



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

Appeal Number: PA/00360/2018

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice

**Decision & Reasons
Promulgated**

On 16 April 2018

On 19 April 2018

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NR

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I. Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr M. Symes, Counsel

DECISION AND REASONS

1. Although the appellant in these proceedings is the Secretary of State, for ease I continue to refer to the parties as they were before the First-tier Tribunal.
2. This appeal concerns the appellant's claim to fear persecution on return to Jamaica on account of his sexuality as a gay man.
3. He is a citizen of Jamaica, born in 1988. He arrived in the UK in August 2002 as a visitor with leave to enter until 8 February 2003. An application

for leave to remain as a dependant of settled parents was refused in August 2003. In 2008 he was detained as an overstayer and then granted temporary release.

4. On 11 August 2011 he received a sentence of 6 months imprisonment for offences of burglary and theft, although deportation action was not pursued. In March 2012, a human rights claim was refused with no right of appeal and in October 2014 he was noted as an absconder for failing to report. In April 2015 he was arrested for failing to appear at court and possession of drugs. Again he was released on temporary admission and again failed to comply with reporting conditions.
5. He was encountered by police on 25 September 2017 and detained. He then claimed asylum on 9 October 2017. Because he claimed that he had been forced to deal in drugs a referral via the National Referral Mechanism ("NRM") was made and on 1 November 2017 a negative 'reasonable grounds' decision was made.
6. His asylum (and human rights claim) was rejected by the respondent in a decision dated 12 December 2017. His appeal against that decision came before First-tier Tribunal Judge Samimi ("the Ftj") at a hearing on 20 February 2018 whereby she allowed the appeal on asylum and human rights (Article 8 grounds).

The grounds of appeal and submissions

7. The respondent's grounds in relation to the Ftj's decision contend that the Ftj failed to give clear reasons as to why she found the appellant to be credible as regards his sexuality. Complaint is made that there is no reference in the Ftj's decision to the negative NRM decision or the human rights application made on 14 November 2011, and both matters were relevant to an assessment of the appellant's credibility.
8. Further, the Ftj had noted that the appellant had been able to keep his sexuality secret from his family and according to his evidence only two of his friends know about it. Accordingly, the Ftj had failed to give adequate reasons as to why the appellant would be unable to live discreetly on return to Jamaica, with the decision of *HJ (Iran) v Secretary of State for the Home Department* (Rev 1) [2010] UKSC 31 being relied on.
9. The further complaint about the Ftj's decision is that although the Ftj found that there would be very significant obstacles to the appellant's integration in Jamaica, primarily on the basis of the appellant's mental health, there is no reference in the Ftj's decision to any GP's notes, or any consideration of whether or not the condition is a short or long-term condition, or whether there would be treatment available for him in Jamaica.

10. It is necessary to refer to the grant of permission to appeal made by a judge of the First-tier Tribunal. In that grant of permission it was stated as follows:
 - “2. It is arguable that the Tribunal failed to have regard to material evidence in arriving at its credibility findings, and that it failed adequately to address the Appellant’s stated reasons for not leading an openly gay lifestyle in the United Kingdom in its assessment of the reasons why he may choose not to do so on return to Jamaica. Permission to appeal on these grounds is accordingly granted.
 3. It is not however arguable that there was insufficient evidence to support the findings relating to the Appellant’s learning and mental health difficulties in paragraph 22 of the decision given the existence of the reports of Robert Zellwood and Dr Lisa Wooton that are referred to at paragraph 18 of the decision. Permission to appeal in this ground (sic) is accordingly refused.”
11. In submissions, Mr Jarvis relied on the respondent’s grounds of appeal. It was submitted that the limitation in the grant of permission only related to part of paragraph 4 of the grounds in terms of a lack of evidence to support the Ftj’s findings. The reports before the Ftj did not deal with conditions in Jamaica for the appellant in terms of available treatment. It was submitted that the refusal of permission was not a complete refusal in terms of the issue raised in the grounds relating to very significant obstacles to integration. I was referred generally to the decision in *Ferrer (limited appeal grounds; Alvi) Philippines* [2012] UKUT 304 (IAC) to the effect that the First-tier Tribunal had not complied with the guidance in that decision about notifying a party that permission had been granted on limited grounds.
12. Otherwise, it was submitted that the appellant’s immigration history was relevant as regards the lateness of the claim for asylum. Even though not raised in the grounds of appeal to the Upper Tribunal, the Ftj should as a matter of law have considered s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, and there was no clear finding on that issue.
13. In his submissions, Mr Symes relied on the appellant’s ‘rule 24’ response. He accepted that the Ftj did not refer to ‘section 8’ by name, but she did not need to. At [19] she had referred to the delay in claiming asylum. Furthermore, it does not appear that this was a matter that was relied on on behalf of the respondent at the hearing before the Ftj.
14. As to the point in relation to the NRM, the decision letter does not go into detail in that respect. It is furthermore, only a reasonable grounds decision, not a conclusive grounds decision. It was submitted that the NRM assessment was using the same standard of proof as that used by the Ftj in the asylum assessment. The Ftj did not have to deal with the issue unless relied on by the respondent at the hearing.

