



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05530/2016

THE IMMIGRATION ACTS

Heard at Field House
On 26 November 2018

Decision & Reasons Promulgated
On 12 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR LEROY ALOYSIUS JACKSON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Malhotra, Counsel, instructed by Greenland Lawyers LLP

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision in the Appellant's appeal against the Respondent's refusal of his human rights claim, dated 8th February 2016. This decision follows on from my conclusion that the First-tier Tribunal had materially erred in law when initially refusing the Appellant's appeal (my error of law decision is annexed, below). This matter had previously been adjourned in order for the Appellant's representatives to obtain a medical report and prepare a more detailed witness statement in preparation for the resumed hearing.

2. A bundle of updated evidence has been provided by the Appellant and I have admitted it pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules 2008, without objection from the Respondent.
3. The core issue in the remaking of the Appellant's case relates to whether there would be "very significant obstacles" to his reintegration into Jamaican society with reference to paragraph 276ADE(1)(vi) of the Immigration Rules.

The hearing before me

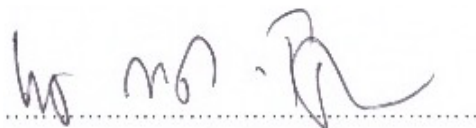
4. Having had the opportunity of reading and digesting the new evidence and discussing matters with Ms Malhotra, Ms Everett took what I regard as being an entirely fair and sensible view of the Appellant's case. She confirmed that she was conceding the appeal on the basis that, on any view of the evidence as a whole and a relevant legal framework, the Appellant would indeed face "very significant obstacles" to his reintegration into Jamaican society.
5. In light of this concession I allow the Appellant's appeal on the basis that he satisfies the requirements of paragraph 276ADE(1)(vi).
6. It is now for the Respondent to grant him an appropriate period of leave.

Notice of Decision

The decision of the First-tier Tribunal contained material errors of law and is set aside.

I re-make the decision in the Appellant's appeal by allowing his appeal. The Respondent's refusal of his human rights claim is unlawful under Section 6 of the Human Rights Act 1998.

No anonymity direction is made.



Signed

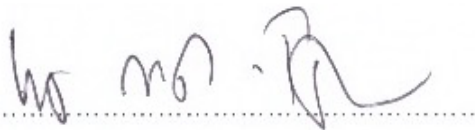
Date: 6 December 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a full fee award of £140.00.

A handwritten signature in black ink, appearing to read 'Ms Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 6 December 2018

Deputy Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION



IAC-FH-NL-V1

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

Appeal Number: HU/05530/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 5 July 2018**

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MR LEROY ALOYSIUS JACKSON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Victor-Mozeli, Counsel, instructed by Invictus Chambers
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant to the decision of First-tier Tribunal Judge R L Walker (the judge), promulgated on 21 June 2017, by which he dismissed the Appellant's appeal against the Respondent's refusal of his human rights claim, dated 8 February 2016.
2. The Appellant's case both in respect of the initial claim and on appeal was essentially as follows. In a previous asylum claim dating back to 2003 it had been found by an Adjudicator on appeal that the Appellant was gay and, apparently, had suffered certain problems as a result of this whilst still in Jamaica. It seems as though other more serious alleged incidents had been rejected by the Tribunal.
3. It was now said that by virtue of his sexuality he would now face "very significant obstacles" if attempting to reintegrate into Jamaican society, with reference to paragraph 276ADE(1)(vi) of the immigration rules.

The judge's decision

4. The judge deals with this core issue at [20]. He says as follows:

"The appellant's evidence is that he will be at risk on return, will have no support or help from family members, no job prospects, no accommodation and will not be able to lead an open and normal life. This is an issue that has already been considered in the appellant's asylum application and later appeal in 2003. That determination concluded he was a homosexual, had been such in Jamaica, but was not at risk on return. The conclusion therefore that it was possible for him to return to Jamaica must still apply. The standard of proof in asylum cases is that much lower than in immigration cases. If the appellant had failed to show that there was 'a reasonable likelihood of risk' then he cannot show the higher standard of 'very significant obstacles'. The principle set out in Devaseelan v SSHD [2003] applies and I must follow the findings in the earlier case. I am entitled to take into account later facts and events but nothing has been produced today to show that the situation in Jamaica is any worse now than it was in 2003 for homosexuals. It follows that the appellant cannot satisfy sub paragraph (vi)."

