

Heard at Field House  
On 18 June 2004

SJ (no real risk) Jamaica  
[2004] UKIAT 00202

## **IMMIGRATION APPEAL TRIBUNAL**

Date Determination  
notified:

21 July 2004

**Before**

:

**Mr J Perkins**  
(Vice President)  
**Ms V S Street**  
**Mrs S I Hewitt**

**Between**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

### **DETERMINATION AND REASONS**

1. Before us the appellant was represented by Mr G Gill of Counsel, instructed by Murria Solicitors and the respondent was represented by Mr J Jones, a Senior Home Office Presenting Officer.

2. The appellant is a citizen of Jamaica. He was born on 18 January 1977 and so is now 27 years old. The appellant appeals the decision of an Adjudicator, Mr J B McCarthy, who in his determination promulgated on 23 July 2003 dismissed his appeal against the decision of the Secretary of State that he is not entitled to refugee status and that removing him from the United Kingdom was not contrary to his rights under the European Convention on Human Rights.

3. The appellant was given permission to appeal because it was arguable that there were inconsistencies or contradictions in the Adjudicator's findings.

4. At paragraph 17 of the determination the Adjudicator said that from the evidence he reviewed he concluded "first, although I accept that the appellant has shown that he has suffered discrimination because of this sexuality, this had not prevented him working. I conclude that he was able to successfully conceal his homosexuality in Jamaica from the majority of people".

5. However at paragraph 12 of the determination the Adjudicator accepted as a fact that the appellant had been identified by a homosexual and attacked by youths as a consequence in December 2000. At paragraph 13 of the determination the Adjudicator accepted as fact that in September 2002 the appellant was identified as a homosexual by police officers who had stopped the car in which he was travelling and subjected him to "homophobic abuse". At paragraph 14 of the determination the Adjudicator accepted that on 17 December 2002 the appellant's partner was attacked in his home and seriously assaulted before his credit cards and debit cards were stolen. The appellant's aunt, who was also his landlady, and his father heard about the incident and realised that the appellant was homosexual and made threats. The appellant's aunt said that she would disclose him to his workplace and his family.

6. Additionally at paragraph 15 of the determination the Adjudicator found that the appellant had suffered discrimination from many sources and that he had tried to cover up who he was in order to fit into what he described as an "exclusively homophobic" society.

7. With respect we understand why it is thought that there was an arguable error in the determination. The claimant's efforts at

concealing his sexuality had not been entirely successful. However we have come to the conclusion that although his apparent contradiction does not enhance the determination it is not a material error of law.

8. It is clear that the Adjudicator has addressed his mind to the degree of disquiet and even contempt that many people in Jamaica feel and exhibit towards homosexual activity. It is also clear that the Adjudicator has accepted that this appellant has been the victim of unpleasant acts, sometimes very unpleasant acts, that have been made worse because he is homosexual.

9. However the Adjudicator has made clear findings of fact about the particular incidents that the appellant relied on to support his claim.

10. The first incident in time was in December 2000. The appellant was returning home on a lonely road when he had to stop to mend his bicycle. Three men came over to him and said they had heard a rumour that he was gay. They then attacked the appellant. A shopkeeper helped him by giving him his taxi fare to the police station. The police were told that the appellant had been robbed and they responded helpfully. The appellant did not have the confidence to tell them that he was homosexual.

11. The next incident was in September 2002 when the appellant was in the company of gay friends returning from a party in the early hours of the morning. Two members of the police force stopped the car in which they were travelling. They indicated that the appellant and his friends were either gunmen or gay. The police officers searched them and took out their guns and threatened the appellant and his friends because they were homosexuals. The threats were nasty. One of the officers produced a gun and said that he wanted to kill "batty boys" which is a well known slang term for homosexuals in Jamaica. They were also warned to move out of

the area. We do not minimise how unpleasant this must have been but we cannot accept that this was in any way a serious threat to the appellant. If the officers had wanted to do him harm then they had the opportunity. They did not. We do not accept that the appellant really thought that police officers were intent on killing him or driving him from the area in which he lived.

12. The next incident, which is the one that prompted him to leave Jamaica, happened in December 2002. A criminal came to the door and was let into the home by the appellant's partner whose credit cards were stolen. As indicated above the appellant's aunt and landlady found out about his sexual desires and said she would shame him at his work place and to his family and the appellant's father said that he would hire a man to kill the appellant. We do realise that this rejection by his relatives must have been very hurtful to the appellant but there is no evidence that there was any serious intent on the part of his father to do him really serious harm.

13. We do not understand the Adjudicator's conclusion that the appellant had been able to hide his homosexuality but we do not accept that the adjudicator should have concluded that the appellant faces a real risk of persecution or other serious ill treatment because of his sexuality. We were referred to the well known decision of Dawkins [2003] EWHC 373 (Admin) where the learned Judge indicated that a citizen of Jamaica would not normally be at risk just because of his homosexuality. We have been shown the section headed "Homosexuals" in the Jamaica 2004 CIPU Report. This emphasises how there is much popular hostility towards homosexuals and how a Jamaican homosexual pressure group is seeking to have the law changed so that sexual acts between homosexuals are not criminal offences. The same report shows how attacks on homosexuals are becoming more frequent. We are aware that there have been some examples of homosexual men being savagely ill treated in conditions reminiscent of the old "hue and cry".

14. Even so we do not see any reason for the Adjudicator to have concluded that homosexuals generally or this appellant in particular faced a real risk of really serious ill treatment. This appellant has not been the victim of any systemised attacks. He has told of only one occasion when he was actually injured and robbed. There is no evidence before us to show that the police in Jamaica are disinterested or would not act to help a homosexual who looked to them for protection.

15. We see no basis for concluding that this appellant could not be expected to live safely in Jamaica and we dismiss this appeal.

Jonathan Perkins  
18 June 2004