requirement for evidence of same sex activity or demonstrated the application of a higher standard of proof by the judge. I agree with Mr Wilding that the judge was not looking for certainty or requiring corroboration, but was well aware of the requisite standard of proof and was simply commenting that it was only a partner who would be in the position of confirming sexuality and that there was therefore a limit to the weight which could be afforded to the evidence of a witness such as Deacon Ferguson. Accordingly I find no merit in the suggestion that the judge's use of the word "certain" contributed to a perception of bias.

12. Neither do I find any merit in the assertion that the judge failed to give consideration to the evidence produced in support of the appeal. The judge set out the evidence of the witnesses and clearly had full regard to that evidence. Mr [Ma]'s evidence, as set out in his witness statement, was a confirmation of what the appellant had told him and the judge noted the limitations of that evidence at [27]. In so far as Mr [Ma]'s evidence related to the appellant's living and working relationship with Mr [Mu], it is clear that the judge did not accept the appellant's account in that regard and she provided full reasons for her conclusion at [26]. The appellant summarised the evidence of [CK] at [7] and, whilst she did not make specific findings on it, it is plain from his statement that it was little more than a confirmation of what the appellant had told him. The judge provided a more detailed analysis of the evidence of Deacon Ferguson and provided cogent reasons for according her evidence the weight that she did.

13. As for the assertion that the judge's findings at [23] in relation to events in 2003 were inconsistent with the background evidence of the situation at that time, I am in agreement with Mr Wilding that the matter was not as clear cut as the grounds suggest. It is clear from the objective evidence pointed out by Mr Wilding, namely the Finnish Immigration Service report, at pages B1 to B3, that homosexuality was criminalised in Uganda, and the judge was accordingly entitled to draw the inferences that she did at [23] and [28] from the lack of any repercussions following the appellant's husband's report to the police, irrespective of the findings on risk of persecution in JM (homosexuality risk) Uganda CG [2008] UKAIT 00065.

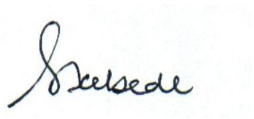
14. It is particularly relevant to take account of the fact that the judge's reasons for finding the appellant not to be a credible witness were based not only upon those matters which she addressed in detail at [25] to [28], as discussed above, but also upon the numerous, significant and material inconsistencies and discrepancies in the appellant's accounts to which she referred at [24]. The judge did not elaborate upon those matters due to the focus of the appellant's counsel's submissions being on the appellant's experiences in the UK, but it is clear that she was referring to the matters mentioned at [13] which were highlighted in the refusal letter at [26] to [41]

and which included wholly inconsistent accounts given by the appellant about her realisation of her sexuality and her past relationships. The judge was fully entitled to find the appellant's claim as to her sexuality and her experiences arising from her claimed sexuality to be significantly undermined by those matters and I am entirely satisfied that a hypothetical fair minded, reasonable and properly informed observer would have no hesitation in concluding that the judge's adverse credibility findings did not derive from any bias but from sound reasoning which was fully justified on the evidence before her.

15. For all of these reasons I find no merit in the suggestion that there was any bias on the part of the judge, apparent or otherwise. I agree with Mr Wilding that the judge's unfortunate comment at [29] did not form any part of her findings of fact or her reasoning but was an inappropriate observation following the event. It is clear that the appellant had a full and fair hearing and was given every opportunity to present her case. Accordingly I find no merit in the challenge based on bias and unfairness and find that the judge was fully entitled to reach the conclusions that she did and to make the decision that she did. I find no errors of law in the judge's decision and I uphold the decision.

DECISION

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.



Signed
Upper Tribunal Judge Kebede Dated: 2 May 2018