



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

Appeal Number: PA/00461/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 February 2016**

**Decision and Reasons  
Promulgated  
On 1 March 2016**

**Before**

**UPPER TRIBUNAL JUDGE STOREY**

**Between**

**J S M**

Appellant

**and**

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

Respondent

**Representation**

For the appellant: Mr A Chakmakjain of Counsel instructed by AB McKenzie Solicitors

For the respondent: Mr T Wilding, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of Uganda, brings a challenge to the decision of the First-tier Tribunal (Judge Kanagaratnam) sent on 3 October 2015 dismissing his appeal against a decision of the respondent dated 29 June 2015 refusing to grant him asylum. It was not in dispute that if the appellant was able to show that he was a homosexual he would be at risk on return for a Refugee Convention ground because of the oppressive approach adopted by the current

regime in Uganda towards homosexuals. The Respondent did not accept that the appellant was a homosexual and on appeal the FtT was of the same view.

2. The appellant mounts two challenges to that adverse decision. First it is argued that the FtT erred in law by failing to consider material Asylum Policy Instructions (APIs) relating to a person's realisation as to sexual identity. I am bound to say I do not consider this ground made out. At [7] the judge noted that the documents before him included the respondent's APIs. At [18] the judge said that in considering the claim of this appellant he "shall first consider [his] account of how he began to realise he was a gay person". Further, the judge was confronted with an appeal in which the appellant was responding to a detailed reasons for refusal letter. Whilst that decision letter does not expressly refer to the APIs relating to assessment of credibility in the case of homosexual/gay persons, it demonstrates a close adherence to these instructions. Thus at [19] there is a heading "Your sexuality" in which the following four paragraphs deal with development of sexual identity.
3. The appellant's second main ground of appeal is that the judge failed to make adequate findings on the evidence, in particular the evidence of the appellant's witnesses. This ground, by contrast, is made out.
4. There are a number of respects in which the judge's treatment of the evidence of the witnesses is vitiated by legal error. First of all, he does not (except in relation to two witnesses) make any specific findings on their credibility even though it is logically implied by his findings that he considered them to lack credence. As regards the two witnesses about whom he does make some adverse comment (the appellant's sister and [S]), these adverse comments were confined to the matter of whether the sister had been told about the appellant's immigration status and whether it reflected well on [S] that he had stated that he had encouraged the appellant to apply for refugee status. Neither of these comments extended to assessment of the sister's or [S]'s evidence that they had direct knowledge of the appellant's homosexual lifestyle (I shall return to the matter of his sister's evidence in a moment).
5. Second, the judge does not appear to have given another witness who gave evidence an opportunity to respond to the adverse comments made about her evidence by the respondent in the reasons for refusal letter. I refer to the evidence that he heard from [JO]. The latter's evidence had been queried in one respect at [31] of the reasons for refusal letter. There is nothing to indicate that this query was put to [JO] so that she had an opportunity to respond.
6. Third, the judge appeared to treat as decisive the fact that the appellant had not produced any "direct evidence" of his homosexuality: at [21] he stated that "none of his gay partners are present to provide direct evidence" At [19] he stated that:

“None of the other witnesses [apart from the sister] who gave evidence before me were able to directly testify as to having met Kenneth” [Kenneth being a person the appellant claimed to have had a gay relationship with between 2007-2010]. Once again the appellant does not present independent evidence as to his gay relationships”

7. However, that still left the fact that the sister had given direct evidence of having met Kenneth: see [10] and, as already noted, this aspect of the sister’s evidence was not the subject of any adverse comment from the judge.
8. Fourth, in the asylum jurisdiction, admissible evidence is not confined to direct evidence in person and the judge had before him a number of witness statements, several of which had been commented on by the respondent in the reasons for refusal. The judge made no findings on them.
9. Fifth, related to the last point, the evidence of [S] included direct evidence of having seen the appellant in situations demonstrative of a homosexual lifestyle (gay clubs etc).
10. Mr Wilding was candid enough to say at the beginning of his submissions that he “struggled” to find argument to support the judge’s treatment of the witness evidence and I am sure it was the above matters, or most of them, that he took cognisance of.
11. I would add that the judge’s decision contains at ([22]) a summary that gives every appearance of recounting the immigration history of an entirely different appellant. Had the remainder of the decision being sound, this may not have been fatal, but in the light of the judge’s errors in his treatment of the witness evidence, this adds to the overall picture of a most unsatisfactory determination.
12. Both parties were in agreement with me that the proper course in this case was to set aside the judge’s decision and remit to the First tier Tribunal.
13. It should go without saying that nothing said by me in this decision is to be taken as implying a view, one way or the other, on whether the appellant has established his homosexuality. That is entirely a matter for the First tier Tribunal on remittal.

14. For the above reasons:

The FtT judge materially erred in law and his decisions is set aside.

The case is remitted to be heard by the First-tier Tribunal other than Judge Kanagaratnam.

Signed  
Judge of the Upper Tribunal

Date: