



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

Appeal Number: AA/04781/2013

THE IMMIGRATION ACTS

Heard at Bradford

**Determination
Promulgated**

On 14 January 2014

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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ADEYINKA ADEWALE ADEKUNLE

Respondent

Representation:

For the Appellant: Mr M Diwnycz

For the Respondent: Mr P Mason, instructed by Sutovic & Hartigan, Solicitors

DETERMINATION AND REASON

1. The respondent, Adeyinka Adewale Adekunle, was born on 16 July 1983 and is a male citizen of Nigeria. I shall refer to the respondent hereafter as “the appellant” (as he was before the First-tier Tribunal) and to the Secretary of State as the “respondent”.
2. The appellant had applied to the Secretary of State for asylum but, by a decision dated 2 May 2013, the appellant’s application was refused and a decision was also made to refuse him leave to enter the United Kingdom. The appellant appealed against that decision to the First-tier Tribunal (Judge Petherbridge) which, in a determination dated 11 September 2013,

allowed the appeal on asylum grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. The appellant claims to be homosexual. The respondent seeks to challenge the judge's finding that the appellant is homosexual; that grounds of appeal do not indicate that the Secretary of State believed that the judge was wrong to conclude that a homosexual man would be of real risk of persecution or ill-treatment on return to Nigeria. The appeal turns, therefore, on the judge's findings of fact.

4. First, the respondent asserts that the judge had failed to explain why he accepted that the appellant was in a relationship with Mr Oluwasuyatin when the judge himself had found at [70] that the appellant and Mr Oluwasuyatin had given inconsistent evidence. At [70], the judge wrote:

Of course, what makes the appellant's evidence as to his circumstances in Nigeria with regard to his homosexuality so difficult to believe is that his account of those occurrences are so inherently unlikely as not to be believable, but the appellant has at the Tribunal today in his oral evidence maintained that he was having an ongoing relationship with Mr Oluwasuyatin which was denied by Mr Oluwasuyatin and it is his evidence that I prefer.

5. *Prima facie*, the judge's observations at [70] would appear to cast considerable doubt on the credibility of the appellant including his claim to be homosexual. However, at [69], Judge Petherbridge had written:

I accept also the evidence of Mr Oluwasuyatin that he and the appellant did have a sexual relationship but it was a 'fling' but notwithstanding what the appellant has said in his oral evidence today did not continue beyond that one off 'fling' over two years ago.

6. The judge's findings at [69] helped to put his comments at [70] in a proper context. The judge found that the appellant and Mr Oluwasuyatin were engaged in a homosexual relationship but that he preferred the witness's evidence as to the date when the relationship had ended. That finding left intact the appellant's claim to be homosexual (indeed, it has supported that claim) whilst reconciling the inconsistencies between the evidence of the witness and the appellant, at least as regards the core of the claim (the appellant's sexuality) was concerned. The finding did not render the judge's primary finding that the appellant is homosexual perverse or inexplicable, as the grounds of appeal suggest.

7. The second ground of appeal observes that the judge had considered the appellant's claim for asylum to be unreliable and that the appellant's claim to have joined gay/lesbian groups said nothing about the appellant's actual sexuality at all.

8. At [63], the judge found the appellant "to be a wholly unreliable witness and I have considerable difficulty accepting his evidence as to the various events he refers to as happening to him on account of alleged

homosexuality in Nigeria.” The judge accepted that the appellant was involved with the UK Lesbian & Gay Immigration Group and that he was a project coordinator “that is for the African Men Who Have Sex With Men Group at the NTL”.

9. There was some force in the submission that joining a gay/lesbian group *sur place* may not indicate that an asylum seeker is homosexual. However, there is no clear indication in the determination that the appellant’s membership of gay groups in the United Kingdom has in any way tipped the balance in favour of his claim to be homosexual. Significantly, the judge had the opportunity of hearing the appellant and the witness Mr Oluwasuyatin give evidence. The judge was not bound to reject their claim to have had a homosexual relationship simply because he found other elements of the appellant’s account of past events in Nigeria to be unreliable. I agree with Mr Mason, for the appellant, that the judge was not compelled to reject all of the appellant’s evidence simply because he had rejected part of it. The judge has separated out his findings regarding the appellant’s account of past events from his findings regarding his relationship with Mr Oluwasuyatin, in respect of which he received detailed oral evidence. The judge has, in effect, concluded that the appellant is a homosexual who has sought to bolster that true claim with untrue or exaggerated accounts of past events in Nigeria. I find that the judge has given sufficient reasons in his determination for finding the appellant was, on the one hand, telling the truth when he claims to be homosexual but lying when he described the particular problems he had faced in Nigeria. Further, it was open to the judge to accept as true the evidence of Mr Oluwasuyatin; part of that witness’s evidence was that he had had a homosexual relationship with the appellant. At [71], the judge wrote:

Whilst, therefore, I find the appellant to have been largely an unreliable witness, I do accept that he has had a homosexual relationship with Mr Oluwasuyatin and take into account his involvement with the organisations referred to above, my conclusion is that the appellant is homosexual and that entitles him to be accorded refugee status. I accept Mr Mason’s final submission that the appellant as a gay man, cannot avoid a real risk of persecution in Nigeria without suppressing core elements of his sexual identity. He cannot safely relocate without doing one or both of these.

10. I find that the judge has been very careful to record that his finding that the appellant is homosexual may not sit easily with his other findings of fact. However, there was nothing perverse or faulty in the manner by which he reached his conclusions and I can identify no error of law in his determination so serious as to justify setting it aside.

DECISION

11. This appeal is dismissed.

Signed

Date 21 January 2014

Upper Tribunal Judge Clive Lane