



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

Appeal Number: AA/08978/2013

THE IMMIGRATION ACTS

Heard at Bradford

**Determination
Promulgated**

On 15th November 2013

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Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MARTIN FITZHERBERT BENJAMIN CORT

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer

For the Respondent: Mr T Hussain, Counsel, instructed by Fadiga & Co

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Adio made following a hearing at Hatton Cross on 1st October 2013.

Background

2. The claimant is a citizen of Guyana born on 2nd December 1992. He made an application for asylum on the grounds that he was a gay man who would be persecuted upon return. It was accepted at the hearing that homosexuality is illegal in Guyana and that if the claimant established that he is homosexual then he would succeed in his appeal. It was not arguable that he could reasonably relocate or receive sufficiency of protection.
3. The Secretary of State did not believe that the claimant was gay. She set out her reasons in a lengthy reasons for refusal letter. The judge, having heard oral evidence, concluded that he was.

The Grounds of Application

4. The Secretary of State sought permission to appeal on two grounds. First that the judge had failed to consider material facts and second that the judge had not given adequate reasons for arriving at the conclusion that the claimant was gay. For example, the claimant had given inconsistent answers as to when he realised he was gay in the interview. He said in his statement that he realised he was gay when he was 10 and at interview said it was when he was 11. He had given contradictory reasons as to why he had started to enjoy the abuse he received from his cousin and the judge had failed to resolve conflicts in the evidence. There was a further conflict in that the claimant stated that he tried to commit suicide when he found that a girl, with whom he had had a one night stand, was pregnant with his child and his evidence that he did so because he wanted to prove to everyone that he was not gay. There was no evidence from the claimant's present partner. He had produced evidence of his activity on the internet which could easily be obtained. The judge said that the claimant was not cross-examined on some aspects of the witness statement and he saw no reason not to accept his account but the judge ought to have identified which claims made in the statement were unchallenged.
5. Permission to appeal was granted for the reasons stated in the grounds by Judge Hodgkinson on 8th October 2013.

Submissions

6. Mr Diwnycz made no submissions save to rely on his grounds which he acknowledged were a long albeit well written, disagreement with the decision.
7. Mr Hussain submitted that the judge's conclusions were open to him for the reasons which he gave.

Findings and Conclusions

8. There is no error of law in this determination. The alleged inconsistency in the age when the claimant realised that he was gay is virtually non-existent.

9. The original interview in relation to the abuse which the claimant suffered as a child was extremely detailed. He was asked a large number of fairly intrusive questions and the judge was entitled to rely on his answers and to believe that he was telling the truth. There is no inconsistency in relation to the claimant's feelings following the pregnancy. The judge was entitled to rely on the internet evidence. There was an explanation given for the absence of the partner.
10. The judge noted that the claimant had given consistent evidence. He claimed asylum on arrival. Having heard the claimant give oral evidence it was entirely open to him to accept what he had been told.
11. It is unarguable that the assessment of whether the claimant was telling the truth about his sexuality was entirely a matter for the judge. The grounds amount to a sustained disagreement with the decision but do not establish either that he failed to take relevant matters into account or that the overall conclusion was in any way perverse.

Decision

12. The grounds do not establish any error of law. The claimant's appeal is allowed and the challenge by the Secretary of State dismissed.

Signed

Date

Upper Tribunal Judge Taylor