



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

R (on the application of NK ) v The Secretary of State for the Home Department IJR  
[2015] UKUT 00431 (IAC)

3 June 2015

**BEFORE**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**N K**

Applicant

**and**

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

Respondent

Ms B Asanovic, instructed by Sutovic & Hartigan Solicitors appeared on behalf of the Applicant.

Ms J Lean, instructed by the Treasury Solicitor appeared on behalf of the Respondent.

**JUDGMENT**

1. The applicant is a citizen of Cameroon. She claims that on return to Cameroon she would suffer persecution because she is a member of a social group as she is a lesbian and that that persecution would be not only from the state but from agents of persecution who include her husband and members of her family.

2. The applicant was born in February 1987. In 2008 she says that she kissed her cousin and thereafter her uncle having learned of this, she was raped. The following year she was married and then had one child. She was threatened by her husband that should she be found to be a lesbian he would take action against her. She formed a relationship, she claims, with a woman called C in June 2010 who she had met on a social media site. In February 2013 she left Cameroon with a visa which, as I understand it, was one for a steward on a ship rather than visit visa. She arrived in Britain on 10 February 2013. Once here she was told that that a photograph of her with C had been found by her family; she was threatened and she said that then she feared returning to Cameroon.

3. She made an application for asylum which was refused and the appeal was entered into the fast track system. The appeal was heard on 20 June 2013 before Judge A M Black and dismissed.

4. In her determination, at paragraphs 35 onwards, Judge Black placed weight on what she saw as the delay in claiming asylum, medical records at Harmondsworth which stated that the applicant was heterosexual and a number of other matters which led the judge to consider that the applicant's story of what had happened to her in Cameroon was implausible. Judge Black did not accept her claim that

she had contacted or joined the Movement for Justice. She noted that the applicant had claimed one relationship here but there was no elaboration on that.

5. Thereafter on 13 August, Lawrence Lupin instructed on behalf of the applicant, made submissions to the Secretary of State. They enclosed an arrest warrant and some email correspondence as well as a letter from Yoyo Yankam who was the Chairperson of the Afro-Asian community Integration Unit. That letter said that Mr Yankam had been making enquiries in Cameroon on behalf of the applicant and that he understood there was a police summons for the applicant and that police had attended her home. He referred to an email from the applicant's brother dated 10 August 2013. Thereafter it appears the applicant changed representatives to Messrs. Sutovic & Hartigan and they then wrote to the Secretary of State on 2 September referring to the correspondence to which I have just referred.

6. The further correspondence was considered by the Secretary of State who refused, in a letter of 2 September, to accept the correspondence as a fresh claim. Judicial review proceedings were then started and on 8 October 2013 permission on those was refused by Upper Tribunal Judge Rintoul.

7. Sutovic & Hartigan wrote a number of further letters to the Secretary of State throughout January of 2014 and the fresh claim in those letters led to a further refusal. When the second judicial review proceedings were issued they were again considered by Upper Tribunal Judge Rintoul and he granted permission.

8. The further submissions made included correspondence from Karen McCarthy who wrote on behalf of the Lesbian Immigration Support Group (LISG). In a letter dated 20 December 2013 she had stated that it was the procedure of LISG not to write support letters until the person they wished to support had been to three meetings so that members of the group could be sure that the applicant was a lesbian or bisexual. She detailed those meetings. Ms Lean has argued that in fact the decision of LISG to support the applicant was merely based on what the applicant had told them. I do not consider that that is entirely correct. It is true that members and supporters of LISG placed weight on what the applicant had told them but it is clear from the various letters that the writers of the letters, including Ms McCarthy, accepted the applicant as being a lesbian because, as she says, "we could clearly see she was a lesbian both from our own experience as lesbians ourselves and of meeting lesbian women from other parts of the world". So it was not just a decision made on what the applicant had told them but because of their own experiences and their own sexuality.

9. In a letter dated 16 January 2014 the Secretary of State refused the further submissions made. I have considered that letter together with the earlier letter of 2 September as it was accepted would be the appropriate course of action. I do not consider that that letter together with the earlier letter do show anxious scrutiny of the further evidence that had been put forward. I do not consider moreover that it was open to the Secretary of State to consider that this new evidence, taken with the earlier evidence, would mean that the applicant would not have a reasonable prospect of success before an Immigration Judge.

10. I reach that conclusion because of the weight of the evidence which was put forward, not only the evidence of Ms McCarthy, Ms M, the members of LISG, and S G, whose wife was a member of LISG but also because of the evidence of Mr Yankam. The evidence that he put forward is evidence which I consider should properly be considered in an appeal. It is not self-serving in the sense that has been argued by the Secretary of State as being evidence that was based on what the applicant had herself said, but it is evidence based on his telephone calls with those in Cameroon and indeed there is the email correspondence. Moreover, there is the documentary evidence by way of the arrest warrant which has been put forward.

11. I consider that taking all that evidence into account and taking it holistically the decision of the Secretary of State was not one that was open to her. It cannot be said that there would not be a realistic prospect of success on appeal. I therefore grant the order sought.

Application for permission to appeal to the Court of Appeal.

12. Ms Lean has made an application for permission to appeal to the Court of Appeal on two grounds. That I should have found that the new material was self serving and that I should not have taken into account the evidence from Mr Yankam because that had been considered and rejected by the respondent. I refuse the application. Firstly, for the reasons I have given above I consider that the evidence from members of LISG is rather more than a mere repetition of what the applicant had told them in that it was based on their own assessment of the applicant's sexuality and also that that from Mr Yankam was based on what he had been told by the applicant's brother and there are, of course, emails from that brother. Secondly because I consider that it was my duty to take all evidence into account - not just evidence which post dated the first rejection of the submissions making a fresh claim.

Costs

13. I order that the respondent pay the applicant's costs in a sum to be agreed or, in default of agreement, to be determined by the Tribunal on the basis of written submissions not to exceed 4 pages from each party.



A.L. McGeachy

Judge of the Upper Tribunal

12 June 2015