



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

Case No: UI-2023-005005  
First-tier Tribunal No: PA/51330/2022

**THE IMMIGRATION ACTS**

**Decisions and Reasons issued**

**On 7<sup>th</sup> of March 2024**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**Ms J A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Jacobs, Counsel  
(instructed by Hackney Law Centre)

For the Respondent: Ms A Ahmed, Senior Home Office Presenting  
Officer

**Heard at FIELD HOUSE on 23 February 2024**

**DECISION AND REASONS**

## **Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

### *Introduction*

1. The Appellant appealed with permission granted by Deputy Upper Tribunal Judge Shepherd on 9 January 2024, against the decision of First-tier Tribunal Judge Bart-Stewart OBE who had dismissed the appeal of the Appellant against the refusal of her protection and human rights claims. The decision and reasons was promulgated on 2 October 2023.
2. The Appellant is a national of Uganda, born on 28 August 1968. She entered in the United Kingdom on 3 March 2008 with a visit visa which she overstayed. Her first application for leave to remain outside the Immigration Rules was not made until 2 December 2011. It was refused on 3 July 2012 without right of appeal. Between 9 August 2012 and 24 July 2015 the Appellant made a series of further human rights applications, all of which were refused. An appeal was dismissed on 10 January 2014 by First-tier Tribunal Rothwell. On 3 October 2017 the Appellant claimed asylum. Her application was refused. Her appeal was eventually dismissed on 14 August 2019 by First-tier Tribunal Judge Courtney. Nevertheless the Appellant remained in the United Kingdom and made yet further submissions on 12 February 2021 which were the subject of the decision under appeal.
3. Judge Bart-Stewart recorded that the Appellant's human rights claim in 2013 was based on the Appellant's diagnosis of HIV+. Judge Rothwell had found that the Appellant had been raped following the death of her husband but had not thereby contracted HIV+. The Appellant was found not to be at risk from her late husband's family and would be able to access HIV+ treatment in Uganda where she had friends and a branch of her church. Although the Appellant had claimed to have had no children, she had a scar indicating that she had

given birth by caesarean section. Those findings were preserved in later appeals.

4. The case the Appellant advanced on 3 October 2017 was primarily on the basis of her same sex orientation. The Appellant claimed that she had been forced into marriage. She and her husband had adopted 4 children, having none of their own. She had formed a relationship with another woman, Christine, in 1991. After her husband died in 2006, his brother (an army colonel) demanded that she left her husband's property. In 2007 the Appellant said that she was gang raped by soldiers and wounded with knives. After her discharge from hospital, the Appellant went to stay with Christine, who arranged the Appellant's departure from Uganda. In 2012 Christine died after she was beaten when discovered in the company of a woman. The Appellant said that she had come out as lesbian in 2017 and had participated in LGBTQI groups and events in the United Kingdom.
5. Judge Bart-Stewart further recorded that Judge Courteney had found that the Appellant's long delay in claiming asylum detracted from her credibility. The judge found that the Appellant was not genuinely lesbian nor would she be perceived as lesbian in Uganda, whether by society at large or by the authorities. Judge Courteney found no reason to depart from previous judicial findings concerning the availability of treatment for HIV+ in Uganda. While it was recognised that the Appellant suffered from PTSD and major depression, the medical evidence was insufficient to justify a decision that it would breach her human rights to return her to Uganda.
6. Judge Bart-Stewart set out the substance of the further representations made on the Appellant's behalf. The latest medical report concluded that the Appellant was suffering from PTSD and moderate depression. There were 33 lesions consistent with the Appellant's attribution of their origin. There was no suicidal ideation nor records of previous attempts at self harm. The Appellant maintained that she would be persecuted in Uganda, her Article 8 ECHR rights would be breached and she would be unable to access the medical treatment she needed for her HIV+ status, PTSD and depression. She would face insurmountable obstacles.

7. Judge Bart-Stewart found that the Appellant was not lesbian and that the lesbian relationships she claimed to have had and to have were concocted to enhance her claim. The same applied to the Appellant's involvement with LGBTQI groups, which had been to bolster her asylum claim. The Appellant's rape and beating in Uganda had always been accepted and were not new matters. The Appellant had said the attack was about property. The evidence presented with the latest appeal did not warrant departing from the previous finding that the Appellant was not genuinely lesbian. She was not at risk over the property which she no longer held. The Appellant would not be perceived as lesbian in Uganda where she had adopted children as well as at least one biological child. The Appellant could access any medical treatment she needed in Uganda, including mental health services. The Appellant would be able to re-integrate in Uganda without any significant obstacles, as she had family and contacts there. Her removal would not be a disproportionate breach of Article 8 ECHR. Nor was there a real risk of suicide, an issue only raised at a late stage which had not been objectively supported. Hence the appeal was dismissed.
8. When granting permission to appeal, Deputy Upper Tribunal Judge Shepherd considered that it was arguable that Judge Bart-Stewart had failed to take into account the Appellant's mental health when considering her protection claim. The judge had arguably not engaged with the Appellant's mental health until examining the claim under paragraph 276ADE of the Immigration Rules. Less arguable was the separate submission made in the grounds that the judge had not applied anxious scrutiny nor made clear findings as to the credibility of the Appellant's witnesses.

