



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

Appeal Number: PA/14377/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 15th December 2017**

**Decision & Reasons
Promulgated
On 23rd January 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MBM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes of Counsel instructed by Broudie Jackson & Canter

For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Senegal born on [] 1978. He sought to claim asylum on the basis essentially of his sexuality. This was refused by the respondent in a decision dated 19th December 2016. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Holt on 2nd February 2017. In a determination dated 28th February 2017 the appeal was dismissed in all aspects.
2. Challenge has been made to the decision on the basis of undue speculation, employment of a stereotype and the unfairness of the

interview. Permission to appeal to the Upper Tribunal was given in such matters. Thus the appeal comes before me to determine the issues.

3. While the appellant claims that he was in a long term homosexual relationship with K in Senegal their relationship came to be discovered when they attended a homosexual marriage in the village. The appellant came to the United Kingdom and has lost contact with K although he has tried to telephone him on a number of occasions without any success.
4. Prior to coming to the United Kingdom the appellant lived with a Swedish couple in Gambia for some six months and they arranged a passport and visa for the appellant. Since coming to the United Kingdom the appellant has not engaged in any homosexual relationship, although he has attended an organisation called Icebreakers which is a meeting forum for gay people.
5. The Judge did not find the account of how he came to be discovered in Senegal as credible. He found the appellant to lack further credibility in the failure to make contact with K and to give vague answers as to what he is doing in Icebreakers.
6. A key finding of the Judge was that the account of the discovery in Senegal was not credible. Given the community hostility shown to the gay culture, it lacked credibility that there would be such an open marriage in the village. No challenge has been made to that finding in the grounds of appeal.
7. This is an appeal based almost exclusively upon what the appellant has to say about himself and the relationships and as such credibility is an important element within that context.
8. It is contended on behalf of the appellant by Mr Holmes that he was not given a fair opportunity of expressing himself and his relationship with K in the interview. He was hampered because his first language, and indeed the language in which he gave evidence at the hearing, was Wolof. The attention of the First-tier Tribunal Judge indeed my attention was drawn to the decision in **Dirshe [2005] EWCA Civ 421** emphasising that the interview was a critical part of the procedure for determining the asylum decisions and that every opportunity should be given to appellants in those circumstances to express themselves in the best possible way particularly being given the opportunity of speaking in a language of their choice.
9. It is to be noted in that connection the screening interview conducted with the appellant on 20th June 2016. In that he indicated that his main language was French. Indeed the request which was made on his behalf by those representing him was to have a female French interpreter present at the substantive interview. This was done but two days before the

schedule date of the interview that request was changed to a Wolof speaking interpreter.

10. At the interview the French interpreter was used and some 128 questions were asked of the appellant as recorded. At the interview the appellant was asked whether he understood everything the interpreter had said and he said yes and expressed himself as being happy with the conduct of the interview and with the interpreter. That was an interview conducted on 1st December 2016.
11. Immediately following the interview, however, by letter of 6th December 2016 the solicitors acting on behalf of the appellant expressed concern, saying that it was clear from the interview records that the appellant has struggled with being interviewed in French. Complaint was made that it was not an interview that had been recorded and in particular that the appellant would have found it easier to explain his deeply personal experiences and emotions in his first language of Wolof.
12. Although it is contended that the appellant misunderstood certain of the questions it is far from clear as what those questions were or indeed the nature of the misunderstanding. What emerges from the detailed letter is rather that the appellant is seeking to build upon the answers that were given in interview in more detail. He contends that he and K were together for eight to nine years until the day he last saw him on 25th December 2015.
13. In terms of his experience in the Gambia that is set out in some detail at paragraph 109 of the letter namely that when his friend, with whom he had been staying in Banjul, found out about his sexuality the appellant went to the other side of the city where he met a man who let him stay at his house for six months. The appellant spent most of the time indoors. The letter also sets out some country information and guidance.
14. The letter from those acting on behalf of the appellant, though seeking to criticise the interview, failed to indicate that it was incorrectly interpreted or misunderstood. The fact that an appellant may want to give more details within the confinement of the interview is quite a different matter. He clearly has been able to express himself in fuller terms in the letter written by the representatives following the interview indeed is a witness statement dated 27th January 2017. It was clear that the Judge has that in mind. The Judge was also invited to consider the case of **Dirshe** and has in mind also the letter of 19th December 2016 which amplified the questions in interview. The Judge has indicated that he has considered those matters with care. It seems therefore that with the combination of interview, submissions and statement, the appellant has been in a position to express himself as fully as he may be as to the circumstances of his claim. The appellant also had a Wolof interpreter at the hearing and was able, should he so desired, to have expanded upon his case then. In the circumstances I find no unfairness in the procedure or any undue

restriction placed upon the appellant in expressing his claim. The Judge found at paragraph 19 of the determination that there were open questions asked of the appellant at interview which would have given him the opportunity to discuss in greater detail the relationship with K. The Judge found, however, that the appellant had given “wooden” responses which lacked any texture or which had the hallmarks of a genuine spontaneous evidence on this aspect. The Judge found that the criticism of the interpreter was an unsatisfactory response to the lack of detail in interview. The fact that an appellant may wish to amplify what was said in interview does not of itself make the interview unfair without some clear indication as to what was defective about it. I find little merit in the **Dirshe** point as directed to this case.

