

SLSA Blog

Socio-Legal Studies Association

#VIRTUALSLSA2020 'It felt like they were looking for something very specific': Stereotypes and Essentialism in the Sexual Orientation Asylum Policy Instruction

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In August 2016, the Home Office issued version 6 of their [Asylum Policy Instruction: Sexual Orientation in the Asylum Claim](#) (hereafter: 2016 API). The policy is designed to guide decision-makers in determining the qualification of sexuality based refugees. The policy has been heralded as a step towards analysing asylum claims on the basis of identity rather than conduct and has received praise from the [UK Lesbian and Gay Immigration Group](#) (Hereafter: UKLGIG). This blog post draws on interviews completed as part of a doctoral research project to critically interrogate one form of inquiry proposed in the 2016 API, offering three ways in which this form of evidence may not correspond to the lived realities of asylum claimants.

The Asylum Policy Instructions draw together law and best practice to inform decision-makers as to how they should approach issues arising in refugee status determination. The 2016 API brings UK policy into line with a [2014 decision of the European Court of Justice](#). This decision curtailed the practice of asking sexually diverse asylum seekers to provide explicit evidence, as well as providing a 'grey list' of forms of evidence which cannot form the sole basis for decision. This list includes stereotypes regarding how sexually diverse people will behave and look.

The API is intended to address the concerns that, as Rachel Lewis puts it, 'decision-makers still have no idea what claimants need to do to prove their sexual orientation.' This is borne out in the large numbers of claims that [continue to end in rejection](#). Starkly, between 2011 and 2013, UKLGIG found that **86%** of rejected sexual minority claims were based on lack of credibility. Put another way, 86% of rejections occurred because the claimant was deemed not to have discharged the burden of proof (reasonable degree of likelihood). This is consistent with research documenting cultures of [denial and disbelief](#) within the Home Office.



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As previously referenced, in 2014, the European Court of Justice created a 'grey list' of factors which should not form the sole basis of decision, including stereotypes. This is reflected within the text of the API.[1] However, the 2016 API goes on to inform decision-makers that attendance in LGBTQ+ spaces, venues, and communities can be considered as a form of evidence and permits questions to be asked about why a claimant may not have participated in this way. Specifically, the API states that,

Any perceived lack of contact with the LGB community, is a relevant area of investigation to explore.[2]

As I have argued [elsewhere](#), expecting claimants to attend a given space because of their sexual diversity is a stereotype. Thus, the policy, while technically stating that decision-makers should avoid reliance on stereotypes, explicitly endorses them as a form of evidence. Some participants felt this resulted in an expectation that they would have attended LGBT spaces. For example, Chatuluka,[3] an Egyptian refugee, told me how his lawyer had advised him,

I would have to attend pride and take pictures there. Which was the first time ever I had been to pride...Also, to go to gay clubs and take pictures as much as you can out with friends.

As the API directly informs decision-makers, a claimant not being involved with the LGBT+ community is a relevant area to explore. Given what Chatuluka told me, which corresponds with the experiences of all other participants, this results in claimants who do not attend venues or manifest a recognisable narrative being disbelieved.

Being Gay is not the same as being attracted to members of the "same"-sex

This links closely to another theme which came through in interviews with refugees, the need to have formulated your sexual diversity into a coherent identity. The 2016 API reminds decision-makers that not all sexually diverse people identify as one of the identities under the LGB umbrella.[4] However, it goes on to inform them that the LGB umbrella is often used to 'encompass a person's social identity and community'.[5] In this way it links the most common forms of sexual diversity to conceptions of identity and community. As Abdulla, an Omani refugee, told me, this creates problems for claimants from countries in which sexual diversity is not conceived of as an identity. Specifically, Abdulla told me about how he,



sexuality, I accepted it, I was okay with it. I even lived with it. But... In every culture there is a certain set of values associated with identity.

His argument was effectively that, even though the API told decision-makers that asylum claimants may use different terms, their expectations of a narrative of difference fundamentally lead them to assume that genuine sexually diverse people would offer them a story of identity development.^[6] As he went on to tell me, however,

To me, gay is so different than homosexual. I mean homosexual is your sexual attraction, full stop. But when you are gay it is not just your attraction, it is also how you express your attraction and the slogans which you use to express that attraction and the way that you conduct yourself in relation to that attraction.

He later told me that in countries such as Oman, identity is far more easily related to tribe or occupation than it is to sexuality. This is significant because, even though it attempts to be inclusive, the 2016 API still requests forms of evidence—such as engagement with the LGBT community—which relate to forms of social and community identity common in the UK. While many sexually diverse asylum seekers may indeed seek these forms of social and community identity, it is argued that they are not inherent to same-sex attraction (or any form of sexual diversity) but rather are socially constructed in culturally contingent ways and, therefore, may not apply to individuals from refugee countries of origin.

A Question of Means

Finally, and interconnectedly, the policy fails to account for the material barriers to producing evidence of such community engagement. For example, some claimants will have been placed in Home Office accommodation with, or be dependent on support from, individuals from their countries of origin. This can mean that despite coming to the UK and seeking asylum, claimants may not be out. This leaves them unable to provide the forms of evidence anticipated under the 2016 API. For example, Abeo, a Nigerian refugee, told me about how he was,

staying in an apartment with three other people. And that was also a big thing for me, because I do not know these people. So, I do not know how much of my sexuality I can bring. So, I had to go back into the closet; because they would bring their girlfriends, or they would bring their friends and I can't do that.



LGBT+ people and communities is not only a stereotype, itself resting on an assumption that sexual diversity is experienced as an identity, but it also fails to account for the material limitations which many asylum seekers face, be that from sharing accommodation with people from their country of origin and not wishing to be outed, or lacking the material means to go to LGBT events, or as a result of the well-documented racism which continues to be present in some LGBT spaces.

Conclusion

This blog has taken one of the points of evidence recommended within the 2016 API on sexual diversity asylum claims and attempted to show how, on three different counts, this approach to evidence collection is misaligned with the lived realities of sexually diverse asylum claimants. Indeed, it has been suggested that some forms of evidence permitted under the 2016 API rest on universalising ideas of what constitutes a genuine performance of sexual diversity.

[1] UK Visas and Immigration, 'Asylum Policy Instruction: Sexual Orientation in Asylum Claims' (Home Office 2016)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf> Accessed 20th May 2020, 7.

[2] 2016 API (N1), 23.

[3] All-names changed to protect the anonymity of participants.

[4] 2016 API (N1), 6.

[5] 2016 API (N1), 6.

[6] Narrative of difference is one of the terms deployed within the API. See: 2016 API (N1), 26.

This post was due to be presented as a paper in the Administrative Justice Stream at the annual SLSA conference in Portsmouth.

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