### *Submissions*

9. Mr Jacobs for the Appellant relied on the grounds of onwards appeal, the Upper Tribunal's grant of permission to appeal and his skeleton argument. Counsel submitted that Judge Bart-Stewart had failed to apply anxious scrutiny, give adequate reasons or take into account relevant considerations. The judge had reached the same conclusions as Judge Courtney which indicated that the

new evidence had not been properly assessed. The impact of the traumatic experiences which the Appellant had suffered in Uganda on the Appellant's ability to recall events accurately had not been taken into account. The judge had not noted that the Appellant had been more forthcoming when she was interviewed by a female psychiatrist, nor that the Appellant had been trying to recall events of 11 years previously. The judge had not considered the medical evidence with the anxious scrutiny required, nor that the Appellant was a vulnerable witness, with depression and PTSD. Counsel submitted that the judge's mistaken approach had tainted all of her findings. The judge had given insufficient reasons for rejecting the Appellant's testimony. The judge had considered the medical evidence only in relation to the Article 8 ECHR claim.

10. The judge had further erred in her consideration of the witness evidence. Again anxious scrutiny had not been applied. The judge had failed to take account of the evidence which had been produced of same sex relations. The judge had overlooked the impact of the pandemic in terms of contact between the Appellant and her partner. The decision was wrong and should be set aside, so that the appeal could be reheard in the First-tier Tribunal by another judge.
11. Ms Ahmed for the Respondent submitted that none of the Appellant's grounds of appeal had been made out and no error of law had been shown. Raising sexual activity was a bad point and requiring such intrusive evidence was precisely the wrong approach in sexual orientation claims. The judge had carefully examined all of the evidence and had given adequate reasons for the adverse credibility findings she had reached: see, e.g., [30] of the decision where the evidence of the claimed partner was discussed.
12. Devaseelan\* [2002] UKIAT 702 applied and so the previous determination was correctly the judge's starting point. The judge found that there was no cogent or compelling evidence which justified a departure from the previous findings. The Appellant was in effect seeking to appeal Judge Courteney's decision through the vehicle of the error of law appeal. Judge Bart-Stewart had expressly recorded the additional evidence and had given it proper consideration. That included the various medical reports.

The Appellant had produced no evidence sufficient to rebut Judge Courtney's finding (based on Judge Rothwell's finding in 2014) that the Appellant had given birth to a child by caesarean section. There was no material error of law or reason to interfere with the judge's decision, which should stand.

13. Mr Jacobs in reply submitted that the evidence of physical relations was compelling evidence. Anxious scrutiny had not been given and it was erroneous to say that the evidence had been concocted. The Appellant's mental health had not been engaged with. Counsel went on to reiterate the points he had made earlier.

*No material error of law finding*

14. At the conclusion of submissions the tribunal reserved its reasoned decision, which now follows. The tribunal rejects all of the submissions as to material error of law made on behalf of the Appellant. In the tribunal's view, the errors asserted to exist in the decision are misconceived and are based on a selective and distorted reading of Judge Bart-Stewart's careful and comprehensive decision.
15. There was never any dispute that actual or perceived same sex orientation in Uganda creates a real risk of serious ill treatment or worse: see, e.g., [22] of Judge Bart-Stewart's decision. That was the same position in 2019 when Judge Courtney heard the Appellant's original asylum appeal. Judge Courtney found that the Appellant was not genuinely lesbian and hence faced no real risk of harm on return on that account: see [80] of her determination. Nor would the Appellant be unable to access treatment for HIV+ in Uganda, as was found by Judge Rothwell in 2014: see [92] of Judge Courtney's determination. The Appellant was not at risk of Article 3 ECHR suffering on account of her mental health: see [102] and [106] of the determination. The Appellant did not qualify for humanitarian protection. The Appellant's removal to Uganda would not be a disproportionate breach of her Article 8 ECHR rights. Judge Courtney's decision extended to 117 paragraphs over 27 pages. It was meticulous. There was no appeal. The findings reached by

Judge Courteney were properly Judge Bart-Stewart's starting point.

16. Ms Ahmed's submission that the grounds of appeal which challenged Judge Bart-Stewart's decision amounted to a collateral attack on Judge Courteney's decision had force. In any other jurisdiction the Appellant might well have been subject to restrictions as a vexatious litigant. She overstayed her visit visa in 2008 which had been issued to her on the basis of her declared intention to return to Uganda. She did not formulate any claim to remain in the United Kingdom until 2011. That claim, based on her HIV+ status, mental health and on her Article 8 ECHR private life, not on her claimed sexual orientation, had first been determined against her in 2014 by Judge Rothwell. There had been no appeal. Nevertheless the Appellant persisted in advancing those elements of her claim again and again. By the time the Appellant's appeal reached Judge Bart-Stewart the bundle of documents extended to 1000 pages. It is little wonder that the judge needed a month to prepare her decision, rather than the 10 working days which is the normal expectation in the First-tier Tribunal.
17. Determining appeals based on sexual orientation is never simple, even in a repeat application. Judge Bart-Stewart set out the basis on which she approached that issue, which was central to the claim: see [20], [21] and [23] of her decision:

"20. I have had regard to the UNHCR guidelines on international protection in respect of claims to refugee status based on sexual orientation and/or gender identity within the context of article 1a(2) of the 1951 Geneva Convention, the respondent's asylum policy instruction: sexual identity issues in the asylum claim and guidance in the case of HJ (Iran) and HT (Cameroon) (FC) v SSHD [2010] UKSC 31.

