Upper Tribunal
(Immigration and Asylum Chamber)Appeal Number: PA/12447/2017 (V)

THE IMMIGRATION ACTS

Heard at Field House by video Conference On 10 & 16 February 2021	**Decision & Reasons Promulgated On 17 May 2021**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

M I M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

Representation:
For the appellant: Ms B. Asanovic, instructed by Duncan Lewis Solicitors
For the respondent: Mr C. Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 07 November 2017 to refuse a protection and human rights claim in the context of deportation proceedings and to certify the protection claim under section 72 of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002').

2. First-tier Tribunal Judge Beach ('the judge') dismissed the appeal in a decision promulgated on 10 December 2019. The judge concluded that the appellant had rebutted the presumption that he was a danger to the community for the purpose of section 72 NIAA 2002. She heard evidence from the appellant, his mother and his brother, but did not accept the credibility of his claim to identify as bisexual. Nor did she accept that the appellant would be at risk on return as a result of past involvement in a fraternity. She dismissed the protection and human rights claim. The appellant did not rely on Article 8 issues relating to his family life even though he has a partner and children in the UK.

3. In a decision promulgated on 20 November 2020 Upper Tribunal Judge Bruce found that the First-tier Tribunal's findings relating to the appellant's sexual orientation involved the making of an error of law. However, she concluded that the First-tier Tribunal's findings relating to risk on return as a result of his past membership of a fraternity were sustainable. She set aside the relevant part of the First-tier Tribunal decision and directed that the Upper Tribunal would remake the decision at a resumed hearing. The respondent accept that, if the appellant is bisexual, that he would be at risk on return. Accordingly, Upper Tribunal Judge Bruce found that the only issue for remaking was whether the appellant is likely to be bisexual.

Background

4. The appellant is a citizen of Nigeria who entered the UK on 28 January 2011 with entry clearance as a Tier 4 (Student) that was valid until 31 October 2012 to study for an MSc in International Business Management at the University of East London.

Criminal conviction (2012)

5. Within a few months of his arrival in the UK the appellant, with a group of others, was involved in the widespread public disorder that took place in August 2011. On 09 February 2012 he was sentenced to 3 years' imprisonment for the attempted burglary of a jewellers. The sentencing judge took into account the fact that the group went prepared to commit the offence. They travelled some distance to their target, had loaded rocks and bricks into the car, and had dark clothing with them including gloves and balaclavas. If it was not for the fact that the premises had reinforced glass, the judge had no doubt that the group would have 'looted them thoroughly'.

First decision (2013)

6. The appellant was notified of his liability to deportion on 28 February 2012 and was asked to complete a questionnaire giving reasons why he should not be deported. A previous First-tier Tribunal decision from 2013 records that the appellant failed to respond to the initial questionnaire.

7. The appellant was in a relationship with a female Nigerian national, 'SA', at the time. Their son, 'A', was born on 16 April 2012 while the appellant was serving his sentence. The respondent's chronology states that the appellant applied for further leave to remain outside the immigration rules on 28 September 2012. It is unclear on what basis the application was made.

8. The 2013 First-tier Tribunal decision records that the appellant was served with a further notice of liability to deportation and a questionnaire on 30 October 2012. He submitted a response on 09 November 2012. The respondent signed a deportation order with reference to section 32(5) of the UK Borders Act 2007 ('UKBA 2007') on 02 May 2013 and served it with a decision letter on 09 May 2013. The decision attracted a right of appeal. The respondent's chronology indicates that two further applications for leave to remain were refused without a right of appeal.

