



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

Appeal Number: **PA/04910/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House (via  
Skype)  
On 22 January 2021**

**Decision & Reasons  
Promulgated  
On 4 February 2021**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HOO (Nigeria)  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Jarvis, Senior Presenting Officer

For the Respondent: Mr Hawkin, instructed by Clyde Solicitors

**DECISION AND REASONS**

1. The Secretary of State for the Home Department appeals, with permission given by First-tier Tribunal Judge Wilson, against a decision which was issued by First-tier Tribunal Judge Pooler on 9 April 2020. By that decision, the judge allowed HOO's appeal against the respondent's refusal of his protection and human rights claims.
2. To avoid confusion, I shall refer to the parties as they were before the FtT: HOO as the appellant and the Secretary of State as the respondent.

## **Background**

3. The appellant entered the UK as a student in 2006 and was subsequently granted periods of further leave to remain which ran until 26 September 2014. On 10 November 2015, he was convicted of six offences in the Crown Court at Birmingham. The convictions followed a two-month trial. He was convicted of making false representations; concealing or transferring criminal property; two counts of making false representation; and two counts of possession of articles for use in fraud. On 11 November 2015, HHJ Stacey sentenced the appellant to five years and six months' imprisonment.
4. The respondent decided to deport the appellant on 14 July 2016. He made a human rights claim, which was refused, and he appealed against the refusal to the First-tier Tribunal, relying principally on his right to a family life with his son, T. His appeal was dismissed by FtT Judge Raikes and his appeal rights were exhausted on 25 May 2017. The appellant made two unsuccessful attempts at judicial review, in March 2017 and May 2018, and the respondent took steps to deport him from the United Kingdom. An emergency travel document was obtained and his deportation was scheduled for the end of January 2019. On 29 January 2019, less than 24 hours prior to his removal, the appellant claimed asylum, stating that he was in fear of return to Nigeria because he was a bisexual man who could not live openly there.
5. The respondent refused the protection claim on 13 May 2019. For reasons she gave at [7]-[18] of the letter of refusal, the respondent issued a certificate under s72 of the Nationality, Immigration and Asylum Act 2002, thereby concluding that the Refugee Convention's protection against refoulement could not be claimed by the appellant for the reasons given in Article 33(2). In any event, for reasons she gave at [41]-[54] of that letter, the respondent concluded that the appellant - who had a propensity for dishonesty and had failed to raise his claimed fear despite 'innumerable opportunities' - had fabricated his claimed bisexuality in an attempt to frustrate his removal from the United Kingdom.
6. The appellant appealed to the First-tier Tribunal for a second time. His appeal came before Judge Pooler ("the judge"), sitting at Taylor House on 10 March 2020. The appellant was represented by counsel, the respondent by a Presenting Officer. The judge heard oral evidence from the appellant and submissions from both representatives before reserving his decision.

## **The Decision of the First-tier Tribunal**

7. The reserved decision is logically sub-divided, carefully reasoned and clearly the product of considerable thought. The judge set out

the appellant's immigration history and his offending history at [8]-[11] and [12]-[21]. The latter section included a careful analysis of the offending and the sentencing remarks of HHJ Stacey. The material parts of s72 were set out at [22]. The judge directed himself at [23]-[24] that the statutory presumptions (of the crime being particularly serious and the appellant representing a danger to the community) applied but that they were rebuttable. At [26], the judge concluded (unsurprisingly) that the first presumption was not rebutted. At [27]-[30], the judge accepted, in reliance on an OASys report dated 29 March 2018, that the appellant had rebutted the presumption that he represented a danger to the community of the United Kingdom.

8. At [30], the judge turned to the appellant's claim that his removal to Nigeria would expose him to a risk of ill-treatment on account of his sexual orientation. He began by citing what had been said by Lord Rodger at [82] of HJ (Iran) [2010] UKSC 31; [2011] 1 AC 596. He then turned to consider whether the appellant was bisexual as claimed. In considering that question, the judge bore carefully in mind what was said against the appellant's claim, and noted in particular the respondent's understandable reliance on the way in which the claim had been made so shortly before removal. He noted at [35] that the appellant had dealt with the reasons for late disclosure at some length in his witness statement. The judge noted that the appellant relied on adverse treatment he had suffered as a result of same sex experiences, from university to his time in prison in the UK: [35]-[37]. He had only felt able to disclose his sexual orientation when he was in detention as a result of discussions with other detainees and a welfare officer: [39]. The judge noted that the appellant was not challenged on these matters in cross-examination: [40]. The judge noted that there was supporting evidence from two gentlemen but that neither attended the hearing, thereby reducing the weight which he could properly attach to their written evidence: [41]. Taking into account the low standard of proof and the fact that nothing in his oral evidence had caused the judge concern as to the appellant's credibility, he was prepared to accept that the appellant's sexual orientation was as claimed. He resolved the remaining HJ (Iran) questions in the appellant's favour and determined the appeal in his favour on asylum and Article 3 ECHR grounds. I need not refer to his assessment of Article 8 ECHR.

