



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003253

First-tier Tribunal Nos: PA/54483/2022
IA/11058/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of September 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

KC
(ANONYMITY ORDER MAINTAINED)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr K Wood, Legal Representative; Immigration Advice Service
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 23 August 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a citizen of Nigeria, appeals against the decision of First-tier Tribunal Judge Mathews dismissing his protection and human rights appeal promulgated on 14th April 2023. The Appellant applied for permission to appeal which was granted by First-tier Tribunal Judge Adio in the following terms:
 - “3. The grounds in the application for permission to appeal argue that the judge failed to provide any adequate reasons for a finding of fact on a material matter, namely it is not clear why three assailants in a particular scenario should have been more interested in M than in the Applicant, and secondly that the judge failed to take into account material matters. In particular mention is made of material in the Applicant’s bundle at page 76 of a screenshot of the Welsh Refugee Council Instagram account which depicts a photo of the Applicant in the Hoops and Loops group celebrating Pride month. It is also argued that there is no consideration of this evidence by Judge Mathews within his decision and reasons and there is a failure to consider material evidence relevant to the assessment of the Applicant’s sexual orientation, in particular the judge criticising the Applicant for the brief description of how his awareness of his sexual orientation arose.
 4. Having considered the grounds in support of the application for permission to appeal and reading the judge’s decision, I find that the judge has failed to take into account the Respondent’s own guidance on how it may be difficult for individuals like the Applicant to provide detailed information about their sexual orientation bearing in mind the Applicant’s evidence at paragraph 9 of his witness statement on his basic sexual attraction to men. Although the judge mentions other pieces of evidence at paragraph 30 of the determination there is no proper analysis of the overall evidence and application to the Applicant’s facts as well as consideration of the arguments put forward in the skeleton argument dealing with these issues. Part of the evidence before the judge at paragraph 77 of the bundle is that the Applicant has been a member of Hoops and Loops since 2019. There is no finding on this issue. It is clearly plausible for the Applicant to be lying about one issue and yet stating the truth about another issue, however the judge has not given proper consideration to the overall evidence before him and has not adequately resolved conflicting matters in the evidence. There is an arguable error of law.”
2. At the outset of the hearing, we verified with Mr Walker, who confirmed that the Respondent has not served a Rule 24 response.

Findings

3. Having heard Mr Wood’s submissions outlining the grounds of appeal, Mr Walker conceded that the decision contained material errors of law as identified by Mr Wood. We are inclined to agree and do so for the following reasons.
4. In relation to Ground 1, complaining that the judge failed to provide any or adequate reasons at §§25-26 of the decision, in reaching a finding upon the Appellant being able to escape from attackers who confronted him and his partner, M, when they were engaged in sexual activity and why he was able to escape but M was not, we agree with Mr Wood that the judge has failed to

consider the evidence in the Appellant's witness statement that potentially answers this issue. At paragraph 11 of his statement the Appellant states: "... In 2019 one evening we were caught touching each other by three men in a disused house where he was staying. We were attacked with a plank of wood by three people I did not know. I was dressed but he was just in his boxer shorts. I managed to run off away from the attackers. The relationship ended after this. H saw the injury that I sustained and I told her about my sexual orientation." Notwithstanding that it is not always possible for an Appellant to explain the actions of others, it is clear that had the judge considered the above evidence he may have concluded that the M was primarily attacked rather than the Appellant, allowing him to escape, because M was in a state of undress and could not readily flee, and understood why the assailants were more interested in attacking M than the Appellant, and thus accepted the Appellant's account, this being one of two reasons why the judge decided against him. Thus, we find that the judge materially erred in failing to take account of this evidence which could have foreseeably addressed his concerns.

5. In relation to Ground 2, complaining that the judge failed to take account of material matters, in relation to two matters, we first find that the judge has failed to consider that the Appellant featured in a screenshot on the Welsh Refugee Council's Instagram account, which depicts the Appellant celebrating Pride month with "Hoops and Loops" (see [AB/76]). We agree with Mr Wood that this evidence was material to the judge's assessment of the Appellant's sexual orientation as it shows him openly celebrating his sexuality. Although the judge noted the references from various groups, and community centres at §30, it is clear that the judge, noting that Hoops and Loops have not mentioned the Appellant's sexuality, may have not rejected the Appellant's claim to belong to a particular social group had he also considered the photo from Hoops and Loops picturing him celebrating Pride. It is noteworthy that this evidence does not appear at §8 and §30 of the decision, where the judge lists the evidence he has taken into account.
6. In relation to the second matter, which notes the judge's criticism at §31 that the Appellant's evidence lacks detail and complains that the judge failed to take into account the Respondent's own Asylum Policy Instruction on Sexual orientation in asylum claims (Version 6.0, page 13), mentioned in the Appellant's Skeleton Argument, and which confirms that it may be difficult for individuals like the Appellant to provide detailed information about their sexual orientation, we find that this would have assisted the judge in gauging what level of detail he could expect from the Appellant, whilst also noting and accepting Mr Wood's argument that the judge has failed to consider the Appellant's evidence at paragraph 9 of his statement which confirms his sexual attraction to men at the age of 11-12 years old and which states as follows: "At a young age, I was about 11 to 12 years old, I would go to the football came for competitive games. In the changing rooms we would see each other nude and play would play with each other's erections. We would do this when there were no adults watching. As I grew older when I saw handsome males with good physic I would be sexually aroused; I realised that I am bisexual". We find that had the judge considered this evidence he may have reached a different conclusion on the Appellant's "emerging bisexuality".
7. For those reasons, we find that Ground 2 is also established and points to a material error of law in failing to take account of material matters.

8. We therefore find that the judge has materially erred for the reasons given and that the decision must be set aside.

Notice of Decision

9. The Appellant's appeal is allowed.
10. The appeal is to be remitted to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Mathews.

Directions

11. The appeal is to be remitted to IAC Newport.
12. No interpreter is required.
13. Upon remittal, each party is at liberty to seek any further direction that may assist in the further management of this appeal.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 August 2024