



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/08846/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 20 September 2017

Decision and Reasons Promulgated
On: 6 October 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

MR G E T
ANONYMITY DIRECTION EXTENDED

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr O Sobowale, counsel (instructed by C.A.S.A. UK)
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.
2. The appellant is a national of Cameroon born on [] 1990. He appeals with permission against the decision of the First-tier Tribunal Judge, promulgated on 22

March 2017, dismissing his appeal against the decision of the respondent refusing his claim for asylum, humanitarian protection and on human rights grounds.

The first-tier Tribunal's decision

3. The F-tT Judge was not satisfied that the appellant had established that he was ever in a homosexual relationship with V. There was no evidence that V even existed, apart from the appellant's assertion. There was no evidence to substantiate that he was the victim of a vicious assault and is either fighting for his life or possibly dead. No further inquiries had been made by the appellant in that regard even though "V and he were in love." He has not troubled himself to find out whether V is still alive. That indicated to the Judge that the appellant is not telling the truth [36].
4. The appellant had provided letters indicating his membership of LGBT organisations. A witness attended the hearing. In evidence she conceded that her letter produced is based entirely on what she had been told by the appellant. It is almost all effectively hearsay beyond the fact that the appellant attended a Reading LGBT Pride in September 2016 and engaged with staff at Support You. [37]
5. All the documentary evidence of contact with LGBT organisations "is post the appellant's asylum application." This highlights the fact that he has no evidence of contact with the gay scene prior to his making of the asylum application [38].
6. The F-tT Judge had regard to a psychiatric report from a Dr Lawrence. His impression is that the appellant is gay. He concedes that this is not his expert opinion. Accordingly he is in no better a position than anyone else to make an assessment of the appellant's homosexuality. The report is based for the most part on what the appellant has told him and the Judge could not find that his "impression" that the appellant is gay is evidentially of significant weight [39].
7. The F-tT Judge set out various paragraphs in the report from [40-48]. Dr Lawrence conceded that he cannot confirm with any degree of certainty that the appellant is suffering from PTSD [46]. Whilst the Judge accepted that the appellant suffers from low mood and anxiety, he was not satisfied that he is a suicide risk. There was no suggestion that his mental health problem is not treatable in Cameroon. He has not availed himself of the opportunity of counselling in the UK [48].
8. The Judge was also satisfied on the facts that the appellant failed to make an application for asylum until 22 January 2016, having entered the UK on 29 September 2013. That damaged his credibility [49].
9. Accordingly the Judge was not satisfied that the appellant established to the requisite standard that he is a homosexual. [50]
10. The Judge noted that the appellant claimed to have been involved in anti government activity and produced photographs of his attendance at a demonstration. That appeared to be the extent of the activity. He is not a member of any anti-government organisations. There was no evidence when these

photographs were taken. There was no evidence that they have or would come to the attention of the authorities in Cameroon.

11. The Judge was satisfied that the appellant has nothing to fear on return to Cameroon, having regard to any political activity in the UK [53]. In the light of those findings he could not find that the appellant met the requirements under paragraph 276ADE (1)(vi). Any private life formed in the UK was established when his immigration status was precarious. The decision to remove him is not disproportionate [55].
12. In granting the appellant permission to appeal, Judge Cruthers found that it may be that the Judge erred in some of the ways alleged and there may be some validity in paragraph 3.2 of the grounds.
13. It was contended that the judge found that the appellant would not have told an authority figure, namely his teacher, that he was gay. The appellant did not state that he had informed his teacher that he was gay. The appellant stated that in a conversation, he “opened up this (sic) to my biology teacher... because I was very confused and I trusted him and he told me I may be gay and that I should do all I can to stop being gay because the Cameroon community does not approve of it and I could be expelled from school and the community could kill me for just being suspected of homosexuality”. It is contended that this evidence was disregarded by the First-tier Tribunal. It was in the appellant's witness statement at paragraph 15.
14. Judge Cruthers also found that there may be some validity regarding the finding that all of the evidence presented post-dated the asylum claim. It was factually incorrect. The claim was made on 22 January 2016. Pages 148 and 149 of the bundle showed photographic evidence of the existence of Manga as well as his attendance at Reading Pride in 2015. That evidence had not been considered.
15. Judge Cruthers found that there was “just sufficient in the grounds” to make a grant of permission appropriate. He stated that this should not be taken as an indication that the appeal will ultimately be successful. On an initial reading many of the points made by the Judge do seem to cast significant doubt on the core claims. Judge Cruthers referred to various paragraphs in the decision. In addition, he stated that it is correct to say that in general an asylum seeker does not need to corroborate his claims but in this appeal there was a distinct lack of the sort of corroborating evidence that might reasonably have been expected in relation to many of the appellant's core claims. He referred to paragraph [14] of ST (Corroboration – Kasolo) Ethiopia [2004] UKIAT 00119 and TK (Burundi) [2009] EWCA Civ 40 at [16].

