



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

Appeal Number: AA/02300/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Newport
On 29th April 2015**

**Determination Promulgated
On 20th May 2015**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**GWG
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvan, Counsel

For the Respondent: Mr D Mills, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a male citizen of Uganda, born 16 November 1969. He entered the United Kingdom and claimed asylum. His claim was rejected by the respondent in a decision dated 7 April 2014 and on the same date the respondent made a decision to remove the appellant from the United Kingdom. The appellant appealed the decisions of the respondent and his appeal came before Judge of the First-Tier

Tribunal Woolley sitting at Newport in July 2014. An oral hearing was held and both parties were represented.

2. In a decision dated 11 July 2014, Judge Woolley dismissed the appellant's appeal on all grounds. At paragraph 36 Judge Woolley found the appellant's account "not to be credible". The appellant's claim for asylum was based upon his alleged support for homosexuals within Uganda.
3. The appellant sought leave to appeal, alleging a number of issues, including one suggesting a denial of a fair hearing. It was suggested that the judge had not applied anxious scrutiny to the evidence. Another allegation is that the judge had wrongly viewed the "Convention reason" as one of imputed political opinion, whereas a claim should have been considered "through the prism of imputed PSG". Other allegations deal with findings made by Judge Woolley in respect of the evidence tendered.
4. The application came before another judge of the First-Tier Tribunal, who in refusing the application gave the following as his reasons:
 - "1. The Respondent seeks permission to appeal, in time, against a decision of the First-Tier Tribunal Judge Woolley who, in a determination promulgated on 14 July 2014 refused the Appellant's appeal against the Respondent's decision to refuse asylum.
 2. The grounds to argue that the Appellant was not given a fair hearing however the grounds then do not argue any procedural unfairness but appear simply to disagree with the findings of the Judge.
 3. It is clear from the lengthy determination that the Judge dealt with the evidence and the law in detail. His conclusions were explained in details and the reasons for reaching those conclusions were adequate. Whilst it is correct that at paragraph 22 of the determination the Judge refers only to imputed political opinion as the Convention reason, it is abundantly clear from the body of the determination that he also considered particular social group as an alternative basis for protection. There is therefore no arguable error in that part of the grounds.
 4. The grounds actually amount to nothing more than a disagreement with the findings made by the Judge on the sexuality or perceived sexuality of the Appellant however it is well-established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law (**Green (Article 8 - new rules) [2013] UKUT 254**).
 5. The findings were open to the Judge on the evidence put before him and the grounds disclose no arguable error of law".
5. The appellant then renewed the application before the Upper Tribunal itself. The grounds are in slightly different form, but again allege the denial of a fair hearing. In particular reference is made to **HJ (Iran) v The Secretary of State for the Home Department [2010] UKSC 31**. The grounds also make reference to the treatment by the judge of the witness evidence and in particular it is suggested that there was a "misapplication of the standard of proof" and an alleged error in making reference,

by the judge, of the lack of documentary evidence. The grounds then go on to challenge the decision of the judge refusing leave to appeal.

6. The matter then came before a judge of the Upper Tribunal who granted permission to appeal and in doing so gave the following as reasons:

“If I understand the grounds correctly, at paras 9 and 10 the argument seems to be that because the appellant by his actions will be perceived as being gay, his appeal should have been determined through the prism of imputed PSG reasons and the judge did not do that. For this reason and the arguments raised in the remaining grounds, it is appropriate to grant permission”.

