



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

Appeal Number: AA/02459/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
on 9 February 2016**

**Decision and Reasons
Promulgated
On 16 February 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by McGlashan MacKay Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Uganda, born on 4 September 1983. The First-tier Tribunal made an anonymity direction, although no submissions had been made on the matter. No submissions were made in the Upper Tribunal either, so a direction is maintained.
2. The determination of First-tier Tribunal Judge Boyd promulgated on 28 August 2015 states at paragraph 6:

At the outset ... I was asked by the appellant's representative for an adjournment as the witness YSN could not attend. He stated he had spoken to someone else from the Unity Centre who could attend to speak to the appellant's attendance thereat. It was noted that the Home Office accepted that if it was found that the appellant was a homosexual, he would [be] at risk on return to Uganda. I refused the application for an adjournment on the basis that I had the signed witness statement from the appellant's

representative, YSN, and I also had a letter from the Unity LGBT group at E2 of the appeal bundle. I was satisfied that this evidence together with the oral evidence of the appellant would be sufficient to enable me to make a determination in this case. The appeal proceeded.

3. I think the judge must have meant that he had the statement from YSN which had been obtained by the appellant's representative.
4. The judge found that the appellant had fabricated his claim to be a homosexual, and dismissed his appeal.
5. The grounds of appeal to the Upper Tribunal may be summarised as follows:
 - 1 Failure to grant an adjournment. The witness statement was supportive of the appellant's position that he was homosexual. It could not be said that the FtT would reach the same decision had it heard and accepted the evidence of the witness.
 - 2 Failure to consider cultural context, where country information and witnesses explained that the cultural context was not to divulge that one was homosexual.
 - 3 Misdirection in law, by failing to recognise that the Tribunal is precluded from finding that the appellant's statements lack credibility merely because he did not rely on his declared sexual orientation on the first occasion he was given the opportunity.
 - 4 Error in law in expecting the appellant to produce corroboration, namely at paragraph 30 criticising the appellant for being unable to produce corroboration of any relationship and at paragraph 33 for failing to produce certain letters.
 - 5 Failure to give adequate reasons at paragraph 32, where the judge found that the appellant's evidence was vague about his relationship in Uganda, without giving reasons or examples.
 - 6 Error in finding that a letter from MK (a Ugandan) was "self-serving."
6. Permission was granted on the basis that arguably the Tribunal failed to consider whether an adjournment was necessary in interests of justice. The remaining grounds were thought to have less merit but as they addressed the composite issue of credibility, permission was granted on all grounds.
7. Mr Winter firstly submitted that the evidence of the witness YSN went not only to the appellant's attendance at the Unity LGBT group, but to his sexuality.
8. The relevant passage in the statement is as follows:

In our country and culture, issues around sex and relationships are taken as a very private thing and we do not discuss that. If a friend was a woman, of the same sexuality, we could discuss that, but not with a man. But despite not discussing the detail of relationships I knew his sexuality because he was going to the group ...
9. I inquired further as to what information had been put before the judge to justify the adjournment. The Home Office note was that the witness was said to have been let down by a childminder, and that the Presenting

Officer had pointed out that the appellant's attendance at the group was not disputed by the respondent. There had been mention of another witness willing to attend, but no details of time of availability. Although it was suggested on the appellant's side that the application for adjournment had not been opposed, that was not confirmed by the Home Office note.

10. Mr Winter submitted further as follows. At paragraph 29 the judge found the appellant's claim that he had a child with his partner in order to cover up his sexuality was inconsistent with his asylum interview, when he said that if he did not have a child with a woman it would be thought that either he or she was barren. The judge found this more consistent with a heterosexual relationship. Mr Winter submitted that this ignored the cultural context, but I am unable to see why. There was evidence of not divulging that one is homosexual, but that does not explain the discrepancy emerging from an asylum interview which pursued precisely that claim.
11. The judge was criticised for expecting corroboration at paragraph 30 of the determination. However, I note that the judge's point there is not the non-production of evidence, rather that the appellant was playing with a semantic distinction between relationships and sexual encounters.
12. At paragraph 32, the judge says that the appellant's evidence both prior to and orally at the hearing was vague and lacked detail. Without setting out the evidence at length, this is a point which on reference to the evidence either speaks for itself or it does not. By definition, vagueness is not subject to detailed citations. The appellant does not quote to show that his evidence was richly detailed and self-consistent.
13. The use of the phrase "self-serving" at paragraph 33 is unhelpful, as is usually the case when this rather meaningless epithet is deployed. The paragraph as a whole, however, makes a sensible point that it is implausible that in Uganda the appellant would exchange explicit correspondence with a person whom he saw regularly, or would keep such correspondence in his place of employment in a drawer along with the business cheque book. The judge was also entitled to find it no coincidence that the correspondence was dated the month after the asylum interview.
14. On the main point on which permission was granted, the failure to adjourn, I am unable to detect any error and certainly not a material one. It rather appears as if the pursuit of the application was half-hearted. It is not clear if the reference to another witness attending was in the alternative, or in addition. It seems to have been made in the passing and for little good reason. No information was provided on when either YSN or another witness might be able to attend. Most importantly, the terms of the statement of YSN confirm what the judge said - she was to speak only to a matter not in dispute, the appellant's attendance at the group. Now that time has gone by, no evidence has been offered to confirm the reasons for her non-attendance. No statement has been offered to suggest that if the matter had been probed, she might have had anything to say which is

more favourable to the appellant's case. As Mrs O'Brien pointed out, further in her statement the witness says that she has not been attending the group for some time. The evidence from the appellant and from Unity Group was that he was an infrequent attender.

15. There is nothing to show that the judge went wrong as a matter of law or that if an adjournment had been granted the appellant's case would have benefited.
16. The further grounds are no more than points of disagreement, dressed up under various headings designed to suggest error of law.
17. The decision is not shown to have gone wrong as a matter of law either in refusal of adjournment or in any other respect, and so shall stand.
18. 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.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

11 February 2106
Upper Tribunal Judge Macleman