### **The Appeal to the Upper Tribunal**

9. The grounds upon which the respondent relied in her application for permission to appeal were as follows. Firstly, she submitted that the judge had misdirected himself in law in relation to s72 of the 2002 Act. Secondly, she submitted that the judge had failed to take the appellant's propensity for dishonesty into account in concluding that his sexual orientation was as claimed. Judge Wilson granted permission to appeal on both grounds.

10. I heard a very brief submission from Mr Jarvis. He withdrew the first ground, noting that it disclosed no legal error in the judge's assessment and failed to engage with the judge's perfectly proper reliance on the OASys assessment of risk, which indicated that the appellant represented a low risk of reoffending and a low risk of serious harm. I should record that this concession was not only correct; it was inevitable. As Mr Jarvis noted, the judge was perfectly entitled to rely on the Probation Officer's assessment of risk and to conclude that the appellant did not pose a danger to the community of the UK.
11. Mr Jarvis did rely on the second ground, but did not wish to develop it. He relied upon it as pleaded and added nothing further.
12. I indicated to Mr Hawkin that I had received his helpful response to the respondent's grounds, under rule 24 of the Procedure Rules, and that I did not need to call upon him to make oral submissions. I was able to indicate that the respondent's appeal would be dismissed for reasons which would follow in writing.

### **Analysis**

13. The gravamen of the respondent's second ground amounts to this: the appellant is a man with a series of serious convictions for offences of dishonesty and the judge failed to take that, or the delay in claiming asylum, into account. Insofar as the criticism is that the judge failed to take the delay into account, I cannot immediately understand how that came to be suggested in the grounds. The judge plainly considered the delay in claiming asylum at length but he considered that it had been addressed by the appellant, who had not been challenged on the point in cross-examination. Many would not have resolved the issue in that way but that is nothing to the point. The judge did not err in law in reaching the conclusion that he did.
14. The respondent has a glimmer of a point in respect of the appellant's background of dishonesty, and I suspect it was the judge's omission of express reference to that background in his analysis of the appellant's claim which caused Judge Wilson to grant permission to appeal. On analysis, however, it is wholly unsurprising that Mr Jarvis chose to say nothing in support of this ground. The judge's decision is obviously to be read as a whole and it is not desirable for a judge to repeat that which has gone before. Equally, it is trite that a judge need not spell out every facet of their reasoning process in coming to findings of fact. No authority need be cited for these propositions, and it might also seem superfluous to remind myself that the FtT is an expert Tribunal tasked with administering a difficult body of law in challenging circumstances and that it is likely that it will get the law right.
15. Reading the judge's decision in that way, it cannot properly be said that he lost sight of the appellant's criminality and his

background of dishonesty. There is a significant section of the judge's decision dedicated to an analysis of that criminality, as described in the sentencing remarks of HHJ Stacey. There is also citation, at [19] of the judge's decision, of the very passage in those sentencing remarks which is said by the respondent to have been left out of account. The judge clearly took a great deal of care to inform himself about the appellant's offending and to understand precisely what had been made by the sentencing judge of his manipulative behaviour during the offending in question. It cannot sensibly be submitted that this careful analysis escaped the judge's attention when he came to consider the appellant's claim to be a bisexual man. It might have been better if he had made brief reference to the history of deception in his subsequent analysis but I must firmly reject the submission that the history was left out of account.

16. For these reasons, I come to the clear conclusion that there is no error of law disclosed by the respondent's grounds of appeal. Her appeal is therefore dismissed and the decision of the FtT shall stand.

### **Notice of Decision**

The Secretary of State's appeal is dismissed. The decision of the FtT, allowing the appeal on asylum grounds, stands.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

M.J.Blundell

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

22 January 2021

