



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06184/2017

THE IMMIGRATION ACTS

Heard at Field House
On 1 June 2018

Decision Promulgated
On 19 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

CN CAMEROON
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

Representation:

For the Appellant: Mr J Gajjar (counsel instructed by AC Gilead Solicitors)
For the Respondent: Mr E Tufan (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of CN, a citizen of Cameroon born 16 August 1982, against the decision of the First-tier Tribunal of 27 July 2017 dismissing his appeal against the refusal of his asylum claim.
2. The Appellant's asylum claim was based on his gender preference. He had become aware of being gay aged around 15, when kissed by another male; he increasingly began to have feelings for other boys. As such conduct was illegal in Cameroon one had to hide one's sexuality. His family and friends there had become aware of his sexuality because it became apparent via social media postings and his effeminate appearance

and gait, and his paternal uncle had threatened to kill him when he returned to Cameroon when his father became ill and died around December 2014. The Appellant had been open about his sexuality since he came to the UK. He had been in a relationship in this country with SAM, a recognised refugee whose claim was based on his own gender preference, who he had met in 2015.

3. The immigration history provided by the Respondent sets out that the Appellant was granted a Tier 5 entry clearance on 16 July 2009, and entered the UK on 23 August that year; he was subsequently granted an extension of leave until 30 June 2012, and further extensions in the International Agreement sub-category of Tier 5 until 7 July 2015; however further applications were refused. On 19 December 2016 he claimed asylum, that claim being refused on 14 June 2017, because there was an inconsistency in his evidence of how his gender preference came to light in Cameroon, the emails he provided did not back up his claim to have used the website *A for A* prior to 2017, and he had claimed asylum late, some time after his last arrival in the UK on 21 January 2015. In any event he had not personally experienced any problems in Cameroon, including during the period when he went back during his father's illness and death from late 2014 to the start of 2015.
4. The First-tier Tribunal considered the Appellant's evidence, and found his credibility wanting, because
 - (a) His evidence generally gave the impression of having been exaggerated;
 - (b) He could not remember the name of the man with whom he said he had been in a relationship for some six months at the age of 15;
 - (c) He had remained in Cameroon for a significant period before his last return to the UK without coming to harm;
 - (d) There was very little concrete evidence of same-sex activity before the Appellant claimed asylum, which suggested that the more recent material was concocted;
 - (e) There was no evidence of his trips to meet his partner SAM notwithstanding that on their own account they must have met up on many occasions;
 - (f) The Appellant's witness knew very little about the Appellant's immigration history, such as when he was served with notice of illegal entry, and nor did he appear to know much about the Appellant's problems with his family or of the details given on his social media profile.
5. Accordingly the First-tier Tribunal did not accept that the Appellant was LGBTi and his international protection claim thus inevitably fell away.

6. I should summarise the grounds of appeal of 23 August 2017, which are very densely drafted and often fail to properly engage with the nature of the appellate jurisdiction. They additionally take a number of irrelevant points: for example, given the Appellant's credibility as a gay man was not accepted, questions of risk of return, internal relocation, the role of discretion and the *HJ (Iran)* principle were all simply irrelevant. Broadly speaking, it was argued that
 - (a) The decision was full of typographical errors and attributed the wrong gender pronoun to the Appellant repeatedly;
 - (b) There were errors as to the date when the Appellant returned from Cameroon on the last occasion: this was January 2015, not May 2015, contrary to repeated references by the First-tier Tribunal; there was also an error as to the circumstances of his return to Cameroon: this was to visit his sick father, who then died, rather than for the original purpose of attending his father's funeral;
 - (c) The evidence of SAM, about the Appellant's visits to him and their experiences at gay clubs, was potentially corroborative of the Appellant's gender preference but no finding had been made on it;
 - (d) There was in fact extensive evidence from the *Adam 4 Adam* website showing that the Appellant joined it on 3 November 2012.
7. The Upper Tribunal granted permission to appeal on 29 January 2018, raising a particular concern that anxious scrutiny may not have been applied to the case, given that evidence relevant to the Appellant's membership of the gay dating site had been overlooked.
8. At the original hearing of this appeal before the Upper Tribunal, Judge Gill adjourned the proceedings and made directions that both sides were to provide the best available summary (backed by their original contemporaneous notes) of the oral evidence that had been given before the judge below. In the event neither side found it necessary to refer to this material.
9. Mr Tufan pragmatically accepted that there whilst he was instructed to defend the appeal, there was no real answer to the stronger of the grounds of appeal, in particular with respect to the website issue and some of the mistakes as to dates. Mr Gajjar relied on his grounds of appeal in the light of that stance.

Findings and reasons

10. In the light of Mr Tufan's realistic stance, I can be relatively brief in my disposal of this appeal.

11. I accept there are clear material errors of law in the decision below. It is axiomatic that asylum appeals require anxious scrutiny. It is difficult to be confident that such scrutiny has been applied here.
12. There are a series of factual errors. Whilst some are relatively minor, others are more significant. For example the First-tier Tribunal attributes significant weight to the time that the Appellant last spent in Cameroon, but appears to have been under a false impression as to the date that he actually left the country. It is clear that the perception that there was no corroborative evidence of the Appellant having been active on a dating website prior to 2017 weighed heavily with the First-tier Tribunal; but that is simply wrong, there being documentary evidence to that effect self-evidently in evidence. Although the earlier material is referenced by the Tribunal at one point, its conclusions are inconsistent with its existence.
13. Furthermore, notwithstanding that there was oral evidence from SAM that occupies a full two paragraphs of the decision below, there is no finding on his credibility. Yet his evidence was potentially highly relevant, as the Appellant's claimed partner, to the Appellant's gender preference. The oral evidence of a witness of fact who gives material evidence regarding the credibility of an asylum seeker's claim must receive specific and reasoned assessment.
14. Given the requirement to afford anxious scrutiny to asylum appeals and the fact that credibility was the central question on the appeal, I accordingly find material errors of law in the decision of the First-tier Tribunal to have been established. The appeal must be re-heard.

Decision:

The decision of the First-tier Tribunal contains material errors of law.
The appeal is remitted for hearing afresh.



Signed:
Deputy Upper Tribunal Judge Symes

Date: 11 June 2018