



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13015/2018

### **THE IMMIGRATION ACTS**

Heard at Field House  
On 22<sup>nd</sup> July 2019

Decision & Reasons Promulgated  
On 28<sup>th</sup> August 2019

#### **Before**

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

#### **Between**

MR A K W  
(ANONYMITY DIRECTION MADE)

**Appellant**

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

#### **Representation:**

For the appellant: Mr A Swain, Counsel, instructed by Templeton Legal Services.

For the respondent: Ms S Cunha, Senior Presenting Officer

### **DECISION AND REASONS**

#### **Introduction**

1. The appellant is a national of Kenya, born in June 1992. He came to the United Kingdom in January 2018 on a visit Visa. In April 2018 he claimed protection on the basis he would be at risk if returned because he is Gay.

2. He claimed he was orphaned as a child and raised by step-parents. His stepfather began to sexually abuse him from around the age of 11. The abuse went on until 2014 when the appellant went to work in Qatar. The appellant would return to Kenya for holidays, staying with his stepfather.
3. By his late teens he began to realise he was Gay. By that stage his relationship with his stepfather had developed into one of affection and he referred to him as his partner. He learnt that his stepfather had been killed, allegedly for abusing children. The appellant returned from Qatar and was met by his friend David. David was from the neighbourhood and was also Gay. David drove him to his stepfather's home. He saw the house had been burnt down. He felt at risk from locals because his stepfather had disclosed he was his lover and was Gay. He went to the police for protection but they did not help. He decided to leave the country and advised his friend David to do the same. A friend, Nicole, sponsored him for his visit Visa.
4. His claim was refused on 29 October 2018. The respondent did not accept he had established he was Gay or of the claimed occurrences in Kenya. His credibility was a central issue.

#### The First tier Tribunal

5. His appeal was heard by First-tier Tribunal Judge Seeloff at Hatton Cross on 22 March 2019. In a decision promulgated on 1 April 2019 it was dismissed. The judge did not find the appellant has established he was at risk and did not find the claim credible.
6. For the appeal, the judge had the usual bundle from the respondent. The judge had a letter from his church; a letter from an organisation Rainbows across Borders, and statements from friends as to his sexuality. Various pieces of medical evidence were presented.
7. The appellant was represented by Counsel. A Home Office presenting officer attended. The judge, in light of the medical evidence provided, considered it appropriate to treat the appellant as a vulnerable witness. He gave evidence and was cross-examined. The judge also heard from two witnesses who knew the appellant in the United Kingdom.

#### The Upper Tribunal

8. Permission to appeal was granted on the basis it was arguable the judge erred in the treatment of a medico-legal report dated 17 March 2019 from a Dr Ginn, consultant psychiatrist. Reference was made to paragraph 68 of the decision where the judge stated:

“It is clear that none of the medical professionals have questioned whether or not the Appellant's account is true.

Accordingly whilst they have all described the Appellant as showing symptoms of mental illness and post-traumatic stress disorder none of them appeared to have given consideration to the possibility that the account was being manufactured or embellished or whether the symptoms could have a different cause from what the appellant claims.”

9. A rule 34 response dated 3 July 2019 has been provided opposing the appeal. It was submitted that the judge directed himself appropriately. The response contended that the credibility of the appellant’s account was a question of fact to be decided by the judge and the weight to be attributed to any piece of evidence was for the judge. It was contended the judge provided sustainable reasons for departing from the medical evidence and finding the appellant’s account unreliable.
10. I have been provided with a copy of the decision JL (Medical reports - credibility) China [2013] UKUT 00145. I have also considered the content of the appeal file and the medical reports submitted in the First-tier Tribunal.
11. Mr Swain, Counsel, relied on the grounds advanced. In response, Ms Cunha made the point that the presenting officer as recorded at paragraph 40 of the decision had submitted that the medical evidence, including the most recent psychiatric report, did not attribute any symptoms of post-traumatic stress disorder to the claim of being abused as a child. The presenting officer had also questioned how he could then subsequently form a relationship with his abusive stepfather. The judge dealt with this at paragraph 54 to 56. The judge acknowledged his lack of expertise on how the victims of abuse would subsequently respond. The judge accepted, given that the appellant was in Qatar, he may not have been aware his stepfather was abusing other children. However the judge did not find it credible that his stepfather would reveal to other people he had been abusing the appellant or that he was Gay.
12. Referring to the judge’s comments about the psychiatric report she submitted the judge did not have to suspend his belief. She submitted the psychiatric report did not increase the appellant’s credibility. There were other factors upon which the judge relied in rejecting the claim. For instance, the judge did not find his account of losing contact with his friend David plausible. The judge also questioned at paragraph 57 his explanation for coming to the United Kingdom. The judge pointed out he had a work visa for Qatar and could have travelled there rather than waiting and applying for a visit Visa for the UK . At paragraph 66 the judge commented that no one from Rainbows across Borders had attended to give supportive evidence. A letter submitted did not say that the organisation is only open to the Gay community. No one from the appellant’s Church had attended to support the claim that they believed he was Gay.

