



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

Appeal Number: PA/01047/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 April 2016**

**Determination  
Promulgated  
On 14 April 2016**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**MA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Patrick Asimwe of Pillai and Jones Solicitors  
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the

order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 19 August 2015 refusing to grant him further leave to remain and to remove him to Nigeria.

### **Introduction**

3. The appellant is a citizen of Nigeria born in 1975. He claims that he is bisexual and that his wife has informed the authorities. He has had gay relationships in the UK. He came to the UK in 2008 and has two children here.
4. The respondent rejected the asylum claim on credibility grounds and decided that there was no evidence of contact with the children.

### **The Appeal**

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Hatton Cross on 19 January 2016. The judge did not find the appellant or his witnesses to be credible and the appellant had not proved that he was bisexual. The appellant was in contact with his children but any interference with his protected rights was proportionate.

### **The Appeal to the Upper Tribunal**

6. The appellant sought permission to appeal on 24 February 2016.
7. Permission to appeal was granted by First-tier Tribunal Judge McDade on 7 March 2016 on the basis that it was arguable that the judge failed to give adequate reasons. All grounds were arguable.
8. Thus, the appeal came before me.

### **Discussion**

9. Ms Fijiwala conceded the appeal at the outset. The reasoning was very short and inadequate. There was no consideration of the Article 8 rights of the children.
10. The judge set out the credibility findings at paragraphs 84-86 of the decision. No reasons are given for finding the evidence of the appellant and his witnesses to lack credibility or plausibility. The failure to give adequate reasons is a material error of law.
11. The judge found at paragraph 93 of the decision that the appellant was in contact with his young children. No reasons are given for finding that any interference with the appellant's protected rights under Article 8 was not disproportionate. There is no consideration of the best interests of the

children or section 117B-D of the 2002 Act. Again, the reasons are inadequate and that is a further material error of law. The children's Article 8 rights are not considered at all, as conceded by Ms Fijiwala.

12. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand.

**Decision**

13. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

14. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed 

Date 11 April 2016

Judge Archer  
Deputy Judge of the Upper Tribunal