



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005267
FtT No: PA/50264/2022
IA/00846/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 March 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

I J B
(anonymity order made)

Appellant

and

SSHD

Respondent

Heard at Edinburgh on 22 February 2023

For the Appellant: Mr D M Olabamiji, Solicitor, Glasgow

For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria, aged 44. FtT Judge Buchanan dismissed his appeal by a decision promulgated on 20 September 2022.
2. The appellant applied for permission to appeal to the UT.
3. The appellant's grounds are:
 1. ... the FtT has made a material error of law ...
 2. ... the FtT has not considered all of the evidence in the appeal, and has not properly addressed the evidential issue of the Appellant's sexuality.

3. The FtT spends six pages considering the Appellant's evidence about his arrival in the UK. It states at paragraph 22.24 that it is not accepted that the Appellant was visiting a cousin in the UK and at 22.21 that the evidence has 'little to do with persecution in Nigeria because of sexual orientation'. Therefore, it is submitted that this is not relevant to the matter of the Appellant's sexuality. The Appellant's visa application also stated: "The main objective of my travel is to spend my 2019/2020 annual vacation in the UK and also to visit some historical centres in London such as UK parliamentary house, London bridge, Big Ben, Piccadilly, Buckingham Palace, Tower of London, Trafalgar Square, Jewel Tower etc (page 2 Respondent's supplementary bundle). He also indicated that he intended to stay in the UK for around 12 days; his flight bookings reflected this and were for 14 days holiday.

4. The FtT states that there is no evidence of the Appellant's divorce: the divorce certificate is at page 76 of the bundle and is itemised on the bundle cover. It is submitted that the Appellant had no reason to explain why his ex-wife did not provide evidence for the appeal and that the FtT's conclusion that this 'affects the weight which I give to the appellant's account of his life in Nigeria' cannot be justified and has tainted consideration of the evidence. The conclusion at paragraph 19.5 is submitted to be unsustainable.

5. At paragraph 18, the FtT states: that a claimant's sexual orientation may be disapproved of and that as a consequence sexual orientation may be hidden; [507/675]; that a claimant may have, in addition to hiding their sexual orientation, evaded detection by engaging in lifestyles that conform to normative cultural heterosexual relationships; [507/675]; that a claimant may have lived as a heterosexual in order to avoid suffering the negative consequences that identification as being Lesbian Gay or Bisexual entails; that a claimant may feel obliged to conform outwardly to family and social expectations of them and may currently or have previously lived in heterosexual relationships, be married and/or have children; [518/675].

6. However, it is submitted that the FtT has not assessed the evidence against these observations.

7. It is submitted that the Appellant's evidence describing himself as both gay and bisexual is consistent with his position as a Nigerian man who is not heterosexual.

8. The FtT dismisses the substantial evidence of the Appellant's attendance and participation at LGBT groups. The Appellant also provided evidence from a dating app which has not been referred to (pages 35 - 47 bundle), as well as support statements from LGBT groups (pages 61, 117, 118 bundle), which, again, have not been referred to.

9. The Appellant's partner gave evidence in the appeal stating that they were together. The FtT dismisses this because the 'association between the men' could be 'simply an association between male friends' (paragraph 31.2). This is not the evidence that the Appellant and his partner gave.

10. The FtT also states that only one photograph of the couple together was provided: this is inaccurate; there is more than one in the main bundle and there are multiple photographs in the Appellant's supplementary bundle, including them cutting a birthday cake together (see pages 13 - 29).

11. It is submitted to be irrelevant whether the witness DK is gay or is bisexual - he is not heterosexual. DK has refugee status on the basis of his

sexuality. The witness SK does not imply that the couple are living together, contrary to the FtT's finding (paragraph 34.1) and the Appellant and DK do not so claim.

12. The FtT objects to the use of the word 'coerced' in relation to the Appellant having children and notes that it 'appears to have been inflicted on the appellant over a long period of time' without explaining why this is significant (paragraph 19.3). Reference is made to the observations quoted at paragraph 5 above. The Appellant was living in an anti-LGBT country and was a politician. He is not attracted to women.

