



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

Appeal Number: AA/09158/2014

THE IMMIGRATION ACTS

Heard at Harmondsworth

**On 12 January 2015
Prepared 12 January 2015**

**Decision & Reasons
Promulgated
On 12 February 2015**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

JBL

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A Jafar, of Counsel

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

DECISION AND REASONS

1. The appellant, a citizen of Uganda, born on 4 April 1987, appeals, with permission, against a decision of Judge of the First-tier Tribunal O'Garro who, in a determination promulgated on 9 December 2014, dismissed the appellant's appeal against a decision of the Secretary of State made on 30

October 2014 to refuse to grant him asylum and to issue removal directions under the provisions of Section 10 of Schedule 2 of the Immigration Act 1971.

2. The appellant entered Britain in February 2012 with a Tier 5 visa valid until February 2013. He returned to Uganda at the end of his visa. In March 2013 he obtained a further Tier 5 visa valid until April 2014. Again he returned to Uganda before the expiry of the visa. He applied for and received a further Tier 5 visa in April 2014 valid until 13 May 2015. He entered Britain on 31 May 2014. In October 2014 he claimed asylum and was served with illegal entry papers and detained. He was placed in the detained fast track system.
3. In paragraphs 8 onwards Judge O'Garro summarised the appellant's history - as a child he had come into contact with a charitable organisation called Missionaries for the Poor who had asked him, when he reached the age of 18, to start a youth group for children from poor backgrounds. That group was named Youth Associates with Missionaries of the Poor (YAMP). The aims of the group were to fight poverty and to fight for the human rights of those who came from similar poor backgrounds to his own.
4. In the course of his work he began to counsel a number of homosexual youths, helping them to obtain accommodation and medical treatment. He spoke to them about homosexual relationships. The "mob" in his area found out what he was doing and attacked him on 5 November 2010. He was hospitalised on that occasion for two days.
5. In July 2011 he was attacked again when he was with a friend who was a known homosexual. The friend fell as they tried to run away and was beaten by the mob. He died a week later. The appellant received a letter from the local council about his activities with homosexuals in Uganda including a summons to attend before them which he ignored. The council suggested that he leave the area, which he did.
6. In January 2011 he returned briefly to his home. Two members of the council arrived and told him he should leave his home within two days. In June 2014, after he had returned to Britain, his family home was attacked and demolished. On 20 September 2014 a newspaper article was published stating that the appellant was engaging in homosexuality and that he had left the country and that his whereabouts were unknown.
7. Judge O'Garro set out her findings in paragraphs 46 onwards of the determination, summarising his claim that if he were returned to Uganda he would be killed by a mob of men because he was perceived to be homosexual and because he had supported homosexuals in his work in the community where he lived. She found that the appellant's claim was credible, stating that he had given a consistent and credible account of the persecution he had suffered in Uganda which was the reason he had come to Britain. She accepted that the appellant had worked in the community

as a youth worker with needy and vulnerable people and through helping a friend whom he had found out was homosexual and begun to extend his work to helping youths who were homosexual and who asked for his help. Taking into account the evidence of a supporting witness she accepted that the appellant supported homosexuals as part of his work with vulnerable youths in Uganda and that this was the reason why he had been attacked. She referred to background documentation relating to the treatment of homosexuals in Uganda and in paragraph 57 said that:-

“It is clear from the objective evidence, homosexuals and their supporters can be subject to mob violence in Uganda and bearing in mind the low threshold in asylum cases I find that the appellant's account is both internally and externally consistent as it is in fact supported by the background evidence in material respects.”

8. She quoted at length from the COIS report at paragraphs 2.5.4 onwards. She considered the issue of internal relocation, referring to evidence of the pursuit of suspected LGBTI persons. However in paragraphs 67 she stated:-

“I find this evidence helpful although it relates to persons who are practising homosexuals. The appellant is not a homosexual and as such, I see no reason why he cannot return to Uganda and move to another area, where he would not be known.”

9. The judge went on to state that she had reached that conclusion having taking into account the fact that the appellant's name and photograph had been in national newspapers where it was alleged that he was homosexual, however she stated that that was not front page news. She stated that the article had been “tucked away in the middle of the newspaper” and stated that therefore it could “quite easily” be overlooked by readers.
10. She noted that the appellant had said that he would still continue to help homosexuals on return but said that he no longer had the organisation which enabled him to engage with youths, some of whom were homosexual, which had brought him to the attention of the community in the first place. She stated that the appellant had not shown that he would be persecuted on return to Uganda. She therefore dismissed the appeal.
11. The grounds of appeal referred to the evidence accepted by the judge. They referred to the fact that it had been accepted that the appellant had already been persecuted and to the perception that he was homosexual. It was claimed that there had not been anxious scrutiny of the issue.
12. In granting permission to appeal Judge of the First-tier Tribunal Froom stated:-