7. Thus the matter came before me sitting in the Upper Tribunal. I note that the respondent produced a response under Rule 24 of the 2008 Procedure Rules submitting, *inter alia*, that Judge Woolley directed himself appropriately and had good reasons for concluding that the account was not credible.
8. The appellant’s representatives produced a reply under Rule 25 of the Procedure Rules. This response by the appellant alleges that the respondent failed to address the grounds upon which leave was granted.
9. At the commencement of the hearing Mr Chelvan made his submission that the determination of Judge Woolley contained a material error of law. He indicated that he had reached agreement with Mr Mills that if a material error was found the appropriate course would be to remit the appeal back to the First-Tier Tribunal.
10. The main thrust of Mr Chelvan’s argument was that Judge Woolley had wrongly identified the Convention Reason. He had found (paragraph 22) that the reason put forward on behalf of the appellant was “imputed political opinion”. The true reason was imputed membership of a particular social group. This amounted to a material error of law making the decision unsafe or unsound. Additionally the judge had been wrong to find it not credible that the appellant had resigned, given that no documents had been produced. Such documents are not needed in an asylum claim/appeal.
11. Mr Chelvan then challenged the judge’s dealings so far as the witness K was concerned. He should not have been treated as an expert witness. That witness had indicated that the appellant would be presumed gay to the village community. Mr Chelvan referred me to paragraphs 5 to 7 of K’s witness statement. Mr Chelvan indicated that all this amounted to a material error of law in the way that evidence had been dealt with.
12. In his response Mr Mills relied upon the Rule 24 submission. The judge had found against the appellant on other credibility issues and he referred me to paragraphs 29 to 30 and 35. The lack of documentation was only one issue. It would make no difference whether the appellant was a sympathiser or gay himself. The judge had dealt with the witness evidence at paragraph 34.

13. In a further response Mr Chelvan indicated that paragraph 34 showed that the judge had misconstrued the evidence.
14. At the end of the hearing I indicated that I would reserve my decision which I now give with reasons.
15. Paragraph 19 of the determination records a submission on behalf of the appellant that the appellant himself had demonstrated imputed political opinion. As a result the judge (paragraph 22) records “the Convention reason which the appellant has put forward is his imputed political opinion, which puts him at risk on return...”. It is now argued that the true Convention reason would be imputed membership of a particular social group. I do not consider that the judge can be criticised for responding to the submission of the appellant’s representative as detailed in paragraph 19. There is no suggestion that the judge has misinterpreted the submission. Certainly there is no statement of truth from the advocate challenging the contents of paragraph 19. Given the circumstances of the appellant’s case it is clear that he was suggesting that he was involved in the political issues surrounding homosexuality in his locality. Accordingly I do not consider the judge can be criticised for his findings as set out in paragraph 22. In any event, the important issue is not so much finding a peg upon which to hang the appellant’s evidence, but more to fully engage with that evidence. I consider the judge did fully engage with that evidence. He took into account the political element of the appellant allegedly supporting an organisation and at paragraph 34 the judge engages with the possibility of the appellant being conceived as gay himself. In addition paragraph 19 notes the suggestion that the appellant “will be perceived as being gay himself”. I am therefore satisfied that Judge Woolley fully engaged with the two concepts. Was the appellant at risk through supporting gay organisations and was he at risk if perceived as being gay, and therefore a member of a particular social group. I find no error of law with regard to a mis-description of a Convention reason.
16. Turning now to the point regarding the lack of documentation (paragraph 32). Mr Mills makes the point that this was but one of a number of areas in which the judge found against the appellant on credibility issues. I agree. However, whilst it is correct that the lack of documentation should not be held against an appellant/claimant, this must be viewed in the context of the case and with regard to the documentation in question. Paragraph 32 adequately explains why the judge found against the appellant with regard to his resignation and even if the judge was wrong to make reference to the lack of documents, it was not material to the eventual outcome of the appeal.
17. As to the witness K, a reading of the determination and in particular paragraph 34 shows that the judge did not regard the witness as an expert. Indeed he discounted that witness’s evidence for the reasons set out in the paragraph and he certainly did not apply any higher standard of proof following a mistaken view that the witness was an expert. Paragraph 34 shows that the judge analysed the content of the statement and he reached conclusions. He was perfectly entitled to reach those conclusions. Mr Chelvan had drawn attention to the use of the words “at its

highest". This did not imply a higher standard. The judge was merely saying that if he accepted the evidence of the witness it would not demonstrate "any risk to the appellant". Again, I find no error of law.

18. The remaining challenges to the determination amount to nothing more than a disagreement with the findings made by the judge. This was a conclusion reached by the judge initially refusing leave to appeal and I support those reasons.
19. The grounds allege a lack of fair hearing. Beyond what I have said above, nothing has been put forward to show that the appellant received anything other than a fair and balanced hearing. There are no allegations of any procedural irregularity and again I find no error on the part of the judge.
20. For these reasons I conclude that the findings and decision of Judge Woolley must stand. The appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Poole