



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10716/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 12 June 2017

Promulgated

On 28 June 2017

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

DM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, Counsel, instructed by Turpin & Miller
Solicitors (Oxford)

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Ghana and his date of birth is 5 April 1977. He made an application for asylum based on his sexuality and the Respondent refused the application on 21 September 2016. The Appellant appealed against the decision and his appeal was dismissed by Judge of the First-tier Tribunal Phull, in a decision promulgated on 5 January 2017, following a hearing on 2 December 2016. Permission was granted to the Appellant by Upper Tribunal Judge Bruce on 2 May 2017.

2. The judge heard evidence from the Appellant and made findings at paragraphs 6, 7 and 8. The judge did not accept the Appellant's evidence in relation to his sexuality. She did not accept that he was bisexual. The grounds argue that the judge made a factual error in relation to the Appellant's evidence. It is not necessary, for the purposes of this decision, to record and engage with all the grounds of appeal because on this ground alone the application succeeds. The judge made a material error of law which was conceded by Mr Bramble.
3. Having considered the Appellant's asylum interview, particularly his answers to questions 172 to 188 and the evidence in his witness statement at paragraphs 18 to 21, I conclude that the judge misunderstood this evidence. She did not take into account the totality of the Appellant's evidence in respect of the relationships with William and Emmanuel and the Appellant's evidence that he had paid them for sex. The judge misunderstood the evidence concluding that it was the other way around and that he, the Appellant, had been paid. She attached significant weight to this when rejecting his evidence about his sexuality. Whilst it was to the judge to find that the Appellant was not credible, she made adverse credibility findings, having misunderstood the evidence or by failing to properly engage with it. Either way, this amounts to a material error and I set aside the decision.
4. Both representatives agreed that there was a need for a full rehearing. None of the findings can be salvaged. The parties were of the view that, in the light of the full fact finding exercise which is now required, the appropriate venue is the FtT. I remit the case to the FtT.

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 Joanna McWilliam

Date: 22 June 2017

Upper Tribunal Judge McWilliam