"21. I note the introduction to the UNHCR guidelines that the experiences of LGBTQI persons vary greatly and are strongly influenced by the cultural, economic, family, political, religious and social environment. The applicant's background may impact the way he or she expresses his or her sexual orientation and/or gender identity or may explain the reasons why he or she does not live openly as

LGBTQI. It is important that decisions on LGBTQI refugee claims are not based on superficial understanding of the experiences of LGBTQI persons, or erroneous, culturally inappropriate or stereotypical assumptions.

“22. I take into account in my approach to the appellant’s case that though a possible confirmatory indicator, there is no requirement that a LGBTQI person does not have to have been in a relationship to so identify or be perceived as LGBTQI... [In] BK (Afghanistan) v SSHD [2019] EWCA Civ 1385 the Court of Appeal held that a previous tribunal’s decision was ‘a starting point, rather than determinative of the issue’.”

It is difficult to see how that summary could be improved on and it demonstrates not simply an informed, open-minded approach but also the anxious scrutiny and reflection applied through the judge’s decision.

18. Between [24] and [34] of her decision Judge Bart-Stewart conducted a painstaking analysis of the evidence presented concerning the Appellant’s claimed sexual orientation, including the claimed physical aspects. That analysis was performed on the express basis that the Appellant was a vulnerable witness who was not giving live evidence because of her mental state: see [2], [9] and [17] of the judge’s decision. It was understood that the Appellant’s witness statement had been prepared under favourable conditions that reflected her vulnerability. The submission that the judge failed to take account of the claimed reasons for such vulnerability when assessing the reliability and credibility of the Appellant’s evidence is unfounded and unsustainable. The Appellant’s mental state was put forward as an explanation of the various obvious deficiencies in her evidence, and as a reason for departing from Judge Courteney’s adverse findings. It was plainly an important issue for the judge to determine. At [26] the judge indicated that she was unable to accept that the Appellant’s mental health difficulties explained the serious inconsistencies and discrepancies in various parts of her evidence. It is mistaken to suggest that the judge only considered the Appellant’s mental health when addressing the human rights elements of her case. The judge made it clear that vulnerability applied to the whole appeal. In passing, it is also perhaps worthy of note that the Appellant’s claims in their various forms have been



dismissed by three separate female judges, so that the Appellant has had whatever benefit that may have conferred when giving evidence.

19. It is mistaken and untenable to assert that the judge failed to consider the evidence of the live witnesses properly and/or to give adequate reasons for giving little or no weight to their evidence. The judge gave specific consideration to the evidence of each witness, alongside consideration of the documents produced. The judge also examined the evidence given by the expert witnesses and what they recorded as having been told by the Appellant: see [36] of the decision, which addresses the whole case. In no sense did Judge Bart-Stewart simply adopt Judge Courteney's findings. The Appellant's case was fully examined in the light of the new evidence. The judge found that the expert's reports provided an insufficient explanation for the deficiencies in the Appellant's evidence, and gave sound reasons for such findings.
20. The tribunal thus finds that neither of the grounds of appeal advanced on the Appellant's behalf has any merit. Judge Bart-Stewart's decision is a thorough, well-structured and logical analysis of the Appellant's renewed claim. The suggestion that anxious scrutiny was not applied by the very experienced judge plainly has no substance and is little short of deplorable. The fact is that the elaborate repackaging of the Appellant's 2017 case failed to improve it.
21. Indeed for some the present appeal, coming on top of two previous dismissed appeals as well as other failed applications to the Home Office, may recall Ward, LJ's opening remarks in TM [2012] EWCA Civ 9: "This is another of those frustrating appeals which characterise - and, some may even think, disfigure - certain aspects of the work in the immigration field. Here we have one of those whirligig cases where an asylum seeker goes up and down on the merry-go-round leaving one wondering when the music will ever stop. It is a typical case where asylum was refused years ago but endless fresh claims clog the process of removal."
22. In conclusion, the grounds advanced on the Appellant's behalf were at best an expression of unwillingness to accept the judge's decision on the elaborately repackaged

repeat claim. The tribunal finds that there were no material errors of law in Judge Bart-Stewart's decision. The onwards appeal is dismissed.

**Notice of decision**

The appeal is dismissed\_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

**Signed R J Manuell**

**Dated** 28 February 2024

**Deputy Upper Tribunal Judge Manuell**