



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

Appeal Number: PA/08912/2018 (V)

THE IMMIGRATION ACTS

**Heard at: Field House
On: 2 September 2020**

**Decision & Reasons Promulgated
On 9 September 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MD
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms H Foot, instructed by Tower Hamlets Law Centre

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. In addition to the above-mentioned parties, the appellant was present, remotely.

2. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing MD's appeal against the Secretary of State's decision to refuse his human rights claim following the making of a deportation order against him.

3. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and MD as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

4. The appellant is a citizen of Ghana born on 20 April 1985. He claims to have arrived in the United Kingdom with his father and siblings in 1997, aged 12 years. Following his arrest on 19 May 2003 for attempted deception and on suspicion of being an immigration offender, the appellant applied for leave to remain on Article 8 grounds, on 22 May 2003. His application was refused and an appeal against that decision dismissed on 1 April 2006.

5. The appellant was convicted on 16 November 2010 of possessing a listed false instrument and possession of articles for use in fraud and possession of an improperly obtained ID card and was sentenced to four 20-month custodial sentences, to run concurrently. He was released from prison on 9 May 2011 but was arrested again on 9 November 2011 and convicted of further offences of fraud and false representations on 22 December 2011. He was served with a notice of liability to deportation and a deportation order was signed on 15 May 2013 under section 32(5) of the UK Borders Act 2007. The appellant appealed against the decision to deport him, but his appeal was dismissed on 18 October 2013 and he became appeal rights exhausted on 20 November 2013.

6. On 21 December 2013 the appellant submitted an application for a derivative residence card under the EEA Regulations which was refused on 22 January 2014 and a further application as the extended family member of a British partner was refused on 20 February 2014 and then, following an appeal, was reconsidered and refused again on 11 April 2014.

7. The appellant made an asylum claim on 26 February 2014 on the grounds of religion and sexuality, but that was refused on 2 September 2014 and certified under section 96 of the Nationality, Immigration and Asylum Act 2002. Following a judicial review challenge the certificate was withdrawn and a new refusal decision was made on 5 August 2015. The appellant appealed against that decision and his appeal was allowed on asylum grounds on 5 November 2016. However, that decision was set aside following a grant of permission to the respondent and the appeal was remitted to the First-tier Tribunal to be heard afresh. The respondent appears to have agreed to reconsider the appellant's claim and the decision of 5 August 2015 was withdrawn. A new decision was made on 2 July 2018 refusing the appellant's protection and human rights claim.

8. In that decision the respondent considered the appellant's claim to be at risk on return to Ghana on the grounds of being an openly bisexual man who could not live discreetly and of being a Rastafarian, and his claim that he was HIV positive, that he had PTSD and suffered from depression and had been suicidal and that he could not receive the required healthcare and medication in Ghana. The respondent took note of the appellant's claim to have left Ghana at the age of 4, to have moved to Nigeria and then the Ivory Coast and to have come to the UK with his father and siblings at the age of 12. The respondent noted the appellant's claim that he and his siblings were abandoned by their

father in the UK, were then in informal foster care and then in the care of his father's girlfriend who abandoned them, leaving him to care for his younger siblings until social services became involved, and that he was left homeless when his siblings were taken into care when he was 16 years of age. The appellant claimed to have been picked up by a man called T who, in exchange for accommodation, involved him in criminal activities and expected him to steal. He was arrested and detained in 2003 after being caught stealing and when released became involved again with T who provided him with false documents to enable him to find employment. At that time his sexuality became known in his community and by his siblings and he was violently attacked on several occasions. He continued to be assisted by T with false documents in various identities and, to clear his debt with T, he agreed to transfer money in a false name in a bank, but he was caught and apprehended by the police, convicted and sentenced to 20 months' imprisonment in a different identity, DC. Following his release, his false identity was discovered and he was arrested again and given another custodial sentence. He was attacked and abused whilst in detention because of his sexuality and was raped in his cell, and he attempted suicide. He was committed to a mental institute in May 2016 after being diagnosed with PTSD and was diagnosed as HIV positive in June 2017.

9. The respondent accepted that the appellant was living openly as a bisexual man and that he was a Rastafarian but did not accept that he would be at risk on either basis. The respondent considered the appellant to be excluded from humanitarian protection because he had committed a serious crime and did not accept that he met the high threshold to establish an Article 3 claim on the basis of his health or the risk of suicide. The respondent considered that the appellant could not meet the requirements of paragraph 399(a) and (b) of the immigration rules as he had no children or current family life with a partner and that he could not meet the requirements of paragraph 399A as he had not been lawfully resident in the UK for most of his life, it was not accepted that he was socially and culturally integrated in the UK and it was considered that there were no very significant obstacles to his integration in Ghana. The respondent did not consider there to be very compelling circumstances outweighing the public interest in deportation.

10. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 5 July 2019 by Judge Neville. The judge confirmed that there was no issue with credibility and the only relevant matter was risk on return as a result of the appellant's sexuality. The judge rejected the submission that gay or bisexual men who lived openly as such in Ghana would generally face a risk of persecution, but he accepted that the appellant's particular circumstances and sexual identity would put him at risk and he allowed the appeal on that basis. The judge also accepted that the appellant's removal to Ghana would be in breach of Article 3 owing to his mental health issues and the high risk of suicide and furthermore that there would be a breach of Article 8 owing to very compelling circumstances outweighing the public interest in deportation. The appeal was accordingly allowed on protection and human rights grounds.

11. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge had made a material misdirection and given inadequate reasons for finding that the appellant was at risk of persecution on the basis of his sexuality; that the decision to allow the appeal on the basis of the appellant's mental health and suicide risk was inconsistent with binding authorities; and that the judge had failed to consider relevant factors when concluding that there were very significant obstacles to the appellant's integration in Ghana.

