



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

Appeal Number: AA/04454/2013

THE IMMIGRATION ACTS

Heard at Hatton Cross on

**Determination
Promulgated**

On 3 July 2013

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

PA ANTOU SAHO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Robinson, instructed by Duncan Lewis Solicitors
For the Respondent: Mr M Logo, Senior Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant, who is a national of Gambia, born 11 November 1985 has been granted permission to appeal the decision of First-tier Tribunal Judge Rowlands who dismissed the appeal on asylum, humanitarian protection

and human rights grounds by the appellant against the decision of the respondent to remove him as an illegal entrant dated 7 May 2013.

2. On 6 April 2009 the appellant was issued with a student visa. Further leave as a student was granted following an appeal against an initial refusal until 13 March 2011 and a final leave to remain on this basis was granted until 7 April 2013. The appellant's application for asylum was made on 4 April 2013.
3. The basis of the appellant's claim is his orientation as a homosexual that resulted in hostility towards him. He has had relationships both in Gambia and the United Kingdom. His fear is that the authorities will prosecute him were he to be returned and he would face fourteen years' imprisonment due to his orientation.
4. The respondent did not accept he is a homosexual owing to inconsistency in his account of events in Gambia and concerns over the plausibility of that account. Furthermore the respondent did not accept that the appellant had had a relationship with someone called Peter in the United Kingdom.
5. The First-tier Tribunal Judge heard evidence from the appellant who was represented by Counsel but did not believe he was gay. He concluded in answer to the first *HJ (Iran) v SSHD* [2010] UKSC 31 question that the appellant was not gay and would not be treated as gay by potential persecutors. He thus concluded the appellant would not be at risk for any reasons were he to be returned to Gambia. The judge observed the appellant did not put forward any suggestion that he had a family and private life in the United Kingdom sufficiently strong to engage Article 8 and therefore did not consider the claim under that ground.
6. Application for permission to appeal relied on grounds that the judge had erred in the credibility assessment, in failing to provide adequate reasons and failing to take relevant factors into account as well as *HJ (Iran)*.
7. The grounds challenge two specific aspects of the judge's findings, in particular that it was not credible the appellant could have gone into hiding after he was attacked by the local community (on discovering his orientation) and the fact that he waited three years before leaving Gambia which indicated that he was in no danger at all.
8. The judge quoted an extract from the refusal letter setting out the basis of his claim as follows:

"You claim that you are Pa Antou Saho, a Gambian national born on 11 November 1985. You are unemployed. You have no dependants or family in the UK. You fear returning to Gambia because 'I am homosexual'. You claim that people knew about your sexuality in Gambia and you received death threats and it is illegal to be homosexual in Gambia. You do not fear returning to Gambia for any other reason than your sexuality. You realised you were homosexual when you were 19 years old, but you do not

remember when you specifically realised. You claim that you have never been attracted to women. Alternatively before you realised you were homosexual in June 2008, you had feelings for women. You claim that in June 2006 the feeling you had for men was more than it was for women and that was the time you realised you were gay. However, you could not describe the feeling you had which made you realise you liked men more. When you realised you were homosexual, you knew that Gambia was a 'homophobic society against homosexuals'. You also knew that it was illegal to be homosexual when you first realised you were gay. It was after sleeping with your first partner that made you realise you were gay. Your first partner's name was Kebba Casey, whom you met in your local community. You met Kebba around February 2008, as he was new in your community and you made friends with him, showing him places and spending time in your house.

Alternatively, you met Kebba, your friendship turned into a relationship in February 2006 and 'I had feeling for him that he was gay as well, because of the way he dressed' and because he would wear tight jeans. You then asked Kebba if he was gay in February 2006 because of the way he dressed and the tight jeans. Kebba was the first person you asked if he was gay and you felt comfortable doing so. As soon as he said he was gay, you told him you were gay and you would go out and started a secret relationship. You stated 'our relationship was a sexual one and he used to come to my house and sleep there and have sex all the time'. You would only have sex at your house and 'throughout the day and night and have sex all the time'. You lived with our parents, one brother and one sister. You had sex for the first time at your house because 'no-one was there'. Your parents were out at an evening ceremony and your sister had gone for a walk while your brother was at a friend's house. You were not worried about being caught but you knew it was risky. You didn't do anything to reduce the risk of being seen with Kebba.

