



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

Appeal Number: AA/00666/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 28th November 2017

**Decision & Reasons
Promulgated**

On 14th December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**RS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan of Counsel instructed by Parker Rhodes
Hickmotts Solicitors

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Row made following a hearing at North Shields on 20th February 2017.

Background

2. The appellant is a citizen of Nigeria born on [] 1983. He has been in the UK illegally for many years, having entered the UK in November 2002. In 2008 he served a ten month prison sentence for affray. He was arrested for working illegally on 2nd August 2014 and claimed asylum. He was refused and his appeal dismissed by Immigration Judge Dearden. He made a fresh claim on 22nd March 2016 which was again refused and it was that refusal which was the subject of the appeal before Judge Row.
3. The appellant's claim is that he would be at risk on return to Nigeria because he is homosexual and likely to be harmed in Nigeria where homosexual acts are criminal. He has had a number of affairs with men in the UK, both gay men and with men who identify as women. One of those, T, gave oral evidence before Judge Row.
4. The judge took as his starting point the decision of Judge Dearden and concluded that there was no truth whatsoever in the appellant's claim and dismissed the appeal.
5. The appellant sought permission to appeal on multiple grounds and was granted permission to argue them by Deputy Upper Tribunal Judge Davey on 14th August 2017.
6. Mrs Pettersen accepted that if the judge had erred in law in relation to his approach to witness T, the appeal would have to be reheard, although she correctly pointed out that the judge did analyse T's evidence in some detail.
7. Not surprisingly the judge was very unimpressed with the appellant's immigration history. He took as his starting point the determination of Judge Dearden who had found the appellant to be wholly lacking in credibility.
8. However the judge had cogent evidence from witness T. He criticised that evidence on the basis that the appellant was a person, with his history, who had shown a persistent disregard for the laws of the UK and who was unlikely to balk at lying, fabricating evidence in support of his claim or asking others to do so on his behalf.
9. However, there was no apparent motive for T to lie. The relationship which he had with the appellant had ended sometime ago. The criticism which the judge made of the multiple emails which he produced, namely that they appear to be out of sequence, make no allowance for the fact that some are labelled Pacific Standard Time, accounting for the time difference. Moreover, the judge criticised T for describing the appellant as Somalian in October 2009 but fails to take account of the explanation which he gave for that error.
10. T did not appear before Judge Dearden because at that time he was not willing to expose the double life which he led both as a male in society and

as a transgendered female. He is not out to her family and most of his acquaintances. By the time of this hearing, he was prepared not only to give evidence but to provide his identity documents to the Tribunal.

11. The judge erred in law in his assessment of the evidence because:
- (a) he did not consider all of the evidence when reaching his adverse conclusions, for example T's explanation as to the time zone when the emails were sent and for her wrong description of him as Somali;
 - (b) his conclusion that the appellant had asked T to lie on his behalf is not supported by the evidence which T has produced, including, at some risk to himself, of producing his true identity documents;
 - (c) appearing to treat the very late claim for asylum as determinative, which is problematic in the context of a late disclosure of sexual preference and inconsistent with the decision in A, B, C v Staatssecretaris van Veiligheid en Justitie [2014] ECR I when the Grand Chamber noted that:

“Having regard to the sensitive nature of questions relating to a person's personal identity and in particular his sexuality, it cannot be concluded that the declared sexuality lacks credibility simply because, due to his reticence in revealing intimate aspects of his life, that person did not declare his homosexuality at the outset”.

12. Accordingly, the decision of Judge Row is set aside and will have to be re-made by a judge other than Judge Row at a hearing before a different First-tier Tribunal Judge at Bradford.

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.

Deborah Taylor

Signed
2017

Date 14 December

Deputy Upper Tribunal Judge Taylor