



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

Appeal Number: PA/03985/2016

THE IMMIGRATION ACTS

Heard at North Shields

Decision & Reasons

On 20 June 2017

Promulgated

On 21 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**M. O.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Oremuyiwa, Solicitor, Wilsons Solicitors

For the Respondent: Ms Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria who entered the UK legally on 14 August 2005 as a student, but became an overstayer on 31 December 2009. He made an application for protection on 2 March 2016 the day before removal directions had been set, following the rejection (and certification as clearly unfounded) of a human rights application.
2. The Respondent refused that protection application on 11 April 2016, and the Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 22 November 2016. It was allowed on asylum and

Article 3 grounds, in a decision promulgated on 13 December 2016 by First Tier Tribunal Judge Head-Rapson.

3. The Respondent was granted permission to appeal that decision on 18 April 2017 by First tier Tribunal Judge O'Garro on the basis that it was arguable the Judge had either failed to deal with relevant evidence, or had failed to give adequate reasons for her acceptance of the disputed core of the Appellant's claim.
4. The Appellant has filed no Rule 24 Notice in relation to the grant of permission. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

Error of Law?

5. In the reasons given for the refusal of the Appellant's claim the Respondent disputed his claim to be a bisexual, or a homosexual. The dispute over the issue of his sexuality was not conceded by the Respondent in the course of the hearing. Thus it was an issue that fell to the Judge to resolve, because the Appellant's claim to be at risk of harm in the event of return to Nigeria would be bound to fail if he was in truth a heterosexual.
6. I am satisfied that although there is a section in the decision which is headed as "findings of fact" that what follows under this heading is no more than a recitation of part of the Appellant's evidence. There is no analysis of the weight to be given to the account so recited. There is also no reference to the evidence or the submissions relied upon by the Respondent as establishing that the Appellant was very far from being a reliable witness, or, the weight to be attached to them. Although part of the immigration history is set out, there is no analysis of it, or its relevance to the matters in dispute. In the circumstances there is no reasoning behind the finding that the Appellant is a bisexual [66]. Thus the Respondent's case that, at best, the decision contains a bald acceptance of the core issue in dispute without reasons, and at worst that the decision simply fails to engage with the evidence relevant to the core disputed issue, is made out.
7. In the circumstances the decision discloses a material error of law that renders the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. 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.
8. Having reached that conclusion, with the agreement of the parties I make the following directions;

- i) The decision is set aside, and the appeal is remitted to the First Tier Tribunal for rehearing. The appeal is not to be listed before Judge Head-Rapson.
- ii) No interpreter is required for the hearing of the appeal.
- iii) There is presently anticipated to be the Appellant and no other witness, and the time estimate is as a result, 3 hours.
- iv) It is not anticipated by the Respondent that she has any further evidence to be filed. The Appellant anticipates that a review of the evidence is required and that a short further witness statement may be filed. The Appellant is therefore to file and serve any further evidence to be relied upon at his appeal by 5pm 11 July 2017
- v) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 18 July 2017.
- vi) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.
- vii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

9. The decision promulgated on 13 December 2016 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 20 June 2017