



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07761/2017

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice
On 16 April 2018

Decision & Reasons Promulgated
On 4 May 2018

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

OO
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E. Fitzsimons, Counsel

For the Respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Nigeria, appealed to the First-tier Tribunal against a decision of the respondent dated 10 August 2017 to refuse a protection claim. The claim is based on fear of persecution on return to Nigeria on the basis of his sexuality as a bisexual person, and a fear from Ogun religious people.
2. His appeal came before First-tier Tribunal Judge Housego (“the FtJ”) at a hearing on 27 October 2017 following which he dismissed the appeal the appeal on all grounds.

The grounds of appeal and submissions

3. The grounds of appeal assert error on the part of the FtJ in his assessment of the appellant's claimed sexual orientation, in particular with reference to the FtJ having found it adverse to the appellant's credibility that he did not disclose his claimed sexuality at the screening interview. It is contended that in the light of authority, it was not permissible for the FtJ to have so concluded with reference to the screening interview. The grounds rely in this respect on *A, B, C v. Staatssecretaris van Veiligheid en Justitie*, C-148/13 to C-150/13.
4. It is further argued that the FtJ erred in his assessment of credibility in that he decided against the appellant on credibility before considering the medical evidence. Thus, he had discounted the expert medical evidence on the basis of earlier adverse credibility findings. The grounds refer to *R (Beqaraj) v A Special Adjudicator* [2002] EWHC 1469 (Admin). In addition, it is said that the FtJ had erred in his assessment of the medical evidence in terms of the development of his mental health problems.
5. It is asserted that the FtJ failed to have regard to the appellant's evidence when he concluded that the appellant had offered no reason as to why Ogun worshippers would have attacked him until the age of 15 when he was not first, but second, in line to the priesthood. The appellant's evidence in his witness statement was that the attacks took place because of the family's Christianity and refusal to take part in Ogun worship.
6. As regards the appellant's failure to have provided supporting evidence of his relationship with a male 'P', in the form of any record of contact, it is argued that the FtJ failed to have regard to the fact that both the appellant and P made it clear that theirs was a relationship that was conducted in secret.
7. In submissions, Ms Fitzsimons relied on the grounds, although recognising what was said in the grant of permission as to the relative strength (or not) of aspects of the grounds. As to the second ground (erroneous approach to the medical evidence), it was submitted that although at [62] the FtJ had said that he had considered the medical evidence of Dr Wootton, he had already found against the appellant on credibility.
8. Similarly, reference was made to [75] of the decision. Dr Wootton had said that the appellant's PTSD and depression had pre-dated his detention, contrary to the FtJ's conclusion.
9. It was accepted that there was no absolute bar on taking into account in relation to credibility that a person did not disclose their sexual orientation at a screening interview, but a judge needed to be conscious of the fact that there may be particular reasons as to that lack of disclosure.
10. In terms of the fear of persecution from Ogun members and internal relocation, whilst there was no objective evidence that the risk extended to all parts of the country, the appellant's vulnerability in that context needed to be taken into account.

11. In his submissions Mr Jarvis relied on the decision in *HH (Ethiopia) v Secretary of State for the Home Department* [2007] EWCA Civ 306 in relation to the limitations of the 'Mibanga' point (adverse credibility findings before assessment of medical evidence) in the assessment of credibility. It was submitted that the FtJ here had merely stated that there were points adverse to the appellant's credibility and he had not sidelined the medical evidence.
12. The FtJ had accepted that the appellant was a vulnerable person. At [40] he explained how he had dealt with the tone in the Presenting Officer's questions of the appellant. Relevant "caveats, measures and protections" in relation to the appellant's vulnerability were adopted by the FtJ. At [88] he said that the appellant did not struggle to recollect matters at the hearing and he responded to questions without difficulty in comprehension.
13. The FtJ gave sustainable reasons at [73] for finding it difficult to accept the appellant's account of the causes of trauma in relation to his PTSD.
14. As to the late disclosure of his sexuality, it was submitted that A, B, C did not say that late disclosure could never be taken into account. In this case there were various factors that adversely affected the appellant's credibility such as the lack of a death certificate in relation to the appellant's father in addition to the delay in making the claim. At [82] the FtJ had considered the issue of reticence about disclosure. He was entitled to find the appellant's account of his relationship with P incredible for the several reasons that he gave.
15. He had also given various reasons for not accepting the appellant's account of a fear of the Ogun, for example at [78.2]-[78.3].