First-tier Tribunal appeal (2013)

9. A panel of the First-tier Tribunal (First-tier Tribunal Judge Davidson and Mr G.H. Getlevog) dismissed his appeal in a decision promulgated on 25 September 2013. The appellant was unrepresented. He applied for an adjournment to obtain a legal representative. The panel noted that there was evidence on file to show that the appellant had a legal representative who had recently withdrawn because they were without instructions. Having considered the relatively straightforward nature of the claim put forward by the appellant the panel decided that they could determine the appeal fairly and refused the application. The appellant appeared at the hearing with his partner SA. The panel considered the nature of the claim, which focussed solely on his family life with SA and their first child. At the hearing SA said that they had been family friends since childhood. SA came to the UK in 2000 to study but had overstayed since 2008. At the date of the hearing SA was on bail awaiting trial for attempting to smuggle a mobile phone into the detention centre. She had only just been released from a three week period of custody during which the baby had been placed in the care of the local authority. The panel accepted that the appellant had a family life with his partner and son. The First-tier Tribunal concluded that deportation was proportionate given the appellant's relatively short length of residence in the UK, the fact that much of that time had been spent in prison, that neither the appellant nor his partner had leave to remain, and the young age of their child. The panel concluded that they could continue their family life in Nigeria. It seems that there was no application to appeal the decision. The appellant's appeal rights are said to have been exhausted on 07 October 2013.

Second decision (2014)

10. The appellant made a protection claim on 26 August 2014. It is unclear whether he approached the respondent to make the claim or whether it was made in response to enforcement action. At this stage, the appellant put forward a claim based on his identity as a bisexual man. No mention was made of any fear on return because his former membership of a fraternity. The respondent treated the application as an application to revoke the deportation order. The protection claim was refused in a decision dated 23 February 2015 with a right of appeal. The respondent found that the delay in raising the issue damaged the appellant's credibility and rejected his claim to be bisexual.

First-tier Tribunal appeal (2015)

11. First-tier Tribunal Judge J.H.H. Cooper dismissed the appeal in a decision promulgated on 18 November 2015. The decision indicates that the First-tier Tribunal relisted the case on several occasions to allow for documents to be submitted and for witnesses to attend. The appellant attended without a legal representative on 19 June 2015 and 27 July 2015. On the latter date he said that his partner, who he had separated from at the end of 2014, had just give birth to their second child on 20 July 2015. He did not appear at the subsequent hearing listed on 16 October 2015. The judge considered the message relayed to him from the court clerk, that the appellant had to go to hospital and could not attend, took into account his previous failure to comply with directions, and the lack of evidence to support the adjournment application, before proceeding to determine the appeal in his absence. The judge noted that the appellant had failed to produce witness statements for himself or any of his witnesses as directed. In the absence of any evidence to support the claim, or any explanation as to why it was not raised in the previous appeal, the judge concluded that the appellant had failed to show that he was bisexual as claimed or that he would be at risk on return. There was no new evidence relating to the appellant's family life that might justify departing from the findings made by the First-tier Tribunal in 2013.

12. The respondent's chronology states that the appellant's appeal rights were exhausted on 07 December 2015, which indicates that he did not apply for permission to appeal against the First-tier Tribunal decision despite the judge's decision to proceed in his absence.

Further submissions (2016)

13. The respondent's chronology indicates that the appellant was detained in February 2016 with a view to removal. In response, the appellant made further submissions on 06 May 2016, for the first time raising his claimed fear of return as a result of his membership of a fraternity. No copy of the further submissions appears to have been included in the evidence before the Upper Tribunal for me to ascertain the extent to which the appellant continued to assert that he was at risk because of his sexual orientation. The respondent's bundle contains evidence that was said to have been sent with the further submissions, all of which relates to the issue of risk

arising from the fraternity. There is nothing to suggest that the appellant put forward further evidence relating to his claimed sexual orientation with the further submissions made in 2016.

14. The chronology details a number of incidents during 2016 and 2017 whereby it is said that the appellant failed to attend interviews, failed to comply with bail conditions, and was arrested in relation to a suspected criminal offence relating to his former partner albeit the charges later were dropped.

15. The respondent refused the further protection claim in a decision dated 10 May 2017 and certified the claim as 'clearly unfounded' under section 94(1) NIAA 2002. The appellant sought to challenge the decision by way of an application for judicial review. The claim was settled by consent on 16 August 2017 and the respondent agreed to reconsider the further submissions.

