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# Identity and the Sexual Minority Refugee: A Discussion of Conceptions and Preconceptions in the United Kingdom and Ireland

by Samantha K. Arnold\*

## INTRODUCTION

All human beings, regardless of their sexual orientation, have the right to the enjoyment and protection of the fundamental freedoms outlined in the Universal Declaration of Human Rights by virtue of their humanity.<sup>1</sup> However, persons who identify as, or are perceived to be, *sexual minorities*—lesbian, gay, bisexual, trans, or intersex persons—are regularly denied these rights through discriminatory laws or national practices. In 2010, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)<sup>2</sup> organization reported that countries repeatedly breach the right to life, the right to be free from torture and inhuman treatment, and the right to non-discrimination.<sup>3</sup> Although it is each state's responsibility to protect its citizens and persons living within its territory in accordance with international norms, the rights of sexual minorities often come into conflict with the religious and cultural morals that govern society.<sup>4</sup> For example, at least 76 countries continue to prosecute individuals on the basis of their sexual orientation.<sup>5</sup> Thirty-eight countries in Africa alone have laws criminalizing homosexuality.<sup>6</sup> The ILGA reported that in 2010, same-sex acts were punishable by death in at least five countries: Iran, Mauritania, Saudi Arabia, Sudan, and Yemen, as well as regions within Nigeria and Somalia.<sup>7</sup> Sexual minority refugees often flee situations where states sanction discriminatory actions and policies toward sexual minorities, or where states fail to protect their citizens from persecution on the basis of their sexual orientation and/or gender identity.

Despite fears of persecution, receiving countries often classify protection applicants as economic migrants, not asylum seekers.<sup>8</sup> This article, however, focuses specifically on the ways in which the concepts of sexual orientation and gender identity are perceived using examples from Ireland and the United Kingdom, and the impact that the factors have on their asylum claims. First, it reflects on the conceptualization of sexual minorities in receiving countries to analyze to what extent pre-conceived notions of sexual orientation and gender identity adversely

affect the sexual minority applicant in the pursuit of asylum. Secondly, it highlights where stereotypes or assumptions are imputed onto the applicant by the interviewer while discussing the variety of ways in which a sexual minority applicant may express sexual orientation and/or gender identity. In conclusion, this article asserts that interviewers do not apply a flexible enough approach in determining whether or not an applicant is indeed a member of a sexual minority, for example, in cases where the interviewer does not deem self-identification as sufficient.

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## SEXUAL MINORITIES

Both sexual orientation and gender identity determine an individual's overall sexual identity and the characteristics associated with personhood or personality. A person's gender as well as sexual orientation, whether one identifies as gay, straight or bisexual, plays a significant role in self-perception, as well as external perception and the person's place in a society. Identity is a broad concept, invariably influenced by a person's environment, and is expressed in diverse ways, through clothing, life-style choices, partners, and many other factors.

Given the cultural, social, and personal significance of defining one's self as male, female, gay, or straight, terminology takes on a significant role in defining how others perceive sexual orientations and gender identities. For example, the United Nations High Commissioner for Refugees (UNHCR) often uses the term "gay" to describe both men and women who have "enduring physical, romantic, and emotional attractions" to persons of the same sex<sup>9</sup> in accordance with the Yogyakarta Principles, a document which summarizes human rights norms as they apply to sexual minorities drafted in 2006 by lawyers and experts on the subject.<sup>10</sup> The Principles use the term "gay" to describe men and the term "lesbian" to describe women.<sup>11</sup> Both the UNHCR and the Yogyakarta Principles define the term "bisexual" as either men or women who are attracted to both men and women.<sup>12</sup> Similarly, the term "trans," although not universally accepted, is an inclusive term referring to those whose biological and gender identities or expressions are in tension with one another.<sup>13</sup> This umbrella term includes, *inter alia*, "preoperative, postoperative or non-operative transsexuals, female and male cross-dressers, drag queens or kings, female or male impersonators and intersex individuals."<sup>14</sup> The term "intersex" refers to individuals whose

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biological makeup consists of more than one set of sexual organs, hormones or physical characteristics. Intersex may refer to someone who has both male and female characteristics or who lacks *any* clear biological indication of sex.<sup>15</sup>

There are great differences in characteristics, identity, and attraction among the aforementioned groups.<sup>16</sup> These differences are important to consider in the asylum context, particularly as there are cultural differences that may also affect the ways in which sexual minorities present themselves to immigration authorities.

