



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

**Appeal Number: PA/01416/2020**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

Decision & Reasons  
Promulgated

On 17 November 2021

On 23 November 2021

Before

UT JUDGE MACLEMAN

Between

**J T**

Appellant

and

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

Respondent

For the Appellant: Mr A Heeps, of McGlashan MacKay, Solicitors

For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals against the decision of FtT Judge Komorowski, promulgated on 23 December 2020, on these grounds:

...

2. The Judge accepted that the appellant is [a lesbian] who has been subject to "corrective rape".

3. The Judge accepted that at [10] there is an anti-gay milieu in Namibia, although the frequency of such action was unclear, [11].

4. The Judge accepted that when in a safe place (the UK) she formed a same sex relationship with a partner, making it clear that is how she would wish to live her life.

5. The Judge [dismissed the appeal] because he did not accept her account of how she lived in the three years leading up to her departure from Namibia ("period A").

6. The Judge failed adequately to explain why absence of credible evidence regarding period A meant that the appellant was not at risk, standing the two findings above.

7. The Judge at [20] after listing a series of factors that undermined the claim regarding period A states this leads him to conclude they are “entirely destructive” ... “on this aspect” ...

8. The Judge failed to assess whether the aspects of the account he did accept were sufficient to make good the claim, shorn of matters he did not accept. That was an error of law.

9. ... the Judge failed to weigh the post-flight aspects ... with the risk identified ... as indicative of how she would wish to behave and whether that desire would be suppressed by a risk of persecution ...

10. The Judge had all the building blocks to allow the appeal but has been distracted by concerns about period A to the extent that he left relevant matters out of account ...

2. UT Judge Martin, in her capacity as an FtT Judge, granted permission:

It is arguable that having found the appellant to be a lesbian, that she was subject to corrective rape in Namibia and was living openly as a lesbian in the UK, the appeal ought to have been allowed and the adverse credibility finding [over period A] was inadequate as a reason to dismiss.

It is also arguable that the Judge failed adequately to consider how the appellant would behave, and why, if returned.

3. Mr Heeps relied upon the grounds and upon his further written submissions. The argument is that the Judge, having accepted the appellant’s sexual orientation and her same sex relationship and engagement with the LGBT community in the UK, failed to consider how she would behave on return, and why, which was difficult to follow given that the Judge also accepted at [24] “a significant incidence of homophobic violence in Namibia”. Mr Heeps suggested that “the building blocks were in place to allow the appeal” and the decision should be remade in the UT.

4. Mr Diwyncz said that there was “not a great deal he could object to” in the appellant’s line of argument. He took the view that on the favourable findings which were the contrary of the position taken in the refusal letter, and with which the respondent now raised no dispute, the adverse finding over period A, although it could not be criticised in itself, was insufficient to support the outcome. He acknowledged an absence of findings on how and why the appellant might modify her behaviour on return to Namibia, and that it was difficult to reconcile the finding of “a significant incidence of homophobic violence in Namibia” with absence of risk to the appellant. He agreed that if set aside, the findings of fact were all in place and the UT should proceed to remake the decision.

5. I indicated that appellant had shown error of law, such that the decision fell to be set aside, and that the outcome would be reversed.

6. The approach of *Hj (Iran)* [2010] UKSC 31, [2011] AC 596 is to be applied to the facts as now established. The appellant is lesbian; there is a real risk of persecution of an openly lesbian person in Namibia; if the appellant were to carry on her life in the relatively open way she does in the UK, she would be at risk; while it is likely she would modify her behaviour on return, a material reason for that would be the fear of persecution which might follow.
7. I am obliged to Mr Heeps for his lucid presentation of the case and to Mr Diwnycz for his fair and well-considered response.
8. The decision of the First-tier Tribunal is set aside. The appeal, as originally brought to the FtT, is allowed in terms of the Refugee Convention.
9. The FtT made an anonymity direction. There may be no ongoing need for one but as the matter was not addressed in the UT, anonymity is maintained herein.



17 November 2021  
UT Judge Macleman

#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.