The FtJ's decision

16. A further summary of the FtJ's decision is necessary in order to put my conclusions into context.
17. The FtJ set out the basis of the appellant's claim which was that his father died after being threatened and attacked for refusing to become an Ogun priest. The appellant claimed that he had been branded by the Ogun when he was a child and he had problems with them after his father died as they wanted the appellant to become an Ogun priest. They came to his home three or four times. The appellant kept moving but they followed him. The police had refused to help because they said that it was a tribal matter.
18. The appellant's case was that he realised that he was bisexual in 2011. He had been in a sexual relationship with a woman, VA, but she was now in Nigeria. He had had a same-sex relationship with P for about three or four years but had kept the relationship discreet so that other Nigerians would not find out.

19. The FtJ set out the appellant's immigration history which included his having been convicted in April 2017 of possession or control of identity documents with intent, for which he received a sentence of six months' imprisonment.
20. The screening interview in relation to his asylum claim took place on 19 June 2017 and there he said that he feared persecution by the Ogun as the only reason for his claim. The substantive asylum interview took place on 29 June 2017.
21. The FtJ cited and quoted from various authorities and statutory provisions, and summarised the evidence that he had before him. He noted that there was a document that the appellant signed when he was in Wormwood Scrubs prison stating that he had never seen a GP in the seven years that he had been in the UK and that he had two children born in Nigeria in 2004 and 2008. In response to the question as to whether there were any reasons why he could not return to Nigeria, it stated that he has a religious problem and that his family wants him to become "a" but the document was incomplete.
22. The FtJ recorded in his decision the steps he took to accede to the request to treat the appellant as a vulnerable person. The appellant and P gave evidence.
23. He made a number of detailed findings. He found that the appellant was from the Yoruba tribe and has ritual scars inflicted when he was a boy. He had a wife and two children in Nigeria with whom he is in touch. He came to the UK in 2009 on his own passport with a genuine visa but it had been obtained by deception. He had overstayed his visa as he had always intended to do. He had obtained a false passport which bore his photograph and he used the passport to remain in the UK to work illegally. He was imprisoned for that offence.
24. He claimed asylum on 10 April 2017 on the basis of a fear of the Ogun and on 29 June 2017 in the substantive interview on the basis of his sexuality.
25. At [61] he concluded that there was no contradiction between the screening interview and the asylum interview in terms of when his father died, having interpreted the manuscript screening interview notes.
26. At [62] he said that he had read and noted carefully Dr Wootton's report to the effect that the appellant has PTSD and depression, "and borne in mind what he reported when considering the evidence in this appeal".
27. He went on to conclude that there were several credibility issues that arose. He found that the whole of the appellant's stay in the UK was based on deceit from the very beginning when he paid an agent to obtain a visa for him on entirely false grounds. He had then intentionally overstayed and that that was his reason for obtaining the visa in the first place. His assertion that someone was kind enough to arrange a false passport for him for nothing so that he could work illegally, was found to be highly implausible.