In order to address this, immigration officials should be aware of the ways in which people define and express themselves within the sexual minority category of asylum-seekers to avoid applying western preconceptions of behavior, mannerisms, and appearance to individuals who may never have been able to explore their own gender or sexual identity in their country of origin. For example, in the European Union, it is often assumed that if an individual identifies as gay, that person would be familiar with various nightclubs, districts, or prominent sexual minorities in the arts.<sup>17</sup> There may also be an assumption by immigration officials that the individual could identify a pink triangle or the rainbow flag as symbols of sexual minority revolution.<sup>18</sup> Lord Roger, in *HJ and HT v. SSHD*, a United Kingdom Supreme Court case discussed below, highlighted similar assumptions when he described the activities of gay men:

To illustrate the point with trivial stereotypical examples from British society: just as male heterosexuals are free to enjoy themselves playing rugby, drinking beer and talking about girls with their mates, so male homosexuals are to be free to enjoy themselves going to Kylie concerts, drinking exotically coloured cocktails and talking about boys with their straight female mates.<sup>19</sup>

However, in countries where sexual minorities are subjected to persecutory actions or serious harm, many applicants from those countries who identify as gay, lesbian, bisexual, or otherwise may not exhibit any identifying characteristics as they may have spent their life before fleeing to conceal their sexual orientation and/or gender identity.<sup>20</sup> It is therefore difficult for applicants to provide immigration authorities with testimony of past self-identification or of a sexual or gendered past as one might not exist due to the applicant's concealment. Similarly, it is challenging to compile a list of characteristics associated with western gay culture as many transsexual or trans applicants may have actively chosen not to display or identify with those characteristics. It would be even more difficult to produce a list of recognizable characteristics arising from regions where sexual or gender transgressions are punishable by law or death because most gay and trans individuals actively avoid any connection with recognizable characteristics. For example, a 2010 publication from the UK lesbian, gay and bisexual charity group Stonewall,<sup>21</sup> *No Going Back*, reported that it is common for interviewers in the UK Border Agency to assume that someone who identifies as gay would be "flamboyant" and someone who identifies as lesbian would be "butch."<sup>22</sup> However, as discussed herein, it would not be in an applicant's interest to ascribe to either "type," as such classification may have resulted in becoming a target of persecution before having fled.<sup>23</sup> Moreover, within the world's disparate community of

sexual minorities, there is wide variation along the spectrums of sexual orientation and gender identity.<sup>24</sup>

### THE SEXUAL MINORITY REFUGEE

The 1951 Convention on the Status of Refugees, as amended by the 1967 Protocol, defines a refugee as a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>25</sup>

This definition can be subdivided into five components that establish: 1) a well-founded fear of persecution; 2) that the harm feared or experienced amounts to persecution; 3) a well-founded fear of persecution based on one of the five enumerated grounds (race, religion, nationality, membership of a particular social group, or political opinion); 4) that the applicant is outside of his country of origin; 5) and that the applicant's country of nationality cannot or will not provide protection to the applicant.