13. In response, Mr. Swain referred me to the psychiatric report at paragraph 8.2 onwards. It concluded that the findings on examination of his mental state were consistent with the history he gave. He submitted the judge had not properly considered the report. He then referred to the other points taken by the judge in assessing the appellant's credibility and submitted the judge wrongly applied section 8 and paragraph 339L of the rules was complied with. He made the point that the appellant applied for protection during the course of his existing visit Visa leave and the claim was not made following arrest or suchlike.

#### Consideration.

14. In considering any decision on appeal is important not to simply focus upon a single phrase or paragraph. Rather, whilst a judge is required to consider and evaluate the central aspects of the claim and the supporting evidence the decision must be looked at as a whole.
15. In this appeal the appellant said he was at risk in Kenya because he was Gay. The respondent did not accept he was Gay and so it was for the appellant to establish this, albeit by the low standard applicable. In considering such a claim the historical account can be very significant. Subsequent events, for instance, how the person has led their life since coming to the United Kingdom and also provide indicators. Medical reports can add support to the credibility of the claim. In summary, a number of factors come into play.
16. The judge accurately sets out the claim being made at paragraphs 2 through to 9 and the respondent's reasons for refusal at paragraphs 10 to 15. The judge was provided with appeal bundles which included medical evidence. The judge had considered the medical evidence at the outset and was agreeable to treating the appellant as a vulnerable witness. He attended and gave evidence and was cross-examined.
17. A number of points were made by the presenting officer challenging his credibility. There was a discrepancy in his account as to when he realised he was gay. His oral evidence was it was that it was in 2010 yet on three separate occasions in his asylum interview said it was 2015. The appellant offered an explanation. He also confirmed he had no Gay relationships whilst living in Qatar. He was then questioned about how he knew his stepfather was abusing other children. He said he had his suspicions but in any event his friend David told him over the telephone. He then said he had lost contact with David, explaining he had thrown his form with his contacts away as the agent who brought him here with trying to extort money from him. He said he had been known David for 20 years but had been unable to contact him through social media.

18. He also claimed to have lost contact with a former partner in the United Kingdom, Moses. He was asked about Rainbows across Borders and said that the group only admitted Gays. The witness was called the organisation to confirm that.
19. Two witnesses were called in support of the claim. The first, MM, said the appellant had lived with him and his family and had not disclosed that he was Gay for over 10 months. he was also unaware of any relationships the appellant had in the United Kingdom. Another witness, HS and was unaware of any relationships in the United Kingdom.in submissions the presenting officer highlighted the fact that the two witnesses called were unaware of any relationship in the United Kingdom.
20. The judge made the point that he had no expertise as to how the victim of abuse might later on in life view their abuser. The judge made the point that it was not credible his stepfather would tell others of his behaviour. The judge also question why the appellant would return to Kenya given what he said his friend David had told him. The judge said there was no apparent reason for David to flee as the appellant had advised. Judge had raised the question why the appellant did not if genuinely in fear returned to Qatar rather than waiting for a UK visa. The judge rejected his claim about losing his phone and his contacts.
21. The judge also questioned how he obtained his visit Visa. His sponsor was not in attendance. The judge then dealt with the appellant's account of life in the United Kingdom. The judge referred to the evidence of MM who was described as the appellant's good friend. However, the judge commented he was unaware the appellant was Gay until he revealed this 10 months later. Apparently MM's mother knew from the outset but had not told her son. That witness and the second witness were unaware of his claim relationship in the United Kingdom.
22. The judge commented that several potentially relevant witnesses did not attend. This included his claimed former partner, Moses.The judge referred to the documentary evidence supplied. A letter from Rainbows across Borders does not state the organisation was only open to the Gay community but describes itself as a social group. The judge dealt with the evidence about the appellant's church. Consequently, there were a number of pieces of evidence which had been analysed by the judge and which detracted from his claim.
23. The judge comments on paragraph 339L of the rules. The judge pointed out the appellant had the benefit of professional advice. I can see no fault with this.

