Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11600/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 26 APRIL 2019	**On 3 JULY 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

SHARON [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Holmes, instructed by Greater Manchester Immigration
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 1 November 1988 and is a female citizen of Uganda. She appealed to the First-tier Tribunal against the decision of the Secretary of State dated 14 September 2018 to refuse to grant her international protection. The First-tier Tribunal, in a decision promulgated on 29 November 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant claims that she is a lesbian. The judge did not believe her account including her claim that she had been in a same-sex relationship

when at school in Uganda. The judge found that she would not face any real risk as a gay woman in Uganda nor would she be perceived by third parties as a gay woman.

3. I shall deal first with the matters raised not in the grounds but by Judge Bludell, who granted permission to appeal. At [4], he writes that 'I consider it strongly arguable that [the judge] … erred by inverting the standard of proof. The question was whether the appellant's account was reasonably likely to be true, not whether it was reasonably likely to be untrue.'

4. Judge Blundell is here referring to the decision at [53], [54] and [56]. I shall deal with [56] below at [8]. The judge's findings in the remaining paragraphs are, I acknowledge, poorly expressed. The judge found it 'reasonably likely that [the appellant and her partner, J] would both have tried leave Uganda' and that it was 'reasonably likely that the appellant would have applied for a Visa for herself and J to come to the UK if their lives were at risk.' The appellant argues now that these findings are not only speculative but, in effect, reverse the burden of proof. Mr Bates, who appeared for the Secretary of State before the Upper Tribunal, submitted that the judge had not reversed the burden of proof (which he had stated correctly at [6]) and that the appellant was complaining of matters of form, rather than substance. I agree. I do not find that the judge has carried out the credibility analysis by seeking to determine whether the appellant's account was reasonably likely to be untrue. The problem lies only in the convoluted form of expression, not in the substance of the findings. Indeed, his findings would not have been controversial had he expressed them in the negative, that is, finding that it was not reasonably likely that the appellant would have travelled to the United Kingdom without J and that it was not reasonably likely the appellant would have delayed leaving Uganda after the grant of her visa. It is not for the Upper Tribunal to clarify or explain the First-tier Tribunal's decision but I find the meaning of the judge's analysis is tolerably clear to any reader, including the appellant.

5. The grounds challenge the judge's credibility analysis. The appellant had claimed that both the school and her father had found out that she was in a same-sex relationship at school. The appellant had been expelled from school but had continued to live at home with her father. The judge found [47] that the 'fact the appellant lived with her father two years persuades me he did not find out about the same-sex relationship the appellant was involved in.' The appellant claims that she was never asked for an explanation as to why her father, who did not prove of her relationship, had allowed her to carry on living at home. Had she been asked, the appellant would have told the judge that she believed her father considered that he could control her behaviour if she was living at home.

6. I find that it would have been helpful if the judge had raised his concerns regarding the appellant continuing to live at her father's home in the course of the hearing. The question does not appear to have arisen previously, including in the refusal letter. However, the question is

whether the judge's error, if amounts to such, was material to the outcome of the appeal. That the appellant was living at father's home forms part of the background of the remainder of her account. In October 2016, the appellant claimed that the father had visited her (after they had ceased living in the same house) with two policemen from whom the appellant had managed to make her escape. That visit was prompted by the appellants partner's brother having seen photographs of the appellant and her partner on the partner's telephone in October 2016. The appellant's relationship with her partner (J) had started in October 2015. The chronology is important; I do not find that the judge's assumption that the appellant had lived with her father for a period after she had been expelled from school allegedly on account of her lesbianism necessarily undermines the remainder of the appellant's account or contributed to the judge finding that the appellant was not a reliable witness. The judge does not say that he disbelieved the appellant's claim that she had lived with her father only he claim that the father knew about her lesbian affair at school. The father's knowledge or lack of it are wholly unconnected to the subsequent difficulties (arising from the photograph) which the appellant claims she experienced. Moreover, the judge's finding at [47] did not lead him to find that subsequent events in the appellant's account did not occur. To that extent, the effect of the judge's finding was entirely neutral as regards the outcome of his credibility analysis. It is an observation which can be removed from the analysis without affecting the judge's remaining findings in any way.

7. At [54], the judge found that it was reasonably likely that the appellant would have left as soon as she obtained her visa to travel to the United Kingdom. The fact that the appellant delayed for 20 days was found by the judge to undermine her credibility. Again, the appellant submits that, had she been asked, she would have provided a reason for her delay. However, I find of the judge made a finding of fact available to him on the evidence. The appellant claimed her life was in danger; her written and oral evidence should have provided a full and detailed chronology of events.

8. At [56], the judge observed that the appellant claimed that she had paid an agent to complete her visa application form. The judge noted that the form contained some correct details as well as mistakes. The judge was not 'persuaded that the appellant paid an agent who inputted some correct and some incorrect details into the application form.' The judge found that it was reasonably likely that the information in the visa application form is correct that the appellant had been living with her husband in Uganda before she left, as stated in the form. The appellant claims at this point was never put to the her in cross-examination. The explanation now provided is that, although the appellant had given some information to the agent by telephone, the agent had also 'invented other information.' That explanation is not materially different from the evidence upon which the judge made his finding. If the contents of the form were wholly the invention of the agent, then it is highly unlikely that the form would have contained any accurate details; it follows that the appellant

must have provided some accurate information to the agent. The judge simply did not believe that the agent had invented some of the details. I do not find that the judge acted unfairly as asserted in the grounds or that his findings are wrong in law.

9. At [60], the judge considered a letter from Philip Jones, who facilitates an LGBT asylum support group. The appellant had attended the group since September 2018. She had entered the United Kingdom in October 2017. The judge found that the delay in the appellant attending LGBT events indicated that she had 'visited the group to support an asylum claim that is not true.' Once again, the appellant complains this point was never put to her in cross-examination. The appellant now claims that she moved around the country and therefore was in no position to attend the group earlier. The judge's point is that the appellant had not been involved in any LGBT activities anywhere in the United Kingdom for a year after her arrival. That was a finding available to the judge on the evidence before him. Viewed in the context of all the remaining evidence, is not unreasonable for the judge to find that the appellant had attended the group only after making her claim for asylum and only with a view to lending support to that claim.

10. Grounds three and four are, as Judge Blundell observed, nothing more than a disagreement with findings which were available to the judge on the evidence which was before the Tribunal. The grounds are consequently without merit.

11. In the circumstances, this appeal is dismissed.

Notice of Decision

This appeal is dismissed.

Signed Date 2 JUNE 2019

Upper Tribunal Judge Lane