



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

Appeal Number: PA/12068/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 1st July 2019**

**Decision & Reasons Promulgated
On 23rd August 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**E L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Da Silva, Fountain Solicitors

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Page, promulgated on 23 August 2018, dismissing his protection claim on asylum grounds, humanitarian protection grounds and human rights grounds.
2. Permission was granted by Upper Tribunal Judge Jackson on 29 March 2019 on the ground that it was arguable the judge failed to give sufficient reasons for finding that the Appellant was not bi-sexual or seeking to transition as a woman. The reasons given at paragraph 27 were based on the late claim for asylum and there was no reference to or rejection of the

Appellant's evidence about his past relationships or involvement with LGBT groups in prison (Ground 1). Further, the findings in paragraph 28 were arguable contrary to HJ (Iran) as to the reasons why the Appellant stated he would live discreetly in Ghana (Ground 2). Lastly, there was arguably insufficient consideration of the family court proceedings notwithstanding the unassailable conclusion, on the evidence, that there was no current family life as a parent (Ground 3).

The Appellant's Immigration History

3. The Appellant is a national of Ghana born in 1968. He arrived in the UK in May 2009 with entry clearance as a spouse of a British citizen. This relationship broke down in April 2011 and his divorce was finalised in January 2012. The Appellant met his current partner [CS] in March 2011. He applied for a settlement in May 2011 and was granted indefinite leave to remain in July 2011. His daughter PL was born in January 2012. He became engaged to CS in September 2013 and his second daughter ML was born in March 2014.
4. On 28 February 2014 the Appellant was convicted of two counts of assaulting a female child under 13 and sentenced to 7 years' imprisonment. He was found guilty of assaulting a 10-year-old girl (a friend of his partner's two children) on two occasions during a sleepover at the house he shared with CS. The Appellant still maintains that he is not guilty of the offences.
5. The Appellant was served with a notice of intention to deport in September 2014 and responded by claiming asylum on 27 October 2014 on the ground that if he returned to Ghana he would face ill treatment by the father of the victim of the sexual assaults. The Appellant was served with a notice of intention to deport in May 2016 and a section 72 notice in September 2016. He was interviewed on 23 November 2016, 15 December 2016 and 6 February 2017. The Appellant's relationship with CS ended in early 2017. The Respondent refused the Appellant's asylum and human rights claims and maintained the decision to deport on 7 November 2017.
6. On 22 November 2017 the Appellant issued proceedings under the Children Act 1989 in respect of his two children born in 2012 and 2014. The hearing in May 2018 was adjourned to a date in November 2018. On 16 November 2018 the Appellant was granted supervised contact with his children three times a year. The Court ordered that if he is deported he is to have supervised indirect contact three times a year.
7. On 22 January 2018 the appellant re-claimed asylum on the ground that he faced a risk on return to Ghana as a bisexual man who intended to undergo surgery to become a transgender woman. His appeal listed in February 2018 was adjourned to enable the fresh asylum claim to be

decided. The Appellant was interviewed again on 13 March 2018. The Respondent, in a supplementary refusal decision dated 9 April 2018, refused the fresh asylum claim and maintained the decision to deport.

Submissions

8. Mr Da Silva submitted that there was sufficient evidence in the Appellant's bundle to show that he was bi-sexual which the judge ignored. The judge failed to properly apply HJ Iran. There were on going family proceedings and there were very compelling circumstances which justified a grant of leave to stay in the UK to see his two British citizen children.
9. Mr Lindsay submitted the main issue in the appeal was whether the judge was entitled to find the Appellant was not a credible witness. The judge took into account the fact that the Appellant continued to deny the offences of which he was convicted by a jury at a trial in which the complainant, a minor, gave evidence. This significantly damaged his credibility. Further, section 8 applied and the judge demonstrated that he attached significant weight to the Appellant's late claim for asylum on grounds of sexuality. The judge also considered the Appellant's explanation for why he had not raised this issue earlier and gave adequate reasons for why this was not credible.
10. It was apparent from paragraph 21 that the judge took into account all the evidence before him even that to which he had not specifically referred. There was nothing in his findings which demonstrated he had missed a part of the evidence or misunderstood it. Having considered all the documents, the judge found that the Appellant was not credible because he had lied to a jury and his claim was made at the last minute when all other avenues had been exhausted. There was no lack of reasoning when the decision was read as a whole and following UT (Sri Lanka) [2019] EWCA Civ 1095 at [26][27] the judge's reasons could be inferred. He did not have to set out every step in his reasoning and judicial restraint should be exercised in examining those reasons. The judge had considered all the evidence in concluding the Appellant was not credible.
11. The evidence in the Appellant's bundle post-dated the refusal of asylum and section 8 applied. There was an irresistible inference that the judge was not persuaded by it. None of the judge's findings were contradicted by the documents in the Appellant's bundle. The judge had been clear and concise. There was no reason to suppose the judge missed anything out. He did not have to refer to every piece of evidence and, in this case, there was a powerful and unambiguous inference to be drawn. The reasons given were sufficient to demonstrate why the Appellant's appeal was dismissed.
12. In relation to ground 3, the judge had addressed the questions in RS (Immigration and family court proceedings) India [2012] UKUT 218. The

outcome of the contemplated family proceedings was unlikely to be material to this immigration decision. Taking the evidence at its highest, the circumstances regarding the Appellant's children could not meet the unduly harsh requirement and could not arguably be said to be very compelling circumstances. Secondly, there were compelling public interest reasons for excluding the Appellant irrespective of outcome of the family proceedings and the best interests of the children which the judge addressed at paragraph 43. Thirdly, the judge found there was reason to believe the proceedings had been instituted to delay or frustrate removal (paragraph 22 of the decision).