28. He noted that the appellant only claimed asylum on 10 April 2017 even though he was arrested on 14 March 2017 and given notice of removal on 16 March 2017. He referred to the fact that even then his claim was on the basis of a fear of the Ogun and that he did not raise the issue of his sexuality until the asylum interview on 29 June 2017.
29. He noted that the appellant's claim was that he always knew that bisexuality was a problem in Nigeria and that the reason he could give no external evidence of the relationship (with P) was that he kept it secret, because even in the UK it was a problem if Nigerians came to know about it. He concluded at [66] that in those circumstances there was every reason to raise this in the screening interview if it was a genuine fear, with the question in the screening interview having been very clear. The FtJ said that this was not a case where caution was required in assessing what was said in the screening interview, referring to the decision of *YL (Rely on SEF) China* [2004] UKIAT 00145. In that context he said that he took into account the subsequent diagnosis of PTSD, anxiety and depression and noted the medical evidence that it was the detention that had adversely affected his mental health. In that respect he said that the appellant had not been detained long at the time of the screening interview.
30. At [67] he said that although the appellant's witness statements were to the effect that there were attacks by the Ogun until the appellant was aged 15, there was no reason as to why that should be so, particularly as the evidence was that the appellant was second in line to the priesthood and so not a likely target for attack. He observed that neither the s.120 statement of additional grounds nor the asylum interview mentioned attacks up to the age of 15. In the asylum interview in response to question 31 (he said '13' by mistake) he said that those problems started after the death of his father on 10 February 2007. That answer, I note, was confirmed in answer to question 48.
31. At [68] he referred to the appellant having changed his account about the attacks on him when asked how it was that the Ogun had not been able to kill him despite having followed him everywhere and had years to do so. He described this as "classic *trimming* of an account".
32. The FtJ then referred to what is in Dr Wootton's report about an attack on his father in 2006 when he defended his father and when he says that he was beaten and attacked with knives and machetes. He noted that the witness statement omits the "surely memorable if true" event of having to defend his father in that attack. He referred to the appellant's oral evidence that his father died three or four months after that attack when asked about the absence of a death certificate for his father. The FtJ concluded that the appellant's account varied depending on the question asked of him.
33. At [73] he referred to the appellant having said to Dr Wootton that there were three traumas that caused his PTSD. The first was aged six when three parallel marks were inflicted on his joints with a hot iron to mark him out as an Ogun worshipper. He

found that the appellant has some such marks but not on every joint and said that in oral evidence it became clear that this was a Yoruba tribal custom inflicted on many Yoruba boys. The second trauma was in 2001, being cut with cutlasses on his legs when he refused to bow down and pray, but that did not feature elsewhere in his account. The third was the attack on his father, but that was not a matter that was in his witness statement or asylum interview.

34. He concluded that the scars that the appellant has are tribal scars and nothing to do with Ogun worshippers.
35. He next observed that any psychiatrist is highly dependent on the account given by the patient. He noted that Dr Wootton opined that the anxiety and depression only really developed whilst the appellant had been in prison. He said that there were issues with the reports of the traumas that the appellant told Dr Wootton about. He said that he did not doubt the diagnosis in the medical report, but the present diagnosis the doctor had said was connected with his detention. He concluded that the diagnosis was not based on the traumas reported by the appellant to the doctor "as the traumas are largely not credible, and so could not be its cause."
36. The FtJ then said that:

"Tribal scars were inflicted on the appellant as a child, and that account is credibility (sic), and the Dr finds it to be the cause of the PTSD he diagnosed."
37. At [76] he referred to the appellant's account that he had fled Nigeria in fear of his life but had not claimed asylum because he could not afford the £1,500 fee that a solicitor was to charge him and because fellow Nigerians told him just to stay and not claim otherwise he would be sent back. However, the FtJ also noted that the appellant knew that he wanted to claim asylum but did not do so in the seven years that he was in the UK until after his arrest, and even though he had a job for much of that time and would have been able to pay for representation.
38. Although the appellant claimed that his father was killed by the Ogun he had not obtained a death certificate, claiming that there was no time. He had however said that he knew the date and place of his father's death, and getting a certificate would not have been too much to expect, it being a key fact in his claim. The FtJ said that this was "a TK (Burundi) v SSHD [2009] EWCA Civ 40 point". Further, although the appellant had said that his father died three or four months after the last attack, this was not a matter that the appellant had said prior to his oral evidence.
39. He referred at [78.3] to the appellant having said that he had moved repeatedly, then changing that to twice, with two attacks in each place that he moved to. Although he said in evidence that he had received a threat by telephone when he was in Lagos, that is not something that he had said previously.
40. As regards his relationship with P, the FtJ noted that there was nothing to evidence that relationship which is said to have lasted for three to four years, save for two "anodyne" photographs of them together. There were no text messages in relation to

any arranged meetings. He concluded that even if their relationship was one that was secret for P as he had to conceal it from his wife, there was no reason for the appellant not keeping, and perhaps treasuring, the contacts with P with whom he wants to live and whom he hoped would leave his wife and children for him. He concluded that the absence of such evidence damaged his credibility.