Third decision (2017)

16. After interviewing the appellant for a second time, the respondent refused the fresh protection and human rights claim in a decision dated 07 November 2017. The interview record and the decision letter concentrated on the issues relating to the fraternity, save for an oblique reference to his sexual orientation made by the interviewing officer at the end of the interview. In response, the appellant said that he joined the fraternity 'because of the bullying about my sexuality'. The decision is the subject of this appeal and is being remade on the narrow ground identified above.

The Hearing

17. The hearing took place at Field House with the parties and witnesses appearing by video conference on Skype due to the continued need to take precautions to prevent the spread of Covid 19. The parties consented to the hearing proceeding in this way. The situation was reviewed throughout the hearing. Two witnesses were due to give evidence by Skype from Nigeria in any event. Having not been able to establish a good enough connection with the appellant's brother on the first day of the hearing, it was adjourned part-heard and his evidence was taken on a second day. None of the witnesses required the assistance of an interpreter. I was satisfied that the witnesses were able to understand the questions put to them and could communicate their answers clearly. Similarly, the legal representatives were able to put forward their submissions without any significant impairment. The detail of the oral evidence and submissions is a matter for record. I will refer to the relevant aspects in my findings.

Decision and reasons

18. The decision of First-tier Tribunal Judge Cooper is the starting point in this assessment, but given that the appellant did not attend the hearing or

produce any evidence in support of the previous appeal my task is to assess the evidence currently before the Upper Tribunal.

19. The appellant's account of his sexual orientation given in interview, his witness statement, and when answering questions at the hearing, has been broadly consistent. His description of attitudes towards people whose sexual orientation does not conform to Nigerian societal norms is also consistent with the background evidence.

20. However, his account has been limited to a fairly narrow and specific set of incidents, some of which are repeated by other witnesses. In interview, and in his witness statement, the appellant described how he began to realise that he might be attracted to men when he was about 14 years old. He described an incident when he was dared to kiss a boy at a birthday party and realised that he quite liked it. A few months later he told his mother about his feelings. She arranged for a junior pastor in their church to say deliverance prayers for him. When he was about 15 years old he became friends with an older boy called 'OO' who people suspected might be gay. Their friendship eventually developed into a sexual relationship. Their relationship ended about six months later when OO's family moved away. The appellant said that he was bullied at university because people thought he was gay and on one occasion was beaten by a group of 5 men. The appellant also described an incident when his younger brother, 'P', was about 15 years old. His brother jokingly asked him if he was gay and he confirmed that he did like men.

21. In her statement, the appellant's mother touched on some of the same elements described by the appellant. She said that he came to see her when he was 14 years old and told her that was attracted to members of the same sex. It was against everything they preached so she arranged for a pastor at their church to carry out deliverance prayers. His mother said that she was called to his secondary school because her son was the victim of 'several bullying incidents', but her statement does not go so far as to suggest that she had any knowledge of the reasons for the bullying. She simply stated that her son would not tell her about it. She confirmed that he was friends with an older boy called OO, but again, did not go so far as to suggest that she had any knowledge of them being in an intimate relationship. She merely stated that her husband 'found it suspicious' that they spent so much time together and frowned upon them spending time in their house. The appellant's mother also recited an incident when he was at university when she witnessed him with a head injury. She said that he was evasive and told her he had fallen, but she later found out from a friend of his that he had joined a fraternity 'for his self-protection'. Again, there is no suggestion in her statement that she was aware of why he was being bullied at university. In oral evidence she said that she had suspicions as to why he might have been bullied and prayed for him. When asked whether other people in their home area knew about her son's sexual orientation she mentioned talking to her sisters at her nephew's wedding, an incident mentioned in his brother's statement, but did not offer any other examples. She confirmed that she met SA and the children

when she visited the UK, but was unaware of any other partners that the appellant might have had either in Nigeria or the UK.

