



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13288/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 14 May 2018

Decision and Reasons Promulgated  
On 20 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

U N  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Dolan (counsel instructed by Shaka Services)  
For the Respondent: Ms N Willocks-Briscoe (Home Office Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of UJI, a citizen of Nigeria born 18 September 1975, against the decision of the First-tier tribunal to dismiss his appeal on asylum grounds, itself brought against the decision to refuse asylum of 4 December 2017.
2. The appellant's asylum claim was based on his account of brutal mistreatment in his country of origin following the discovery of his sexuality. He had begun to identify himself as gay from the age of 14 when he realised his attraction to other men. He had some eleven same-sex partners in the years that followed.

3. His sexual identity had caused him problems from 2002 onwards, leading him to be beaten some five times in different parts of the country. In 2002 he sought to chat up a boy who was widely thought to be gay, but the boy responded by reporting the appellant to the boy's parents: he was bitten, cut with machetes, beaten with sticks for almost two hours, and left for dead. He was banned from his village and moved to another town, Uzebu, and identified there and attacked. He fled to the bush but was hunted down there and beaten. He moved to Lagos. On one occasion members of his home community came across him in Lagos and beat him, identifying him to the police. Rather than assisting him, the police took account of his denunciation by the community, and subsequently detained and mistreated for three days. Subsequently he found sanctuary at the church of the Sacred Peace Movement until his family agreed to fund his journey out of the country by selling some of their land.
4. He came to the UK in October 2004 with entry clearance as a student, having overturned the entry clearance officer's refusal on appeal, satisfying the judge of the genuineness of his intentions to study here. His leave was extended until around November 2007, after which time he appeared to have had a dispute with North London College as to his fees, and was no longer able to extend his leave as a student, becoming an overstayer. He was encountered by the immigration service on 22 September 2017 when they visited his uncle P's address. The appellant is recorded as having disavowed the presence of family in the UK.
5. He subsequently claimed asylum on 26 September 2017 and his claim was considered suitable for treatment in the Detained Asylum Casework process. His witness statement explained that he had not sought asylum sooner as he had psychological scars, and preferred to try to rediscover himself by prayer.
6. His asylum statement emphasised that he had significant problems with understanding English which had caused problems at interview. Evidence supporting his appeal included a report under Rule 35 of the Detention Centre Rules where Dr Ali concluded that his account was plausible: "He had multiple lacerations which are consistent ... with attacks from both blunt instrument such as a stick on his lower limbs and with a machete on his calf, back and arm".
7. His claim was refused because the Secretary of State identified various discrepancies within his account which were thought to undermine the veracity of his account. As the First-tier tribunal notes, these mostly arise from answers given at interview. Having noted the evidence in the interview record itself indicating some confusion and misunderstandings, and in the appellant's witness statement for the appeal, the judge concluded that it would be unsafe to rely on discrepancies arising from the interview record.
8. Nevertheless, the First-tier tribunal rejected the appellant's account, because

- (a) He had formed no meaningful same-sex relationships in the UK and could not name the websites where he had sought to find potential partners: his only gay friend had apparently relocated to Uganda;
  - (b) The appellant had mentioned only a single attack to Dr Ali rather than the five assaults featuring in his asylum statement, and that medical report was not Istanbul Protocol compliant;
  - (c) He had given evidence in cross-examination as to his living arrangements whilst at Ambrose Alli University in Nigeria, stating he had resided there in accommodation until 2004 when the unreliability of the teaching due to industrial action led him to abandon the course: however this was inconsistent with the impression given from his account of the five assaults on him, which invited the inference that the ongoing threat of harm had necessitated an itinerant lifestyle from 2002;
  - (d) He had not revealed any difficulties in Nigeria during the application and appeal process that led to the grant of his student visa, and had indeed stated he intended to establish a business back home when his studies ended – and his uncle who gave evidence at the present appeal had been complicit in that deception;
  - (e) He had claimed asylum very late, only after encountered by the immigration service, and even then had foregone the opportunity to mention his situation when first discovered at his uncle's home.
9. Accordingly the First-tier tribunal found that the facts asserted by the appellant were not made out and his asylum claim was dismissed.
10. Grounds of appeal argued that the First-tier tribunal had erred in law by
- (1) Effectively relying on answers given at interview notwithstanding its ostensible disavowal of that as a source of discrepancy;
  - (2) Failing to take account of the fact that the appellant's preparation of his case and ability to find witnesses had been disadvantaged by the fact he was detained, and that such relationships as he had had, were casual ones;
  - (3) Discounting the Rule 35 report because the doctor had apparently been told of only one attack, without taking account of the fact that it was understandable that a doctor commenting on the visible sequelae of potential torture would focus only on such attacks arguably causative of the relevant scarring;
  - (4) Finding the uncle's evidence to be unreliable without giving reasons;
  - (5) Failing to take account of the inherent problems which gay men and the LGBTi community generally experience in putting forward an asylum claim.

