



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

Appeal Number: PA/07674/2018

THE IMMIGRATION ACTS

**Heard at Newport
On 24 January 2019**

**Decision & Reasons Promulgated
On 12 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**JA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Gardner of Counsel

For the Respondent: Mr C Howells Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The appellant appeals against a decision of Judge Mathews (the judge) of the First-tier Tribunal (the FTT) promulgated on 9 October 2018.
2. The appellant is a Nigerian citizen born in June 1976. He made a human rights and international protection claim on the basis that he would be at risk if he was returned to Nigeria as he is a bisexual man.

3. The application was refused on 15 May 2018 and the appeal was heard on 13 September 2018 and dismissed on all grounds. The judge did not accept the appellant is bisexual and therefore concluded he would not be at risk if returned to Nigeria.
4. The appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was granted by Judge Chamberlain who noted that it was contended that the judge erred in attaching weight to the lack of detail of the rape the appellant claimed to have experienced, erred in his assessment of the timing of the disclosure of the appellant's sexuality, erred regarding the lack of evidence from witnesses given the nature of the appellant's relationships and erred regarding the lack of detail of the appellant's journey to bisexuality.

The Upper Tribunal Hearing

5. Miss Gardner relied and expanded upon the four grounds of appeal which are summarised below.
6. Firstly it was submitted the judge erred at paragraph 24 in finding 'I do not preclude sexual activity by force from being something that could allow bisexuality to emerge in person, but I note that it appears to be a noteworthy stimulus that the appellant does not address in detail. In my judgement a man being forced to have sex with another man, and then finding that he expresses bisexuality, is a matter of note.'
7. It was submitted that the lack of detail was not put to the appellant by the respondent or judge and a lack of detail about an alleged rape might be thought both predictable and reasonable. The judge ignored the direct relevance of the appellant's diagnosis of PTSD in relation to his ability to provide such detail. It was submitted that the judge also ignored what detailed evidence there was in the appellant's witness statement about the rape and the judge did not specify what details might have been expected. The appellant had expressed evidence of shame and fear of stigma and the judge failed to take this evidence into account. The judge failed to apply or expressly address his mind to the lower standard of proof.
8. Secondly it was submitted that the judge erred at paragraph 27 in stating 'The appellant also speaks of making no disclosure as to his sexuality through fear of Tom and others, yet does not adequately explain why such fear has now receded, and had done so on release from prison when he started to attend Pride events.'
9. The failure to make disclosure was not put to the appellant and therefore he could not respond to it. It was submitted that the judge's conclusion on the question of timing of the disclosure ignored the appellant's explanation and evidence on this point which were in his witness statement.

10. Thirdly it was submitted that the judge erred at paragraph 28 in finding it noteworthy that he had received no evidence from any of the appellant's male sexual partners given the length of his claimed sexuality, the number of partners he now refers to, and his asserted confidence in his sexuality given his attendance at Pride events.
11. It was submitted that the judge's conclusion failed to consider arguments advanced in the appellant's skeleton argument to the effect that it is unreasonable to expect certain prescriptive types of relationships of a given individual. It was contended that the judge held the appellant's willingness to have casual relationships and/or his inability to maintain long-term relationships against him. It was unreasonable to expect the appellant to approach people with whom he had had one night stands and ask them to give evidence. The judge failed to have regard to the appellant's explanation as to why he had lost contact with his sexual partners.
12. Fourthly it was submitted that the judge had erred at paragraph 29 in finding that the appellant had not given details of his personal feelings and journey from being a heterosexual family man to a bisexual single man. The judge noted that the appellant had not been reluctant to discuss matters such as the death of his family and the judge found the absence of a detailed account of that central transition to be probative.
13. It was contended that the judge failed to have regard to the appellant's evidence in his witness statement and his oral evidence at the hearing and failed to consider the impact of the appellant's PTSD on his ability to give evidence. It was submitted that the judge erred in conflating the way the appellant could be expected to feel about and describe the death of his family and his reluctance to discuss his sexuality.
14. Mr Howells submitted that the judge had not materially erred in law and it was clear that the judge had taken into account the diagnosis of PTSD.
15. With reference to the first ground Mr Howells submitted that the judge was not referring to a lack of detail regarding the act of rape, but was referring to a lack of detail as to how the rape led to a change in sexuality.
16. Regarding the second ground it was submitted that the judge was entitled to consider the late disclosure by the appellant of his bisexuality and was entitled to conclude that there was no adequate explanation.
17. With reference to the third ground it was submitted that it was not unreasonable to expect the appellant to approach at least one of his partners to give supporting evidence and the judge had not erred in so finding.
18. Regarding the fourth ground it was submitted that it was open to the judge to make the finding at paragraph 29 and to make a distinction

between the appellant's detailed account regarding the death of his family, and the absence of a detailed account in relation to his bisexuality.

My Conclusions and Reasons

19. There is reference in the first and fourth grounds to the judge failing to take into account that the appellant had been diagnosed with PTSD. I do not find that the judge erred on this issue. In my view it is clear that the judge was well aware of and did take into account the diagnosis of PTSD. A reading of paragraphs 7-9 shows that the judge considered Dr Battersby's report and was aware of the diagnosis of mild PTSD and the judge specifically refers to Dr Battersby's opinion that this condition is likely to impact upon the cogency of the appellant's evidence.
20. At paragraph 8 the judge makes it clear that the appellant will be treated as a vulnerable witness and records 'I have kept that in mind throughout my consideration of this appeal.'
21. At paragraph 9 the judge records the submissions made by the appellant's counsel to the effect that the appellant required simple questions, put at a slow pace, and that the appellant could take breaks whenever required, and the judge agreed with those requirements and conducted the appeal accordingly.
22. Further evidence of the judge taking the diagnosis of PTSD into account is demonstrated at paragraph 19 and again at paragraph 23 when the judge is considering the appellant's account. I find no error of law on this issue. I find no evidence that the judge failed to apply the lower standard of proof.
23. I accept the submission made on behalf of the respondent in relation to the first ground In that the judge was not commenting upon lack of detail in relation to the act of rape, but the lack of detail as to how the rape led to the appellant's change in sexuality.
24. I find that the judge was entitled to make the findings which are now the subject of challenge at paragraphs 24, 27, 28 and 29. The weight to be attached to evidence is a matter for the judge to decide. In my view it cannot be said that the findings made by the judge are perverse or irrational or unreasonable.
25. I do not accept that the judge has disregarded the appellant's evidence. The decision demonstrates that the judge has considered that evidence but has not found explanations given by the appellant to be adequate. Those findings were open to the judge to make on the evidence.
26. The grounds demonstrate a disagreement with the conclusions reached by the judge but they do not disclose any material error of law. The judge has made findings open to make on the evidence and given adequate and sustainable reasons for those findings. It is clear from reading the decision why the judge has dismissed the appeal.

Notice of Decision

The appeal is dismissed.

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
2019

Date 6 February

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.



Signed
2019

Date 6 February

Deputy Upper Tribunal Judge M A Hall