15. It was also contended that the Judge engaged in undue speculation concerning the attempts of the appellant to contact K. As the appellant said, he phoned the home on a number of occasions without success but had not followed matters up any further.
16. At paragraph 21 of the determination the Judge found it simply not believable that K has disappeared without trace and there was no evidence to show any attempts by the appellant to get back in contact with him. The suggestion is canvassed that communication may be by Facebook that of course begs the question as to whether the appellant and K ever employed that medium. It is said that the Judge perhaps was over strong in his criticism of the appellant who had done all that he could possibly do in the circumstances to make contact. K was not there it was difficult to ask families and friends to locate him without disclosing the nature of the relationship.
17. I find that there is some merit in that concern but equally in the statement the appellant seeks to give some detail about K whom he knew from his community that they had known each other for the whole of their lives and had grown up together, lived at an apartment on the second floor of a building which K’s friend was renting, first met him at a party, people were present, he seemingly had a house as well as the apartment because of that relationship they met other people whom they had discussions as to the difficulties experienced with their sexuality.
18. K had a rented apartment and there were other families living in the building. As the appellant claims that he was in this relationship for eight to ten years, he and K would have met many people over that time, including those who were living in the same apartment as he did. Indeed the couple who married so openly also were neighbours in that apartment.
19. In those situations it is understandable that the Judge would have considered that there were more avenues to have been explored in order to find K and people who they knew together possibly to be questioned. Although to some extent it is speculation about Facebook, nevertheless they were part of a community for a considerable period of time and there

is some merit in the concern of the Judge that apart from making telephone calls nothing further has been done to try and locate him.

20. One matter, which weighed heavily with the Judge in considering the matter of credibility, was the account of going to Gambia and living with the family until his forged Swedish passport was obtained. The Judge did not find it credible that the appellant did not disclose his reason for leaving to such people who were organising his passport. However the Judge considered that they were smugglers rather than family. It seems to me that that was a reasonable conclusion to have come to, particularly as the appellant was introduced to a man who would help him get a passport and pay US\$1,000 for it. The family bought his flight tickets and paid for his journey out of Gambia.
21. It was also said by Mr Holmes, on behalf of the appellant, that the Judge fell into the danger of seeking to place the appellant in a stereotype. Comment was made that he did not involve himself in the "gay scene" in Manchester with its gay friendly pubs and clubs. It is suggested that is perhaps an unfair criticism to make, particularly to ignore the different culture in which the appellant has come it would seem certainly in Senegal that the appellant and K kept themselves to themselves, there is no reason at all why the appellant should be conformed to a stereotype of enjoying clubs and pubs rather than keeping himself to himself. It was also said that the Judge perhaps unfairly criticised the appellant for his lack of knowledge about the institution of Icebreakers which he said that he attended on three occasions on Wednesday evenings. The point is made, particularly by Upper Tribunal Judge Finch in granting permission, that it perhaps was inaccurate for the Judge to criticise his lack of detail on that matter when the Record of Proceedings would seem to indicate that he had given a much greater range of answers about those meetings.
22. As Mr Holmes indicates, the appellant had only recently come to the United Kingdom it was understandable that he would be cautious about entering into any new relationship, particularly as he contended that his abiding emotional attachment was to K and remains so. The appellant indicated, in the course of the hearing, that he had not had the money to come into the centre of Manchester very often that the visits to Icebreakers was a tentative venture to try and make some friends and contacts.
23. Equally it is understandable that the Judge, when considering the question of whether the appellant was gay, to note that now that there was freedom to express himself fully in that regard he chose not to do so. As he indicated he had had no homosexual relations since leaving Senegal. Were that criticism as to stereotypes stand in isolation from the overall context of the case, then I can readily understand that that might find the ground to call for a rehearing. However, it is clear from the context of the determination, that the Judge had looked at a number of matters both in isolation and in combination. The Judge did not find that the incident

which prompted the departure and the separation from K in fact happened. Notwithstanding the claim by the appellant that K was central to his life, little had been done to make enquiries about him, there by calling into question whether it is said that the relationship is truthful. In determining whether the appellant indeed is homosexual regard was had to the fact that he had no sexual partners in the United Kingdom and had done very little on the gay scene. Indeed the appellant had not even told the family who assisted him in leaving to the United Kingdom about his sexuality, although clearly they would have been concerned as to why he needed to leave in the first place.

24. All those factors led the Judge to conclude that the appellant was not credible and was not homosexual.
25. I find looked at overall, that that was a finding which was open to the Judge to come to. There is no indication that the Judge has failed to consider the matters that were raised by the appellant.
26. In all the circumstances therefore, although there are clearly some errors in the approach that were taken, such do not serve to taint the overall finding that the Judge has made that the appellant is not credible as to his account and not homosexual in his orientation.
27. In the circumstances therefore the appeal to the Upper Tribunal is dismissed and the findings of the First-tier Tribunal shall stand. The appellant's appeal for asylum is dismissed that in relation to humanitarian protection is dismissed as is that in relation to human rights.

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.



Signed

Date 19 January 2018

Upper Tribunal Judge King TD