5. The judge goes on to consider other evidence about social ties in the United Kingdom. It is said that these did not amount to much and the appeal was duly dismissed.

The grounds of appeal and grant of permission

6. The grounds focus exclusively on the issue of the Appellant's sexuality and paragraph 276ADE(1)(vi). It is said that the judge was wrong to have applied

Devaseelan in the way he had and that the Appellant's sexuality would have been sufficient to constitute "very significant obstacles".

7. Permission to appeal was granted by First-tier Tribunal Judge Ford on 25 April 2018.

The hearing before me

8. Although dated 25 May 2018, a Rule 24 response from the Respondent had not found its way either to my file or into the hands of Ms Victor-Mozeli. In any event copies were provided to us both by Mr Avery. Paragraph 2 of that response reads as follows:

"The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant has established significant obstacles to return or a breach of his family and private life in the UK."

9. Despite the somewhat ambiguous wording of that response, Mr Avery confirmed that was effectively conceding that the judge had materially erred in law in this case. Unsurprisingly, Ms Victor-Mozeli had nothing to add.

My decision on error of law

10. In my view the Respondent was entirely correct to concede that the judge had materially erred in law. This is the case for at least two reasons. First, Devaseelan [2002] UKIAT 00702 does not bind the hands of a subsequent Tribunal, contrary to what the judge appears to have believed by virtue of his repeated use of the word "must" in [20] of his decision. All relevant evidence and other materials must be considered. Previous findings represent a clear starting point only.
11. Second, although this was not a protection claim, there were relevant materials which postdated the 2003 determination which the judge should have borne in mind, in particular the country guidance case of DW [2005] UKAIT 00168 and the principles set out in HJ (Iran) [2010] UKSC 31. A further error in approach by the judge is to have failed to appreciate the material difference in the questions posed by a protection claim on the one hand and a human rights claim on the other. In the former, the core issue is that of a risk of persecution. In the latter, it is about the reintegration into the society of the country of origin and the need to undertake a broad evaluative judgment of all relevant circumstances.
12. In light of the above I set the judge's decision aside.

Disposal

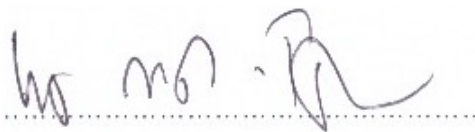
13. At first glance this would appear to be a case in which I should be remaking the decision on the evidence now before me. Ms Victor-Mozeli submitted that this was the correct course of action. She submitted that the Appellant's sexuality of itself was sufficient for him to succeed in his appeal. However, Mr Avery pointed out that there was no copy of the 2003 determination, and thus no clear factual picture of what was and what was not accepted at that time, nor was there an up-to-date statement from the Appellant dealing with his sexuality and how he lived his life in the United Kingdom. He suggested that oral evidence would be necessary and that there would be questions for the Appellant. This could not be undertaken today and a resumed hearing should take place.
14. With some reluctance I agree with Mr Avery. It is unfortunate that there has not been more up-to-date information supplied by the Appellant for the purposes of this hearing. Having said that, the absence of the 2003 determination is not down to him. In my view it would be right for oral evidence to be received and tested in light of further written evidence. I am therefore adjourning the appeal.
15. I make it clear that Mr Avery has not suggested that the issue of the Appellant's sexuality is exclusively a matter for a protection claim. He acknowledged that it was open to the Appellant to rely on this core issue in respect of paragraph 276ADE(1)(vi).
16. I issue relevant directions below.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I adjourn this appeal for a resumed hearing before me in due course.

No anonymity direction is made.



Signed

Date: 18 July 2018

Deputy Upper Tribunal Judge Norton-Taylor

Directions to the parties

- (1) The Appellant is to provide an updated witness statement containing details of his life in the United Kingdom, with specific reference to his sexuality;
- (2) Oral evidence at the resumed hearing is permitted, but only if a witness statement is provided in compliance with direction 1, above;
- (3) The Appellant shall make reasonable attempts to try and find a copy of his 2003 Tribunal determination;
- (4) The Respondent is to use his best endeavours to locate a copy of the 2003 determination;
- (5) With reference to directions 1-4 above, further evidence from either party is to be filed with the Upper Tribunal and served on the other side **no later than 14 days** before the resumed hearing.