24. The judge then turned to the medical evidence, pointing out that none of the compilers of the report have question whether his account is true. I find no fault with this comment. The truth of the underlying account may go to the reliability of the report. Furthermore, it does not necessarily follow that a diagnoses of post-traumatic stress disorder means the account given to the doctor is correct. Clearly, it is for the judge to decide what facts to accept and reject. This is not the doctor's task and indeed the psychiatrist in preparing the report provided comments that it was prepared on the assumption that what the appellant told him is true. Consequently, the report needs to be analysed in this context.
25. Before dealing with the psychiatrist report I would refer, by way of analogy, to the very supportive GP report from Dr Wikrama-Seka dated 20 November 2018. The doctor first saw the appellant on 26 June 2018 as an emergency and the doctor referred him to the mental health team. The bulk of the report repeats the appellant's claims as if they were facts: for instance, it refers to him having witnessed horrific and dramatic events in Kenya.
26. There is a letter from the mental health team dated 4 December 2018 which more sensibly refers to the appellant 'reporting' nightmares as a result of 'alleged' abuse (my emphasis).
27. I now turn to the psychiatric report. The doctor refers to what is a normal clinical practice and classifications in order to reach a diagnoses. The doctor refers to situations where reliance is placed upon a sound evidential base and also experience. At section 7 the doctor sets out the appellant's account of events in Kenya and his treatment since being in the United Kingdom. He was asked about his day-to-day life here. At 7.3 .25 he was asked questions directed towards a clinical diagnoses, such as hypervigilance and avoidance. At 7.4.3 the doctor said objectively he was reactive and his speech was articulate. He was orientated in time, place and person. The doctor concluded he did not meet the diagnostic criteria for any mental disorder. The diagnostic criteria for a diagnoses of depression was not met nor of post-traumatic stress disorder. The doctor did not feel he should be regarded as a vulnerable witness. The doctor concluded that his account was consistent with mild-to-moderate depression in the recent past and this had resolved. However, the doctor felt his condition could deteriorate if his antidepressant treatment stop or he was placed in situational stress. The doctor concluded by stating the appellant reports he has come close to making suicidal attempts and therefore there was a potential in the future for self-harm.
28. The judge is not completely accurate in stating none of the medical professionals have questioned whether his account is true. Some of the doctors, notably his GP have taken at face value that the claim is true. A report which does not provide a critical and

objective analysis can be afforded less weight than one which does. However, other members of the community mental health team referred to his 'claims'. The consultant psychiatrist at 8.2 does comment on whether the diagnosis is consistent with the appellant's account. In part, the doctor is straying into what is a matter for the judge but nevertheless he has been invited to make comment by the appellant's representatives. He can express an opinion and has commented that he did not describe symptoms out of keeping with the rest of his presentation or history and the findings were consistent with the history.

29. JL (Medical reports - credibility) China [2013] UKUT 00145 points out that the more a diagnosis is dependent on the account given the less weight can be attached to the report. Doctors are guided to bear in mind that ultimately whether an account of underlying events is credible is for the judge not the doctor. However, this does not mean the doctor cannot form an opinion. The final headnote in the case refers to the fact that medical reports may well involve an assessment of the compatibility of the account with physical marks or medical conditions.
30. In summary, I find no material error demonstrated in how the judge dealt with the appeal. The psychiatric report does not confirm a major disabling mental illness. The judge's comments at paragraph 68 of the appellant showing symptoms of mental illness and post-traumatic stress pitch matters higher than that stated in the psychiatric report.
31. In terms of determining the underlying account the report is of limited probative value. There was no argument of any discrepancy in the assessment of his claim attributable to any cognitive impairment. It was not argued his mental state was such that article 3 would be breached on return.
32. The judge has gone through different aspects of the evidence and has made an assessment of the claim which was open to him on the evidence. As stated, the judge is wrong in stating that none of the medical professionals have questioned the truth of the underlying account. However, I do not find this detracts from the reliability of the judge's overall conclusion on the appeal.

### Decision

No material error of law in the decision of First-tier Tribunal Judge Seeloff has been established. Consequently, that decision dismissing the appeal shall stand.

Deputy Upper Tribunal Judge Farrelly.

Date: 26 August 2019