



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005305
On appeal from: PA/54751/2021
IA/14412/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 March 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE METZER

Between

PMM
(ANONYMITY DIRECTION GIVEN)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Nolan a Senior Home Office Presenting Officer
For the Respondent: Ms P Yong Counsel instructed by Wimbledon solicitors

Heard at Field House on 6 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. 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 the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant challenged the decision of the First-tier Tribunal Judge Abdar (“the First-tier Judge”) dismissing his appeal against the respondent’s decision promulgated on 30 August 2022 on protection and human rights grounds.

Background

2. The appellant is a citizen of Kenya who was born on 28 November 1983. He entered the UK on 1 May 2016 with entry clearance as a Tier 5 (Charity) Migrant. The appellant overstayed and on 10 October 2020, he applied for asylum on the grounds of being gay and had been in a relationship with ARMA (“Ali”) in Kenya, which was refused on 16 September 2021. He appealed to the First-tier Tribunal.

First-tier Tribunal decision

3. The First-tier Judge found that the appellant’s account of being gay and in a relationship with Ali was not credible at paragraphs 46, 50 and 52 and therefore dismissed his asylum appeal at paragraph 53.

Grounds of appeal

4. The grounds of appeal asserted that the First-tier Judge erred in his assessment of the appellant’s credibility, in particular at ground one, relying upon his findings in respect of two witnesses called on behalf of the appellant, namely Mr SG and Mr AK. There were three other grounds but for the reasons set out below it is unnecessary to consider them further.

Permission to appeal

5. Permission to appeal was granted on 2 December 2022 by Upper Tribunal Judge Jackson on all grounds who stated in respect of ground one:

“It is arguable that the Tribunal has failed to give adequate reasons for adverse credibility findings of both the appellant and two witnesses who gave evidence before it, in particular having found that they were sincere but rejecting evidence of their own account as well as of what the appellant had told them.”

Upper Tribunal hearing

Submissions

6. We heard submissions for the appellant from Ms Yong about how the First-Tier Judge’s referred to the evidence of the two witnesses. Mr SK’s evidence was referred to at paragraph 45. He had known the appellant since May 2016 and they had “shared our sexual orientation”. Mr SK also introduced the appellant to Out and Proud African LGBTI (“OPAL”) in December 2020 which the appellant had been attending regularly.
7. Mr AK’s evidence was referred to at paragraphs 48 and 49. In summary, he confirmed the appellant’s regular presence and active involvement at OPAL, discussed the appellant’s experiences in Kenya with him and from his conversations and observations of the appellant, considered he was gay. His observations included zoom meetings during lockdown and seeing the appellant dancing and kissing other men at OPAL’s social functions.

8. The First-tier Judge found at paragraph 50 that “Mr SG and Mr AK to be sincere witnesses, particularly Mr AK to be an award winning human rights activist” but went on to find that the appellant was not credible and that “Mr SG and Mr AK’s opinions to be largely based on the appellant’s incredible account and the appellant’s concerted effort to manufacture a narrative of being gay”.
9. We heard submissions from Mrs Nolan who did not challenge our indication that “sincere” has to be understood to mean “credible” and that therefore there was an inconsistency between that finding and the first-tier Judge’s adverse credibility findings particularly as the evidence of the two witnesses was not simply based upon what the appellant told them.
10. We indicated after brief deliberation that we would be allowing the appeal on ground one with written reasons to follow our decision, which we now give.

Analysis

11. We consider that having found that Mr SK and Mr AK to be “sincere” which we find to be synonymous with “credible”, the First-tier Judge erred in his adverse credibility findings against the appellant and the two witnesses whose evidence was based in large part upon what they observed and not simply, as the First-tier Judge suggested, upon what they were told by the appellant. We found that this inconsistent finding within paragraph 50 amounted to a material error of law.

Notice of Decision

12. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law. We allow the appellant’s appeal. We consider it appropriate to remit the appeal back to the First Tier Tribunal, rather than the appeal remaining in the Upper Tribunal given the extent of fact- finding required to be made where credibility of the appellant and his witnesses will need to be addressed afresh. We therefore remit the case to the First -tier Tribunal for full re-hearing with no preserved findings of fact.

Anthony Metzger KC

Date 14 March 2023
Deputy Upper Tribunal Judge Metzger

Dated: 14 March 202