

Made in Britain: A Constructivist Study of LGBT+ Asylum Seekers in Institutional Settings

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In 1999, the first asylum claim based on sexual orientation was granted refugee protection in the UK, almost 50 years after the 1951 Refugee convention was signed (Briddock, 2016). Since then, the number of LGBT asylum claims has steadily increased along with the social and media attention to the refugee and LGBT struggles. Whereas there has been some progress in recent years in UK law in terms of LGBT equality (such as equal marriage or parenting), LGBT asylum seekers remain amongst the most vulnerable groups within the asylum system; casting doubts on the alleged role of UK in advocating for LGBT rights. Several investigations into the treatment of LGBT asylum applicants commissioned by the government and NGOs revealed that this minority group, indeed, has a higher failure rate than others based on different reasons for seeking refuge (Jung, 2015; Chaka, 2016; Gray & McDowall, 2013; Millbank, 2009). Moreover, the results of the investigations suggest that fundamental errors of judgements in the assessment of LGBT made by UK Border Agency staff and judges seemed to be due to stereotyped presumptions based on Western and personal understandings of what it means to be LGBT.

This paper looks at the legal context of LGBT asylum with the aim of showing how it allows for social assumptions on sexuality to play a key role in the evaluations of the claims. Ultimately, the category of “the LGBT asylum seeker” seems to be legally and socially constructed in a way that tends to focus greatly on sexuality and to overlook its intersection and interdependency with other aspects of the individual identity and their respective struggles, such as race, class, legal status and gender (Morgan, 2006; das Nair & Butler, 2012). The paper also seeks to explore the negative effects of this categorization on the lives of LGBT asylum applicants and of support organizations.

The five grounds on which refugee can be granted according to the 1951 Refugee convention – i.e., race, religion, nationality, membership of a particular social group or political opinion - do not include an explicit reference to sexual orientation. LGBT asylum claims are instead primarily recognised under the ground of membership of a particular social group; i.e., the LGBT social group. Asylum claims on the ground of membership of a group are generally

assessed at two levels. First, the social group should exist and be perceived in the home country as a distinct social group. In 2013, the European Court of Justice ruled that the existence of criminal laws, which specifically target LGBTs, supports their claim to be regarded as forming a particular social group. LGBT applicants will usually meet this definition as they are often from countries where discrimination against LGBT people is widespread and reinforced by sodomy laws or other legal provisions criminalizing homosexuality (including fines, incarceration or death penalty). Second, asylum applicants should prove their membership to the group through their personal account and other evidentiary material, such as membership certificates or support letters, to name just a few. The various written and oral interviews of the asylum application are precisely aimed at establishing the credibility of the applicant's account outlining the reasons for fearing persecution in the home country and the authenticity and significance of the presented evidence in support to the personal statement.

In the assessment of the authenticity of LGBT asylum cases, the focus used to be on determining whether it could be considered reasonable for the LGBT applicants to be "discrete" about their sexual and gender identity if returned to their home country. Ultimately, many LGBT asylum claims used to be refused because the country of origins was deemed to be safe for a life in the "closet". Only in July 2010 the Supreme Court established (for the joint cases HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department) that hiding one's own sexual or gender identity to avoid persecution is to deny fundamental rights. While the "discretion test" certainly constituted a significant problem and discriminatory practice against LGBT asylum seekers, its dismissal led to a greater attention and weight on the membership aspect of the claim (Gray & McDowall, 2013). That is, proving one's own sexuality became the main pivotal aspect of LGBT asylum and the personal account as well as other evidentiary material ought to be assembled and examined accordingly. Nonetheless, unlike other reasons to fear persecution, membership to the LGBT social group can be hardly proven by means of official documents. For example, when available, a Baptism or Confirmation certificate might be used as evidence of being Christian, whereas a party membership card might prove belongingness to an oppositional and oppressed political party. On the other hand, no one arrives in the UK with an official certificate attesting his or her sexual orientation, just as nobody in the UK can be accredited with such a document. Therefore, in the case of LGBT asylum much weight is put on the credibility of the applicants' account on their sexuality and related persecution.

Ultimately, only those who perform an accepted and recognizable "LGBTness", which follow Western understandings of what it means to be LGBT, are eligible for refugee status in

the new country (Jung, 2015). When testing the credibility of LGBT asylum seekers, UK Border Agency (UKBA) officials and judges often assume that these individuals are performing their sexual and gender identity in particularly recognizable ways “associated with white middle-class Western-style of commercialism and consumerism”, such as frequenting LGBT clubs or going to gay pride parades (Ibid.: p.312). That is, it is often expected that LGBT asylum seekers are “out and proud” immediately upon arrival in UK and if they are not, the credibility of their asylum claim becomes dubious: they are not taken as “believable victims”. This type of presumption overlook other aspects of an individual identity that plays a crucial role in the expression of sexuality (Morgan, 2006). For instance, at an economic level, many asylum seekers in the UK rely on a maintenance grant of about 36 pounds per week (often in the forms of vouchers to be spent in certain supermarkets for food and soft beverage only), which makes it hard to find the money to go to a local gay club. Moreover, some studies have documented the racial discrimination of ethnic minorities in joining white gay communities.

Most importantly, in the case of LGBT asylum seekers the disclosure of one’s sexual orientation is often a painful and difficult process for it cannot be expected that they will be ready, willing or able to explore and enjoy the public queer life in the UK upon arrival. Indeed, LGBT applicants have supposedly been persecuted and traumatized in their respective home countries precisely because of their sexuality and gender, which had to be hidden. Hence, being open about one’s sexuality might not be possible for a person who has just fled persecution and reached the country of asylum. Alas, there have been cases of LGBT asylum seekers whose claim has been rejected precisely for failing to mention their sexuality immediately upon arrival at the port of entrance in the UK. One of my LGBT interlocutors has been refused leave to remain because she did not mention a fear based on sexual orientation as the main reason for fleeing persecution during the screening interview, which undermined her credibility. In fact, at her screening interview, she merely stated that if returned to her home country she will be killed by her siblings without mentioning that their motivation was partly related to her homosexuality, which was revealed only at the substantive interview. In her appeal against the Home Office’s rejection, she explains that

“I have always mentioned I am a lesbian at my substantive interview. It is not my fault my screening interview was not conducted so to ask me about my sexual orientation. I was embarrassed and also fearful”.

In the screening interview form, in fact, there is not a section to declare the sexual orientation

of the applicant. On the other hand, when she was explicitly asked for the reasons of seeking asylum she merely mentioned that if returned home her siblings would kill her. Coming from a country where she has been humiliated and persecuted for her homosexuality by her family and the local authority, she felt ashamed and fearful to disclose it to the UK Border Agents at the port of entry in the UK immediately upon arrival. What seems to be a reasonable explanation, it was simply not accepted by the court of appeal, which finally rejected the case.

Other LGBT asylum seekers might *deliberately* maintain a grade of anonymity about their sexuality and gender with groups and individuals living in the UK and from the same country, community, tribe or family of origin, for they might reproduce the same hatred against LGBT, or have links with persecutors and family members and give out important information of their location and life style. Unfortunately, coming out within their communities of belonging in the UK, it sometimes seen as the only possible way to produce supportive evidence. That was the case for another LGBT interlocutor I have met, a young man from Uganda who had no way to prove his homosexuality to the Home Office and had not disclosed it to his Ugandan community in UK, for fearing of being once again ostracized and loose his family. His case worker, however, suggested him to disclose it for his community's reaction would constitute a good evidence for the Home Office. In fact, in case the members of his group rejected him, he could use it as an evidence of being discriminated for being homosexual. On the other hand, if they appeared to be comprehensive, he could attempt to persuade them to write a supportive statement about his homosexuality and the risk of persecution he or his family members would face if he had to be deported back to Uganda.

Finally, there have been cases of gay asylum seekers made to submit photos or video tapes of sex with same sex partners as supportive evidence and to answer to intimate and explicit questions about sexual activities (Lewis, 2014). These episodes expose not only the brutality of the asylum system for LGB+ asylum seekers, but also its institutionalized sexualisation and genderisation according to a conception of sexuality largely defined by a conformity to stereotypes and expectations about what gay sex and gender expression should involve.

Taken together, these observations give an idea of some of the presumptions and misjudgements of UKBA officers make in trying to establish the authenticity of LGBT asylum seekers' self-identified sexuality. That not only has a negative impact on the wellbeing of LGBT asylum applicants, but it also highly shapes the role of aid organizations, which direct their activities towards the desperate attempt of producing evidence of their members' sexuality. During my empirical research, I have frequented Pride Without Borders (PWB), an

LGBT asylum aid group in the city of Leicester, UK. PWB is a project of Leicester City of Sanctuary, which is a refugee aid charity that supports asylum seekers and refugees living in the city and surroundings. PWB was created when a very small group of asylum seekers, refugees and European activists volunteering at the drop-ins of Leicester City of Sanctuary began to realize that as more individuals came to Leicester and UK in general, many sought asylum specifically for their LGBT identity and needed special support. PWB was officially born on the 29th of January 2015 and has dramatically developed and grown over its first year (from only 6 initial members to over 30), thanks to the extensive networking via Facebook, Twitter, email, official website and online blog and to the several social initiatives that have been promoted. PWB does not provide legal advice but it helps its members to build up the confidence and trust to be open about their sexuality so to produce vital evidence as requested by the Home Office. To that respect, among other activities, PWB instructs LGBT applicants on how to write their personal statement and supportive letters by their witnesses according to Western conceptions and categorizations of sexuality. In fact, many LGBT asylum seekers might not share or understand the Western categorical framework to speak about their sexuality. It is nonetheless important that they become acquainted with it, in order to produce an intelligible and credible account. For example, there have been LGBT asylum claims that have been rejected for the applicants were unable to refer to their sexuality using the appropriate terminology (Chaka, 2016). Moreover, there seems to be an expectation that personal narratives about one's own sexuality and history of persecution related to it should follow Western linear models of sexuality developments, (Berg & Millbank, 2009). In fact, many LG asylum cases have been refused for failing to account for previous heterosexual relationships, which cannot easily avoid. This is especially true for lesbian asylum seekers who are often from countries where marriage is expected and enforced (Bennett & Thomas, 2013). This also gives an idea of how gender aspects of identity and struggle associated with it are often overlooked, which might lead to wrong assumption in the assessment of the authenticity of the applicant's sexuality. For example, during my fieldwork at PWB, I have met a woman from Nigeria, whose previous heterosexual relationships were considered as undermining her credibility of a lesbian fleeing persecution. Ultimately, the testimony given by her partner, another African lesbian asylum seeker, was dismissed for they were suspected of pretending to be in a homosexual relationship for adding evidence to their otherwise very weak LGBT asylum cases.