41. At [80] the FtJ said that P knew very little about the appellant's life or the problems that he faced. Whilst it was possible that the appellant might not have wanted to talk about his problems to anyone before his arrest, that absence of knowledge was relevant to the credibility assessment. That was so because theirs was not said to be simply a physical relationship but one of love such that P was trying to summon up the courage to leave his wife to be with the appellant permanently. The FtJ concluded that in those circumstances it was not credible that the appellant would not share his life experiences with P.
42. At [84], after the bulk of the conclusions on credibility, the FtJ said that the appellant was able to name one pub where he and P went together, but said that plainly they were very good friends and would doubtless go to the pub together.
43. The FtJ went on to state that the other (general) credibility issues were relevant to the claim, namely a false visa and passport, as well as the chronology of the claim. The credibility issues in relation to the Ogun claim were relevant to the assessment of credibility in terms of the claim to be bisexual, he found, although noting that it was possible to be untruthful about one aspect of a claim but not the other.
44. At [82], in relation to the submission that the appellant may have been reticent in discussing matters of his sexuality, he concluded that if the fear was genuine "that is not of great weight" with the more likely conclusion being that the appellant is not bisexual, or if he is he does not fear return on that account. The medical evidence was not to the effect that his PTSD affected his ability or willingness to reveal his sexuality.
45. He dismissed the Article 8 ground of appeal. He referred to the 'vulnerability guidance' in terms of an explanation of how his decision complied with it.

Assessment and Conclusions

46. Although the FtJ said at [2] that a decision was made to deport the appellant pursuant to section 5(1) of the Immigration Act 1971, such a decision is not apparent from the documents that were before him. At the hearing before me, Mr Jarvis agreed to clarify that matter and to provide any information in that regard post-hearing. That has now been done and it appears that no decision to make a deportation order has been made by the respondent.
47. There is no distinct challenge to the FtJ's decision in terms of its conclusions in relation to Article 8.

48. I am not satisfied that there is any error of law in the FtJ's decision in relation to his conclusion that the timing of the claim and the appellant's failure to have mentioned his sexuality in the screening interview were adverse to his credibility. As is clear from my summary of the FtJ's decision at [29] above in this respect, the FtJ was well aware of the need for caution when considering whether a failure to disclose a relevant matter in a screening interview adversely affects credibility. He referred to relevant authority on the point. It is also worth reiterating that at [61] of his decision he resolved in the appellant's favour a suggested contradiction as between the screening interview and asylum interview.
49. He also referred at [49] to the decision in *A, B, C* which gives some guidance on the issue of reticence in disclosing sexuality. Although admittedly he did not refer in detail to what was said in that decision, he did not need to.
50. It is also important to bear in mind in this context that even the claim of a fear of persecution by the Ogun was a claim that was characterised by significant delay.
51. As to the timing of the asylum claim generally, at [48] the FtJ referred to the decision of *TP (Credibility) Zimbabwe* [2004] UKIAT 00159 in relation to circumstances where the lateness of a claim may of itself mean that a claim is incredible. He said that the chronology in this appellant's case was such that his immigration history was very unsatisfactory, but he concluded that he should not dismiss the claim on the basis only of the timing of the claim.
52. Prior to his conclusions about the adverse credibility of the appellant not mentioning his sexuality in the screening interview, the FtJ had said at [63] that the appellant's whole stay in the UK was based on deceit from the very beginning (as set out in my [27] above).
53. In my judgement there is no merit in the complaint in relation to the FtJ's conclusions on credibility as to the lateness of the claim and the fact that a very significant part of it was not mentioned in the screening interview.
54. As to the FtJ's approach to the medical evidence, I do not accept the contention that the FtJ, in effect, sidelined the medical evidence by virtue of having dismissed the credibility of the appellant's account without taking into account the medical evidence as part of that assessment. In the first place, it is important to note what the FtJ said at [49] under the subheading "Approach to findings of fact", namely that he had borne in mind the diagnosis of PTSD. More significantly in this context, under his "Findings" he said at [62] that he had read and noted carefully the conclusions of Dr Wootton, that the appellant has PTSD and depression "and borne in mind what he reported when considering the evidence in this appeal."
55. In my view it is clear from those preliminary observations that the FtJ did take into account the medical evidence when assessing the appellant's credibility.
56. Furthermore, I have summarised what the FtJ said at [75] about the medical report having been dependent on the account given to its author. He was entitled to take

