



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

Appeal Number: AA/05190/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham Sheldon Court  
On 23 December 2014**

**Decision Promulgated  
On 20 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**MUSA JAITEH**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Y Darboe, Queen's Park Solicitors

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, who was born on 12 December 1993 and who is a citizen of Gambia, appeals against the determination of First-tier Tribunal Judge V A Osborne that was promulgated on 2 October 2014. Judge Osborne dismissed the appellant's appeal against the immigration decision of 21 July 2014 to remove him as an overstayer having refused his asylum and human rights claims.
2. The appellant relied on three grounds of appeal. The first was that Judge Osborne erred procedurally by failing to grant an adjournment for the

appellant to obtain a proctologists report to confirm his homosexual activity. As discussed at the hearing, this ground falls away in light of the judgment of the Court of Justice of the European Union in A, B, C v Staatsecretaris van Veiligheid en Justitie (C-148/13 (plus ), 2 December 2014) [2014 EUECJ C-148/13. Such evidence would not be admissible in connection with a protection claim even if the appellant were to consent to such a report being prepared following a medical examination.

3. I add that even if this clarification of the law had not been forthcoming, I would have found against the appellant on this ground because there is no evidence that an application for an adjournment was made to Judge Osborne.
4. Although it is clear that an application to adjourn was received by the Tribunal on 19 August 2014, that application was refused three days latter by Designated Judge Coates because he was not satisfied that a report from a proctologist was either necessary or appropriate for establishing the appellant's sexuality. There is of course nothing wrong with that decision in light of the Court of Justice's judgment. There is no evidence that this application was renewed at the hearing on 22 August 2014 or that any other application was made to Judge Osborne by Mr L Darboe who represented the appellant before the First-tier Tribunal.
5. The second and third grounds of appeal overlap insofar as they challenge the credibility findings made by Judge Osborne. Mr Y Darboe advised me that the appellant did not seek to challenge those finding on perversity or rationality grounds and given the manifestly well reasoned determination it is clear to see why he made that concession. There was no prospect of any argument on perversity or rationality grounds succeeding.
6. The submission was that the judge had failed to have proper regard to the evidence. She had failed to take account of the photographs of the appellant with another man. They were evidence of his sexuality given that they showed him kissing. The complaint was that the judge found the photographs to be of poor quality because she only had photocopies and not the originals, which had been retained by the Home Office.
7. There is no merit in this point because although Judge Osborne found the evidence to be of poor quality, she did not dispute that they showed the appellant with another man. What she found, however, at paragraph 57 is that the relationship between the appellant and the other man was not a genuine relationship and that the evidence provided was self-serving. That finding was open to the judge, given her assessment of the other evidence, including the appellant's own accounts, set out earlier in the determination.
8. The submissions also allege that the judge failed to appreciate that the appellant might never have known the true date of birth of his claimed partner. The appellant did not dispute that there was a difference in what he understood to be his partner's date of birth and that stated in his partner's passport but that there was no reason he should have known his partner's actual date of birth.

9. It is clear that this point was never made to Judge Osborne and therefore it is not possible to say she erred by not considering it, particularly since she considered the evidence presented which showed a discrepancy that was not explained. In any event, even if there is merit in the point, it could not have altered the judge's overall findings as it was only one of a number of reasons why she thought the appellant had not been truthful about his sexuality.
10. The submissions continue by alleging that the judge failed to properly consider the documents relied on by the appellant. The appellant sought to distance himself from the errors in the documents relating to his uncle and aunt and said the judge was wrong to hold him responsible for the errors they contained. This is not a sound argument because as the appellant submitted the documents it can be assumed he knew their contents. The fact he failed to deal with the errors in those documents means the judge could not give them any significant weight.
11. The appellant also alleges that the judge made contradictory findings in relations to the truthfulness of the appellant's claim to be gay. However, it is clear that the allegation is based on a misreading of the determination. The judge recognises that the appellant might be gay but that to determine that issue she would have to have regard to all of his evidence. When she examines all aspects of the appellant's account she concluded that he was not a truthful person and therefore had failed to establish his account including that of his sexuality.
12. I am satisfied there is nothing in the second and third grounds of appeal because I find the judge properly assessed all the evidence and reached clear and cogent reasons for her findings. The grounds amount to mere disagreement with the findings made and do not disclose any legal error.
13. As the grounds are not made out, the appeal to the Upper Tribunal fails and the decision of Judge Osborne stands.

## **Decision**

The appeal to the Upper Tribunal is dismissed.

There is no error on a point of law in Judge V A Osborne's determination and her decision is upheld.

Signed  
**January 2015**

Date **6**

Deputy Judge of the Upper Tribunal