13. Applying MS (s.117C "very compelling circumstances") Philippines [2019] UKUT 122, there were no very compelling circumstances such as to outweigh the public interest, which included deterrence and the need to maintain public confidence in the system. This case could not succeed under Article 8.
14. Mr Da Silva submitted that the Appellant had served his term of imprisonment and had been given permission to see his children three times a year. He accepted there was no evidence of this before the First-tier Tribunal. He submitted the judge had failed to follow the correct test and had ignored the Appellant's claim to be bi-sexual. The judge failed to take into account the anxiety, stress and shame in considering the Appellant's late claim. He failed to consider the risk on return and how the Appellant could avoid persecution. The First-tier Tribunal failed to adopt the correct approach and the decision should be set aside and remade.

Conclusions and reasons

15. The judge made it clear at paragraph 21 that he had considered the oral evidence, submissions and documentary evidence even if he had not mentioned it in his decision. At paragraph 24, he specifically took into account the Appellant's oral evidence, his witness statement and the supporting documents. At paragraph 27 he stated: "After considering all the appellant's evidence and the evidence in the appellant's bundle, I do not find the appellant credible to the low standard of proof that he is truthfully bi-sexual or that he intends to undergo gender realignment (sic) surgery." I find that the judge did not ignore the Appellant's claim to be bi-sexual and he took into account all the evidence in the Appellant's bundle in assessing the credibility of the Appellant's claim.
16. The judge gave numerous reasons, at paragraph 27, for finding that the Appellant was not credible:
 - (i) the Appellant's failure to claim asylum based on his sexuality until his appeal was pending;
 - (ii) the number of times the Appellant had the opportunity to disclose his claim and failed to do to;

- (iii) the Appellant's reasons for choosing not to disclose his claim earlier was not credible. The Appellant stated, "he did not want to put all his eggs in one basket" and he did not want his partner to learn about his sexuality. This did not adequately explain the failure to disclose given that he separated from his partner in early 2017, but did not claim asylum until January 2018;
 - (iv) The Appellant's failure to mention that he would be at risk on return on account of his sexuality in his asylum interview when he claimed that he feared his victim's family.
 - (v) The Appellant raised his sexuality as a ground for asylum when he realised he had no other basis on which to resist deportation.
17. The judge made a clear finding that the Appellant was not a credible witness and gave adequate reasons for concluding that the Appellant had fabricated his claim to be bi-sexual and prospective transgender woman.
 18. Following UT (Sri Lanka), it could be inferred from the decision that the judge attached little weight to the evidence in the Appellant's bundle: a character reference dated 25 March 2018 from the Shannon Trust Co-ordinator; an undated letter from Matthew; and a letter from the community engagement manager of G4S dated 8 March 2018, which stated that the Appellant informed that he was bi-sexual on 16 October 2017 and attended two LGBT meetings on 26 November 2017 and 21 December 2017. These documents do not undermine the judge's conclusion that the Appellant raised his sexuality as a last ditch attempt to resist deportation.
 19. The minutes from the LGBT meeting dated 30 September 2015 and the Appellant's claim to have written to the Respondent after his interview were adequately dealt with in the refusal letter and did not undermine the judge's credibility findings in any event. The Appellant's claim to have had three same-sex relationships was not supported by oral or documentary evidence which the Appellant ought to have been able to produce if his account was true. The judge gave adequate reasons for why the Appellant was not a credible witness and therefore it was implicit in this conclusion that he attached no weight to these unsupported assertions. There was no material error of law in relation to ground 1.
 20. There was no misdirection in law. The judge answered the first question in HJ (Iran) and concluded that the Appellant had failed to show to the lower standard that he was bi-sexual or that he intended to undergo gender reassignment surgery. There was no need for the judge to go any further. Any error in relation to ground 2 was not material.
 21. The judge properly directed himself following RS (India). There were compelling public interest reasons to exclude the Appellant from the United Kingdom irrespective of the outcome of the family proceedings or the best interest of his children. The outcome of the family proceedings

was not material. Given the unchallenged finding that there was no current family life, the Appellant's Article 8 claim could not succeed.

22. Taking his claim at its highest, there were no very compelling circumstances to outweigh the public interest in deportation. There was no material error of law in relation to ground 3.
23. Accordingly, I find that there is no error of law in the judge's decision and I dismiss the Appellant's appeal.

Notice of Decision

Appeal dismissed

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.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 8 July 2019

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 8 July 2019