into account what he described as the “issues with the reports of the traumas of which the appellant told the doctor”. The appellant’s account of the traumas was problematic, for the reasons that the FtJ had earlier given.

57. At my [36] above I have quoted what the FtJ said in the final sentence of his [75]. In that sentence it would seem that the FtJ meant to use the word ‘credible’ rather than “credibility”. Thus, what he was saying was simply that the appellant did have scars inflicted on him as a child, but they were tribal scars, and the doctor had found the infliction of those scars to be the cause of his PTSD.
58. There is furthermore, merit in the submissions made on behalf of the respondent in terms of what was said on this issue in *HH (Ethiopia)* at [16], which itself quoted from *S v Secretary of State for the Home Department* [2006] EWCA Civ 1153. At [16] one finds the following:
- “In S this court also approved the passage which appears in the AIT's decision in the present case at paragraph 21. That reads as follows:
- ‘The Tribunal considers that there is a danger of Mibanga being misunderstood. The judgments in that case are not intended to place judicial fact-finders in a form of forensic straightjacket. In particular, the Court of Appeal is not to be regarded as laying down any rule of law as to the order in which judicial fact-finders are to approach the evidential materials before them. To take Wilson J's 'cake' analogy, all its ingredients cannot be thrown together into the bowl simultaneously. One has to start somewhere. There was nothing illogical about the process by which the Immigration Judge in the present case chose to approach his analytical task.’
- Like this court in the case of S, I respectfully agree with that passage.”
59. In relation to the appellant’s claimed fear of the Ogun, the FtJ highlighted various inconsistencies in his account of the adverse attention that he claims he and his father were subjected to. His account of the attack on, and the death of, his father was inconsistent or otherwise inherently implausible.
60. As regards his sexuality, other than the lateness of the claim even within the claim for asylum which was itself very tardy, the FtJ was entitled to take into account the lack of supporting evidence from the appellant of his relationship with P. He was aware that the appellant’s claim was that the relationship was said to have been conducted in secret. The FtJ was entitled to conclude that it was reasonable to have expected the appellant to have kept some evidence of his contacts with P given what they both said was the depth of their relationship.
61. In addition, it was plainly relevant that on the FtJ’s assessment of the evidence, P knew very little about the appellant’s life or the problems that he claims to have faced, particularly in the context of their claimed feelings for each other.
62. In the appellant’s grounds reference is made to the ‘rule 35’ report that was before the FtJ which records scars on the appellant’s body which are described as

lacerations. It is argued that those scars are distinct from the ritual scarring of three parallel burn marks, yet the FtJ failed to deal with this evidence.

63. However, I cannot see that the FtJ's failure to assess this evidence undermines his credibility assessment in any respect bearing in mind the breadth of his analysis and the many and varied reasons he gave for rejecting the credibility of the appellant's account.
64. Similarly, in relation to what the FtJ said in terms of the appellant not having given any reason for the attacks on him prior to age 15, given that the appellant claims to have been second in line to the priesthood. Although it is argued that the appellant's witness statement states that the motivation for the attacks was his family's Christianity and refusal to participate in Ogun worship, the FtJ's failure to consider that part of his evidence does not undermine the adverse credibility assessment either. The appellant's evidence in relation to those incidents was inherently unsatisfactory in any event.
65. I am not satisfied that the FtJ erred in law in his assessment of the appellant's claim in any respect. His decision to dismiss the appeal must therefore stand.

Decision

66. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. His decision to dismiss the appeal stands.

Upper Tribunal Judge Kopieczek

24/04/18

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

Given the nature of the claim and the background to it, 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 his 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.