



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

Appeal Number: PA/07256/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 24 January 2018**

**Decision & Reasons Promulgated
On 7 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR KELECHI OJIMMA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Franco, counsel, instructed by Mandy Peter Solicitors
For the Respondent: Mr I Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nigeria, date of birth 7 January 1987, appealed against the Respondent's decision, dated 14 July 2017, to refuse to grant asylum. The appeal came before First-tier Tribunal Judge Kimnell, who on 11 September 2017 dismissed the appeal on Refugee Convention and Humanitarian Protection grounds and human rights grounds. There is no

substantive challenge to the human rights grounds decision but simply to the way the Judge assessed the Appellant's need for protection in the context that he claimed that his sexuality presented a real risk to him on a return to Nigeria.

2. Mr Franco, in supporting the grounds of appeal settled by the Appellant's representatives, says that the Judge failed to properly address the background evidence and make appropriate findings on the facts: Rather in assessing the case the Judge took points against the Appellant's credibility by reference to various matters which, Mr Franco said, are simply not warranted or failed to properly look at all the evidence in the round in assessing the Appellant's claim. Mr Jarvis in short argued that enough was done to show adequate and sufficient reasons why the Judge rejected the Appellant's credibility in terms of his claim and highlighted the evident contradictions which the Judge had picked upon to illustrate the careful assessment the Judge had made.
3. The Judge of course had the benefit of hearing the Appellant's evidence and that of his uncle, Mr Jonas Ojemma, and he also had the benefit of Mr Franco's appearance on behalf of the Appellant and a Presenting Officer's submissions in relation to the issues raised.
4. The Judge, it seemed to me, fairly set out the background of the claim and the factual matters that were relied upon in terms of the Appellant's sexuality and his claimed relationships in the United Kingdom. It is clear that the Judge was not either expecting or requiring the Appellant to have attended gay clubs or gay bars or other forms of entertainment in Nigeria as determining the issue of whether or not the Appellant was indeed gay. However, as the Judge indicated, the evidence as presented raised a significant number of doubts in his mind that the Appellant's claim was genuine or that he had given credible and reliable evidence or that, taken as a whole, it married in with the known practical consequences: Given

the illegality of homosexual relationships in Nigeria, and how that formed a basis for the Appellant's claim of risk on return.

5. Ultimately, the Judge did not simply address this by way of the use of stereotypes. I was taken to the Grand Chamber's decision in the case of A, B and C, C-148/13, C-150/13 which provides how a case should be properly looked at on the evidence in order to address the preliminary ruling raised with the Grand Chamber. It did not seem to me that that decision of the Grand Chamber demonstrates any error by the Judge in dealing with this Appellant's appeal. Rather, the decision highlights the concerns not least of avoiding stereotypes but equally finding them as part of a preliminary assessment of the issues of some application depending on the circumstances of the case and bearing in mind that they are fact-specific cases.
6. In the circumstances and despite the elegance of Mr Franco's arguments I do not find that the grounds are really anything more than ultimately a sincere disagreement with the conclusions which the Judge found.
7. It seemed to me that as a matter of law in the light of the decision in E and R [2004] QB 1044 CA this is a classic case of the Judge having formed a view having heard the evidence and reached a view he was entitled to. The Judge addressed the claim being made and he did just that.
8. First-tier Tribunal Judge Kinnell is extremely experienced as an Immigration Judge and it seemed to me that his decision represented a cogent, coherent and careful analysis of the evidence. He took the view that differences between the Appellant and his uncle concerning the evidence were part and parcel of an attempt to concoct a claim based upon the matters relied upon. It seemed to me that the Judge's view was one entitled to have reached. Even if I might not have reached the same decision on that point it does not seem to me that that demonstrates a material error of law by the Judge.

9. For these reasons, without doing injustice to the arguments being raised, ultimately the complaints about the Judge's decision are simply not well-founded so as to demonstrate amongst other things that another Tribunal properly directed on the law could possibly have reached a different decision. There was no material error of law.

10. In those circumstances the appeal is dismissed.

NOTICE OF DECISION

The appeal is allowed.

No anonymity direction is made.

Signed

Date 16 February 2018

Deputy Upper Tribunal Judge Davey