22. In his statement, the appellant's brother P said that he had begun to hear rumours about his brother's sexual orientation when he was about 10 years old and his brother was about 15 years old. People were saying that he might have been involved with a boy at boarding school, but he did not describe any knowledge of a potential relationship beyond that vague rumour. He said that he did not pay any attention to it at the time. He went on to say that when he was 'about 15 years old' his brother told him that he liked men. At the time he did not take it seriously and did not understand what it meant. He said that sometime around '2013-2014' he met up with a family friend who had just come back from the UK. He told P that the appellant had taken him out to a gay bar in London. P said that he was shocked and disappointed because he realised that the rumours that he heard might be true. He rang his brother who confirmed that it was true and said that it was up to him how he wanted to live his life. P has not seen his family friend much since then. The last time he saw him was several years ago when he bumped into him at the airport. P also described an incident in 2016 when he walked in on his mother discussing his brother's sexual orientation at his cousin's wedding. He thought it was his mother's sister who lives in Manchester who brought up the conversation about his brother's lifestyle. The appellant's brother made clear that he disapproved of his lifestyle. They never talk about it. If his brother returned to Nigeria he would be afraid to be associated with him.

23. In evidence at the hearing his brother P ensured that he mentioned each of these incidents even when he was not asked directly about them. When asked how old he was when their family friend came back from the UK, he did not answer the question but repeated the dates in his witness statement i.e. 2013-2014. Without prompting, he went on to refer to the incident when his brother told him that he liked guys but he thought it was a joke.

24. The appellant claimed that he and his partner SA had reconciled, but that she had been advised by her legal representative not to give evidence at the hearing. In a witness statement signed on 28 October 2019 she did not say whether they were then in a ongoing relationship or not. Her statement touched on some of the same core elements of the appellant's account as the other witnesses. SA said that she had known the appellant all her life. She described them 'dating' when she was about 12-13 years old but said that it was all innocent. She comes from a strict religious family. Her parents were against her associating with the appellant. Although they never told her why, she suspected that it might be because of his bisexuality and membership of the fraternity. She thinks her parents might have come to know about this because they were lecturers at the university. SA claims that she 'sensed' that the appellant was bisexual although he did not tell her. She knew OO and his family. She does not say when she questioned the appellant about it, whether it was in Nigeria or far more recently, but the way her statement is drafted suggests that it

may have been more recently because she said that he admitted that he had been involved with OO and told her that he had sex with another man while he was in detention in the UK. She went on to say:

> "[M] knew that him getting with other men does not count as cheating in my eyes and does not compare with him getting with other women which I don't tolerate. He is allowed to see other men."

25. SA went on to say that she heard rumours about his sexuality from family and friends in Nigeria when she was pregnant with their first child and even received a threatening email from someone she did not know. Although I take into account the fact that this is said to have taken place in or around 2011, there is no copy of the email or any other evidence to support the claim.

26. It is difficult to place much weight on this evidence without having heard from SA. While I recognise that some relationships might be that open and tolerant, it seems implausible that his partner would not tolerate him having sex with other women but would tolerate him having sex with men. At the very least, the reason why she considered that having sex with men 'does not count as cheating' is not explained and could not be explored any further. The reasons given by SA for suspecting that he may have been bisexual are vague. Without an opportunity to assess her evidence in more detail, and to evaluate her as a witness, I find that I can place little weight on her assertion that the appellant is bisexual as claimed.

27. There is further evidence from a witness who claims to know about his sexual orientation contained in a letter dated 18 May 2017 from a woman called 'TA' who said that they had recently started dating at the time. At the hearing the appellant confirmed that he lived with this woman for a period of time. Although the exact dates are unclear, it seems that this may have been a long term relationship that lasted for several years before he reconciled with SA in 2019. The letter from TA also describes the relationship in committed terms. She said that he had become an integral part of her family with her son. She hoped that they would develop a loving long-term relationship. The height of her evidence about his sexuality was as follows:

> "I am aware of his bisexuality and it is something I am trying to work through as no one is perfect and I also have experimented, however I feel it's something he cannot help."

28. Again, I find that I can place little weight on this evidence to support the appellant's claim to be bisexual. TA's evidence amounts to no more than a bare statement and does not contain sufficient detail for me to assess how she came to understand that he was bisexual or why, like SA, she might impliedly tolerate him having sex with men while in what she considered to be a committed relationship.

29. The final piece of witness evidence is a statement from a friend called 'DE' who is a Nigerian national who I am told is also seeking to regularise his status in the UK. The statement is dated 16 October 2019. It is supported

by a large number of documents relating to DE's own protection claim, indeed more of the documents in the bundle relate to him than the appellant. DE said that he first met the appellant in Highpoint prison. He noticed that the appellant seemed to like him. They met again when they were placed in immigration detention in 2016, where they shared a room. He did not say how long they were in detention together, but states that they had sex while in the detention centre. DE said that after they were released he continued to live with his female partner and their children until the summer of 2018. DE said that he kept in contact with the appellant after they were released from detention and said that they used to go to bars and clubs together. The evidence shows that DE is a vulnerable person who suffers from poor mental health. In his statement he described his relationship with the appellant as a strong friendship and only as an 'on and off sexual partner'. I accept that there may be good reason why DE decided not to give evidence given his vulnerability, but it is also possible that he might want to avoid findings being made about his reliability as a witness if it might affect his own immigration case.

30. The evidence shows that DE was likely to have been particularly vulnerable in detention. The appellant says that he was the one who initiated sex. It is plausible that a person might have sex with someone of the same sex when detained in a single sex environment, but in those circumstances it is not necessarily an indicator of their underlying sexual orientation. Although I accept that there may be genuine reasons why DE felt unable to give oral evidence in this appeal, given the description of their continuing friendship after they were released from detention, no other evidence has been produced to support the appellant's claim to have had an intimate relationship with DE. Their description of going out to bars and clubs contrasted with the appellant's claim in oral evidence that he did not go out much. Even if they did meet up, there are no photographs of them out together or any evidence from mutual friends to support their claim to have been in an 'on and off' sexual relationship. The respondent submits that DE equally has an incentive to claim that he is bisexual to resist removal to Nigeria. Although DE's evidence is broadly consistent with the appellant's central claim to be bisexual, it is difficult to place much weight on it in the absence of oral evidence or any other contextual evidence to demonstrate an intimate relationship of the kind that might support the appellant's claim to be bisexual.

31. Despite having said that he was still in contact with OO when interviewed about his protection claim in February 2015, the appellant produced no evidence from him to support his claim to have been in a relationship. In interview the appellant said that OO was living in Manchester. In his witness statement the appellant claimed that he had not been in contact with OO since he moved to America in 2014. The appellant's evidence is that he has known OO since he was 15 years old and was still in contact with him in early 2015 (a period of around 17 years). The evidence indicates that the appellant comes from a small university community where people know one another. His partner also has connections with OO's family. It seems unlikely that the appellant would lose contact with

such a long standing friend as easily as claimed given the ease of modern communication and the fact that he is likely to have mutual friends and acquaintances who could put them in touch if need be. In the circumstances it would have been reasonable to expect the appellant to obtain some supporting evidence from OO. The absence of such evidence is a notable omission given that, even on his own evidence at interview, the appellant was still in contact with OO when he made the initial protection claim in August 2014.

32. In interview the appellant said that all his friends in the UK knew about his sexual orientation, yet there no evidence from any of those friends or acquaintances. Having been given an opportunity to produce further evidence and relevant witnesses for the hearing in October 2015 the appellant did not produce any witnesses nor even attend the hearing. When asked about the lack of evidence from any other people who know him he told me that he did not like to discuss his immigration case with his friends and many of them were busy with work. Nevertheless, when faced with deportation, and having failed in two previous appeals, it might be reasonable to expect the appellant to overcome his retiscence to obtain supporting evidence from a wider range of sources.

