



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04889/2017

THE IMMIGRATION ACTS

Heard at Newport
On 25 July 2018

Decision & Reasons Promulgated
On 21 August 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR A A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Capel, Counsel, instructed by Duncan Lewis & Co Solicitors
(Harrow Office)

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Nigeria, has permission to challenge the decision of Judge Page of the First-tier Tribunal (FtT) sent on 16 January 2018 dismissing his appeal

against the decision made by the respondent on 10 May 2017 refusing his protection claim. In contrast to the respondent, who did not accept that the appellant was gay, Judge Page did but considered that nevertheless he would not be at risk on return as he would be able to live discreetly in Nigeria.

2. It is unnecessary to set out the grounds or to analyse them in any detail because both parties shared my view that the decision of the judge is vitiated by material error of law.
3. The first and most glaring error by the judge was failure to follow the guidance given by the Supreme Court in **HJ (Iran)** [2010] UKSC 31. Having found that the appellant was gay and would live discreetly on return, to accord with **HJ(Iran)** guidance, he should have gone on to examine whether one of the causes the appellant would live discreetly would be fear of persecution. The judge wholly failed to conduct such an examination, notwithstanding that the appellant's evidence was that one of the reasons he had behaved discreetly in the past was fear of persecution.
4. The second error of the judge was his assumption that as there was no Tribunal country guidance case to say that being gay in Nigeria was a recognised risk category, he could thereby conclude the appellant would not be at risk on return. That overlooked that there were relevant country background materials that Counsel had drawn his attention to, which included the respondent's own Country Information and Guidance: Nigeria: Sexual orientation and gender identity (March 2015). Whilst this did not identify gay sexual orientation as a risk category as such, this CIG made clear that for gay persons persecution was "likely to amount in individual cases" (1.4.2) and that effective protection is not available to LGBT persons (1.4.5) except in respect of "[s]ome LGBT persons from privileged backgrounds in the larger urban areas" (1.3.10).
5. In light of these errors I set aside the decision of the judge for material error of law.
6. Mr Howells on behalf of the respondent submitted that I should proceed to re-make the decision by allowing the claimant's protection appeal. In light of this submission, I would only not proceed to accept the respondent's concession if I considered there were special circumstances for not doing so. I see no special circumstances in play here. On the basis of the judge's findings of fact the appellant is a gay man. The respondent no longer disputes that if he goes back to Nigeria and lives discreetly, one of the causes for him so behaving would be fear of persecution. He is clearly a member of a particular social group.
7. For the above reasons I conclude:

Notice of Decision

The decision of the FtT Judge is set aside for material error of law.

The decision I re-make is to allow the appellant's appeal against refusal of his protection claim.

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.

Signed:

Date: 7 August 2018

A handwritten signature in black ink that reads "H H Storey". The letters are written in a cursive, slightly slanted style.

Dr H H Storey
Judge of the Upper Tribunal