13. The incident that occurred after the Appellant left Nigeria took place on the last day of February 2020. 2020 was a leap year, which clearly explains the discrepancy in the dates given of 28 or 29 of February. The affidavit from the 4 Appellant's neighbour is rejected in part because the Appellant's surname is given first (paragraph 23.2): this is repeated in the official documentation at pages 63, 65, 76, 82, 87, 88, and 97 (documentation accepted by the FtT, see paragraph 35.5) as well as on the divorce certificate. Further, there is no need for an affidavit to be addressed to anyone.

14. With reference to paragraph 27.1, the Nigerian police force has two insignia, with the elephant facing either to the left or the right (see below). The FtT was wrong to dismiss the evidence on this basis.

15. The Respondent's Asylum Policy instruction highlights that extrinsic evidence of sexuality is not required. It is submitted that the Appellant has provided ample and varied extrinsic evidence, which the FtT has either ignored or unfairly dismissed.

4. Multiple copies of Nigerian police insignia are attached to the grounds, although there is no accompanying application to admit evidence which was not before the FtT.

5. On 10 November 2022 FtT Judge Barker granted permission:

It is arguable that the Judge erred by not taking into account evidence that was available to him in the hearing bundle, including as detailed in the grounds, the divorce certificate; photographs; and supporting statements. It is arguable that his credibility findings are vitiated by these errors.

Whilst there may be less merit in the other grounds, I do not limit the grounds which can be argued ...

6. Mr Olabamiji submitted that the Judge focused unduly on whether the appellant's stated intentions about his visit were genuine. That was not completely irrelevant, but it had little to do with whether the appellant's sexual orientation and political profile in Nigeria together placed him at risk. The Judge made much of the details of the visit, asking many questions at the hearing (although it was accepted the grounds do not take that as an adverse point) and discussing it over 6 pages, but dealing hardly at all with the political history (35.5), which was shown by documentary evidence. The Judge directed himself correctly on how to approach evidence of sexual orientation, but in the rest of his decision failed to apply those directions. At 19.3, the Judge failed to look at the

overall thrust of the evidence, which was that the appellant's marriage did not reflect his true nature, and applied an over-literal interpretation of the word "coerced". The same error of approach went to the appellant describing himself at times as bisexual and at other times as gay, which not a rigid or helpful distinction, and was irrelevant. At 34, under a specific sub-heading, the Judge quoted a letter which might give the impression that the appellant and his partner were living together, and said that was not the case. It was hard to see why that was mentioned except as an adverse point, but the appellant, his partner and the witness had all been clear that they do not live together and had not tried to give any other impression. Names in Nigeria do not distinguish between forenames and surnames in the same way as in the UK, and often these are given in varying order. The documentation reflects that. The Judge made unwarranted findings of discrepancy. The examples of police insignia attached to the grounds are consistent with the appellant's documents. Drawing the grounds and submissions together, Mr Olabamiji said the case should be remitted.

7. Mr Diwyncz accepted that the Judge overlooked the divorce certificate. It might not have been an item the presence or absence of which proved very much, but the Judge plainly gave its absence, about which he was wrong, adverse significance.
8. Mr Diwyncz waived any objection to the evidence of Nigerian police insignia being admitted and accepted that this disclosed another error.
9. Having considered the rest of the grounds, and heard the submissions, Mr Diwyncz conceded that material errors were shown.
10. Representatives agreed that an entirely fresh hearing was required.
11. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing. The case is remitted to the FtT for a fresh hearing, not before Judge Buchanan.
12. The FtT made an anonymity order.
13. Anonymity is maintained at this stage, unless and until the tribunal, or a Court, on application, makes another order.
14. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.
15. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

Hugh Macleman

Judge of the Upper Tribunal, Immigration and Asylum Chamber

21 February 2023