



DW v. Secretary of State for the Home Department

[2005] UKAIT 00168

Country: United Kingdom

Region: Europe

Year: 2005

Court: Asylum and Immigration Tribunal

Health Topics: HIV/AIDS, Sexual and reproductive health, Violence

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence

Facts

DW was a Jamaican citizen who sought asylum in the United Kingdom. He claimed to have been persecuted in Jamaica on the basis of his sexual orientation. He recounted two instances of being assaulted on the basis of being a homosexual. DW feared reporting these incidences to the police because he believed that they would not provide protection, as the police force in Jamaica was said to be "corrupt and homophobic." He claimed homophobia was endemic in Jamaican society and that there was nowhere he could safely be returned to.

The Secretary of State for the Home Department (the Secretary) refused DW's application for asylum, claiming that this statement of events was false and that DW was not a homosexual. The Secretary argued that DW's harassers did not "persecute" him, and that any failure on the part of the police to apprehend the perpetrators did not show complicity in or support for such attacks. The Secretary also argued that DW could be safely removed to other parts of Jamaica. The trial judge accepted the Secretary's arguments. DW appealed.

Decision and Reasoning

The Court held that DW's sexual orientation and his fear of being persecuted in Jamaica were sufficient grounds to challenge his removal from the UK. The Court was presented with evidence which showed that homosexuals in Jamaica were the subject of endemic discrimination and violence. Furthermore, there were reports that health workers in Jamaica had refused treatment to men who had sex with men, made abusive comments toward them, and disclosed their sexual orientation to others, putting them at risk of homophobic violence. As a result, many men who had sex with men delayed or avoided seeking healthcare altogether, especially for health problems that might mark them as homosexual, such as sexually transmitted diseases. Because the presence of other sexually transmitted diseases heightens the risk of HIV transmission, such discrimination could have fatal consequences.

The Court further considered that DW's sexual orientation placed him in a particular social group, and his membership in that group had led to his persecution. It found his two previous assaults, together with a number of other incidents of harassment, to have amounted to persecution, and that this persecution had come about as a direct result of his homosexuality, or more importantly, the perception that he was a homosexual. It further considered that because Jamaica was a small country and homophobic attitudes were endemic throughout the country, DW could not be expected to relocate within Jamaica to avoid persecution. It was also not reasonable to expect him to hide his homosexuality to avoid persecution, as his risk of persecution needed to be assessed in light of the course of behavior he was most likely to adopt.

The Court consequently held that unless there had been a material change in his circumstances, removing DW to Jamaica would likely put him at risk of persecution and violate his rights under article 3 of the European Convention on Human Rights.

Decision Excerpts

"This appellant did not suffer a single incident, but two serious and violent incidents and, in addition, over a lengthy period, a number of incidents of aggressive harassment. We find that, taken together, these did amount to persecution. They were persistent. It is not necessary that every incident should be as serious as the worst. What happened to this appellant amounted to persecution even without the assistance of the

observations in Faraj. However, if such assistance is needed, it is available to the appellant because he was a member of a group, perceived homosexuals, many of whom have suffered in similar ways, as the country information makes clear. We have considered what is meant by "a particular group of persons" in Faraj and have concluded that it does include a group such as homosexuals in Jamaica.â€• Para. 65.

â€œWe find that, in a small country like Jamaica, where homophobic attitudes are prevalent across the country and the appellant, because of his appearance and demeanour, would be perceived as homosexual wherever he went, he would be at risk of persecution and infringement of his Article 3 human rights throughout Jamaica. As he is at risk of persecution there is no question but that it would be unduly harsh to expect him to relocate.â€• Para. 70.

â€œWe find that as the reasons for persecution must be found in the mind of the persecutor there is no need to differentiate between such categories. The only question we need to ask is whether an individual is a member of a particular social group. It may matter a great deal to an individual whether he is or is not homosexual but, certainly in the context of Jamaica, whether an individual is or is not homosexual, bisexual or asexual is of far less importance than the question whether he is perceived to be homosexual. There is some force in the suggestion, that â€˜perception is allâ€™™. Mr Blundell has conceded that gay men in Jamaica belong to a particular social group.â€• Para. 71.

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