



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

Appeal ref: PA/04083/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34

**Decision & Reasons Promulgated
On 14 July 2020**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

CHIMEZIE [O]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. This is an appeal against the decision of FtT Judge Burns, promulgated on 7 November 2019.
2. The UT granted permission on grounds set out by the appellant in his application dated 5 March 2020:
 - [1] failure to engage with an expert report regarding the appellant's late disclosure of his sexuality;
 - [2] too high a standard of proof applied to appellant's credibility regarding his sexuality;
 - [3] failure to engage with the evidence as a whole, and reaching erroneous conclusions; and

[4] inadequate reasoning; failure to consider the impact of the appellant's medical and mental health on his asylum claim, consistency of scarring, and diagnosis of depression.

3. The UT issued directions, dated 2 April 2020, with a view to deciding without a hearing whether the FtT erred in law and, if so, whether its decision should be set aside.
4. Parties were also given the opportunity to submit on whether a hearing is necessary. Neither party seeks a hearing. The UT may now justly decide on error of law, based on parties' written submissions.
5. The appellant's submissions say that he was a vulnerable witness; a Medical Foundation report found no clinical evidence of fabrication; the decision was "contrary to the evidence"; and the decision does not refer to *Hj (Iran)* [2011] 1 AC 596. The rest of the submission reasserts his case that on return he would be at risk as a bisexual man, would not receive state protection, and would be at risk from gangs or cultists who persecuted him in the past, and from money lenders.
6. The SSHD submits firstly that the grounds do not challenge the findings on risk from gangsters or cultists, or from money lenders, only on bisexuality; nor on the internal flight alternative. On the grounds as numbered, the SSHD says [1] the report was considered, and reticence about sexuality did not correspond with the long delay in the claim, which was on various grounds; [2] the correct standard of proof was stated and applied; [3] the consideration of the evidence was adequate; and [4] medical reports and scarring were considered, and adequate reasons given for finding that these did not significantly advance the case.
7. The appellant's reply, filed on 14 May 2020, reasserts and embellishes the case - e.g., "failed to consider the appellant's actions as those of a frightened, celibate, mentally afflicted man living among ... the homophobic Nigerian community not only in Nigeria but in the UK", and, "[the judge] ... has castigated him for failing to comply with a perceived stereotypical norm". This is disagreement on the facts, in rather strident terms; it is not legal analysis.
8. I am not persuaded that the appellant's grounds and submissions disclose any error by the FtT on a point of law.
9. The respondent accepted that LGBT persons in Nigeria form a particular social group in terms of the Refugee Convention, but not that membership of that group is sufficient for recognition as a refugee. Such cases turn on their own facts, as appears to be accepted for the appellant.
10. The FtT did not find the appellant's claim of bisexuality credible, for reasons specified at [21] - [29]. These are to be taken in context of adverse credibility findings based on long delay, and claiming only when arrested, at [14] - [20]; dearth of evidence about gangsters or cultists (a

group allegedly made up entirely of bisexual men), at [30] - [32]; and absence of any basis for a threat from money-lenders, at [33].

11. The FtT concluded at [36] that it did not accept any of the elements of the claim - bisexuality, a gang, or money-lenders - and said finally at [37 - 38]:

“Had I found any truth in the gang / moneylenders aspects I would have concluded that it was implausible in the extreme to suggest that 8 years after he left Nigeria and 6 years after his brother died that gang members or money lenders would be looking for him and in any event [he] could relocate ... for example to Lagos ... where he lived and attended university before leaving for the UK ... the asylum claims have been invented simply because he wants to find a way of staying in the UK.”
12. The appellant reasserts his case, and disagrees selectively with the FtT’s reasons for finding as it did, but, reading the decision fairly and as a whole, it explains why this was found to be a belated, weak, and concocted claim in all its aspects.
13. The appellant has not shown that the FtT’s overall conclusion, reached for several sound reasons, should be set aside for having involved the making of any error on a point of law.
14. The decision of the First-tier Tribunal shall stand.
15. No anonymity direction has been requested or made.
16. The date of this determination is to be taken as the date it is issued to parties.

Hugh Macleman

UT Judge Macleman

Date 29/06/2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.