



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

Appeal Number: AA/01864/2015

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision & Reasons**

**On 14 March 2016**

**Promulgated**

**Prepared on 14 March 2016**

**On 19 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HOLMES**

**Between**

**N. G.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, instructed by Halliday Reeves Law Firm

For the Respondent: Mr Kingham, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of the Philippines who entered the UK lawfully.
2. On 13 October 2013 the Appellant claimed asylum on the basis of her sexuality, asserting that she was a lesbian who faced persecution on account of her sexuality if she returned to the Philippines, and who would through fear, feel unable to live in an openly lesbian relationship, which she would otherwise wish to do.
3. On 19 November 2014 the Respondent refused the asylum claim, and made a decision to remove her. The Respondent was not satisfied that

the Appellant was genuinely a lesbian as claimed since she had described herself as bisexual, or, that homosexuality was criminalised in the Philippines. Thus, even if there was a risk from the Appellant's own family, which was disputed, there was no reason why she should not enjoy state protection against criminal actions, or be able to internally relocate to avoid any individuals that she did not wish to associate with.

4. The Appellant's appeal against the removal decision was heard on 31 July 2015 and was allowed in a brief decision promulgated on 6 August 2015 by First Tier Tribunal Judge Heatherington.
5. The Respondent was granted permission to appeal the decision on 31 August 2015 by First Tier Tribunal Judge Nicholson on the basis it was arguable the Judge had failed to engage with the evidence concerning the ability of homosexuals to live in safety within the Philippines, and the relevant jurisprudence, so that arguably neither the issues of sufficiency of state protection, nor internal relocation were dealt with adequately within the decision, although they had been argued before him. Thus the matter comes before me.

#### Error of Law?

6. This is a very brief decision that both parties accept is deficient, although they disagree about the extent of that deficiency. Mr Kingham for the Respondent would plainly have liked to have been in a position to argue that the Judge had failed to engage with the Respondent's case upon the credibility of the claim to be a lesbian, as opposed to bisexual. Were it not for the way the grounds of appeal were drafted that could have been open to him, but the draftsman of the grounds failed to take that point, and so it is not.
7. The decision does however contain a series of findings of fact [32], which amount to an acceptance of the Appellant's account, and absent a challenge based upon either perversity, or a failure to provide adequate reasons as to why they have been made, they must stand.
8. In the light of those findings there were two limbs to the Appellant's appeal which needed to be considered. First, whether the Appellant currently faced a genuine risk of harm from anyone other than her mother – since as yet she did not claim to be perceived as a lesbian beyond her family circle, and her father was now deceased, and her family had expressed the desire to have nothing to do with her. If so, whether the risk from the family extended beyond the immediate home area. In any event whether there was adequate state protection against any criminal action they might undertake, and whether the risk of harm they posed could be avoided by internal relocation.
9. The second limb was whether the Appellant would ordinarily choose to live an openly lesbian lifestyle, and thus face a future risk of harm from members of the general population in the event that she sought to do so, and whether through fear of that risk she would feel unable to do so.
10. Whilst the Judge has listed as an annexe to his decision a number of extracts taken from the material placed before him by the Appellant, there is no analysis of their content to be found in the decision, and there is no attempt to analyse the content of any of the

material referred to by the Respondent in the course of her decision relevant to these issues. Thus, although the Judge did make findings concerning the risk to lesbians from the general population and from members of the police force (without apparently distinguishing between the actions of rogue officers and the attitude of the force as a whole), the decision fails to offer an adequate analysis of the evidence placed before him by both parties upon the issues he had to resolve, and thus it fails to adequately explain to the parties how he reached his decision.

11. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, as requested by the Respondent. In the circumstances of the appeal I am satisfied that this is the correct approach, and I note Ms Cleghorn does not seek to suggest otherwise. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012. Having reached that conclusion, with the agreement of the parties I make the following directions;
- i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. The findings of fact set out in paragraph 32 of the decision are preserved. The appeal is not to be listed before Judge Heatherington.
  - ii) A Tagalog interpreter is required for the hearing of the appeal.
  - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 1 April 2016.
  - iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

## **Decision**

12. The decision promulgated on 6 August 2015 did involve the making of an error of law sufficient to require it to be set aside and the appeal to be reheard. Accordingly the decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal with the following directions;
- i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. The findings of fact set out in paragraph 32 of the decision are preserved. The appeal is not to be listed before Judge Heatherington.
  - ii) A Tagalog interpreter is required for the hearing of the appeal.
  - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 1 April 2016.
  - iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes  
Dated 14 March 2016