



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/12039/2015

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke on Trent  
On 8<sup>th</sup> June 2016

Decision & Reasons Promulgated  
On 21st July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[G K]  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Jaffar (Counsel)  
For the Respondent: Mr A McVeety (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Sangha, promulgated on 4<sup>th</sup> March 2016, following a hearing at Birmingham on 18<sup>th</sup> February

2016. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Uganda, who was born on [ ] 1965. He appealed against the decision of the Respondent Secretary of State dated 25<sup>th</sup> August 2015, refusing his application to be recognised as a refugee and his application to be granted permission to remain on the basis of humanitarian leave. The basis of the application is that he is a homosexual who would face mistreatment upon return to Uganda.

### **The Judge's Findings**

3. The judge observed how the Appellant had previously claimed that he would be persecuted upon return to Uganda due to his imputed political opinion, because he had been detained by the Lord's Resistance Army and would therefore be considered as a rebel collaborator, and when that claim had been rejected, he had subsequently raised a fresh claim in relation to his alleged homosexuality. Judge Sangha also observed how the previous judge had treated the asylum appeal on the basis that it was "entirely spurious" (see paragraph 11 of Judge Sangha's determination), and at the time the Appellant had attended protests to strengthen his political claim "solely to give himself cover to make a subsequent application" (paragraph 11). The Appellant now claimed that he could not return because of his homosexuality but it was noted that he had a partner and three children in Uganda (paragraph 11). Given that the previous judge had considered the Appellant's claim to be entirely devoid of all credibility, Judge Sangha applied the principles of **Devaseelan** as a starting point and concluded that the Appellant's credibility in relation to his latest claim was also very much in issue (paragraph 33). The Appellant's current claim was refused on the basis that he "relies on his membership of six different LGBT organisations and his involvement with LGBT protests as a cover for his false asylum claim" (paragraph 42).

### **Grounds of Application**

4. The grounds of application state that the judge made a material error of law because of his failure to consider the risk of persecution on return to Uganda and also because he failed to have regard to binding case law regarding the Appellant's "motive" in engaging in LGBT activities in the UK, which motive was irrelevant for the purposes of assessing whether he risked persecution upon return.
5. Permission to appeal was granted on 1<sup>st</sup> April 2016.
6. A Rule 24 response was entered on 15<sup>th</sup> April 2016 on the basis that the claim on the perception of the authorities in Uganda cannot be divorced from the fact that the Appellant has a wife and three children in Uganda (see paragraph 11 of the determination), and nor that he would be returning on the factual basis of having

previously manufactured an earlier “sur place” claim on a differing basis (political opinion) to bolster a claim for asylum [see paragraph 11 of the determination].

### Submissions

7. At the hearing before me on 8<sup>th</sup> June 2016, Mr Jaffar, of Counsel, appearing on behalf of the Appellant, drew my attention to the Appellant’s second bundle at B4 to B63, which set out the nature of the Appellant’s current claim. In particular, my attention was drawn to B44 at paragraph 82, which suggested that it was only necessary for the Appellant to allege that he was gay, and this would then attract adverse attention from the Ugandan authorities to the extent that he would face persecution. Furthermore, at C13, there was evidence of the Appellant’s regular meetings between 2013 and 2014 with gay organisations. There was also a letter from Mr Peter Tatchell confirming his association with gay organisations.
8. Furthermore, the Appellant had been photographed many times in this context. The fact was that the Appellant was openly gay and he had engaged in high profile activities and he would therefore be at risk in Uganda. At C30 there were photographs of the Appellant. Indeed, at C35 there is a Facebook profile which actually contains the Appellant’s name as well. He is carrying a placard and is giving out a statement which is given with his name. This was a case where there was a very sophisticated portrayal of the Appellant as a gay person and that portrayal had been publicised on the internet. The Appellant was bound to be at risk on the lower standard.
9. Second, the judge had only asked himself the question as to whether the Appellant was gay but failed to then consider how he would be treated upon return to Uganda having raised this matter in the way that he had, regardless of whether he was believed or not.
10. For his part, Mr McVeety submitted that the determination could only be faulted on the basis that there was a “**Robinson** obvious” point which the judge should have considered, failing which, there could not be said to be any error of law, because the judge could only consider that which was placed before him. It had never been argued by previous Counsel before Judge Sangha that the Tribunal should turn its attention also to how the Appellant was likely to be perceived upon return to Uganda.
11. Second, the case law here, as epitomised by **HJ (Iran)**, was that the Appellant was protected with respect to his “inherent characteristics”, but not protected with respect to how he sought to project himself, whether that be on the internet or anywhere else, and if his inherent characteristics were put in doubt by the Tribunal, then there was nothing that **HJ (Iran)** would attach to. The judge was never asked to consider the alternative position as to how the Appellant would be perceived upon return. The only matter that was put before the judge was that the Appellant was gay. The judge rejected that.