15. In addition, this is an issue which relates only to one part of the Ftj's decision in terms of whether or not he was forced to sell drugs which was a modest part of the appellant's history. It is not a matter that could undermine the Ftj's overall conclusions.
16. As to Article 8 and the 'very significant obstacles to integration' point, permission was refused in relation to that ground. Regardless of what notice was sent to the parties notifying them of the grant of permission, the Secretary of State could have written to the Tribunal to complain that the wrong notice had been sent out. It was submitted that in any event the Ftj was entitled to make the findings that she did in terms of very significant obstacles to integration. Her conclusions could not possibly be said to have been perverse.
17. In reply, Mr Jarvis submitted that there was no obvious duty on the part of the respondent to have referred in detail to the NRM letter when the appellant would have known its contents. Albeit that it was not given the "push" on behalf of the respondent that it could have been, it was nevertheless part of the evidence.
18. The appellant's claim that he was forced to sell drugs was not a minor issue, and the NRM letter refers to information in a letter provided by the appellant's father which contradicts the appellant's account of having to sleep rough.
19. As to the grant of permission, it was not obviously the case that permission was granted on limited grounds only, and the respondent could not therefore have been expected to raise the matter with the Tribunal.

The Ftj's decision

20. The appellant's claim before the Ftj was that the appellant feared return to Jamaica on account of his sexuality as a gay man. The Ftj concluded that the appellant had been consistent in relation to the "core issue" of his sexuality, through his witness statements, interviews and oral evidence.
21. Part of that account was that he had become homeless because he could not tell his father that he was gay. He had then been forced to sell drugs. His oral evidence was that he had been offered free accommodation which had led to his being forced to sell drugs to pay for the accommodation.
22. He had only been able to have casual relationships because of his lack of status and had not been able to maintain contact with those people because of his homelessness. He claimed to have travelled to Brighton where he had slept rough and where he was able to be more comfortable as a gay person. The Ftj concluded that the appellant had not been able to maintain contact with his sexual partners because of his homelessness. She also concluded that he had been consistent in relation to having gone to Brighton in order to keep his sexuality secret from his family. There he

had visited the homeless shelter where he was provided with food and basic necessities. This the FtJ also accepted as credible.

23. She referred to his account of having had a sexual relationship with a man named Barry in Brighton, a matter that she found credible. She also referred to his account of having contacted an ex-partner called Ian who had initially agreed to attend as a witness and provide statements but the appellant was then unable to contact him as he did not answer his calls.
24. The FtJ concluded that the appellant had given a credible account of fearing return to Jamaica on account of his sexuality and at [20] that he would lead a gay lifestyle there. On the other hand she said at [17] that he had consistently made it clear that if he is returned to Jamaica he would have to “leave in Secret” [live in secret] because of his fear of harm.
25. She referred to medical evidence indicating that the appellant has a moderate learning disability, PTSD, a severe depressive disorder and a generalised anxiety disorder in the context of his inability to remember names and other details. She considered that he needed to be dealt with as a vulnerable adult in the proceedings before her.
26. At [19] she went on to state that the appellant had adequately addressed the issues raised in the decision letter. She accepted his account of how his sexuality developed. She said that she found it credible (although she wrote “incredible”) that due to his anxiety about his finding out about his sexuality he did not have a relationship until he was aged 20.
27. In the same paragraph she said this in relation to the delay in the appellant claiming asylum:

“In considering the Appellant’s delay in claiming asylum, I have regard to the fact that the Appellant has undergone considerable emotional and psychological ordeal in coming to terms with his sexuality, which he continues to keep secret from his family.”
28. At [22] she concluded that there would be very significant obstacles to his integration in Jamaica, citing paragraph 276ADE(1)(vi) of the Immigration Rules, on account of his learning disability and mental health problems. She stated that she attached considerable weight to those matters given that the appellant was only 14 years old when he arrived in the UK. She referred to his travel to the UK having been organised by his father, as his grandmother who had looked after him had passed away. She found that the appellant has no contact with his mother, and has no siblings or any other relative he could turn to for support on return to Jamaica. The fact that he had been living in the UK for 16 years during the formative years of his life was another factor that she took into account in this respect.
29. She concluded that if he returned to Jamaica there was a real risk that he would face destitution and a deterioration in his mental health.

