



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

Appeal Number: AA/00486/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 22 October 2013

Determination

Promulgated

On 11 November 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

JEAN FAUSTIN TOUMANGA KOUEMBOU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson, instructed by Jackson Nicholson Solicitors

For the Respondent: Mr S Spence, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant Jean Faustin Toumanga Kouembou, was born on 16 February 1985 and is a male citizen of Cameroon. A decision was taken on 19 November 2012 to refuse his application for asylum and to give directions for his removal to Cameroon. The appellant appealed against that latter decision to the First-tier Tribunal (Judge James) which, in a determination promulgated on 14 June 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. In the period immediately before the First-tier Tribunal hearing until after he was granted permission to appeal to the Upper Tribunal, the appellant

was not legally represented. Unfortunately, Judge Baker, who granted permission on 26 July 2013, appears to have misunderstood the handwritten grounds of appeal submitted by the appellant. Judge Baker had been concerned that the appellant had not been given the opportunity “to be heard in his own appeal”; she appears to have assumed that the appellant had not been present at the First-tier Tribunal hearing at Hatton Cross because he had been in detention. That was not the case. The parties agree that the appellant was present at the First-tier Tribunal hearing on 12 March 2013 and gave oral evidence that day. He had been released from prison and granted temporary admission to the United Kingdom on 25 January 2013.

3. Mr Nicholson acknowledged that the grant of permission put his client in some difficulties. He did not seek at the initial hearing to rely on the proposed amended grounds of appeal to the Upper Tribunal which his solicitors had filed on 21 August 2013. Rather, having regard to Judge Baker’s view (albeit based upon an inaccurate factual matrix) that it had been arguable that the First-tier Tribunal Judge should have adjourned the hearing, he submitted that, faced with an unrepresented appellant whose former representatives had indicated that additional documents (in particular, a magazine article and a medical report) would be forthcoming in time for the hearing, the judge should have invited the unrepresented appellant to apply (again) for an adjournment; an application had been made by the appellant’s former representative but refused by Designated Judge Taylor on 22 February 2013 in the following terms:

“Adjournment refused. It is the credibility of the appellant as to his sexual orientation that is in issue. A report from the Bamber Foundation is unlikely to assist the Tribunal.”

4. The application for an adjournment by the previous solicitors (Fadiga & Co) had asked for further time to produce the Bamber Foundation report together with a translated copy of the magazine/newspaper article which referred to the appellant.
5. The adjournment of appeals before the First-tier Tribunal is subject to paragraph 21 of the Asylum and Immigration Tribunal (Procedure) Rules 2005:

21 Adjournment of appeals

(1) Where a party applies for an adjournment of a hearing of an appeal, he must—

- (a) if practicable, notify all other parties of the application;
- (b) show good reason why an adjournment is necessary; and
- (c) produce evidence of any fact or matter relied upon in support of the application.

(2) The Tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined.

(3) The Tribunal must not, in particular, adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that—

(a) the evidence relates to a matter in dispute in the appeal;

(b) it would be unjust to determine the appeal without permitting the party a further opportunity to produce the evidence; and

(c) where the party has failed to comply with directions for the production of the evidence, he has provided a satisfactory explanation for that failure.

(4) Where the hearing of an appeal is adjourned, the Tribunal will fix a new hearing date which—

(a) shall be not more than 28 days after the original hearing date, unless the Tribunal is satisfied that because of exceptional circumstances the appeal cannot justly be heard within that time; and

(b) shall in any event be not later than is strictly required by the circumstances necessitating the adjournment.

6. The main issue in the appeal before the Tribunal had been the credibility of the appellant's claim to be homosexual. In a lengthy determination, the judge made detailed findings as regards the appellant's credibility and found that the appellant was not homosexual and that his past account detailing difficulties arising from homosexual relationships was not true. He found that the appellant would not face a risk on return to Cameroon. The judge was aware of the application made by the appellant's solicitors to the Bamber Foundation because he refers to it at [49] *et seq.* He observed that, "as being gay is not an illness or a mental disorder, such a report from a psychiatrist or psychologist would add little to the appellant's claim as it is his credibility and his factual claims that I am to assess. Thus it is not known why an appointment was made with the

foundation on this particular point” [50]. The judge noted that the appellant was to have an initial assessment with a psychologist on 30 April 2013. There is no evidence to indicate that the appellant attended that or, indeed, any appointment before October 2013; certainly no report or letter was produced by the Bamber Foundation until 21 October 2013. That report makes no reference to the appellant having been examined in April 2013; Dr Obuaya prepared the report having examined the appellant on 1 October 2013.

7. As regards the magazine/newspaper article, there had been an untranslated copy of the document before the judge. The judge was under no duty to consider it because there was no English translation (see Procedure Rules 2005, paragraph 52(3)).
8. I reject Mr Nicholson’s submission there was any obligation on the judge to invite the appellant to renew his application for an adjournment. There is no authority to support such a course of action in the 2005 Procedure Rules nor am I aware of any jurisprudence on the issue. Paragraph 21 of the Rules refers to “where a party applies for an adjournment” and to “on the application of a party ...”; clearly, there will be occasions when the Tribunal will, of its own motion and without an application from one of the parties, adjourn a hearing. Such occurrences are, however, likely to be rare and will most likely occur where it is obvious that it would be impossible for the Tribunal justly to determine an appeal without an adjournment. That was not the case in the present appeal. I find that Judge James had no cause to revisit the refusal of an adjournment directed by Designated Judge Taylor. Indeed, Judge James went on in his determination to repeat the reason given by Designated Judge Taylor for refusing the adjournment, namely that a report from the Bamber Foundation was not likely to cast any light upon the appellant’s claimed sexuality. I also find that it is likely that the appellant had not attended the psychologist on 30 April 2013 because, if he had done so, that attendance would have been recorded in the report which would have been produced before 21 October 2013. Further, the judge appears to have had no difficulty in understanding the appellant’s case and his evidence in respect of which he has made very detailed findings. I find that the judge has properly complied with the provisions of paragraph 21(3) of the 2005 Rules. I find, having regard to the particular circumstances in this appeal, that the Tribunal was right to proceed with the hearing because the appeal could be justly determined without an adjournment. I find that Judge James has given clear and cogent reasons for dismissing the appeal and I have concluded that his determination is free from legal error.

DECISION

9. This appeal is appeal is dismissed.

Signed

Date 30 October 2013

Upper Tribunal Judge Clive Lane