



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: PA/01198/2016

THE IMMIGRATION ACTS

At **Field House**
on **24.07.2018**
Signed on **29.07.2018**

Decision & Reasons Promulgated
on **02.08.2018**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

[M M]

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Stuart McTaggart* (counsel instructed by MSM Law)

For the respondent: Mr A McVeety

DETERMINATION AND REASONS

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Francis Farrelly), sitting at Belfast on 21 July, to allow an asylum appeal by a citizen of Nigeria, born 1992.

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.*

2. The appellant had travelled to this country and back on a student visa in 2013: on 14 July 2014 he returned on a visit visa for his graduation ceremony, but then overstayed till he claimed asylum on 7 September 2015, refused on 26 January 2016. In his asylum interview on 4 January he had given a history of his sex-life, or lack of it in Nigeria, which the judge summarizes as follows at 5:

... he did not realise he was gay when he was in Nigeria ... he found the company of other boys preferable and at school they teased him because he had no girlfriend. In 2010 he had a girlfriend for several months but she was more as a friend. He also was attracted to one boy in particular.

3. The appellant then went on to relate how, when he came here as a student in 2013, he had met a man called Peter, and agreed to meet again. Later the appellant had stayed overnight with Peter, and had sex with him, going on to stay with him several times a week. When he returned for his graduation in 2014, Peter had spoken to him on his phone and they met and kissed outside the ceremony. This encounter was witnessed by the appellant's father, who had also come over, and he flew into a rage, and left off all contact with him till 2015. Then the appellant's father replied to an e-mail he had sent him, saying he would do him harm if he returned. The appellant said his father had been an important politician, and was now an influential businessman.
4. At paragraph 9 the judge describes the appellant's family situation: his mother and siblings in Nigeria were reconciled with him, and he had been staying with a cousin and his family in Belfast, where from 2015 he became a regular visitor to gatherings of a homosexual organization called Cara. Quite seamlessly, the judge moves on at 10

His child was born in November 2016 in Derry. The child's mother lives in Strabane ... they met in 2015. She visited him in Belfast where they had sex. ... she only stayed a few days and then returned to Strabane and four months later told him she was pregnant. He was present at the birth. He claims to see his daughter every week-end. He denies there [was] a sexual relationship and states the conception was a one-off act of intercourse. In his oral evidence he states that he is gay and not bisexual. In oral evidence he changed this to say he was bisexual but preferred same-sex relationships. ...

5. The appellant was named on the child's birth certificate as her father. In the ordinary course of human biology (there is no reference to any evidence of her being born prematurely) she must have been conceived in or about February 2016, very soon after the interview, where he had presented himself as exclusively homosexual. Even his 'girlfriend' of 2010 had been 'more as a friend'. That represented one open question on the appellant's credibility.
6. The other open question was on the appellant's relationship with Peter, who had neither given oral evidence, nor even a statement or letter in support of his case. The reason, according to the appellant, was that he did not know his address or even surname. The judge dealt with this at 29:

The refusal is on stronger ground in questioning the lack of detail given about Peter ... It does seem incredible that he does not know his second name or know his address. Against that, the appellant never claimed to have lived with him and the relationship, on his account, only lasted

for a number of months. Consequently, there is a possibility he may not know his former lover's details.


7. The judge (see 31 – 32) allowed the appellant's asylum appeal, not on the specific history about his kiss with Peter leading to trouble with his father he had given at his interview, but on the general risk for homosexual men in Nigeria. The appellant had been able to produce letters, though not oral evidence, from his cousin and a man who said he had had a short homosexual relationship with him in Belfast. This man gave his full name, but not his address, and says "I really love him: he cheated on me with a girl in March [*the letter is dated 12 July 2017*] and he told me in April about it but I ended the relationship".
8. The judge says at 31 "... I find [the appellant] has established he is gay: this is principally on his own say-so and supported by his involvement with Cara". It follows that the appellant's own credibility was essential to his case on any risk he might face as a homosexual, or any inability to express his sexuality in that way in Nigeria. His claim about Peter had been challenged, and this needed to be resolved before deciding whether or not he was homosexual by inclination; not least because it was through his relationship with Peter that he said he had found himself as an active homosexual.
9. So far as Peter was concerned, they had met on a train, and must have exchanged some kind of contact details before meeting again. He had also stayed with him several times a week over a period of months, and Peter had called him on his phone at his graduation. If by any chance the appellant had forgotten any of Peter's details beyond his Christian name, it might reasonably have been supposed, given this history, that he could find them out.
10. The other possibility was that, having relied on this part of his history at interview, the appellant had denied all further knowledge of Peter because he did not want to be challenged on why he had not been called, or at least asked to provide a statement. I put this to Mr McTaggart, who suggested that Peter might have 'just come along' to the graduation. While the event was no doubt identifiable from the Internet or other sources, that does not explain how Peter could have known that the appellant was going to be able to come and take his degree in person on the date in question; or the other points in his history identified at 9. The judge clearly needed to resolve this point in some way beyond the passage quoted at 6.
11. The remaining credibility point was on how the appellant, who had identified himself as exclusively homosexual at his interview in January 2016, had come to beget a child with a woman in about February. Of course it is perfectly possible to be bisexual, and even to beget a child: there is no need to look further than Oscar Wilde for that, and the judge was fully entitled to recognize this point at 24 – 25.
12. However, this was not how the appellant had presented himself at interview, and he had even given two different accounts of his sexuality within his oral evidence (see the passage quoted at 4). Mr McTaggart recognized this, but could offer no explanation of it. It was a discrepancy which required a reasoned explanation from the judge, before going on to accept the appellant's credibility on his sexual orientation.
13. Having accepted that, the judge went on at 33

... I do not find it established that he is in an ongoing relationship with either the child's mother or the child. Consequently, I cannot see this aspect of his claim assisting him.

The judge expressly allowed the appellant's appeal on asylum grounds only, and not on human rights. This part of his decision was not the subject of any cross-appeal or application on behalf of the appellant, and so stands. For the reasons given at **10** and **12** however, there will have to be a fresh hearing of his asylum appeal.

Appeal dismissed : : first-tier decision set aside

Fresh hearing of asylum appeal only, in First-tier Tribunal at Belfast, not before Judge Farrelly

A handwritten signature in black ink, appearing to be 'JLR', written in a cursive style.

(a judge of the Upper Tribunal)