Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02446/2017

THE IMMIGRATION ACTS

Heard at : Field House	**Decision & Reasons Promulgated**
On : 30 June 2017	**On : 6 July 2017**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

FRANK RUKEMANGANIZI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Fisher, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 24 January 2017 to refuse his protection and human rights claim.

2. The appellant is a national of Uganda born on 1 September 1973. He claims to have entered the United Kingdom in April/May 2006. He came to the attention of the authorities when he was stopped in a motor vehicle on 1 June 2014 and was served with illegal entry papers. He claimed at that time to have entered the UK in 2012 with his own genuine passport containing a false indefinite leave to remain stamp. On 16 June 2014 he was convicted of two counts of possess/control identity documents with intent and was sentenced to one year imprisonment. On 16 July 2014 he was notified of his liability to automatic deportation. On 18 August 2014 he indicated that he wanted to leave the UK and he signed a disclaimer and applied for his return under the Facilitated Returns Scheme (FRS), which was approved. On 6 October 2014 a decision to make a deportation order under section 32(5) of the UK Borders Act 2007 was made, together with a signed deportation order. On 29 November 2014 the appellant was removed from the UK under the FRS.

3. On 21 January 2016 the appellant re-entered the UK in breach of the deportation order and made an asylum claim. His claim was refused on 24 January 2017.

4. The appellant claimed asylum on the basis that he was at risk on return to Uganda as he was gay. He claimed to have first realised his sexuality when he was at school or college and had had several male relationships. He met his first partner Alan at high school in 1996 and that relationship continued until Alan moved to Kenya in 2000. In 2000 he met Michael with whom he was in a relationship until 2015. He also had a son with a woman named Sarah. On 15 June 2015 he was detained by the Ugandan authorities when seen kissing Michael on the street. He was beaten by the police and burned on the abdomen with a heated knife. He was released on a bond the following day. He left Uganda five to six months later.

5. The respondent noted various inconsistencies in the appellant's claim. His claimed relationship with Michael was not accepted and various inconsistencies were noted between the account given by Michael in his letter of support and the account given by the appellant. The respondent did not accept the appellant's claim to have been arrested and detained in Uganda in June 2015. The respondent referred to a medical report submitted from Dr Naomi Hartree but did not consider that it adequately supported his claim to be gay. The respondent considered the appellant's account of his relationship with Sarah, and his claim in regard to his two children with Sarah, to be inconsistent. The respondent noted that the appellant had used different identities in the UK and considered that that undermined his credibility. The respondent did not accept the explanation given by the appellant for failing to claim asylum on the basis of his sexuality prior to his deportation from the UK. The respondent did not accept that the appellant was gay and did not accept that he would be at risk on return to Uganda. The respondent noted the appellant's claim to be HIV+ and to have had tuberculosis but concluded that he would be able to access treatment in Uganda. The respondent considered that the appellant's removal would not breach his human rights under Article 3 or 8 of the ECHR.

6. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Howard on 30 March 2017. Judge Howard refused an adjournment request that was made in order for Dr Hartree to attend and give evidence. He heard from the appellant. The judge did not accept that the appellant was gay and found that he would be at no risk on return to Uganda. He accordingly dismissed the appeal on all grounds.

7. The appellant then sought permission to appeal to the Upper Tribunal on three grounds: firstly, that the judge's refusal to adjourn the hearing to enable Dr Hartree to defend her report was unfair; secondly, that the judge erred in his approach to Dr Hartree's report and that his approach was contrary to the guidance in Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367; and thirdly, that the judge made irrational findings of fact.

8. Permission was granted on 11 May 2017, with specific reference to the ground referring to the judge's refusal to adjourn the proceedings.

Appeal hearing and submissions

9. The matter came before me on 30 June 2017. I heard submissions from both parties.

10. Ms Fisher relied and expanded upon the three grounds of challenge. She relied on the case of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 in submitting that the judge's refusal to grant an adjournment led to an unfair hearing. The medical report from Dr Hartree had been prepared prior to the appellant's asylum interview and the purpose of the adjournment was to enable her to comment on the interview. Ms Fisher submitted that the judge's approach to the medical evidence was flawed because he rejected the medical evidence on the basis that the appellant's account was not credible, an approach criticised in Mibanga. She submitted further that the judge's findings were brief and inadequately reasoned.

11. Mr Tufan responded to the grounds, submitting that the logic in Mibanga did not apply in this case and that Mibanga was confined to the particular circumstances in that case where the medical evidence had had clear corroborative weight. He relied upon the case of HH (medical evidence; effect of *Mibanga*) Ethiopia [2005] UKAIT 00164. He submitted that the judge's reasoning was adequate and that there was no material error of law in the decision.

12. Ms Fisher responded and reiterated the points previously made.

Consideration and findings.

