



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

Appeal Number: AA/00751/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 8 July 2013**

**Date sent  
On 10 July 2013**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**TRACY CHANDA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr T D Ruddy, of Jain Neil & Ruddy, Solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) The appellant is a citizen of Zambia, born on 2 February 1992. She says she is at risk of persecution on return to Zambia because she is a lesbian.
- 2) The respondent refused the claim for reasons explained in a letter dated 22 November 2012.
- 3) First-tier Tribunal Judge Kempton dismissed the appellant's appeal by determination promulgated 11 March 2013. She did not find evidence from the appellant, from her mother, and from her alleged lesbian partner, Ardia Banzouzi, to be credible.
- 4) The appellant sought permission to appeal to the Upper Tribunal. The first ground is that the judge overlooked a concession made by the respondent's

representative that if found credible, the appellant would qualify for protection. The further grounds dispute the adverse credibility findings for wrongly identifying inconsistencies in the evidence; for failing to give the appellant the opportunity to respond to various points; and for inadequacy of reasoning.

- 5) On 3 April 2013, First-tier Tribunal Judge Easterman refused permission to appeal. The judge identified in the record of proceedings a note of the concession, but that did not effect the overall decision, as the appellant had not been found credible. The other grounds were thought to be no more than disagreement with adequately reasoned credibility findings.
- 6) On 24 April 2013, Upper Tribunal Judge Chalkley granted permission on a renewed application, made on the same grounds. It was thought that as the judge had not summarised the appellant's oral evidence it was not possible to identify the claimed inconsistencies referred to at paragraph 29 of the determination. While there seemed to be little merit in the other challenges, permission was not restricted.
- 7) Mr Ruddy said that the first category of challenge was that the judge overlooked the concession. (Mr Mullen was able to identify the making of the concession from the record on his file.) However, Mr Ruddy accepted that this was irrelevant unless other error was shown.
- 8) Mr Ruddy's second category of challenge was as to absence of fair notice, issues mentioned at paragraphs 3, 4 and 8 of the grounds.
- 9) The third category of error in the remaining grounds was inadequacy of assessment of the evidence, coupled with mistakes as to what the evidence actually was. Cumulatively, these were said to undermine the determination.
- 10) At paragraph 29, the judge says that there was an inconsistency in the appellant's evidence as to whether she had a row with the father of her child on 25, 26 or 27 December 2012. Mr Ruddy submitted that there was no such inconsistency. Both in her statement and at the hearing the appellant said that the row took place on Christmas Day. The judge failed at paragraph 35 to explain why the appellant's mother's evidence was rejected, and why she was thought to have been "pulling the strings all along". There was no explanation of why her evidence should be disregarded to that extent. At paragraph 36, the judge did not accept that the appellant frequented gay nightclubs. That was misleading, because the appellant never said that she did frequent gay night clubs. At paragraph 37, the judge found it bizarre that the appellant's partner, Ardia, began a lesbian relationship shortly after having a child, but there was no reason for finding that to be bizarre. Having had a child was not a factor which discredited the witness's evidence of being of lesbian orientation. At paragraph 40, the judge found it adverse that the appellant was diagnosed with chlamydia only in 2012, although she claimed to have had no sexual

relations with a man since the conception of her daughter towards the end of 2007. There was no reasoning for that conclusion. The judge went on to use very strong wording, saying, "I simply cannot believe a word that the appellant and her two witnesses have told me. It was quite the most extraordinary account of fabrication I have ever heard." There was nothing to justify such an extreme rejection of the evidence. Nothing emerged in cross-examination to discredit Ardia as a witness. The determination should be set aside and the case reheard in the First-tier Tribunal.

11) Mr Mullen accepted that there was nothing to show an inconsistency about whether the row with the father of the appellant's child was on 25, 26 or 27 December 2012. However, in the same paragraph the judge also founded on a much more significant discrepancy, over whether the appellant had an ongoing relationship with the father of her child man or whether the pregnancy was the result of a "one night stand". That was a good reason for rejecting her evidence. At paragraph 30, the judge explained in detail why she rejected evidence concerning an alleged previous lesbian partner of the appellant in Zambia. The judge got that right. There was no duty to put all matters which occurred to a judge when considering the evidence to the appellant for further comment. It had not been suggested that the appellant had any further responses to offer. Paragraph 31 disclosed in further detail that the appellant had maintained through her solicitors that she was in an ongoing relationship with the father of the child, contrary to her later claim that this was a one night stand. The appellant's mother was a thoroughly discredited witness through prior proceedings, and the judge was entitled to reject her evidence and to conclude that she was manipulating matters further in efforts to remain in the UK. At paragraph 36 the judge was entitled to find the appellant did not frequent gay night clubs, a matter of at least potential relevance. The judge was entitled to find evidence from Ardia about entering into the relationship with the appellant bizarre. When the paragraph was read as a whole, this was in the context of the appellant, despite being allegedly in a serious relationship with Ardia, knowing nothing about contact between Ardia's child and his father. The judge was entitled to conclude that there was not demonstrated to be a relationship or indeed that the appellant and Ardia even knew each other very well. Mr Mullen accepted that paragraph 40, relating to the chlamydia diagnosis, did not explain why any adverse inference followed. He said that was a minor element which could be excised, leaving the rest of the determination to stand. Paragraphs 42 and 43 contained good reasons for rejecting the evidence of the alleged relationship. Ardia's evidence as to the relationship had been vague, including lack of discussion of the future, and lack of knowledge of when they last went out as a couple.

12) Mr Ruddy in response submitted that in evidence it had not been explored what knowledge the appellant and Ardia had regarding the care of their respective children, or what the appellant knew of Ardia's child's contact with her father. The appellant had said that she was not aware of the extent of the child's contact with his father, not that she was unaware of the child care arrangements. The judge failed to provide a sufficient analysis of

why adverse conclusions were reached upon the whole evidence. Paragraph 40 could not simply be disregarded, because it was an example of the judge's insufficient justification of her conclusions throughout the determination.

- 13) I reserved my determination.
- 14) The judge overlooked the concession made. That was an error, but (as agreed) it is relevant only if the credibility conclusions must be set aside.
- 15) The points on which the appellant complains of not having had fair notice are of no substance. They are all observations of shortcomings in the evidence which the judge was entitled to make. Also, the appellant has not put forward any further proposed information or explanation bearing on these matters, without which there cannot be material error.
- 16) The plainest error identified is at paragraph 40. It is not explained why the late diagnosis of chlamydia yields an adverse credibility conclusion, and it is not a matter to be taken implicitly from judicial knowledge. The question is whether the determination remains adequate when that reason is taken out.
- 17) The rest of the challenges seek to make too much of such inaccuracies as can be found. The appellant may not have been inconsistent as to whether she had a row with the father of her child on 25, 26 or 27 December 2012 but she was plainly inconsistent as to whether she had a long term relationship or a one night stand with that person, a contradiction redolent of fabrication. The judge was entitled to find the evidence from the appellant and Ardia inadequate to establish that they had a genuine lesbian relationship, and she set out why that evidence, also crucial, was vague and unsatisfactory. The judge was entitled to reject the evidence from the appellant's mother, the starting point being that she was previously found to be a very untruthful witness.
- 18) Reading the determination fairly and as a whole it is an adequate explanation to the appellant of why her case failed.
- 19) The determination of the First-tier Tribunal shall stand.
- 20) No anonymity order has been requested or made.



9 July 2013

Judge of the Upper Tribunal