33. Whilst none of the witnesses who gave oral evidence were subject to probing cross-examination, nor was it put to them directly that they might have provided an account to support the appellant with his case, it was clear that the respondent did not accept the appellant's claim to be bisexual and by implication that their evidence was not accepted. Mr Bates submitted that both witnesses were close family members who had an interest in assisting the appellant and that little weight should be placed on their evidence for this reason. Similarly, SA and DE also had an interest in supporting his claim. If the appellant was granted leave to remain it might benefit SA and the children who continued to remain without leave. In DE's case he had an equal incentive to claim that he was bisexual to assist his own immigration case. He did not dispute that their evidence was broadly consistent with that of the appellant. However, he submitted that little weight could be placed on the witnesses' evidence when they either had an interest in helping the appellant or it might be in their own interest to do so.

34. I set out the background to this case in some detail because it is important to assess the evidence produced by the appellant in the context of his immigration history. The delay in raising the issue is a factor that might weigh against the credibility of his claim to be bisexual. I have taken into account what was said by the European Court of Justice about delayed disclosure in A*, B, C v Staatssecretaris van Veiligheid en Justitie* (C/148/13). I also bear in mind that the background evidence shows that cultural norms in Nigeria discriminate against and stimatise LGBT+ people. For this reason it is possible that a person might have some cultural barrier to discussing their sexual orientation. But that does not seem to be the explanation offered by the appellant. His evidence is that he has been open to friends in the UK about his sexual orientation and does not claim

to have been discreet. I find it difficult to believe that he did not understand that he could raise the issue when he was sent a deportation questionnaire. It would have made clear that he must outlined all the reasons why he should not be deported. The appellant is an educated person who was able to make previous applications for a visa. He said that he did not raise the issue in the first appeal because he thought he would succeed because of his family life. His further explanation that it was only after the passing of the Same Sex Marriage (Prohibition) Act 2013 in Nigeria that he felt at risk is also weak. Even if the Act increased the penalties for same sex activity, it was illegal prior to the Act and societal discrimination against LGBT+ people was likely to have been just as widespread.

35. Having belatedly raised the issue in August 2014 the appellant was refused and had another opportunity to produce evidence of his claimed sexual orientation in the second appeal. The explanation given in his witness statement as to why he did not attend the second appeal lacks credibility. The First-tier Tribunal decision indicates that he failed to comply with directions to produce witness statements, to call witnesses or to produce any other evidence to support his appeal despite the fact that the hearing on 27 July 2015 was adjourned for that express purpose. The appellant explained that it was a difficult time because his daughter was born prematurely on 20 July 2015, but the hearing took place three months later on 16 October 2015. He would have been fully aware of the importance of the appeal. His failure to attend must be assessed in that context.

36. His explanation as to why he did not attend the hearing contrasts with the record made by the judge. In his witness statement the appellant said that he was ill with pneumonia but did not see a GP because he thought he could not do so because he was an overstayer. However, the message relayed to the judge was that he could not attend because he was on his way to hospital. In my assessment it is not plausible that he would think that he had no access to healthcare when, on his own evidence, his partner had recently given birth in hospital even though she was an overstayer. If the appellant genuinely was ill, it is reasonable to expect that he would have sought to appeal the First-tier Tribunal decision. Even if he did not have representation at the time, he is an educated man who had made other applications without assistance. He was capable of reading the information that would have accompanied the First-tier Tribunal decision explaining how to make an application for permission to appeal. He told me that he was ill for a couple of weeks. The decision was promulgated a month after the hearing so on his own evidence he should have been well enough by that stage to consider his next step. There is no evidence to show that the appellant took steps to challenge the decision, instead, he made further submissions on a different basis when the respondent began to prepare for his removal from the UK.

37. Not only did the appellant not raise the issue of his sexual orientation in the first appeal, but when he did finally raise it, he did not prepare for or

seriously pursue the second appeal. Nor is there any evidence to show that he continued to pursue the issue with any vigour when he made further submissions to the respondent in 2016.

38. The appellant's claim is broadly consistent with the background evidence of how LGBT+ people are treated in Nigeria. He has produced some witness evidence that is generally supportive of his claim. He has given a broadly consistent account of the few specific elements that he relies on to demonstrate that he is bisexual as claimed. Between them, his mother and brother have also mentioned the same key elements of his account. However, their evidence is part of a holistic assessment.