13. The first ground of challenge is that the judge's refusal to adjourn the proceedings was unfair. The relevant approach to such a challenge is set out in Nwaigwe, where the head-note states as follows:

> *"If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material*

> *considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."*

14. Whilst Judge Howard did not specifically refer to the question of whether the refusal deprived the affected party of his right to a fair hearing, it is clear from his reasons for refusing the adjournment request that he did not consider that the appellant would be so deprived. The judge properly found that no purpose would be served by calling the doctor to give evidence since her clinical findings were not challenged or questioned. The assessment of the appellant's credibility arising from those clinical findings was, as the judge properly found, a matter for him alone. The grounds for an adjournment as set out in the appellant's skeleton argument at [14] to [22] also referred to a need for the expert to supplement her report after having had sight of the appellant's interview record. However, although an adjournment request made prior to the appeal hearing on that same basis had been refused, by the time of the hearing Dr Hartree had had an opportunity to prepare and produce a supplementary report responding to the respondent's criticism of her earlier report. Clearly she had seen and considered the refusal letter by that time and the fact that she had not had sight of the interview records, which plainly would have preceded the refusal decision, could only have been due to the appellant's solicitor's oversight. Given that there had been time for her to obtain and consider the refusal letter, it follows that there must have been ample time for the interview records to be supplied to her for her consideration. In any event, for the same reasons as given by Judge Howard, I fail to see how a consideration by the expert of the appellant's interview records could have had any effect on her clinical findings. Accordingly, given that by the time of the hearing the expert had had time to consider and respond to the refusal decision and that a detailed supplementary report had been produced to the Tribunal, there was no justification for, and no purpose to be served by an adjournment and the appellant had clearly not been deprived of a fair hearing. I therefore find no merit in the first ground of challenge.

15. Neither do I find any merit in the second ground. I do not agree that the judge's approach to the medical evidence suffered from the defects identified in Mibanga. The Upper Tribunal, in HH, made the following observation in regard to Mibanga:

> "The Tribunal considers that there is a danger of ***Mibanga*** being misunderstood. The judgments in that case are not intended to place judicial fact-finders in a form of forensic straightjacket. In particular, the Court of Appeal is not to be regarded as laying down any rule of law as to the order in which judicial fact-finders are to approach the evidential materials before them. To take Wilson J's "cake" analogy, all its ingredients cannot be thrown together into the bowl simultaneously. One has to start somewhere. There was nothing illogical about the process by which the Immigration Judge in the present case chose to approach his analytical task."

16. It seems to me that the grounds of challenge in this case pursue the same flawed approach as criticised in HH. The fact that the judge addressed Dr Hartree's report at the end of his findings does not, in my view, demonstrate that he considered the medical evidence in isolation after having already determined the credibility of the appellant's claim. Indeed it is relevant to note that the judge referred to the report prior to his credibility findings, at [28]. There is nothing in the judge's findings to suggest that he failed to consider all the evidence, including the medical evidence, in the round. Having accepted Dr Hartree's conclusion that the appellant's scars were consistent with the account he had given for their cause, he properly identified at [35] that the expert could go no further than that and that she was not in a position to confirm that the scars had been caused in the actual circumstances claimed by the appellant. That was a matter for the judge on a consideration of all the evidence. In light of the various other significant concerns that he had about the evidence, it was entirely open to the judge to reject the appellant's claim that the injuries had been caused in the circumstances stated and to place the limited weight that he did on the medical reports. I find no merit in this ground of challenge.

17. Finally the grounds assert that the judge's findings of fact were irrational and were inadequately reasoned. It is the case that I indicated to the parties prior to hearing submissions that I found the judge's findings to be somewhat brief. However, having heard submissions and having carefully considered the judge's findings, I consider that his adverse conclusions are adequately reasoned. The respondent, in refusing the appellant's claim, identified numerous inconsistencies and discrepancies in the evidence at pages 5 to 7 and 10 to 12 of the decision letter. The judge did not specifically refer to these but would plainly have had them in mind when assessing credibility. In addition there are the reasons specifically provided by the judge for rejecting the appellant's claim, at set out at [30] to [34].

18. In regard to those reasons, the judge was perfectly entitled to draw adverse conclusions from the fact that the appellant had made no mention of being gay prior to his return to the UK in breach of his deportation, despite claiming that his move to the UK in 2006 was partly motivated by fear of the repressive attitude of the Ugandan authorities to homosexuality. In particular he referred to the fact that the appellant, at his pre-deportation interview with the immigration authorities, identified his reason for coming to the UK as business and mentioned having two children in Uganda. The judge was perfectly entitled to reject the appellant's claim to have told a lawyer that he was gay in the days before his deportation and to consider that two days was an adequate period of time in which a lawyer could have sought to challenge his removal and lodge an asylum claim. No evidence has been produced by the appellant to confirm his account. The judge was also perfectly entitled to make the observations that he did at [34] in regard to the appellant being released without charge the day after he and his partner were detained, despite them both making confessions about their sexuality, and I find nothing in his observation which is undermined by the background information referred to in the appellant's grounds. For all of those reasons, and for the reasons given at [34] in regard to the lack of police interest in Michael, the judge was fully entitled to conclude that the appellant's account was not a credible one and to reject his claim to be gay. There was

nothing irrational in his findings and his conclusions were more than adequately reasoned. Again, the challenge in the grounds has no merit.

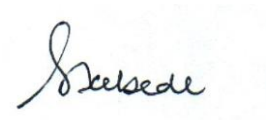
19. For all of these reasons I do not consider there to be any errors of law in Judge Howard's decision which would require it to be set aside. The judge was entitled to proceed to hear the appeal as he did on the evidence available to him. His approach to the medical evidence was a proper and lawful one and the conclusions he reached were adequately reasoned and were fully and properly open to him on the evidence before him. I uphold his decision.

DECISION

20. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. I do not set aside the decision. The decision to dismiss the appellant's appeal therefore stands.

Anonymity

The First-tier Tribunal made an order for anonymity. I see no need for anonymity in this case and I therefore discharge the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 

Upper Tribunal Judge Kebede Dated: 5 July 2017