All human beings have the right to seek asylum in another country in accordance with Article 14 of the Universal Declaration of Human Rights.<sup>26</sup> Sexual minorities may also fall within the scope of the 1951 Convention Relating to the Status of Refugees. The UNHCR, in its *Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity*, provides evidence suggesting that sexual minorities may invoke the particular social group, race, religion, political opinion and/or nationality nexuses.<sup>27</sup> The UK Border Agency, in accordance with the UNHCR guidelines, has determined that sexual minority asylum seekers meet the requisite characteristics for protection as persons belonging to a group sharing a common, immutable characteristic that a person should not be required to change, or the 'particular social group.'<sup>28</sup> In Ireland, the Refugee Act 1996<sup>29</sup> specifically provides that sexual orientation meets the particular social group criteria for qualification as a refugee, as well.<sup>30</sup> Thus, both the UK and Ireland have transposed into domestic law the European Council Directive 2004/83/EC of April 29, 2004 *on minimum standards for the qualification of third country nationals and stateless persons as refugees or as person who otherwise need international protection and the content of the protection granted* (Qualification Directive), which also provides that sexual orientation falls within the meaning of a particular social group nexus. Article 10.1(d) states:

[A] group shall be considered to form a particular social group where in particular: members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society[.]<sup>31</sup>

Sexual orientation, however, is only one part of the discourse on sexual minorities. The concept of gender identity forms the rest of the debate and is an integral factor for consideration when assessing a claim for protection on the basis of the applicant's identification, or perceived identification, as a sexual minority. The reason gender identity forms an integral part of the discourse on asylum as it relates to sexual minority applicants is due to the complexities associated with transgressing a social norm as it relates to sexual behavior *alongside* gendered expression. The ways in which a person identifies with one gender or another (or a combination of the two generally accepted binary incarnations of "gender") may have further implications in respect to their asylum claim. *Gender identity* is described in the Yogyakarta Principles, as "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, and which includes the personal sense of the body and other expressions of gender, including dress, speech and mannerisms."<sup>32</sup> Some of these expressions may come into conflict with societal norms or laws in an applicant's country of origin.<sup>33</sup> However, expressions of gender identity can vary greatly and thus it is not always clear how to interpret the ways in which an applicant may present with certain characteristics, especially where they come into conflict with ideas of gender expression in the receiving country. Both of these factors, the way applicants express themselves and the way immigration officials interpret those expressions, affect the asylum claim.

Gender identity is discussed in the UK Border Agency's *Asylum Instruction: Gender Issues in the Asylum Claim*,<sup>34</sup> and is referred to in terms of "gender related aspects" of an asylum claim in the Qualification Directive.<sup>35</sup> While this directive recognizes gender identity, given long-standing cultural preconceptions and practices, the recognition of expressions of gender identity in individual asylum claims continues to be inconsistent.

Despite international and domestic law's development in the area of the right to asylum based on sexual orientation and/or gender identity, sexual minority applicants face numerous barriers related to satisfying a claim for protection. Specifically, Western stereotypes, out-of-date country-of-origin information and biased immigration officials create undue difficulty for members of a sexual minority to prove that they are in fact a sexual minority *and* that they fear persecution on that basis.<sup>36</sup>

#### THE SEXUAL MINORITY REFUGEE IN IRELAND AND THE UNITED KINGDOM

Immigration officials commonly expect or suppose that an applicant will self-identify as a sexual minority at the first instance. However, this poses a challenge to applicants and their legal representatives, as there is often limited discourse on sexual orientation and gender identity in countries from which

asylum-seekers are coming, and therefore applicants may not have the vocabulary to express this aspect of their identity. This is particularly true in countries that persecute individuals for alternate gender identities, as discussed above. Moreover, applicants may be hesitant to disclose their sexual orientation and/or gender identity due to feelings of shame or guilt, or memories of past trauma.<sup>37</sup> In other cases, applicants may feel intimidated to disclose their sexual or gender identity to someone in a position of authority, as police may have been agents of persecution in their country of origin.<sup>38</sup> Recognizing this challenge, UNHCR advises that those responsible for assessing claims on this basis take into account the difficulties in proving sexual orientation:

While some applicants will be able to provide proof of their LGBT status, for instance through witness

statements, photographs or other documentary evidence, they do not need to document activities in the country of origin indicating their different sexual orientation or gender identity. Where the applicant is unable to provide evidence as to his or her sexual orientation and/or there is a lack of sufficiently specific country of origin information the decision-maker will have to rely on that person's testimony alone.<sup>39</sup>

