



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

Appeal Number: PA/06306/2018

THE IMMIGRATION ACTS

Heard at Field House

On 21 December 2018

**Decision & Reasons
Promulgated**

On 7 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**N S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Capel of Counsel

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Zambia. She was born on 13 August 1970.
2. She appealed against the respondent's decision dated 27 March 2018 to refuse her asylum, humanitarian protection and on human rights grounds.
3. Judge Shore (the judge) dismissed the appeal in a decision promulgated on 23 July 2018. He did not find the appellant to be a

credible witness, that she would not be at risk on return and that the respondent's decision was proportionate.

4. The grounds appeared to have been prepared by the appellant. The grounds repeated the appellant's claim, that she is a lesbian and fears for her life in Zambia.
5. Designated Judge McCarthy granted permission to appeal on 12 November 2018. Inter alia, he said the following:
 4. *The original grounds of application have been amended by the appellant's solicitors, whom she instructed after being detained in September 2018. The grounds allege that Judge Shore erred in her credibility assessment by misunderstanding the law in Zambia, and by drawing adverse inferences from issues without giving adequate reasons.*
 5. *I find it is arguable that Judge Shore erred at [84.1] by finding at [84.1] that homosexuality was not proscribed in Zambia until 2010 when the country information shows it has been part of the criminal code since 1964. This raises a serious concern as to whether Judge Shore placed the appellant's accounts in their proper context. Since many of this findings that the appellant is not credible focus on not believing her account of not disclosing her sexual orientation to her family, it is arguable that this error may undermine the entirety of the credibility assessment".*
6. There was no Rule 24 response.

Submissions on Error of Law

7. Ms Capel relied upon the grounds. The judge had misunderstood the evidence. A mistake of fact on the part of the appellant undermined her credibility in the eyes of the judge. Mr Lindsay accepted the judge had erred but submitted such error was not material.

Conclusion on Error of Law

8. The judge commenced his credibility findings at [84] of his decision. The judge made comprehensive adverse credibility findings based upon the appellant's claim that she was sure of her sexuality at the age of 18 in 1988 but that given it was another 22 years before homosexuality was made illegal in Zambia, the judge found it unlikely that the appellant did nothing whatsoever to express her sexuality to anyone in the 22 year period between 1998 and 2010. The judge said at [27] that homosexuality became illegal in Zambia in 2010. The true situation is rather different as the country information indicates that homosexuality was part of the Criminal Code since 1964. That is significant because the foundation of the judge's adverse credibility

findings was that at a time when he wrongly understood homosexuality not to be illegal in Zambia, notwithstanding social and religious pressure on the appellant not to express her sexuality, she would inevitably have done so and the fact that she did not do so lacked credibility. See [84.1].

9. There was information in the appellant's bundle, inter alia comprising a Human Rights Watch of July 2016. At p31 of the bundle it said inter alia:

"In 2005, Zambia amended its Penal Code, replacing a British colonial era law that had penalised same-sex conduct with up to fourteen years in prison with a new law that provides for fifteen years to life in prison for 'carnal knowledge of any person against the order of nature'".

10. Such fundamental error has infected the rest of the judge's adverse credibility findings, thereby making them unsafe.

Notice of Decision

11. The judge's decision contains material errors of law, is set aside and will be re-made in the First-tier following a de novo hearing.

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 him 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 30 January 2019

Deputy Upper Tribunal Judge Peart