39. When one steps back there is very little surrounding evidence to give his claim any depth or context. The witnesses were consistent in repeating the limited set of elements contained in their statements but their oral evidence was lacking in natural context. I bear in mind that both his mother and brother are religious and that their beliefs might make it difficult to discuss the issue. However, the impression that I was left with after having heard their evidence was that there was no deviation from the few elements outlined in their statements. In the case of his mother, she avoids any direct connection between incidents of bullying or his membership of the fraternity and his sexual orientation. In the case of his brother, he seemed keen to ensure that he had mentioned every incident in his statement even when he was not asked about it. Whilst the witnesses were generally consistent, a natural discussion about his sexual identity was somewhat lacking. I recognise that witnesses might prepare for a hearing by ensuring that they are familiar with their previous statements, but I was left with an impression that there may have been an element of rehearsal.

40. I have already explained why the statements made by other witnesses who did not give evidence were limited in nature and could not be given significant weight. None of the people who he says he has had significant relationships with in the UK gave oral evidence.

41. The tone of the appellant's evidence in the first asylum interview was to suggest that he preferred men to women. He said that he had feelings for boys more than girls. He said that he suspected that he was 'gay' when he was at school and repeated that he was 'gay' before saying that he would define himself as bisexual. His relationship history in the UK indicates that he has predominantly been in long term relationships with women. There is little or no evidence from friends or other people who are said to know about his sexual orientation to support his claim to have been in intimate relationships with men. I accept that in conservative cultures people may feel pressured to conform to societal norms, but the appellant says that he has felt free to express himself in the UK. The evidence of his relationship history in the last 10 years contrasts with the picture he sought to portray in the asylum interview.

42. Assessing whether someone's thoughts and feelings about other people are likely to be genuine is one of the most difficult areas of decision making for an immigration judge. It is rarely possible to come to any confident conclusions about a person's claimed sexual orientation.

43. In assessing the evidence as a whole, I find that the overall picture shows that the appellant only sought to raise the issue of his sexual orientation at a late stage after an initial attempt to stay on grounds of his family life was unsuccessful. His history indicates a propensity to seek to delay hearings and to make further applications to resist deportation on different grounds. Even if the appellant was reluctant to raise the issue until 2014 because of fear of stigmatisation, when he had an opportunity to produce evidence to support his claim he failed to pursue the appeal in 2015 in any meaningful way.

44. The claim, in so far as it goes, has been expressed in a broadly consistent way by each of the oral witnesses, but is limited to a suite of set incidents. The oral evidence given by the witnesses lacked the natural variations in expression that one might expect between several witnesses. This gave the impression that they confined their evidence to the key elements contained in their statements. Whilst that evidence was broadly consistent, the witnesses may have an incentive to assist the appellant because of their close familial ties. The evidence given by other witnesses solely in writing is limited in nature and could not be tested. There is a lack of evidence from key characters in his account such as OO and DE, which could reasonably have been produced. There is also a lack of surrounding evidence from other friends and acquaintances who are said to be aware of his sexual orientation.

45. I bear in mind that there is a low standard of proof. Although the appellant and his close family members have given a consistent account of a specific set of events, when one steps back from those statements to look at the evidence as a whole in the context of his immigration history and his relationship history, there are a number of issues that undermine the credibility of his claim. For the reasons given above I find that the appellant has failed to produce sufficient reliable evidence to show that there is a reasonable degree of likelihood that he is bisexual as claimed or that he would be at risk on return for that reason.

46. I conclude that the appellant does not have a well-founded fear of persecution for one of the reasons identified in the Refugee Convention and that he would not be at risk on return under Article 3 of the European Convention. The appellant's removal in consequence of the decision would not breach the United Kingdom's obligations under the Refugee Convention and would not be unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is DISMISSED on protection and human rights grounds

Signed M. Canavan Date 06 May 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email