



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/04074/2013
AA/04075/2013

THE IMMIGRATION ACTS

Heard at Field House
On 25 March 2014

Determination Promulgated

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Before

MR JUSTICE JEREMY BAKER
UPPER TRIBUNAL JUDGE DAWSON

Between

TR
RS
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Talacchi, counsel, instructed by Longfellow Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are nationals of Pakistan where they were born in 1984. They appeal with permission the determination of First-tier Tribunal Judge J Molloy. RS is a dependant on an asylum claim by TR based on their gay relationship and the implications that would ensue if removed to Pakistan.
2. TR entered the United Kingdom as a student in May 2009 and RS followed in January 2010. TR only attended classes for three months and applied for asylum in April 2013 along with RS. They were served with removal notices dated 19 April 2013 against which they appealed to the First-tier Tribunal.
3. The respondent did not accept that the appellants are gay based on concerns over the consistency of their accounts of events in Pakistan prior to arrival and subsequently in the United Kingdom. The respondent considered the credibility was damaged by TR's poor immigration history and the claim to asylum having been made after he had been encountered.
4. On 16 May 2013 First-tier Tribunal Judge Parker gave an anonymity direction which was continued by Judge Molloy. Although no application was made, we continue that direction. No report or other publication of the proceedings or any part of them shall name or directly or indirectly identify the appellants. Reference may be by use of initials but not by name. Failure to comply with this direction may lead to proceedings for contempt of court.
5. Permission to appeal to the Upper Tribunal was granted on the basis that First-tier Tribunal Judge Parkes considered the complaints made about the conduct of the hearing that it was inherently unfair with witnesses being badgered plus errors in the credibility findings appeared to have merit. He observed that the determination was far too long and detailed to be readily followed and understood.

The Hearing in the First-tier Tribunal

6. There are some unusual features with regard to the journey of these appeals in the First-tier Tribunal. They were listed for hearing on 30 May 2013 which was adjourned unopposed at the appellants' request. The reasons were that the appellants were due to enter into a civil partnership on 6 June and because of late service of certain documentation by the respondent. It appears that the latter persuaded Judge Molloy to postpone the hearing which resumed on 16 August when TR and RS gave evidence together with Naveed Ahmad. Proceedings finished at 6 o'clock when the case was adjourned to another date for submissions and for the originals of certain photographs to be provided.
7. The hearing resumed on 30 October by when there was a change of counsel with Mr Talacchi taking over from Ms Tobin. There was also a replacement Presenting Officer. Prior notice had been given of further evidence the appellants wished to rely

on, being their civil partnership having taken place and warrants for the arrest in Pakistan. TR and RS gave further evidence.

8. That hearing was also adjourned in order for the production of further documentation regarding the arrest warrant and for an issue to be dealt with regarding the interpretation of RS's evidence on 16 August. Judge Molloy explained that, as was the position following the 16 August adjournment, he would be preparing a draft part-determination based on what had occurred but he would not be making any findings of fact.
9. At the resumed hearing on 25 November, by when the interpretation issue had been resolved, TR gave evidence again about the civil partnership. Although RS was also given the opportunity to give evidence, this was declined by Mr Talacchi. Submissions followed after which the decision was reserved.
10. The detail of the above events, coupled with the substance of the evidence given, is set out in 373 paragraphs over 52 pages of the judge's determination. Between paragraphs 374 and 646, another 34 pages, the judge sets out his conclusions which are expressed with uncharacteristic succinctness at [601]:

"For the avoidance of doubt the Tribunal finds that it is not persuaded that either of the couple is at real risk on return to Pakistan of being regarded as a person of same-sex orientation whether this be actual or imputed."

This was in the context of an earlier direction that a male of same-sex orientation would face a risk of serious harm amounting to persecution for breach of his absolute rights under the Human Rights Convention in Pakistan. The judge considered the claim to be nothing more than a fabrication and the documents introduced in support could not be relied upon. He found that the civil partnership was an arrangement of convenience and as a consequence there was no family life.

11. The appeals were also considered under Article 8 which gave the other judge some anxiety as he understood the appellants had been granted leave to remain for a period exceeding one year despite their protection claims having been protected.

Grounds of Challenge

12. Of the three grounds of challenge, Mr Talacchi considered the first two overlapped. He adopted the lengthy grounds which he fleshed out with oral submissions.
13. The first ground argues that the judge had committed "...a procedural error capable of making a material difference to the outcome of the fairness of the proceedings". The second ground is that "the hearing was inherently unfair". The second ground clarifies the reference to "the outcome of the fairness of the proceedings" in the first.
14. The substance of the complaint in the first ground is that the judge had entered the arena indicating on more than one occasion that further and better particulars were required of TR's evidence which resulted in TR and RS being asked questions repeatedly on the same topics by the Presenting Officer. The hearing was no longer

adversarial but inquisitorial. It is argued that it was undesirable for the judge to direct what questions should be asked to the witness. His role is to seek clarification but to direct cross-examination to the respondent. Examples are given of inappropriate interventions, including an indication when the hearing reconvened (the grounds erroneously refer to 16 August 2013) that he needed clarification. The judge had also raised concerns about the contradictions between the evidence of Mr Ahmad and TR. The judge also wanted clarification regarding the identity of a mullah for whom two different names had been given, of a relationship between TR and a female in Pakistan.