11. Permission to appeal was given on those grounds by the First-tier tribunal on 7 March 2018.
12. For the Appellant, Mr Dolan developed the grounds of appeal emphasising that ultimately the judge had relied on section 8 immigration control factors to an undue extent. The Rule 24 response was wrong to suggest an asylum seeker was better off if their interview was ruled out of account: it was an essential part of the relevant material that might support someone's case. Late disclosure of a person's sexual identity was common in asylum claims based on that factor.
13. Ms Willocks-Briscoe submitted that the judge had assessed all the evidence in the round and that overall he had been entitled to come to the findings he did. In particular, the live evidence as to the appellant living at the same address clearly undermined a central aspect of his account. The judge's findings were unaffected by the interview record.

### **Findings and reasons**

14. Having reserved my decision and now reflected on the matter, I do not think the grounds of appeal are made out. The First-tier Tribunal was clearly right to rule evidence from the interview record out of account, given the overt confusion that had arisen and the patent problems of interpretation. I accept that it was unwise for the Tribunal to use the contents of a Rule 35 report to assess the Appellant's asylum claim more generally, given the narrow focus of such reports, which concentrate on those incidents that leave scars consistent with torture, rather than embarking on any broader enquiry into the facts underpinning an international protection claim.
15. I do not consider that there was any material reliance on the impugned interview record. It is true that the issue of the Appellant's use of dating websites was raised at interview, but the First-tier Tribunal's reasoning was not based on any discrepancy arising from the subsequent interview record. The point it made was simply that it was implausible that the Appellant would fail to identify any particular website if he had employed this means of dating to any significant degree. Given the sparseness of the evidence supporting his claim generally, this was a reasonable point to make. A detailed account is more credible than a vague one.
16. The First-tier Tribunal placed reliance on the absence of supporting witnesses. Of course, it is understandable that the Appellant might find it difficult to produce witnesses from his own community. His asylum claim was processed via the Detained Asylum Casework initiative, which is relatively speedy. However he nevertheless had two months between the December 2017 refusal of his claim and the February 2018 hearing. Since then another three months have passed, and there has been no indication that further witnesses might be produced: whilst their evidence would not be admissible in determining the question of error of law in the decision below, their potential availability would have borne on showing whether

there had been material unfairness. Appeals must be determined on the available evidence.

17. It is wrong to allege that the First-tier Tribunal failed to give reasons for disbelieving the Appellant's uncle's evidence. It took the view that his evidence was clouded by the fact that he had previously supported the Appellant's appeal as a *bona fides* student. Judges must be careful in asylum claims to jump to conclusions regarding immigration history. A genuine refugee may have to adopt some subterfuge to obtain protection in the host country. However, here the delay in claiming asylum was very extended. The Appellant knew enough about immigration law to pursue a successful student appeal. He is intelligent enough to obtain a Tier 4 student entry clearance and to study in the UK in higher level education. He is able to use the internet. It seems to me that the First-tier Tribunal's conclusion, that the possibility of claiming asylum as a gay man would have come to his attention sooner (and that he would have acted upon it) were he genuinely in fear of his life, was not irrational.
18. More importantly, this was only one of various reasons given for disbelieving the Appellant. The most telling reason, once the interview record was ruled out of consideration, was the fact that the Appellant had at once given an account of living in university accommodation at the same time as claiming he was being hunted from place to place by his antagonists from his home village. It was not unreasonable to place significant weight on this inconsistency, which went to the very heart of his asylum claim. Overall the First-tier Tribunal below identified numerous deficiencies in the account relied on, in a reasoned and detailed decision, giving the Appellant credit at times (as where it ruled out the interview record) whilst ultimately resolving the appeal against him.
19. I accordingly find that the First-tier Tribunal was entitled to come to the conclusions that it did, and I dismiss the appeal.

Decision:

The appeal to the Upper Tribunal is dismissed.

I have made an anonymity order to preserve the identity of the Appellant, in line with the usual practice of the Upper Tribunal in asylum appeals.

Signed:

Date: 20 May 2018



Deputy Upper Tribunal Judge Symes