The responsibility to provide "proof" of one's sexual orientation and/or gender identity therefore not only rests with

applicants and their ability to convey testimony, but it also rests with the decision maker in determining what weight to allocate the applicant's testimony of self-identification. As highlighted in *No Going Back*, there is evidence that judgment may be clouded by a reliance on the receiving country's stereotypical notions of what it means to be "gay," "lesbian," or "trans,"<sup>40</sup> all of which may be completely inapplicable to members of a sexual minority from other cultures and countries. It is therefore extremely difficult to prove one's sexual orientation and/or gender identity when there are several conceptions of what it means to be gay or lesbian, for example. In Ireland and the UK, medical reports and witness testimony may be used to support the applicant's sexual orientation.<sup>41</sup>

Furthermore, although states might have a clear policy and guidelines on what constitutes a sexual minority refugee, because applicants who identify as a sexual minority may present in a variety of ways, often through expressing their gender identity and/or sexual orientation as a result of their background and individual development, immigration officials have a difficult time adequately implementing those policies. Immigration officials in Ireland and the UK may not view the same act as one that would make the applicant identifiable as a member of a sexual minority and thus a possible subject of persecution. In one case, a British immigration official reportedly asked whether or not the applicant was familiar with the works of the poet Oscar Wilde.<sup>42</sup> This indicates an assumption that sexual minorities have similar interests or behave the same way across the world.

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Similarly, in Ireland, a study found that an applicant's testimony fell short of establishing his homosexual orientation because he had never heard of one of the main gay bars in Dublin.<sup>43</sup> What immigration officials fail to consider is that members of sexual minorities often take to concealing their sexual orientation and restricting their own gender expression to avoid harm, discrimination, or persecution.<sup>44</sup> Moreover, immigration officials may also fail to acknowledge the role religion plays with respect to social and cultural habits and customs; for example a Muslim man who may have been raised to avoid consuming alcohol may never have reason or a desire to seek out a gay bar.<sup>45</sup>

These challenges exist despite the fact that the UK Border Agency guidelines delve into the issue of assessing credibility in asylum claims.<sup>46</sup> The guidelines emphasize being alert to mitigating factors that may affect the delivery of testimony, *i.e.*: traumatic experiences, inarticulateness, fear, distrust of authorities, shame, and reliving painful memories—especially those sexual in nature—which may affect the applicant's ability to relate testimony or sexual orientation and/or gender identity.<sup>47</sup> For these reasons, disclosure of an applicant's sexual orientation and/or gender identity may be delayed or masked by feelings of shame or guilt that may result in non-disclosure, late disclosure, or past repression which means the applicant may not have a sexual and/or gendered history.<sup>48</sup>

### UK STANDARDS

The United Kingdom courts, through various decisions have also addressed the issue of sexual minority asylum claims. In *HJ and HT v. SSHD*, the UK Supreme Court set out new guidelines in determining sexual minority applications for protection.<sup>49</sup> The approach set up by Lord Roger in *HJ and HT* outlines four steps to assessing whether or not an applicant who identifies as a sexual minority should be granted protection considering whether or not the person is acting naturally discreet or acting discreetly by necessity.<sup>50</sup>

First, the tribunal must determine whether the applicant is either “gay” or would be treated as gay in the country of origin based on the evidence the applicant has provided, such as documentation relating to the applicant's involvement in sexual minority groups, statements from partners, photos, or verbal or written testimony.<sup>51</sup> Second, the tribunal must find that in the country of origin there is a reasonable fear of persecution for those that live their lives as openly transgendered or homosexual.<sup>52</sup> Third, the tribunal must consider how the applicant would act if returned to that country.<sup>53</sup> In other words, if the applicant would conceal their identity upon return to avoid societal stigmatization, or for other personal reasons not relating to persecution, the applicant may not be eligible for protection. However, applicants who would return and not conceal their sexual orientation and/or gender identity and that would itself put them at risk of persecution, then they may be eligible for protection.<sup>54</sup> Lastly, the tribunal must consider if the applicant, living openly, would thereby be exposed to a risk

of persecution.<sup>55</sup> If so, then the applicant has a well-founded fear of persecution.<sup>56</sup> This case set the standard in determining sexual minority claims. Prior to this judgment, applicants were frequently required to return to their country of origin, where they would act discreetly in order to avoid persecution.<sup>57</sup>