12. Permission to appeal was refused by the First-tier Tribunal but was subsequently granted by the Upper Tribunal on 2 March 2020. The matter then came before me for a remote hearing by way of skype for business.

Hearing and Submissions

13. Mr Melvin submitted that the judge's conclusion, that the appellant would be at risk of persecution, lacked adequate reasoning. He submitted that the judge's reasoning at [54] to [56] was insufficient to warrant a departure from his finding at [52] that gay or bisexual men who lived openly as such in Ghana were not generally at risk of persecution. Mr Melvin submitted that the judge erred by speculating, at [55], that the lack of evidence of reports of violence was due to the fact that people avoided expressing their sexuality openly in Ghana. The fact that the appellant had joined a number of groups and was actively involved in the UK in LGBTQ activities was not part of his sexuality and was not sufficient to show that he would be at risk in Ghana. Neither was there evidence that the appellant was at risk of exploitation amounting to persecution. Mr Melvin relied on the grounds of appeal in relation to the judge's findings on Article 3 and 8.

14. Ms Foot submitted that the judge's decision was noticeably carefully reasoned and the grounds of challenge were simply an expression of disagreement. The high threshold for making out a reasons challenge was not met. Even if a material error of law was found in the judge's decision, it did not have to be set aside, and it was relevant that the more recent CPIN report of May 2020 showed a deterioration in the attitude to the LGBTQ community in Ghana. Ms Foot submitted that it was not irrational or unreasonable to conclude that the lack of incidents of violence against the LGBTQ community was due to a lack of an ability openly to demonstrate sexuality. The judge was not speculating, but he based his findings on the expert report and background information. The judge directed himself properly in relation to the case of BF (Albania) v The Secretary of State for the Home Department [2019] EWCA Civ 1781, which was relevant to the appellant's circumstances, and considered various reasons which, when taken together, were sufficient to show that the appellant was at risk in Ghana. The issue of state protection was not an issue because the appellant's fear was partly from the authorities. Ms Foot submitted that the grounds of challenge in relation to Article 3 were not clear and simply consisted of a citation of various cases. The judge was entitled to conclude as he did in regard to Article 3 and 8.

Discussion and Findings

15. As Ms Foot submitted, the judge's decision is a particularly well-written and comprehensive one. The judge undertook a detailed assessment of the country and medical expert reports and the country information and assessed the appellant's claim in the context of the information in those reports.

16. The respondent challenges the judge's conclusion that the appellant would be at risk on the basis of his sexuality, asserting that he materially misdirected himself when making his findings and provided inadequate reasoning. However, and on the contrary, it seems to me that the judge gave detailed reasons for finding that, despite the fact that there was no generalised risk of treatment amounting to persecution for those living openly bisexual lives in Ghana, the appellant's particular circumstances and situation meant that he would be at risk. The judge gave three such reasons, at [54] to [59], the first being the nature and the extent of the appellant's public display of his sexuality. It is the respondent's case that the judge's findings in that regard involved speculating that the limited evidence of incidents of violence was due to the fear of open displays of sexuality, but I agree with Ms Foot that it was not irrational of the judge, having regard to all the evidence including the country expert evidence, to make such a finding. That is the threshold the respondent has to meet in a reasons challenge and it seems to me that the threshold is not met. In any event, as Ms Foot submitted, the judge gave further reasons for distinguishing the appellant's circumstances from those of the general group referred to at [52], namely the fact that he is accepted as being a genuine and committed activist for the LGBTQ community and would continue to be so on return to Ghana, such that he has a profile elevating him above the general group, and that he is accepted as having vulnerabilities in terms of his mental health and his past experiences which would put him at an enhanced risk of exploitation. The grounds assert that the judge failed to give proper reasons for concluding that the appellant could not access state protection, but that was plainly a matter the judge considered and properly addressed, at [44], [45], [50] [51] and [59].

17. I am therefore satisfied, contrary to Mr Melvin's submission, that the judge provided sufficient reasons to warrant a departure from the finding on generalised risk on return at [52], drawing assistance, as he said, from the judgment in BF (Albania) in which similar issues and considerations arose and noting the exceptional and unusual nature of the appellant's particular case. Whilst it may be that another judge could have reached a different decision, it was, in my view, entirely open to Judge Neville to reach the decision that he did, having given detailed consideration to all relevant matters and having given full and cogent reasons for concluding as he did. The respondent's grounds are essentially a disagreement with the judge's decision, but the judge cannot be criticised as a matter of law, given his careful analysis of the evidence and the appellant's particular background, circumstances and past experiences and his detailed and comprehensive reasoning. I therefore uphold the judge's findings on protection.

18. As Mr Melvin properly submitted, the second and third grounds fall away given that I am against him on the first ground. However, I would add that the respondent's challenge in those grounds is again a simple disagreement. The

second ground is largely a reference to authorities which it is said the judge failed to follow, but that is plainly not the case. The judge had full regard to the relevant authorities when making his findings and, having carefully analysed and assessed the medical evidence and had regard to the background information relating to access to treatment and medication in Ghana, provided detailed reasons for concluding that the evidence met the high threshold for making out an Article 3 claim. Likewise the judge provided a detailed assessment of the appellant's circumstances in the context of Article 8 and applied the correct test in considering the factors in the appellant's favour and those against him when reaching his conclusion as to the existence of "very compelling circumstances".

19. For all of these reasons I find that the respondent has not made out her grounds of appeal and that the judge did not err in law as asserted. I uphold the judge's decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal to allow the appellant's appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 2 September 2020