



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

Appeal Number: PA/06577/2017

THE IMMIGRATION ACTS

**Heard at Birmingham
On 16th November 2018**

**Decision & Reasons
Promulgated
On 05th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**R A P N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Tooray (Counsel)
For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

- 1.** This is an appeal against a determination of First-tier Tribunal Judge Asjad, promulgated on 8th September 2017, following a hearing at Birmingham on 8th August 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Cameroon, and was born on 15th May 1990. He appealed against the decision of the Respondent dated 28th June 2017, refusing his application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is gay, having first realised his sexual identity when he was 14 or 15 years of age. He maintains that he began wearing make-up when he was very young, although it was just fun for him, and he did not know at the time that he was gay. His first sexual experience was with "Donald" and he subsequently had a relationship with "Martin." His friend "Olivia" used to cover for him, until she discovered photographs of him and Donald on his telephone, when she distanced herself from him.

The Judge's Findings

4. The judge was not satisfied that the Appellant gave a consistent and convincing account of his sexuality. A number of reasons given by the Appellant were found to be contradictory, such as that how he began to first wear make-up, that his family did not find out about his homosexuality; and the fact that he exercised his homosexuality privately, a statement which sat unhappily with his claim that he had first met his first partner "Donald" at a party (paragraph 16).
5. The crucial part of the judge's determination is at paragraph 18, where the judge considers the Appellant's claim that he has been in a relationship with someone called "Martin" and that in 2016 his cousin "Fatso", found them having sex. He claimed that Fatso simply moved out of his address but did not tell him. This is the same Fatso, who the Appellant claims has been threatening to kill him. Fatso is said also to have spoken to a newspaper reporter about the Appellant. The tone and substance of the report published online "is supportive in nature and in no way written so as to be threatening towards the Appellant."
6. The judge took the view that "the fact that Fatso cooperated with such an article, and the fact that it names facts about the Appellant that only he could know about, leads me to find that the Appellant himself has had a hand in the article being published at all". The judge went on to say that "it is an article published with the intention of publicising his plight. It is wholly inconsistent that the very person who the Appellant claims is threatening him would assist in such an article" (paragraph 18).
7. The judge also went on to consider the Appellant's account that he had been attending an LGBT centre in the UK but that "there was no evidence that the groups that the Appellant attended or joined were exclusive to

LGBT persons. The photographs relate to the same event as the Appellant can be seen wearing the same clothes” (paragraph 19).

8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge failed to consider whether the Appellant would be at risk on return on the basis of being “perceived” as gay, notwithstanding the fact that the judge had found that the Appellant was not in fact gay. The Secretary of State had accepted that an online article, containing some of the Appellant’s details had been published. However, the Secretary of State pointed out that it had been published in an obscure site, and had not been updated for months. Although the judge had concluded that the Appellant must have had a hand in the writing of this article, such that it became a self-serving article, the fact remained that the perception would have been created of the Appellant being gay, which would put him at risk in Cameroon were he to be returned there.
10. On 10th January 2018, the Upper Tribunal granted permission to appeal on the basis that the judge’s determination at paragraph 18, with respect to the publication of the online article, included unclear findings. On one reading, the Tribunal appears to accept that the Appellant’s cousin, “Fatso”, contributed to the piece, confirming that to his knowledge the Appellant was in fact gay. However, this does not appear to have been taken into account by the Tribunal when reaching his conclusion at paragraph 21 that the Appellant, is not in fact gay.
11. On 27th February 2018, a Rule 24 response was entered by the Respondent Secretary of State.

Submissions

12. At the hearing before me on 16th November 2018, Mr Tooray, appeared on behalf of the Appellant, and relied on the accepted grounds of application. He submitted that at paragraph 35 of **HJ (Iran) [2010] UKSC 31**, had not been taken into account by the judge, because this contained the proposition that, the Appellant may well be “perceived” as being gay, even if he was not actually gay, a matter that was not considered by the judge.
13. Consideration had to be given to the fact that the Appellant’s actions, which included actions both past, present and in the future, would identify him as being gay. Second, his family members would identify him as being gay. Third, his online activities would show him up as being gay. All of these aspects would create a perception that he was gay, such as to place him at risk.
14. For her part, Ms Aboni relied upon the Rule 24 response. She submitted that the judge’s view was clear that the Appellant had himself had a hand

in drafting the article which was put on an obscure website on the internet. The judge was also clear that the Appellant's account contained inconsistencies in his evidence so as to affect his credibility. The Appellant had also been evasive in answering questions, and this too was made clear by the judge. Finally, no argument had arisen before the judge of the "perception" of the Appellant upon return to Cameroon, and since this matter was not expressly put before the judge, there could be no material error in the judge's determination.

No Error of Law

- 15.** I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such as to enable me to set aside the decision.
- 16.** First, the issue of the "perception" of the Appellant's homosexuality had not been raised before the judge. Accordingly, the judge could only ever address those matters that were expressly put to her. If they were not put before her, the judge could not consider it as evidence meant to be taken into account, and therefore there could be no error.
- 17.** Second, even if there was an issue of "perception", it was for the Appellant to prove before the judge that a single article, which had not been updated for months, would, in being published online, create a "perception" in the society in Cameroon at large, which would lead to the Appellant being subjected to the risk of attack. In fact, the judge had misgivings about the nature of the article in more ways than one. She observed that "the tone and substance of the report published online is supportive in nature and in no way written as to be threatening towards the Appellant" (paragraph 18). The article was about raising awareness of homosexuality in Cameroon. The judge accepted that "it is an article published with the intention of publicising his plight", however, it is a considerable stretch to conclude on the basis of a single article, published in a website that is other than mainstream, that the Appellant would be put at risk by virtue of its publication alone.
- 18.** Third, the judge was of the view that the Appellant was partially responsible for its publication, and assisted by his cousin in publishing it.
- 19.** Fourth, the judge rejected any contention that the Appellant's cousin was threatening the Appellant. In short, the findings of the judge did not confirm that the Appellant's cousin knew that the Appellant was actually gay.
- 20.** For all these reasons, there can be no error in the judge's determination.

Notice of Decision

The decision of the First-tier Tribunal did not amount to an error on a point of law. The decision shall stand.

The appeal is dismissed.

An anonymity order is made

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

18th December 2018