12. Third, upon return, it was most likely that the Ugandan authorities would see him as a person of a heterosexual nature because he had a wife and three children, particularly as by the Appellant's own admission, he had also entered into a relationship with a woman in the United Kingdom.
13. Finally, there was a credibility hurdle put in the Appellant's way on account of the application of **Devaseelan** principles because previously Judge Paul had already decided that the Appellant was not a person to be believed.
14. In reply, Mr Jaffar submitted that it was not the case that the Tribunal was confined to considering only the question of the Appellant's "inherent characteristics, and as to whether he was gay or not, without also additionally being required to consider whether the perception of the Appellant upon return would attract the risk of persecution. This is a question of law, and if the judge had come to the wrong conclusion with respect to the applicable law, then there was an error of law.

### **No Error of Law**

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. I come to this conclusion notwithstanding Mr Jaffar's valiant efforts to persuade me otherwise. Whereas I accept Mr Jaffar's point that in **HJ (Iran) [2010] UKSC 31**, the court had made it quite clear that when dealing with LGBT cases, "the Tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he will be treated as gay by potential persecutors in his country of nationality", the judge was entitled to conclude that the Appellant would not be at risk of persecution for the reasons that he had given. It is all too often said that *sur place* activities can lead to a successful claim for asylum notwithstanding the genuineness of such an activity. Whether or not that is the case will rest very much on the particular circumstances of the case. What is important to bear in mind, however, is that the leading case that is relied upon in this respect, (namely that of **Danian [2000] Imm AR 96**) does not give an unqualified approval to the making of claims on the basis of bad faith. This is because Lord Justice Sedley made it quite clear that, "nothing in it should be read as giving any kind of green light to bogus asylum seekers". It is against the backdrop of such case law that the judge's handling of the Appellant's claim in the present context should be considered.
16. In the instant case, the judge has approached the matter in a clear, comprehensive, and careful manner. He has concluded in the following manner. First, the Appellant arrived in the UK in November 2002, but only raised the question of his homosexuality after his appeal rights were exhausted on 5<sup>th</sup> November 2011.
17. Second, even then, the Appellant did not make his further submissions until October 2012 when his homosexuality was raised for the first time.
18. Third, the Appellant gave an explanation that he was not confident enough to come out, but the judge held this to be "entirely lacking in credibility" (paragraph 34) given that he had arrived in 2002 and did not even make an asylum claim upon

arrival on any basis whatsoever. His first asylum claim was after he had been encountered by immigration authorities on 7<sup>th</sup> April 2011 working at a domestic address in London on a false identity, when he claimed to have indefinite leave to remain.

19. Fourth, the Appellant claimed asylum on 8<sup>th</sup> April 2011 on the basis of imputed political opinion arguing that he had been detained by the Lord's Resistance Army and would be regarded as a rebel collaborator. That claim was eventually rejected as wholly untenable by Judge Paul who drew adverse credibility inferences.
20. Fifth, the judge now found the homosexual claim to be "entirely inconsistent and lacking in credibility in other aspects" (paragraph 35). For example, although the Appellant said that he did not feel comfortable enough in coming out, "he was comfortable enough to participate in public LGBT events and attend gay social events" (paragraph 35). More importantly, the Appellant "has not given any clear information regarding how he became aware that sexual identity was grounds for asylum, and despite the fact that the Appellant claims that he was a practising homosexual whilst in Uganda" (paragraph 35), for which the Appellant provided no evidence whatsoever.
21. Finally, the judge found the evidence of the Appellant's witnesses also to be unpersuasive and the evidence of a Mr Sassaly "to be convoluted particularly in relation to how he determined the Appellant's sexuality" (paragraph 40). The judge's overriding conclusion was that, "I find the Appellant is in fact a very sophisticated person having practised deceit in the past" (paragraph 42).
22. As to the question that the judge did not consider how the Appellant would be perceived upon return to Uganda, there is nothing in this contention. The judge concluded that,

"I do not consider the Appellant's account to be at all credible. I do not accept that the Appellant conducted any gay relationships in Uganda and nor do I accept that he was able to conceal his sexuality for the length of time that he claims while evading the attention of his family, the police and the authorities who according to his own admission was seeking him as a missing person" (paragraph 36).
23. Given that this is how the judge comprehensively evaluated the position, it is clear that the Appellant is not likely to face the risk of persecution on the lower standard in terms of the perception of the Ugandan authorities of him upon his return. They had not treated him as gay previously.
24. His claim in the UK of being gay has been comprehensively rejected as has all his previous asylum claims on differing bases. In short, the Appellant will only be viewed as a failed asylum seeker upon return to Uganda.

**Notice of Decision**

25. There is no material error of law in the original judge's decision. The determination shall stand.
26. An anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

20<sup>th</sup> July 2016