You were in a relationship with Kebba for about a year from February 2008 - February 2007. You conducted your relationship in secret. Alternatively, you would go on dates together in public and 'we used to hold hands and used to hold each other on the back'. You admit it was risky holding hands in public. Your mum established you were gay around March 2006. You were caught in March 2006 as 'he normally comes to my house, sleeps there all the time and my mum found out and saw us in the room as were naked in the house sleeping. The door was closed but your mother caught you, she said it was a big disgrace in the family and so she kicked you out. You then split up with Kebba in March 2006. Your last contact with Kebba was in March 2007. You then moved to Baku where you were initially sleeping rough before you got a job and saved money and rented a small house. When you moved to Baku, you met and started another relationship with a man from Senegal called Lamin. You met Lamin around June 2006. You met Lamin in the pharmacy where you worked. You realised Lamin was gay because when he came to your house, he told you he was on the run in Senegal because he was gay. He told you this the first time he came to your house. Lamin did not know you were gay when he told you about his problems in Senegal.

You then started a secret relationship with Lamin from May 2006. Alternatively, you would go out in public holding hands together. Your

neighbours found out about your relationship with Lamin around September 2006. A woman named Haddy who was looking after the compound where you lived 'found me sitting on a chair outside the house and Lamin was sitting on top of me', this took place outside the front door of door of the house. She then informed everyone in your compound that you were gay and this is when you started receiving death threats in September 2006. It was this threat that made you leave Gambia for the UK. The threats came from neighbours in the compound. The threat was just verbal and 'the way he talked to me, they were angry the way they talked to me'. The landlord of the compound forced you to leave and you lived with one of your friends while securing a UK visa. You then secured a visa to the UK and entered on 29 April 2009 to save your life. You have had four sexual encounters here in the UK. The first relationship was with John but you cannot remember his full name. You met him in a gay bar in Windsor called Super Nova Bar. You claim the relationship lasted a few weeks. On the other hand, you met him once and it was a one night stand. Your second and third encounter was with Terry and Mel, they were both a one night stand and you met him in the same bar as John in Windsor. Your fourth encounter was with Peter and he was the only one you had a relationship. You met Peter in Leicester in a gay bar called Dover Castle. You met him in 2011, then you said you met him in 2012. You have submitted three photographs of you kissing Peter in a bar. You took no other photos of you and Peter together. Your relationship lasted for six months and it ended in December 2012."

9. The appellant adopted a statement at the hearing and he also produced a letter from a former friend who had helped him when his landlord threw him out.
10. The judge recorded at [8] and [10] of his determination the evidence given in cross-examination as follows:
 - "8. In cross-examination he confirmed that his mother had thrown him out when she discovered he was gay because she was a strict person. His father agreed. He said he did not know his parents' views because he only found when they discovered he was gay. He did however know that it was against the laws and societies' views. He was then asked why he had done it at home and he said because it was in his home and no one was there. The door was closed. It was put to him that they could have come back at any time and he said when he closes his door no one should enter. His mother had found out because they were asleep by then and had fallen asleep. It was put to him that he had been very inconsistent about how he had behaved in Gambia saying at one point that he had tried to keep it a secret but he had also said that he had held hands with one of his friends in public. He said it was only in the quiet places that they had done that they went to quiet beaches although he accepted they were public beaches and he took the risk because he had strong feelings.
 9. He confirmed that his father had thrown him out in 2008 but had actually sponsored him to come to the United Kingdom in 2009 because he wanted to see him succeed in life. He had gone to Baku in 2007 not 2006 as he had previously said. He confirmed that with Lamin he had conducted himself openly. It was gay life. It was the only thing he could do. He met Lamin in 2006 according to his interview but

he was confused it was actually in 2007, he could not remember the dates properly it was eight years ago. He confirmed he had the death threats in 2006 and had not made the application until 2008. He said that was because he waited before going to his parents for support they wanted him to be successful which is why he waited for three years. He agreed that the death threats were actually in 2007 he hadn't gone back because he had no-one to go back and stay with.

10. As far as the photographs were concerned he confirmed that they had been taken on a day out with his partner they had gone to a gay club and taken those photographs, it was his first camera."

11. There were matters arising in re-examination recorded at [13] of the determination:

"13. He said that after he had been thrown out of the house he used to go home about once a month or more often to visit there were no problems with this. His relationship came up again in 2005. As far as Lamin was concerned they were sat on each others laps on the compound. The death threats were only from people in the compound he moved out and stayed with a friend. He didn't go out. He delayed leaving because he had not completed his course.