Error of law hearing

16. Mr Sobowale, who did not appear on behalf of the appellant before the First-tier Tribunal, submitted that the Judge erred in finding that the appellant was not credible and that he is not gay. He adopted the grounds prepared by counsel who represented the appellant before the First-tier tribunal.

17. The basis upon which the Judge made his finding is unsustainable. He failed to have regard to evidence adduced in support of the appeal and made adverse credibility findings on key elements on the basis of the lack of corroborative evidence.
18. Mr Sobowale referred to the evidence relating to LGBT which pre-dated the asylum claim.
19. He referred to paragraph [23] of the decision where the Judge stated that the appellant was 15 years old when he realised how other gay people are treated in Cameroon. He did not accept that he would have been unaware of homosexuality or homophobia in Cameroon. That would have been the subject of general conversation between himself and fellow pupils. It was not credible that at his boarding school he would not have talked about these things. He claimed that on first being told about the problem by his biology teacher, he then saw the problem that gays have on the television news. He could not accept that he would not have seen it on the news before that point [23].
20. That being the case he could not accept that he would tell an authority figure such as a teacher that he thought he was gay and openly discuss his feelings [24].
21. Mr Sobowale submitted that there were no reasons given as to how this finding has been made. The appellant's written evidence also referred to his previous knowledge on how homosexuals are being treated in Cameroon – paragraph 16 of his witness statement.
22. Nor did the appellant tell his teacher that he thought he was gay. The appellant had stated that in a conversation he opened this up to his teacher because he was very confused and he trusted him, and he told him he may be gay and “should do all I can to stop being gay” - paragraph 15 of his witness statement.
23. The Judge simply rejected elements of the appellant's account without adequate reasoning, particularly with regard to paragraphs [26-29]. The Judge stated that given that the appellant and Manga were sharing a room with only one bed, he could not accept that a neighbour would need to go to the trouble of boring a hole through the wall when he heard sexual noises. After hearing such noises he would have raised the alarm immediately.
24. Nor did he accept that the neighbour would have been able to bore a hole through a wall (and through a Bob Marley poster on the appellant's wall) without the appellant or Manga being aware of it. The appellant was unsure as to how the hole was bored through, stating only that the neighbour probably made a small hole. He found the appellant's account so implausible “...that it bears the hallmarks of being an invention to assist his claim to being gay” [27].
25. He found that even though it might be plausible that upon calling the neighbours a crowd would immediately congregate it was implausible that the crowd would immediately form armed with blunt weapons with which they then immediately

used to attack the appellant and his friend, the crowd having the intention of killing them [28].

26. It was also implausible that his uncle happened to be fortuitously in the vicinity and contacted the police who saved the appellant from further injury. The Judge was 'at a loss to understand' how, if the crowd had surrounded the appellant at that point, his uncle was alerted before the police arrived. The appellant was not killed or at least very seriously injured by the crowd of ten people, although there were 50 people in total, armed with weapons. [29].
27. Mr Solowale submitted that there was no "objective evidence" supporting all these assertions. The appellant was at a school in Cameroon. There are different cultural practices.
28. He also submitted that the Judge rejected parts of his account on the basis that there was no corroborative evidence. In that regard the Judge found that the appellant had claimed to have gone to hospital for a few days. There was however no documentary evidence to support this such as a discharge letter. The Judge stated that he was aware that corroboration is not required and there was no evidence that even an attempt had been made to obtain these documents which at one time were in the appellant's possession [30].
29. The appellant had also contended that he was conditionally bailed and the Judge stated that he '...should expect some information as to the conditions of bail and the return date'. Not only does the appellant not answer his bail but managed to leave Cameroon about 6-7 months later on his own passport. If he was on conditional bail he should have expected him to be stopped at the airport [31].
30. In the grounds of appeal, it is contended that the appellant was unofficially released with the payment of a bribe but was informed that the police would monitor his activities. There has not been an adequate assessment by the First-tier Tribunal.
31. Further, the finding that the documentary evidence of contact with LGBT post dated the date of his application was factually incorrect. The appellant in fact produced at pages 148-149 photographic evidence of the existence of Manga as well as his attendance at the Reading Pride in 2015. That evidence was not considered.
32. Mr Solowale submitted that the photographs produced indicate a degree of "closeness from the body language". Had these been properly considered a different decision might have been reached.
33. On behalf of the respondent, Mr Melvin referred to the fact that there was a bundle consisting of 250 pages. There was also a skeleton argument. However, there was nothing in the bundle making any reference to any dates regarding the photographs. Had that been a significant factor it would have been drawn to the Judge's attention.
34. He referred to the skeleton argument in the bundle, drawn up by counsel who represented the appellant. The submissions are recorded at paragraph 5.2 of the

skeleton. There was however no reference to the photographs in the way that they have been described at this hearing.

35. He submitted that the Judge considered the evidence at [21-24] and has given reasons why he could not accept that he would tell his teacher that he thought he was gay and openly discuss his feelings.
36. Mr Melvin accepted that the submissions relating to the photographs constitute one small point. However, the other credibility findings are substantial and go against the appellant. Even if the photos had been taken into account, this does not constitute a material error in the circumstances.
37. In reply Mr Solowale submitted that it is clear from the interviews that the appellant tried to seek counselling. It was accordingly appropriate for him to behave in that way.
38. Moreover the photographs are relevant. In the society of rife homophobia it does not mean that this is a subject that is talked about as a matter of routine. It is not surprising that homosexuality would not be discussed at a boarding school.

Assessment

39. The First-tier tribunal Judge has given a detailed and lengthy decision.
40. The appellant claimed at interview that he first became conscious of being attracted to men when he was 15 years old, whilst at school. He told his teacher about these feelings. The teacher told him about the consequences of being homosexual in Cameroon. The appellant then watched the news and realised how other gay people were treated there.
41. At [23-24] the Judge could not accept that he would not have been aware of homosexuality or homophobia in Cameroon. He did not accept that gays and gayness would not have been the subject of general conversation between himself and fellow pupils. He found that it was not credible that at his boarding school he would not have talked about these things with his fellow pupils [23].
42. It was on that basis that he could not accept that the appellant would tell an authority figure that he thought he was gay and openly discuss it. That was a finding open to the Judge in the circumstances.
43. It was also contended that the Judge simply rejected elements of the appellant's account at paragraphs [25-29] which I have set out. However, the Judge has given sustainable reasons as to why he did not accept that a neighbour would have needed to bore a hole through the wall when he heard sexual noises: He did not accept that the neighbour would have been able to bore a hole through the wall and through a poster without the appellant or Manga being aware of this.
44. Similar considerations apply to the neighbours who congregated. The finding that he was fortuitously rescued by his uncle did not explain why the crowd who had

surrounded him at that point had not seriously injured the appellant, seeing that they were armed with weapons.

45. The psychiatric report also refers to the appellant's description of neighbours breaking down the door and dragging both he and Manga out and beating them. The Judge noted at [42] that no such description was in the appellant's witness statements, nor in the asylum interview. The volatile crowd must have gathered swiftly and silently if the first the appellant knew was that the door was being broken down [42].
46. With regard to the submissions relating to corroboration, the Judge did properly direct himself that corroboration is not ordinarily required in such a case. This did not however mean that an adjudicator is required to leave out of the account the absence of documentary evidence which might reasonably be expected. An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support – ST [2004] UKIAT 00119 at [15].
47. In the circumstances it was not an error for the Judge to draw an adverse inference and it was not unreasonable to expect the appellant to provide corroboration with regard to those matters referred from paragraph [30].
48. Finally, there is nothing in counsel's skeleton argument referring to the photographic evidence relating to the alleged existence of Manga as well as his attendance at Reading Pride in 2015. Nor was there any evidence provided to suggest that the Judge was in fact referred to those photographs either during the course of the evidence or that they were identified or referred to when submissions were made.
49. The Judge referred to the appellant's involvement in anti-government activity and that he produced photographs of attendance at a demonstration. The Judge found that there was no evidence when the photographs were taken. Nor was there evidence that the photographs have or would come to the attention of the authorities in Cameroon. Nor was there evidence that he could be identified from them [52]. He never claimed to be an organiser or to have played a prominent role in such demonstrations.
50. I find, having regard to the evidence as a whole, that the Judge has carefully considered the evidence before him and has given adequate and sustainable reasons for his findings.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Deputy Upper Tribunal Judge Mailer

Date 4 October 2017