“The appellant claimed that he feared persecution as a perceived homosexual. The judge found the appellant had given a consistent and

credible account of past persecution [52]. She accepted the evidence of a witness that the appellant had given advice to gay youths as part of his work in Uganda [54]. She noted the background evidence showed that homosexuals and their supporters could be subject to mob violence [57] and that this had happened to the appellant on two occasions [58]. She accepted the appellant's home had been demolished by mob [60]. The appellant provides a newspaper article in which he is identified as a homosexual and the judge found the newspaper was genuine [62]. However she dismissed the appeal because the appellant was not a practising homosexual and he could live in another part of Uganda where he was not known [67]. I grant permission to appeal because it is arguable that the judge failed to apply paragraph 339K and she does not appear to have considered that the appellant continued to work with homosexuals on return."

13. At the hearing of the appeal I asked Mr Logo if the appellant's detention had been considered under the general detention criteria. He told me that it had and that a letter explaining why it was considered he met those criteria had been sent to the appellant. The reasons given were that the appellant had used verbal deception on entry to Britain when he had not claimed asylum at the airport, that he had delayed in claiming asylum and that he was at risk of absconding because he did not have enough close ties here to ensure that he would remain in one place. Mr Logo accepted that there was no cross appeal or Rule 24 Notice and that therefore he could not argue that the Judge's findings of fact were wrong.
14. In reply Mr Jaffar pointed out that the appellant's house had been destroyed after he had returned to Britain, he had not overstayed and that he had ties here - the members of his church who were present in court were part of his community. He asserted that the letter sent to the appellant relating to the general detention policy was insufficiently reasoned.
15. Mr Jaffar referred to the findings of the Judge and the grant of permission by Judge Froom which summarised those. He said that the Judge had failed to consider the evidence of the appellant that he would continue to assist homosexual youths, that a newspaper had asserted that the appellant was homosexual and that the provisions of paragraph 339k made it clear that that past persecution is a clear indication of future persecution. .
16. Mr Logo argued that the decision of the Judge was fully sustainable and that the reasons she had given for finding that the appellant could relocate were sufficient to show that he would not be likely to face persecution in another part of the country. He emphasised that the appellant is not homosexual and that he is no longer running the support group which he had organised in the past.

Discussion

17. Mr Jaffar did not argued that these proceedings, following the judgment of the Court of Appeal in **R (on the application of) Detention Action [2014] EWCA Civ 1634**, are void ab initio and I consider that he was correct not to do so.
18. In considering the determination I note that the Judge, as was summarised by Judge Froom when granting permission to appeal, made a large number of positive findings regarding the claim of the appellant and in effect accepted the entirety of the appellant's claim. The reality is that, although the appellant is not homosexual, it was accepted that he had been perceived as such and indeed that he had suffered persecution in the past. Past persecution is a clear indicator of future persecution, particularly given that it is accepted that the appellant would repeat the activity - that of caring and counselling for young men who are homosexual - on return. I consider therefore that there are material error of law in the determination of the judge in that she did not place weight on those factors when assessing the risk on return or indeed the possibility of internal relocation or the fact that even should the appellant internally relocate there is nothing to indicate that in another part of Uganda he would not suffer the same treatment as that which he had suffered before, which she had accepted amounted to persecution. Moreover, she had not placed weight on the fact that it was not just the "mob" who had attacked the appellant but also the local council had told him he should leave the area.
18. I therefore consider that it is appropriate to set aside the determination of the judge. However, I consider that the findings of fact of the judge relating to the appellant's past persecution and indeed his credibility regarding what has happened to him in the past were well reasoned. I therefore consider that her findings of fact should stand. There remains therefore the issue, central to any asylum appeal, as to whether or not the appellant would suffer persecution in the future given what has happened in the past and whether or not internal relocation would be open to him. Although there is considerable information in the letter of refusal regarding the evidence of the persecution of homosexuals in Uganda, bearing in mind the judgment of the Court of Appeal in **R (on the application of) Detention Action** I consider that it would be appropriate for further time to be given for the appellant to obtain evidence on those issues and I therefore consider it appropriate to take this appeal out of the fast track - I consider that the provisions of Rule 30 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 are met.

Decision.

The decision of the First-tier Tribunal Judge dismissing this appeal is therefore set aside. However her findings in relation to past persecution including her findings of the general credibility of the appellant are preserved. This appeal is removed from the fast track process.

Signed

Date

Upper Tribunal Judge McGeachy