14. He told me that the college was about 30 minutes away from where he was staying. It was a technical college where he did a course Association of Accountancy Technician. There were about 40 in the class but it was a really big college. He could not say how many there were there and no-one knew he was gay. That was the end of his evidence."

12. After setting out his submissions, the judge gave his reasons for finding the appellant had not told the truth about his orientation which may be summarised as follows:

(i) Although it was not surprising that none of the men with whom the appellant had had brief encounters was available to give evidence before the Tribunal, the situation with Peter was slightly different. The judge acknowledged however there was no rule that says that corroboration is compulsory.

(ii) The letter from the friend in Gambia could not be given too much weight as it was typed, unsigned and without any verification as to the identification of the author.

(iii) The three photographs produced were extremely grainy and of poor quality. There appeared to be mixed sex couple in the background. It could be that some heterosexual people go "there" because it was a famous gay bar. The photographs in themselves did not prove the appellant is gay.

(iv) The appellant had claimed he was thrown out by his parents because of his sexuality yet it was perfectly clear that not only did

they agree to sponsor him to come to the UK but he was visiting them on a regular basis.

- (v) The appellant claimed to have gone into hiding but in fact was working and attending what sounded like a huge college. This was not something he would have been able to do if he had been the subject of attack in any kind of way as claimed.
- (vi) The appellant had waited three years before leaving Gambia which was indicative he was in no danger at all.

13. The first ground of application for permission to appeal offers the explanation that the appellant had responded to the threats he had received by leaving his accommodation and moving to another area; his former neighbours did not know where he moved to. He continued to work and to attend college but lived discreetly. It is argued that the judge did not set out where the appellant stated that he went into hiding and further argued that any reference to that term referred principally to hiding his sexuality. Accordingly the judge failed to consider that the appellant had moved away from the compound to avoid further problems.
14. The second ground examines the judge's reasoning based on the appellant having waited for three years before leaving. It is explained that he was living discreetly and hiding his sexuality (during this time). The complaint is made that the fact that the appellant could live discreetly in Gambia hiding his sexuality did not assist in answering a material question, namely whether he was gay and what would happen to him if he lived in Gambia as an openly gay man. The judge is also criticised for failing to take account of the obstacles that the appellant would face in leaving Gambia. The explanation advanced is that this was so he could further his studies to be in a position to apply for a student visa.
15. The renewed grounds of application to the Upper Tribunal develop the argument regarding the application of *HJ (Iran)* and it is argued that the judge failed to consider or apply the key principles, namely that if a gay man could avoid persecution by living discreetly he satisfies the requirements for refugee status.

Submissions and Discussion

16. The parties had complied with Judge Kopieczek's directions that transcripts should be provided of their note of the proceedings. Although Mr Logo did not produce the Presenting Officer's typed transcript until the day of the hearing, Ms Robinson had had time to read it and was content to proceed. She referred to an email from Mr Sills (who had represented the appellant before the First-tier Tribunal) explaining that he had typed his note of the hearing. I observed that Mr Behl's note (the Presenting Officer) was likely to be fuller than Mr Sills', particularly when the appellant was being questioned by Mr Sills.

17. Ms Robinson opened her submissions with the observation that the challenge came down to a narrow issue relating to the interpretation by the judge of the evidence of what had happened to the appellant after the residents in the compound where he had moved to in Bakau discovered his orientation and connection with Mr Lamin. Her argument was that the judge had misunderstood the evidence. The answers crucial to this point emerged in re-examination. Her argument was that the appellant had referred to was the concealment of his orientation (as opposed to a physical hiding) and so this explained his ability to remain without harm in Gambia until he set out for the United Kingdom. She confirmed that the matters raised in the paragraph 2 of the grounds of application were not relied on but instead those in paragraphs 3 and 4 relating to the judge's understanding of the evidence. Her further argument was that the misunderstanding affected the findings by the judge as to what the appellant had encountered after 2007 and as a consequence all the findings needed to be revisited.

18. I thereafter read to the parties the judge's note as re-examination:

"I am with Peter in the photograph.

I aim to go home about once a month to visit. There were no problems with them.

My relationship with Kebba began in 2005. Re: Lamin we were sat on lap in the compound.

