



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13493/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 9th May 2019**

**Decision & Reasons Promulgated
On 22nd May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**S L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Bramble, a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant who was born on 11th May 1979 is a male citizen of Ghana. His application for protection was refused by the Secretary of State on 4th October 2018. His appeal against that refusal was dismissed by Judge Greasley following a hearing on 3rd January 2019. In essence the Judge did not accept that the Appellant had established his sexuality or that in the alternative if he had, that he would need to alter his behaviour as he was a private individual who did not seek to flaunt his sexuality.
2. Deputy Upper Tribunal Judge Doyle granted permission to appeal on 26th March 2019 stating that it is arguable that the Judge's findings between [49-51] are inadequately reasoned and that it is arguable that the Judge unnecessarily embarked on a search for corroboration.

3. The findings made by the Judge are contained within [49-51] but refer back to [45-48]. I set those paragraphs out here:

“45. I do not find this explanation to be credible. Although the appellant was a child at the time, he was nonetheless 15 years of age and has accepted elsewhere in evidence that he was aware that sexual relationships between same-sex couples, but particularly males, was frowned upon and the subject of widespread societal discrimination. Moreover, although the appellant asks me to accept he has provided a credible reason as to why at the time he did not ensure that the room door was locked, there is no explanation or credible account provided as to why Mr O, as a 45-year-old male, was not have considered this issue. The appellant merely claims that this was a spurt of the moment event but given that the sexual encounter took place in a compound where several family members resided, I do not find it credible that this event occurred in the manner claimed.

46. Despite the appellant claiming that he has had other same-sex relationships, no one has provided any supporting documentary statements or correspondent to the tribunal in relation to such claimed relationships. The appellant claims that he is not in a gay relationship at present. There is no supporting evidence that he has had any gay relationship in the United Kingdom, or indeed that he has attended any gay bars or other similar establishments. There is no supporting evidence the appellant has participated in any activity with the gay community in the United Kingdom. Indeed, on 26 September 2011 he was formerly served with overstayer documentation being a person liable to removal, his previous visa in the United Kingdom having expired. It was only when the appellant faced removal that he eventually decided to claim asylum six years later in December 2017. I find these are simply not the actions of a genuine refugee in need of international protection. I find that the appellant’s failure to avail himself of a reasonable opportunity to seek protection further damages his credibility by virtue of the operation of **Section 8 (5) of the Immigration and Asylum (Treatment of Claimants, etc), Act 2004**.

47. I have considered the important decision of **HJ (Iran) (2010)** where the Supreme Court considered the correct approach to assessing asylum claims from applicant’s claiming to be homosexual. As a first stage analysis, I do not accept that the appellant is in fact gay, or that he would be treated as gay by potential persecutors in his country of nationality, namely Ghana. I am satisfied on the available objective evidence that gay people who lived openly would be liable to persecution in the appellants country of nationality, and I must therefore go on to consider what the appellant would do if he were to be returned to Ghana. **HJ (Iran)** notes that if an individual would in fact live openly and be exposed to a real risk of persecution, then he would have well

founded fear of persecution. If, on the other hand, the tribunal found that the applicant would in fact live discreetly and so avoid persecution the tribunal must then go and ask itself why he would do so. **HJ (Iran)** provides that if an individual would choose to live discreetly because that was how he himself would wish to live, or because of social pressures, then an application for internal protection should be rejected. The decision notes that social pressures of that kind do not amount to persecution and accordingly the convention does not provide protection.

48. The appellant gave clear oral evidence that he was very much a private person who did not seek to flaunt his sexuality.
 49. As a primary finding fact, I do not accept that the appellant is in fact a gay person, for the reasons set out within this determination. However, even if the appellant was a gay person, given his claim that he is a private person who does not flaunt his sexuality, such a person has no well founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt way of life which means that he is not in fact liable to be persecuted due to his gay orientation.
 50. I therefore find the appellant is someone who would be able to return to his home area in Ghana. I reject the appellants claim to have been involved in a sexual relationship with Mr O and which incurred the wrath of his immediate family members. He has an adverse immigration history and only sought asylum when facing asylum. Nor is it credible that he would have returned to Ghana to see his mother, if, as he now claims he fled Ghana fearing a risk of ill treatment or persecution.
 51. The appellant is therefore someone who could return to his home area without risk of persecution for any recognised convention reason. The appellant is a relatively healthy male who has demonstrated considerable resourcefulness by residing in the United Kingdom for a number of years even after his leave expired. He only sought international protection when facing removal.”
4. Mr Bramble submitted that the Judge made evidenced based findings. He was not in error in relation to the concern as to the lack of supporting evidence of having a gay relationship in the United Kingdom. He was not seeking evidence from a home country where he could face persecution. The Judge’s was concern about lack of evidence from within the United Kingdom which is a protective host country. There was no material error in relation to his treatment of **HJ (Iran) [2010]**.
 5. The Appellant relied on his written grounds which I have considered carefully. He was concerned that there was no recognition or acknowledgement of other accounts regarding other men with whom he

had had relationships with. He said that he explained at the hearing that he was a private person because of the horrible experiences he suffered whilst in Ghana. He stated that the Judge was “unsettled” with the claim of K’s age in the hearing. He had however made it quite clear that he stated what K told him about his age. He criticised the Judge’s challenge to the credibility of him opening up to his sexuality to a complete stranger. However the Appellant said that at the substantive hearing he made it clear that it was after some time before he opened up about his sexuality to K. He explained about the reason for the delay in his claim within the grounds seeking permission to appeal that he was confused and only subsequently read an article that gay people could gain asylum in the United Kingdom. He also identified concerns in relation to medical services due to his high blood pressure and his desire not to flaunt his sexuality.

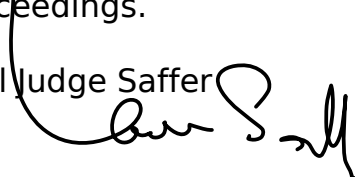
Discussion

6. I am not satisfied that the Judge made any material error in his assessment of the Appellant’s sexuality. The Judge set out in detail why he did not accept the Appellant had established he was homosexual. It was for the Appellant to establish his claim to the lower standard and the Judge gave adequate reasons for his findings. He was entitled to note the lack of evidence from within the United Kingdom to support his claim and was also entitled to find that the delay in seeking protection further damaged his credibility. Ground 1 amounts to nothing more than a disagreement with the evidence-based findings.
7. As ground 1 failed, the assessment of **HJ (Iran)** was irrelevant as the Appellant was not required to change his behaviour. In any event, the Judge was entitled to find that the Appellant’s was very much a private person who does not seek to flaunt his sexuality. He was not therefore required to change his behaviour even if he was gay.
8. There is no material error of law. The decision of the First-tier Tribunal is not set aside.

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.

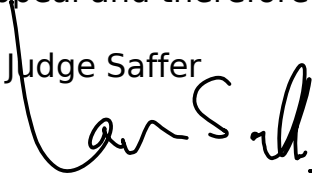
Deputy Upper Tribunal Judge Saffer
22 May 2019



TO THE RESPONDENT - FEE AWARD

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

Deputy Upper Tribunal Judge Saffer
22 May 2019

A handwritten signature in black ink, appearing to read 'Lan Saffer', written over the printed name.