Assessment and Conclusions

30. It was not suggested by either party that there was any ambiguity in the grant of permission in relation to the FtJ's conclusions as to the risk of harm to the appellant on return to Jamaica on account of his sexuality. It is convenient therefore, to deal first with the respondent's complaints about that aspect of the FtJ's decision.
31. I do not consider that there is any merit in the 'section 8' issue. In the first place this is not a matter raised in the respondents' grounds of appeal. Secondly, although it is in fact in the decision letter, the FtJ did in fact deal with the appellant's delay in claiming asylum, as can be seen from my quotation from her decision at [27] above. If the reference in the grounds to the FtJ not having mentioned the human rights application made on 14 November 2011 is a reference to delay (and Mr Jarvis did not say that it was), as I have indicated, the FtJ did deal with the issue of delay.
32. I do consider that Mr Symes was correct to accept that it would have been better if the relevant statutory provision had been identified and referred to by the FtJ, but that omission does not undermine her conclusions on the matter, albeit that her decision would have benefited from a little more detail in its analysis here.
33. As regards the NRM issue, I consider that there would have been more force in the argument if the respondent could point to any submissions made on her behalf to the FtJ on the point, or any particular detail of the NRM letter set out in the decision refusing the asylum claim. The decision letter in this context simply refers in the appellant's immigration history to the fact of a negative reasonable grounds decision having been made. The next and only other reference to it is under a subparagraph headed "National Referral Mechanism" where it states that:
- "Your NRM decision was made on 01 November 2017 and it was concluded that you are not a victim of human trafficking or slavery, servitude, or forced/compulsory labour. This letter considers whether you need international protection."
34. It would appear from those references to the NRM letter/consideration in the respondent's asylum decision letter that the fact of a negative reasonable grounds decision was only referred to as part of the background to the appellant's claim. It does not appear to have been suggested that it had any wider significance and equally it does not appear that the FtJ was invited to take into account the analysis in that letter as part of her assessment of the appellant's credibility. It was open to the respondent to invite the FtJ to consider those parts of the NRM letter which are said adversely to affect his credibility because of inconsistencies or inherent implausibilities, but that was not done.
35. I do not share Mr Symes' characterisation of this issue as being only "a very modest part" of the appellant's history. The NRM letter does highlight inconsistency in relation to the appellant's claim to have been homeless, a matter that has a bearing on his claim to have been sleeping rough in Brighton. That was a matter that featured in the FtJ's positive assessment

of his account. Nevertheless, as already indicated, it was for the respondent to advance before the FtJ the significant adverse credibility matters that she relied on. As a matter of interest, I note that in the NRM letter with reference to the appellant's immigration history, it does in fact state that on 25 September 2017 he was "encountered rough sleeping in a park".

36. Furthermore, the FtJ concluded that the appellant's account had been consistent throughout his screening and asylum interviews, his witness statements and his oral evidence. She found his account plausible in terms of his description of the development of his sexuality and his desire to have kept it secret from his family.
37. The contention that the FtJ failed to give adequate reasons as to why the appellant would be unable to live discreetly on return to Jamaica was said by Mr Jarvis to relate to the NRM letter issue. I have explained why I consider that that there is no error of law in that part of the FtJ's decision.
38. Otherwise on the issue of return to live discreetly (as a gay man) in Jamaica, I reject the contention that the FtJ's reasons are inadequate. Whilst it is true that the appellant's account is that only two of his friends know of his sexuality, the FtJ concluded that the appellant would want to live openly as a gay man in Jamaica, which he would not be able to do because of his fear of persecution. There is no want of reasons for that conclusion. She accepted his evidence that he has kept the matter secret from his family.
39. Accordingly, I am not satisfied that there is any error of law in the FtJ's assessment of the asylum aspect of the appeal.
40. In those circumstances, it is not strictly necessary to go on to consider the remainder of the respondent's grounds which relate to Article 8 and the conclusion that there would be very significant obstacles to the appellant's integration in Jamaica. However, for completeness I do so.
41. Firstly, I consider that it is apparent that permission was refused on this ground; the sentence "Permission to appeal [on] this ground is accordingly refused" in itself could not be clearer. The reference to "this ground" must be a reference to the distinct complaint in relation to very significant obstacles to integration/Article 8.
42. Whilst I note the respondent's reliance on *Ferrer*, it would have been open to the respondent to contact the First-tier Tribunal for the position to be clarified or to ask for a proper notice informing her that permission had been granted on limited grounds (as explained at [20] and [21] of *Ferrer*).
43. In any event, it is not apparent that any argument was advanced on behalf of the respondent in terms of the availability of treatment for the appellant in Jamaica in relation to his mental health and such is not relied on in the decision letter. The FtJ had before her medical evidence from which she concluded that the appellant's mental health and lack of family support on

return to Jamaica were such as to mean that there would be very significant obstacles to his integration there, taking into account the age at which he came to the UK and the length of time that he has been here. I am not satisfied that there is any error of law in her conclusions in this respect.

44. Therefore, not being satisfied that the FtJ erred in law in any respect, her decision to allow the appeal on all grounds therefore stands.

Decision

45. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Her decision to allow the appeal is to stand.

Upper Tribunal Judge Kopieczek

17/04/18

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Given the nature of the claim and the background to it, 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.