The death threats were from people in the compound. When I moved out I stayed with friend. I didn't go out. No gay relationships.

I delayed because I had not completed my course.

The college was about 30 minutes. Technical College Association Accounting Technician. 40 plus, really big college. No one knew I was gay."

19. Before inviting further submissions from Ms Robinson, based on that record I reminded the parties of the evidence before the judge in particular the timelines relied on by the appellant in support of his claim. There is no need to repeat them in detail here except to observe that there were clear inconsistencies relating to when the appellant discovered he was gay, when he first met Kebba, the length of their relationship, the timing of when his mother discovered them together, the length of his relationship with Lamin and the timing of the hostility towards them in the compound.

20. Two further matters emerged in the course of discussion. The first was that the appellant had explained when the judge observed in the course of cross-examination that for two years absolutely nothing had happened to him that his parents had passed away. The point does not seem to have been taken when in re-examination, the appellant had responded to questions from Mr Sills about why he had waited for two to three years to leave Gambia. His answer was in terms that he was studying, completing

his course and then his parents helped him come to the UK. The further point related to the length of the relationship with Mr Lamin. According to answers given at interview, this had been for one year and six months from May 2006 whereas, as pointed out by Ms Robinson, in his statement the appellant had referred to having come to the United Kingdom soon after his relationship with Mr Lamin had come to an end.

21. Ms Robinson acknowledged the difficulties with the dates but argued that the key strands in the evidence and the sequence of events were the same.
22. By way of response Mr Logo argued that the word hiding should be given its ordinary meaning. The appellant was talking about physical hiding. He referred to the evidence of the appellant's activities whilst in "hiding". He referred also to the other reasons given by the judge for his adverse credibility findings.
23. By way of reply Ms Robinson responded in terms that she relied on the submissions already made.

My Conclusions

24. I explained at the hearing that I did not consider that the judge had made an error on a point of law and gave brief reasons which I now develop. The challenge is to the judge's understanding of the evidence in particular whether the appellant had referred to being in "physical" hiding or whether he had been concealing his orientation and thus able to carry on studying and working. If the latter, it might well be a legitimate explanation for the ability of the appellant to continue living in the Gambia without difficulty.
25. The typed transcript of Mr Behl's record includes this:

"When you left compound did they know where you went? - No.

Any further contact with these people? - No.

Explain why you did not receive any threats between 2006-2007 to 2009 - I stayed hiding with my friend.

Any gay relationships in that period - No.

Explain why you waited two to three years to leave Gambia - I was studying, completing my course. Then my parents helped me to come to the UK."

These were questions by Mr Sills in re-examination. The judge's own record broadly accords with the above note. I have explained above why it was likely Mr Behl had a fuller note than Mr Sills. The judge was entitled

to infer from what he heard that the appellant had explained that he was physically hiding, not that he was concealing his homosexuality and thus out of harm's way. The judge was therefore entitled to treat the evidence he heard with that of the appellant being able to continue to lead his life without coming to harm as inconsistent.

26. The judge had before him an account of events in Gambia infected by serious problems over the consistency of the chronology of key events and although these inconsistencies did not form part of the reasons given by the judge for disbelieving the appellant, there is no doubt that he had them in mind, particularly in the light of the reproduction of parts of the refusal letter and furthermore his record of the submissions heard from Mr Behl. Even if I were persuaded that the appellant had intended to refer to the concealment of his orientation as an explanation for his lack of harm following the hostility in the compound (whether that was in 2006 or 2007), having regard to the other unchallenged reasons given by the judge for rejecting the appellant's account, I am not persuaded that the conclusion by the judge the appellant was not gay was not open to him. As observed by Laws LJ in *Subesh v SSHD* [2004] EWCA Civ 56 cited with approval in *R (Iran) and Ors v SSHD* [2005] EWCA Civ 982 at [8]:

"It would only very rarely be able to overturn a finding of fact based on oral evidence and the assessment of credibility"

27. This is not such a case. Examination of the record of what the appellant said shows that the judge understood all the evidence that was before him, correctly directed himself as to the law and reached conclusions open to him on the evidence. As Ms Robinson confirmed there is no suggestion that the findings otherwise disclose perversity or irrationality.
28. Accordingly the appeal by the appellant is dismissed and the decision of the First-tier Tribunal stands.

Signed

Date 4 July 2013.



Upper Tribunal Judge Dawson