The judgment handed down in *HJ and HT* removed the discretion requirement, except in cases where the applicant is acting discreetly not out of fear of persecution but due to social pressure regardless of whether or not there is a legitimate cause for fearing persecution.<sup>58</sup> Although this judgment is progressive, the line between discretion due to social pressures and stereotypes and discretion due to a fear of persecution has not been clarified. If the applicant would have a legitimate fear of

persecution, whether or not the applicant would act “naturally” discreet or not should be of no influence on the outcome of the case.

Most recently, in *SW (Lesbians—HJ and HT Applied) Jamaica v. SSHD*, the UK's Upper Tribunal found that the applicant was acting discreetly out of fear of persecution, and *not* due to social pressures.<sup>59</sup> The appellant stated to the court that she would not return to Jamaica and hide her identity as a lesbian, nor would she change her behavior. She was prepared to put herself in danger to live openly after having experienced repression in the past and having experienced the relative freedom of life in the UK.<sup>60</sup> This judgment is consistent with *HJ and HT* and highlights the importance of an in-depth analysis of

the reasons an applicant may have concealed his or her sexual orientation in the past in conjunction with the court's analysis of the applicant's fear of future persecution.

However, a recent European report, *Fleeing Homophobia*, suggests that Irish asylum decision-makers continue to argue that applicants who identify as sexual minorities can safely return to countries where they would be subject to persecution by assuming (or requiring) that the applicants could return and act discreetly to avoid persecution, and thus do not meet the “well-founded fear of persecution” requirement for an asylum claim.<sup>61</sup> Decision makers are, however, moving away from focusing on whether or not applicants can return and conceal sexual orientations and/or gender identities. Unfortunately, this seems to have resulted in decision makers focusing on “proving” sexuality rather than whether or not the applicant could reasonably live discreetly if returned.<sup>62</sup> There may also be a tendency to focus on whether or not the applicant is acting “naturally” discreet.

### CONCLUSION AND RECOMMENDATIONS

Sexual minority asylum seekers face obstacles unique to their asylum demographic. Individuals fleeing violence on the basis of their sexual orientation may not be aware of the possibility of applying for protection on the basis of sexual orientation and/or gender identity and may also suffer from guilt, shame, or past trauma. Others may be fleeing a general

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situation of violence and could apply for asylum based on the internal violence in the country as well as based on their sexual orientation. Both difficulties of a lack of knowledge as well as past mental trauma and stigmatization may affect an applicant's ability or willingness to disclose sexual orientation and gender identification to legal practitioners and/or immigration officials. This challenge may be affected by the level of sensitivity and the knowledge the interviewer exhibits.

In order to combat the inconsistencies and hardships faced by sexual minority applicants despite clear language from the courts as well as in international conventions and treaties,

reform is required. First, adjudicators and officials must be better trained and informed about the specific issues relating to sexual minority applicants as well as the requirements under the law of taking these different cultural indicators into consideration. More comprehensive country-of-origin information that highlights the specific risks faced by sexual minorities must be incorporated into asylum application criteria. More specific to sexual minorities, decision makers must recognize the diverse manifestations of sexual orientation and gender identity and move beyond stereotyping that is often linked to the social contexts of Western, industrialized states.

## Endnotes

<sup>1</sup> Universal Declaration of Human Rights G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948) [hereinafter UDHR].

<sup>2</sup> International Gay, Lesbian, Bisexual, Trans and Intersex Association, <http://ilga.org> (last visited Apr. 16, 2013).