15. As to the second ground, it is argued that when a witness gives evidence he must do so without being badgered and interrupted. The continuous questioning resulted in the judge applying a higher standard of proof and that the judge had appeared to make adverse credibility findings on the basis that material was not contained in the witness statements.
16. In his oral submissions, Mr Talacchi explained that the reference to badgering in his grounds was meant to cover a situation where the party had already given evidence and been asked to do so again.
17. Ground 3 argues that material errors were made in the making of the adverse credibility findings. It is contended that those findings are speculative, tenuous and not based on objective background evidence but on the judge's own views. Seven examples are given to illustrate the ground. We return to these in more detail below.
18. On behalf of the Secretary of State, Mr Avery contended that the judge had given anxious scrutiny and on the issues raised, it was not a question of giving the Secretary of State a further opportunity but to give TR (and RS) the chance to respond. It was very unfair to criticise the judge as pursuing the former. In respect of the third ground, Mr Avery considered the judge would have background knowledge and that he had not gone too far on Mr Talacchi acknowledging the judge was entitled to an extent to rely on that knowledge.

Our Conclusions

19. We are not persuaded that the judge erred in the manner claimed. It is not a ground of challenge that the determination is too long or is for some other reason incomprehensible; it was unnecessary for Judge Parkes to make such observations. Given time, it is possible to follow and understand the reasons given by Judge Molloy for disbelieving the appellants. That is not to say there was a need for a determination of this length. To observe that its contents are exhaustive is an understatement. This is in large part due to the judge providing a "real time" account of events when, absent any serious procedural issues, there was no reason for him to do so.
20. Each judge has a different style; some are able to produce short, crisp judgments, but others prefer a more expansive approach. The overall objective is to produce a comprehensible document explaining the issues, précisising the evidence relevant to

those issues, setting out the law, and to give adequate reasons for the decision. Nothing more, nothing less.

21. But as we have said, the length is not the complaint.
22. On our reading of the determination, we are satisfied that the interventions by Judge Molloy were properly for clarification on points that were troubling him. We now understand more fully the reference to “badgering” in the grounds. The context also needs to be appreciated. Although Mr Talacchi has not said so, he did not have the advantage of having heard first-hand the evidence given on 16 August. It is clear the judge gave anxious scrutiny to all the evidence before him which was on the whole germane to the issues upon which he had to adjudicate.
23. Turning to the third ground, in particular the assertion that the judge’s findings were speculative without reference to any concrete evidence, Mr Talacchi illustrated this by reference to the judge’s observation at [385] of his determination when he was assessing the evidence about what boys would talk about at school and what they would do. The judge had observed from his understanding of life and behaviour in Pakistan where Islam is the state religion that boys there generally speaking behaved themselves. Any difficulties with this are met by the judge directing himself at [388] that he would not go so far as to say there would be no boys and girls in Pakistan who would engage in such behaviour and he expressed awareness that there is a reasonable degree of likelihood that what some would say is a moral behaviour does take place in Pakistan. The judge was concerned about TR’s evidence in his witness statement that the immoral behaviour he claims to have experienced was much more widespread than previously thought. Here again he referred to his individual and collective specialist experience of social and religious mores and found it difficult to believe the claims as reasonably likely to be true.
24. If this were the only or principal reason given by the judge for rejecting the account, we would be inclined to agree with Mr Talacchi. But this is not the case. The judge gave a number of reasons for his disbelief and we are not persuaded that this selected aspect is sufficient to undermine the credibility findings as a whole. We have a similar view with regard to the further points in the ground regarding TR’s relationship with a girl who used to live near his family’s home. That evidence included the girl having consented to the couple trying a sexual relationship and furthermore an invitation to engage in anal intercourse. What concerned the judge was the plausibility of the expression of such relationship for three to four months and it was open to him to question whether such a relationship could have been carried on by a girl living nearby.
25. Part of the account before the judge was that the appellants had been playing snooker in a madrassa and had been caught kissing in the lavatories in Pakistan. The judge was concerned about RS’s lack of knowledge about what a break was and it was open to him, in our view, to find that he was not a snooker player which contributed to his doubts about the party’s truthfulness. Again, it was not a pivotal or core point.

26. Finally, the query by the judge regarding the extraterritorial effect of the criminal jurisdiction in Pakistan needs to be considered in the context of the evidence. According to a translation of an article in a newspaper called Daily Life Times, the police are reported to have registered a case on charges of homosexuality against men residing in the United Kingdom. That case had been registered on the complaint of "area residents" after an emergency meeting of the "area committee" in which they demanded that the accused be stoned to death. The appellants are identified. Area residents are quoted as having said that in non-Muslim society homosexuality might be acceptable but *sharia* and the law of Pakistan did not allow such acts. What seems to have troubled the judge is the absence of evidence that the appellants could under Pakistan law be prosecuted in that country for activities abroad. It was legitimate for him to express those concerns.
27. In short, the challenge to the credibility findings is a disagreement with the evidence; the judge did not make an error of law. Accordingly, the appeal is dismissed.

Signed

Date 31 March 2014



Upper Tribunal Judge Dawson