



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

Appeal Number: HU/06263/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 26 November 2021**

**Decision & Reasons Promulgated
On 1 November 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MS KRISTINE CAMILLE ESCALERRA ARGAO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Miah, Sony Sadaf Haroon Solicitors

For the Respondent: Ms Susana Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Lingam promulgated on 21 June 2021 dismissing her appeal against the decision of the Secretary of State made to refuse her human rights claim subsequent on a refusal for a claim under paragraph 276ADE and/or Article 8 of the Human Rights Convention.
2. The core of the appellant's claim and this is not in dispute is that she is a lesbian and is from the Philippines. Her claim is twofold. First that she is at risk in the Philippines on account of her sexuality and as in and in part of that it would be difficult for her to integrate again into the Philippine

society having lived openly as a lesbian in the United Kingdom. It is also part of her case that she is in a relationship with another woman who is also as I understand it from the Philippines although she has the right to remain in the United Kingdom under EEA provisions.

3. It is I think sensible to record at this point that the appellant did not formerly claim asylum. That is a matter for her. It may be that she did not think that the level of difficulty she faced in the Philippines was sufficient to engage persecution but it does of course not necessarily follow that it would not be difficult for her to integrate on account of her sexuality.
4. The Secretary of State did not accept the appellant's case although did accept that she is a lesbian, it was not accepted that she is in a relationship as claimed or that there would be insurmountable obstacles to her relocating back to the Philippines. The terms of the disagreement between the parties are set out helpfully in paragraphs 32 and 33 of the First-tier Tribunal's decision. The judge did not accept that the appellant was at risk in the Philippines on account of her sexuality although accepting that the situation for lesbians and gay people is not ideal. The judge also heard evidence from the appellant's partner and concluded for the reasons set out in the decision that they were not genuinely in a relationship. She concluded that the appellant had not demonstrated a credible fear on the basis of discrimination on the basis of her sexuality and that paragraph 276ADE was not made out. The judge also concluded she would not be at risk of persecution and thus her claims under Articles 2 and 3 fell. She then went on to consider the appellant's private life with respect to Article 8, concluding that it was not engaged.
5. The appellant sought permission to appeal on a number of grounds but as is accepted, the only arguable ground is that the Tribunal erred in failing to make clear findings as to whether the appellant and her partner are in a genuine and subsisting relationship. It is submitted that the judge had failed properly to apply the relevant case law set out in Goudey [2012] UKUT 00041 and Naz subsisting marriage standard of proof Pakistan [2012] UKUT 40 and that the assessment of credibility was flawed, this being inexplicable in the light of the finding that the partner's business had been named after the appellant and her partner.
6. In approaching this decision I remind myself that an Appellate Tribunal should be hesitant before overturning a finding of fact on credibility or findings reached by a lower Tribunal which had the advantage of hearing and seeing the appellant and other witnesses give evidence. There does not appear to be any criticism of the judge's recording of the evidence which is set out in some detail between paragraphs 8 to 20. I do not find the decision in Goudey to be of particular assistance in this case given that the factual situation in that case was different. In that case the couple were not living together and it was an absence of evidence of contact between the parties.

7. The issue as the judge characterises it is one of credibility and the judge gave a number of reasons as to why she did not find the appellant credible in respect of her claim that she left home to avoid being targeted for her sexuality and considered also there had been exaggeration as to why; and, as set out at paragraph 42. That said, there is in this case the evidence of both parties to the claimed relationship. Much of what is said at paragraph 45 involves the discussion about in effect as to how someone displays their sexuality or characterises it. Much is put on an apparent inconsistency in the appellant's evidence that she had not dated men and indeed has been living openly as a lesbian since 2009, yet there is a letter of support from a Miss Petallana which describes difficulties in the relationship between the appellant and her former partner and that the appellant had tried dating the opposite sex but did not really find true happiness. The first observation of course is that Miss Petallana was not there to give evidence and to be cross-examined or to explain why she thought that this was the case. But the reasoning at paragraph 45 goes well beyond that.
8. The judge appears to have approached the evidence with a somewhat rigid view of sexuality and appears to have required at points the witness or that is the partner to have asked certain things. It is somewhat strange to find that adverse credibility findings could be taken from a failure of the partner not to query the appellant's past activities. It is somewhat worrying to read that the judge writes "her attempt to claim she is against labelling a person goes against the gay community that regularly campaigns very neat profile. Her explanation is contrary to the gay community image at large". With all due respect to the judge this is improper stereotyping. It is not an objective way of assessing evidence; on the contrary it is entirely subjective and the judge is putting her own views forward as to how people would react and her perception of how the gay community is.
9. Taking these factors into account I find that doubt is cast on the credibility finding. I have some doubt also that the judge's assessment at paragraph 46 as regards the appellant and her partner's explanations as to when they had moved was a fair assessment of the evidence. The judge appearing to assume that there would have been a fixed date but of course it is entirely possible for people to end up living together, spending more and more time at one place, rather than another, but that is not a matter of great weight. It is unclear also why the appellant's credibility is criticised at paragraph 47. In the circumstances of where the appellant had to obtain her passport from the Home Office and had to have it renewed it is understandable that her solicitor would be involved to some extent and I accept that there is nothing unreasonable in her landlord wanting to see a passport, given the restrictions on renting that exist. I do not understand what "prevaricating" meant in these circumstances, and the judge erred in considering that appellant is working illegally and that joint bills would go towards the joint business activity, rather than a claim to live as a gay couple. That is I consider speculative.

10. Taking all these factors into account and viewing the evidence as a whole, that the assessment of credibility in this case is fundamentally flawed such that it is unsafe, that the findings with respect to the relationship are unsafe and that therefore the decision falls to be set aside, given the very narrow basis on which the Article 8 issue was considered. It is in my view material because had the judge found that there was a genuine and subsisting relationship the entire approach to Article 8 would have been different.
11. For these reasons therefore I find that the decision of the First-tier Tribunal involving the making of an error of law and I set it aside. Given that the error in this case goes to credibility it would be necessary to remake the case as a whole and to have an extensive if not total remaking of the appeal and for these reasons I consider that it is entirely appropriate to remit it to the First-tier Tribunal with none of the findings of fact which were not in dispute being preserved.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the appeal to the First-tier Tribunal for a fresh decision on all matters.
3. No anonymity direction is made.

Signed

Date 1 November 2022

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul