



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/11650/2016

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 May 2017**

**Decision & Reasons Promulgated  
On 7 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**A A**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Nelson, legal representative from Universe Solicitors  
For the Respondent: Ms Alice Holmes, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because, even though the appellant's claim to be gay has been disbelieved, he might be at risk if it became known that he had identified himself as a gay man. It is not necessary to know his identity to understand this decision.
2. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent refusing him asylum or humanitarian protection and ruling that he was not entitled to remain. Refusing him leave did not contravene his rights under Article 8 of the European Convention on Human Rights.

3. Permission to appeal was granted because it was thought arguable that:

“The judge failed to consider that the production of documentary evidence in an asylum claim to be the exception rather than the rule under **ST (corroboration - Kasolo) Ethiopia [2004] UKAIT 00119.**”

4. At paragraph 14 in **ST** the Tribunal said:

“The main issue in this appeal is whether the Adjudicator’s findings on the issue of credibility are undermined by her comments on the absence of documentary evidence. There is no requirement for corroboration and in Kasolo the Tribunal held that it was a misdirection to imply that corroboration was necessary.”

5. The Tribunal then continued at paragraph 15:

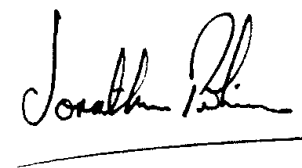
“The fact that corroboration is not required does not mean that an Adjudicator is required to leave out of account the absence of documentary evidence which might reasonably be expected. An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support.”

6. I begin by considering the First-tier Tribunal’s decision. The judge noted that it was the Secretary of State’s case that homosexual relationships between men in Nigeria are illegal and that homosexuals generally are unable to seek protection from the police. He noted too from the background evidence that public opposition to gay activity has accelerated at both state and local level when the judge said expressly at paragraph 17 that if he had believed the appellant’s claim to be gay he would have allowed the appeal.
7. It is plain from the fact of the Decision that the judge was conspicuously aware of his responsibilities and the possibility that the appellant might have been telling the truth when he gave evidence of ill-treatment in Nigeria and a fear of return. The judge was careful to direct himself, twice, that corroboration was not needed but he did list seven points that he considered to be significant gaps in the appellant’s case. There was no evidence to support the appellant’s claim that he had been caught taking part in a sexual act with a man at university. There was no evidence from the appellant’s parents indicating that they knew what was supposed to have happened and that the appellant was ostracised and beaten as a result and that news of his sexuality had got back to his home area. There was no evidence from the alleged sexual partner in Nigeria even though it was the appellant’s case that his relationship with that partner had lasted for about three years. Neither was there any supporting evidence from his alleged partner in the United Kingdom, who is named in the decision, except possibly a card and a letter attributed to that person that I consider below. Neither was there any support from the one other person in the United Kingdom who the appellant claimed knew about his sexuality. Further there was no evidence of the appellant having problems in university at Nigeria even though it was his case he had been so badly beaten that he was left for dead and revived in the university hospital.
8. The judge made no finding on the submission that the appellant was unbelievable because his claim was late but he did say that although the appellant had been convicted for an offence of possession of counterfeit documents and that necessarily related to his credibility generally the judge did not find it helpful in determining the appellant’s sexuality. The point is that

the judge clearly showed that he was persuadable and was not looking for points to take against the appellant but, having evaluated the evidence as a whole, he found it unpersuasive.

9. Before me Mr Nelson argued that the judge had ignored a Valentine's card and letter that had been shown to the Secretary of State. This submission is not sustainable in the light of paragraph 20 of the Decision and Reasons.
10. Put simply, it is clear to me that the judge has not erred by requiring documentary evidence or other corroboration but has acted properly by approaching the evidence with a transparently open mind and an awareness of the potential seriousness of the decision. Having reflected on that evidence he was unpersuaded by it and he gave proper reasons for the decision that he made. Once the findings of fact had been made the decision to dismiss the appeal with reference to Article 8 of the European Convention on Human Rights was inevitable. The finding could not support a different conclusion.
11. Mr Nelson did all that could be expected of him and I realise that the appellant has made allegations which if truthful would put him at risk. I see no basis for criticising the First-tier Tribunal Judge's decision and I dismiss the appeal.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 6 June 2017