PWB also tries to economically support its members to attend social gatherings and events in local gay establishments. The organization particularly encourages its members to

participate in gay pride parades for pictures of the event are typically taken by the public, including gay magazines and national newspapers, which might help in openly exposing sexuality and demonstrating belongingness to the UK gay scene. Finally, PWB keeps a register of members' attendance to its weekly drop-ins and issues support statements and certificates of registration that members can present as evidence for their claim. Nonetheless, it is often the case that no weight is put on such type of evidence. Indeed, some PWB members have been denied leave to remain because the supportive statements written by PWB, other LGBT organizations, friends, previous and current partners as well as pictures taken during gay prides and other events alike were taken only *after* having submitted their asylum application and were therefore regarded as mere proof of attendance to such groups and events.

The expectation of being able to apply on asylum based on sexuality “on time” is in direct contrast with the reality of the struggle of coming to terms with one’s own sexuality as well as being able to expressing it and accounting for it according to Western legal and social frameworks. Moreover, this type of presumption is irrespective of the legal limbo where many asylum applicants found themselves trapped in, for which, ironically, a later asylum application on the bases of sexuality might represent the only possible way to seek legal leave to remain in the UK. This was the case for one of PWB members I have met, a young gay Bangladeshi asylum seeker, who has approached the organization after many years of illegal residence in the UK. In the report written by an anti-trafficking organization that has been supporting him, his trafficking history is detailly explained. The young man was trafficked in the UK for the purpose of domestic slavery at the age of 7 years old. He vaguely remembered his mother talking to the trafficker on the day of his departure to the UK, who ensured her that he was being taken to the UK for better life, whereby, he would receive an education and become a good man. However, once in the UK, he was never sent to school and was instead forced to do daily housework, such as room cleaning, mopping, dish washing and serving food. He was not given any money payment for his work. If he refused to work, he was beaten severely by the trafficker and his partner who shared the apartment with them. One day he finally managed to escape and in order to financially support himself he started working illegally in different restaurants throughout the UK as a chef and waiter. After few years, he was finally discovered by the authorities and detained because in possession of a residency permit that was counterfeit in order to remain in the UK and work illegally. He continued to be held in an Immigration Removal Centre for 5 months under the immigration law pending arrangement for his deportation to Bangladesh. It was only at this point that was forced into claiming asylum on the bases of his homosexuality by an immigration officer who convinced him that that was the

only possible way to escape from prison and finally have a chance to legalize his status in the UK. In an interview I conducted with him, he describes what the officer said and how he convinced him as follows:

“He just spoke to me, look if you claim asylum this is your chance, if you don't claim asylum or anything you have no right to stay in this country, though you're living here a long time, this doesn't matter, you don't get anything from the government unless you have done a legal status. Think about these things and then you might be lucky enough to you just might get you an asylum so you're going to have a better life here, so think about these things, that's why I came here, just a quick chat with you, if you're happy with that then you can continue to screening interview... I can take your screening interview and you can talk to me fearless, as a friend not an immigration officer.”

In this way, his homosexuality, which had nothing to do with his history of persecution, became the main reason for fearing deportation to his home country and claiming asylum. Whereas he has a detailed account supported by strong evidence to support his trafficking experience of slavery, he still has difficulties in coming to terms with his homosexuality, which might undermine his claim for asylum.

To conclude, this paper has tried to show how the category “LGBT asylum seeker” is legally and socially constructed to perpetuate the struggle of the individuals falling within it. Crucially, in the desperate attempt of producing evidence to support LGBT asylum seekers, aid organizations play an important role in sustaining the very same stereotypical visions of sexuality they ought to fight. Ultimately, at the core of LGBT asylum struggle lies a failure in understanding the intersected nature of this category with other important aspects of the individual identity and legal categorizations, which equally contributes to the intelligibility of sexuality as basis of the claim.

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