



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/03746/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 27 February 2018**

**Decision & Reasons  
Promulgated  
On 05 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**R N M**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Byrne, Advocate, instructed by Latta & Co, Solicitors  
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Mr Byrne in his submissions focused on the “paper apart” grounds 1 and 2 below. He had nothing to add to the other grounds. However, as the other grounds were not departed from, and as the grounds overlap substantially, they are all summarised here:

Ground 1. The judge’s assessment of credibility was flawed because he failed to consider relevant evidence, namely the appellant’s substantial amendments to the asylum interview.

Ground 2. The judge criticises the appellant for failing to mention his claimed sexuality at the screening interview. It is well known that appellants may omit certain details at the screening for good reason: *YL (China)* [2004] UKIAT 00145, paragraph 19. [Mr

Byrne acknowledged that the rest of this ground was incorrect in fact, and did not rely on that part].

Ground 3. At paragraph 52 the judge rejects the appellant's account re allegations of witchcraft ... [but] no reasons ... are given.

Ground 4. At paragraph 71 the judge states that the appellant's British partner overstated the difficulties if she is forced to go to Kenya to continue the relationship ... her concerns were consistent with the background evidence ... there is no evidential basis for the finding ... this has distorted the assessment of "insurmountable obstacles".

Further grounds in "paper apart":

Ground 1. At paragraph 27 the FtT said:

*"If the appellant was genuinely in fear of his life or of serious ill treatment upon his return to Kenya, I consider he would have disclosed this at a much earlier stage".*

The FTT therefore held this to be dispositive of the entire claim. It follows that because the appellant had not claimed earlier, he was not in genuine fear of his life. That is the ordinary meaning of the words used. The remaining analysis is therefore *obiter*. The claim is periled on this finding.

The FTT placed decisive weight upon a late claim and therefore gave considerations [under section 8 of the 2002 Act] a status and compartment of its own ... [*J v SSHD* 2012 SLT 162, [2011] CSIH 49 is quoted].

The lateness of the claim did not comprise a global assessment. Read correctly it is a decisive factor. It ought not to have been because late claims must be considered in context that the appellant was safely within the UK and spent substantial periods lawfully as a student. Asylum is a last resort. The dicta in *JT (Cameroon)* [cited in *JA*] ought to be followed. It is an error of law to give this point decisive import.

Ground 2.

The FTT placed substantial weight on alleged failure to mention matters... at screening interview... [the grounds quote an interviewing officer's standard advice that only a brief outline of why asylum is sought is asked for, and if appropriate a full interview will follow].

At paragraph 29 the FTT considers it of some significance that the appellant did not refer to "his sexuality" at screening interview. Paragraph 29 discloses an error in comprehending the appellant's claim - he was not claiming to be homosexual, only that he was imputed to be. Secondly, the FTT failed to have regard to the nature and purpose of the interview... It was irrational to have regard to an alleged omission going to the detail of the claim in an interview designed to omit the detail.... It is to screen the individual for their personal circumstances not to interview them in relation to the substance of their claims [*YL* is quoted].

... Omission of details precisely what is to be expected at screening interview.

Ground 3.

The FTT concluded the applicant had not completed his degree... That is an error of fact... The FTT identifies this as a negative factor detracting from the desirability of the appellant remaining, or put another way the utility of the appellant's presence could have reduced the public interest in his removal - as attested by a large public support for his application to remain. The strength of the public interest is capable of being affected by such a factor... The matter is material as it is capable of making a difference to the fact sensitive and evaluative article 8 assessment.

2. The principal further points which I noted from the submissions of Mr Byrne were as follows:
  - (i) The error of taking the late claim as conclusive percolated the rest of the decision; see paragraphs 33 and 37.
  - (ii) It was not clear whether the judge was strictly applying section 8 or a “common law” approach, but the statutory provision should comprise the issue at common law, and the judge had fallen into the “status and compartment” error explained in *J* at [9], derived from *JT (Cameroon) v SSHD* [2008] EWCA Civ 878.
  - (iii) *YL* emphasised the latitude to be given to discrepancies identified from screening interviews. The principle must apply even more strongly to an omission such as encountered here, with several strands in the eventual claim.
3. In replying to the submissions for the SSHD Mr Byrne added:
  - (i) There could be in principle be no difference in the correct approach to delay through statute or through common law, so the fact that the judge did not refer to s.8 made no difference.
  - (ii) At the end of paragraph 29 the judge said that the appellant claimed that at screening interview he was asked only for brief reasons, and went on, “*I do not accept that*” – a clear error of fact, as that was exactly what the appellant was asked.
4. Having considered also the submissions for the SSHD, I find that the appellant has not shown any error on a point of law such as to require the decision of the FtT to be set aside.
5. Ground 1 does not show that the appellant offered any amendment to the substantive interview which merited separate treatment, or which might have made any difference.
6. Ground 2 and “paper apart ground 2” both go to the screening interview, and may be taken together.
7. The judge uses the term “sexuality” without a qualifier at paragraph 29 but there are references to perceived sexuality at paragraphs 6, 8, 21, 30 (twice), 32, 33, and 39. The allegation of misunderstanding is not supported on a full and fair reading.
8. Mr Matthews made two sound points on this aspect. Firstly, the matter is not only omitted from the screening interview. It was not forthcoming at an enforcement interview when the appellant was asked for reasons not to return, and did not mention any of the difficulties later relied upon (paragraph 28). Secondly, the omission of reference to sexuality must be put in the context set out by the judge. His observation comes immediately after noting the quite detailed response at screening interview, specifying other heads of claim (paragraph 29).

9. Mr Byrne's observation about the last sentence of paragraph 29 was astute, but again fails to reflect the full context. The judge is not declining to believe that the appellant was asked for brief details, a well-known feature of this jurisdiction. He is declining to accept that as an explanation for the omission.
10. The error of approach identified in *YL* is not to be found in this decision.
11. Ground 3 overlooks reasons stated elsewhere - see paragraph 36.
12. Ground 4 is only disagreement with the judge's assessment of insurmountable obstacles, which is well supported by the evidence.
13. "Paper apart ground 1" takes the judge's sentence out of context. It is followed by a sentence stating that delay damages credibility, which does not suggest that there was no more to the case. It is followed by numerous sensible reasons for rejecting the multiple heads of claim. The judge plainly did not treat the late making of the claim as conclusive.
14. It may further be noted that this was a delay related not to perception of the safest destination, but to a last-ditch effort to avoid removal.
15. "Paper apart ground 3" may identify a slip on a matter of fact, but the appellant's completion of his degree did not have any prospect of carrying the day on human rights grounds.
16. *VV* (grounds of appeal) [2016] UKUT 00053 at paragraph 25 refers to the approval in the House of Lords of a statement by Sir Thomas Bingham MR that an issue of adequacy of reasons was to be resolved "on a straightforward reading without excessive legalism or exegetical sophistication".
17. The two principal criticisms in the grounds are taking delay as decisive on its own, and failing to allow for the restriction of a screening interview to brief details. Neither criticism is valid, once the decision is read fairly and as a whole.
18. The decision of the First-tier Tribunal shall stand.
19. The FtT made an anonymity direction. There is no apparent reason for one, but as the matter was not addressed in the UT, anonymity has been maintained herein.



27 February 2018  
Upper Tribunal Judge Macleman