



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/00740/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 28 February 2018**

**Decision & Reasons
Promulgated
On 20 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**FJI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Chirico, Counsel instructed by Fadiga & Co
For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Nigeria, born on 2 September 1971 appeals with permission against a decision of Judge of the First-tier Tribunal M A Khan who in a determination promulgated on 8 June 2017 dismissed the appellant's appeal against a decision of the Secretary of State to refuse to grant asylum.
2. The basis of the appellant's claim to asylum was that although he was married and was living with his wife and children he was bisexual and that over time he had had various sexual relations with men.

3. The judge heard evidence from the appellant with regard to his sexual experiences with men and noted a statement from the appellant's wife. He also heard evidence from two men, Mr MW and Mr SM who had had relations with the appellant as well as other witnesses who spoke to their knowledge of the appellant's bisexuality. Finally, the judge had before him a letter from Nottinghamshire Health Shop Sexual Health Service the author of which, Ms S-G, a harm reduction worker, had stated that he had reported to the Nottinghamshire Health Shop Sexual Health Service about his bisexuality in March 2010.
4. The grounds of appeal argued that the judge had not properly assessed the evidence before him and had not given reasons for his conclusions as to why he dismissed the evidence of the supporting witnesses and that from Ms S-G.
5. Mr Chirico argued that the lack of reason for the conclusions of the judge was a clear error of law. It was Ms Ahmad's submission that in fact the judge had not erred in that it was not incumbent on him to give reasons for each and every finding that he made.

Discussion

6. The reality is that the judge heard evidence from three men who stated that they had had sexual relations with the appellant. The judge's comment on that evidence was merely that he did not accept the evidence although in respect of the evidence from Mr W he stated that he did not accept that he and the appellant had been in a relationship since 2008. He did not state in terms that he considered the witnesses were untruthful and what they were saying was not true. The reality is that, of course, with regard to the issue of whether or not these individuals had had a sexual relationship with the appellant they were either telling the truth or they were not. This is not a matter about which there could be any question of nuance or interpretation. Similarly, two other friends of the appellant, Ms B and Ms D, gave evidence regarding their knowledge of the appellant's sexual identity. The judge makes no comment on their evidence. Again, when he considered the evidence from the appellant's wife he stated merely, "I therefore give due weight to her statement". That is unsatisfactory as it does not indicate what weight he did give to the appellant's wife's statement - she had stated that she was aware of the appellant's bisexuality and troubled by it but wanted him to remain with the family for the sake of her children. There is no comment by the judge on that. Again, he does not state that he discounts in its entirety the evidence from Ms S-G. The judge's own conclusions are that he found that the appellant's actions were not those of someone in fear of persecution because he would have claimed asylum sooner if that were the case.
7. I consider that the lack of reasoning and lack of findings about the evidence of the witnesses amounts to an error of law and similarly, given that this is a case where the appellant is claiming to fear persecution because of his sexuality that the judge placed undue weight on the delay

in claiming asylum – that is contrary to the UNHCR Guidelines. The reality is that this claim is based on the appellant’s claim to be bisexual. Bisexuality is treated in the same way as any other form of sexual identity as is clear from the judgment of the European Court of Justice in **AB and C (C-148-9-50-13)**.

8. Given the lack of reasoning I consider it is appropriate to set aside the determination of the First-tier Judge and remit this appeal for a hearing afresh in the First-tier Tribunal. It will be for the First-tier Judge to consider firstly whether or not the appellant is bisexual and then to consider whether or not he would face persecution in Nigeria. It will be for the Secretary of State to raise any arguments she considers appropriate that given the fact that the appellant is married, with children, he would be likely to act discreetly or that it would be appropriate for him to do so and therefore avoid persecution in Nigeria on return or to argue if she considered it appropriate that married bisexuals do not face persecution in Nigeria. .

Notice of Decision

The determination of the Judge in the First-tier Tribunal is set aside.

Directions

The appeal will proceed to a hearing afresh in the First-tier on all issues.

Signed : 

Date: 18 March 2018

Deputy Upper Tribunal Judge McGeachy

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.