



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-001249**  
**First-tier Tribunal Nos:**  
**PA/52573/2021**  
**IA/07237/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 06 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MPO**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Gazzain, Counsel, Blackstone Law Associates

For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

**Heard at Field House on 22 June 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**

## **Introduction**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Gaskell (the judge) who dismissed his appeal against the Respondent's refusals of his protection and human rights claims. The core of the Appellant's protection claim was that he is gay and as a result of this would be at risk on return to his home country of Nigeria.
2. The Appellant had been interviewed by the Respondent at significant length about his claim. A detailed witness statement had been put forward and the Appellant gave oral evidence at the hearing. In addition, a number of witnesses were called on the Appellant's behalf, whilst another witness provided written evidence but did not attend.
3. Having set out the evidence in summary, the judge expressed his findings in very brief terms at [37] to [40]. At [37] the judge stated that:

“I did not find the appellant to be a truthful, honest or reliable witness. The evidence he adduced was riddled with inconsistencies even as to his current address. The evidence he gave with regard to his same-sex relationships in the UK was at variance with that given by MA and KEO. This (*sic*) the witnesses CD, HA and Mr Kawsar had no direct knowledge of the appellant's sexuality and I found it striking that none of these witnesses said anything about any of the others (*sic*) it was though the appellant have (*sic*) pulled together evidence from whatever source he could to try and establish that he was openly gay. This”.
4. At [38] the judge found that photographic evidence added nothing to the Appellant's case, and at [39] the judge placed significant weight on the fact that the Appellant had delayed making his protection claim in this country as well as having delayed his departure from Nigeria. Ultimately at [40] the judge concluded that the Appellant had not discharged the burden of proof resting upon him.
5. The appeal was accordingly dismissed.

## **The grounds of appeal**

6. Three grounds of appeal were put forward. Grounds 1 and 2 asserted that the judge had failed to make adequate findings, had failed to adequately assess the evidence, had been unclear in the reasons which had been put forward, and, as an overarching argument, had failed to anxiously scrutinise the evidence in the Appellant's case. Ground 3 related to the alleged failure of the judge to treat the Appellant as a vulnerable witness, given his mental health conditions.
7. Permission to appeal was granted on all grounds. Whilst the permission decision stated that the application was made "out of time", having considered the material before me and in light of the parties' agreement on the issue, I am satisfied that this was a typographical error and that the application was in fact made in time.

## **The hearing**

8. At the hearing Mr Gazzain relied on the grounds of appeal. Ms Lecointe, in my view correctly, accepted that the judge's consideration of the central issue in the appeal and the evidence relating thereto had, in the circumstances, been inadequate.

## **Conclusions**

9. I conclude that the judge has materially erred in law for the following reasons.
10. Firstly, the judge failed to engage in any way with the detailed evidence set out in the asylum interview, the witness statement and the oral evidence. Reference was made in [39] to the evidence being "riddled with inconsistencies", yet the only specific point raised attached to that description related to the current address. The alleged inconsistencies in respect of relationships in the United Kingdom were not set out in any identifiable detail. Secondly, the judge has not explained the basis on which he found that certain witnesses had "no direct

knowledge” of the Appellant’s sexuality. In fact, aspects of their evidence did, on the face of it, involve direct knowledge of his sexuality. Thirdly, it is difficult to discern what the judge meant when he said that the “witnesses had not said anything about any of the others”. As set out in the grounds, there was no suggestion that any of them knew each other and so clearly they would have been unable to provide any evidence of this. Fourthly, it is of some concern that [37] ends with the word “This” with nothing else following from it. It may be that the judge had intended to provide further analysis and reasoning. Fifthly, I agree with the grounds to the extent that the judge has failed to make a clear finding as to whether the Appellant had in fact ever had a relationship with C whilst in Nigeria. Sixthly, there is no apparent consideration of the claimed relationship with M. This claimed relationship formed a material aspect of the Appellant’s case. Seventhly, whilst the judge was entitled to rely on the issue of delay as being adverse to the Appellant’s credibility, this clearly could not have been decisive in respect of the claim in its entirety.

11. For these reasons the judge’s decision contains errors of law and those errors are material.

### **Disposal**

12. The parties were agreed that the appeal would have to be remitted to the First-tier Tribunal for a complete rehearing. I agree. The issue of credibility is central to this case. There can be no preserved findings of fact.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and that decision is set aside.**

**This appeal is remitted to the First-tier Tribunal (Taylor House hearing centre), to be reheard a fresh by a judge other than Judge Gaskell.**

**H Norton-Taylor**

Appeal Number: UI-2023-001249  
First-tier Tribunal Numbers: PA/52573/2021  
IA/07237/2021

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 3 July 2023**