<sup>3</sup> D. Ottosson STATE SPONSORED HOMOPHOBIA: A WORLD SURVEY OF LAWS PROHIBITING SAME SEX ACTIVITY BETWEEN CONSENTING ADULTS, International Lesbian, Gay, Bisexual, Trans and Intersex Association, <http://ebookbrowse.com/ilga-state-sponsored-homophobia-2010-pdf-d44415034> (2010).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See Diane Taylor, *The UK Border Agency must end this culture of disbelief*, *The Guardian* (Nov. 22, 2012), available at <http://www.guardian.co.uk/commentisfree/2012/nov/22/uk-border-agency-culture-disbelief>; Sue Conlan et. al., Irish Refugee Council, *Difficult to Believe: The assessment of asylum claims in Ireland*, available at <http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/Difficult-to-Believe-The-assessment-of-asylum-claims-in-Ireland.pdf>.

<sup>9</sup> UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, ¶ 6, available at: <http://www.refworld.org/docid/48abd5660.html> [accessed 16 April 2013].

<sup>10</sup> International Commission of Jurists, *Yogyakarta Principles—Principles on the application of international human rights law in relation to sexual orientation and gender identity*, fn 1, March 2007, available at <http://www.refworld.org/docid/48244e602.html> [hereinafter *Yogyakarta Principles*].

<sup>11</sup> *Id.*

<sup>12</sup> UNHCR Guidance Note, *supra* note 9.

<sup>13</sup> *Id.*

<sup>14</sup> See National Lesbian and Gay Journalists Association in the United States, <http://nlgja.org/about/index.html> (date accessed: 23 April 2011).

<sup>15</sup> EUROPEAN COMMISSION, INTERSEX PEOPLE: DISCRIMINATION ON THE GROUNDS OF SEX, GENDER IDENTITY AND GENDER EXPRESSION, (2011), available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4fdedde32>.

<sup>16</sup> UNHCR Guidance Note, *supra* note 9.

<sup>17</sup> NATHANIEL MILES STONEWALL, NO GOING BACK: LESBIAN AND GAY PEOPLE AND THE ASYLUM SYSTEM, (2010), available at [http://www.stonewall.org.uk/what\\_we\\_do/research\\_and\\_policy/2874.asp](http://www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp) (last visited Apr. 16, 2013).

<sup>18</sup> *Id.*

<sup>19</sup> *HJ (Iran) and HT (Cameroon) v. Sec. of State of the Home Dept.*, (2010) UKSC 31, [78] (appeal taken from Eng. and Wales) [hereinafter *HJ and HT*].

<sup>20</sup> Laurie Berg and Jenni Millbank, *Constructing the Personal Narratives of LGB Claimants*, *JOURNAL OF REFUGEE STUDIES*, 2009 199-201, 216.

<sup>21</sup> A UK lesbian, gay and bisexual charity: [www.stonewall.org.uk](http://www.stonewall.org.uk).

<sup>22</sup> STONEWALL, NO GOING BACK: LESBIAN AND GAY PEOPLE AND THE ASYLUM SYSTEM, (2010) available at [http://www.stonewall.org.uk/what\\_we\\_do/research\\_and\\_policy/2874.asp](http://www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp) [hereinafter NO GOING BACK].

<sup>23</sup> Barry O'Leary. "We Cannot Claim any Particular Knowledge of Homosexuals, Still less of Iranian Homosexuals...": *The Particular Problems Facing Those Who Seek Asylum on the Basis of their Sexual Identity* 89 (2008) 16 *FEMINIST LEGAL STUDIES* [hereinafter O'Leary 2008].

<sup>24</sup> *Id.*

<sup>25</sup> Convention Relating to the Status of Refugees, Apr. 22, 1954, 189 U.N.T.S. 150, Art. 1A(2).

<sup>26</sup> UDHR Article 14.1: "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

<sup>27</sup> See e.g. UNHCR, *supra* note 9, at ¶ 8; HOME OFFICE THE UK BORDER AGENCY, ASYLUM INSTRUCTION: SEXUAL ORIENTATION AND GENDER IDENTITY IN THE ASYLUM CLAIM, available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicy/instructions/apis/sexual-orientation-gender-ident?view=Binary> [hereinafter UKBA *Sexual Orientation and Gender Identity in the Asylum Claim*].

<sup>28</sup> UKBA, *supra* note 27.

<sup>29</sup> Irish Refugee Act of 1996, Art., 1 available at <http://www.unhcr.org/refworld/docid/3ae6b60e0.html>.

<sup>30</sup> Refugee Act 1996 Section 1: "'membership of a particular social group" includes membership of a trade union and also includes membership of a group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation'.

<sup>31</sup> European Council Directive 2004/83/EC of 29 April 2004, Art. 10.1(d), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML> [hereinafter European Council Directive].

<sup>32</sup> *Yogyakarta Principles*, *supra* note 10.

<sup>33</sup> UKBA, *supra* note 27.

<sup>34</sup> *Id.*

<sup>35</sup> European Council Directive, *supra* note 31.

<sup>36</sup> Sabine Jansen and Thomas Spijkerboer, *Fleeing Homophobia: Seeking Safety in Europe*, COC NEDERLAND & VU UNIVERSITY AMSTERDAM 71 (2011), available at [http://www.rechten.vu.nl/nl/Images/Fleeing%20Homophobia%20report%20EN\\_tcm22-232205.pdf](http://www.rechten.vu.nl/nl/Images/Fleeing%20Homophobia%20report%20EN_tcm22-232205.pdf) [hereinafter *Fleeing Homophobia*].

<sup>37</sup> See e.g. UK LESBIAN AND GAY IMMIGRATION GROUP, FAILING THE GRADE: HOME OFFICE INITIAL DECISION ON LESBIAN AND GAY CLAIMS FOR ASYLUM (2010), available at <http://www.asylumlaw.org/docs/sexualminorities/Failing%20the%20Grade%20UKLGIG%20April%202010.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> *SW (lesbians—HJ and HT applied) Jamaica v. Secretary of State for the Home Department*, CG [2011] UKUT 00251(IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 24 June 2011, available at: <http://www.unhcr.org/refworld/docid/4e0c3fae2.html> [accessed 9 July 2011] [hereinafter *SW Jamaica*].

<sup>40</sup> NO GOING BACK, *supra* note 22.

<sup>41</sup> JANSEN & SPIJKERBOER, *supra* note 36.

<sup>42</sup> NO GOING BACK, *supra* note 22 at 16.

<sup>43</sup> JANSEN & SPIJKERBOER, *supra* note 36 at 9.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> UK BORDER AGENCY, CONSIDERING ASYLUM CLAIMS AND ASSESSING CREDIBILITY 14 (Mar. 25, 2011), available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/consideringanddecidingtheclaim/guidance/considering-protection-.pdf?view=Binary>.

<sup>47</sup> *Id.*

<sup>48</sup> Samantha Arnold, *The Culture of Credibility in the United Kingdom and Ireland and the Sexual Minority Refugee*, 30, Irish Law Times, 55 (2012).

<sup>49</sup> *HJ and HT*, *supra* note 19.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at ¶ 35.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at ¶ 22.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at ¶ 82.

<sup>57</sup> JANSEN & SPIJKERBOER, *supra* note 36.

<sup>58</sup> *HJ and HT*, *supra* note 19, at ¶ 22.

<sup>59</sup> *SW Jamaica*, *supra* note 39.

<sup>60</sup> *Id.* at ¶ 22.

<sup>61</sup> JANSEN & SPIJKERBOER, *supra* note 35, at 35.

<sup>62</sup> See Patricia Brazil, *Applications for Asylum by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons*, THE RESEARCHER (Mar. 30, 2013), available at [http://www.legalaidboard.ie/lab/publishing.nsf/content/The\\_Researcher\\_March\\_2011\\_Article\\_2](http://www.legalaidboard.ie/lab/publishing.nsf/content/The_Researcher_March_2011_Article_2).