



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

THE IMMIGRATION ACTS

Heard at: Birmingham
On: 20 June 2014
2014

Decision Promulgated: On 30 June

Before

Upper Tribunal Judge Pitt

Between

NU

(Anonymity Order Made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Kullar, instructed by SH & Co. Solicitors
For the Respondent: Mr Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan and was born in 1980.
2. The appeal is brought against the decision promulgated on 7 January 2014 of First-tier Tribunal Judge Grimmett and Mr G F Sandall which

dismissed the appellant's appeal against the respondent's decision of 6 August 2013 to make a deportation order against him under Section 32 of the UK Borders Act 2007 and the decision of 6 September 2013 refusing an asylum and human rights claim.

3. The appellant fell to be deported as he was convicted of two counts of conspiring or supplying a controlled drug - Class A. On 20 July 2012 he was sentenced to 2 years' and 6 months' imprisonment for those convictions.
4. The appellant's asylum claim was made on the basis that on a visit to Pakistan in 2010/11 he was kidnapped by the Pakistani Taliban and imprisoned and tortured by them. He was released after his family borrowed money from money lenders to pay a ransom. The family cannot pay the money lenders. The appellant maintained that he would be at risk on return from both the Pakistani Taliban and the money lenders. The appellant submitted that the trauma of this incident had led to significant mental health problems and lay behind his offending in the UK. The appellant also maintained that he was in need of protection as he is gay.
5. The first ground argued before me was that the First-tier Tribunal erred in finding that the appellant is not gay.
6. Firstly, it was submitted that the First-tier Tribunal erred at [45] in finding that the appellant's ex-wife visited him in prison. The panel had misread an entry on the prison visitors log which did not show the appellant's ex-wife had visited. Ms Kullar argued that this error of fact was material as the panel had placed weight on it when finding that the appellant was not gay. Mr Smart conceded the error of fact but maintained that against the findings as a whole the point could not be material.
7. The First-tier Tribunal set out their consideration of the appellant's claim to be gay from [40] to [52]. The reasons given for the panel finding that the appellant is not gay were numerous. Prominent amongst them was the fact that the man with whom he claims to have had a relationship for some years, from prior to going to prison and afterwards, was not present to give evidence. The panel considered this at [46]. They were entitled to find that the failure to appear undermined the evidence of this witness and the appellant's claim where closed proceedings and a non-disclosure order could have been requested if there were concerns about identification.
8. The panel also found at [46] that the prison phone records provided did not show telephone contact with the claimed partner and nothing had been produced to confirm money sent by the partner to the

appellant whilst he was in prison. The panel went on to find at [47] and [48] that the evidence of the appellant and his partner's witness statement were inconsistent in numerous ways.

9. At [49] and [50] the evidence of a further witness, the appellant's brother-in-law, was found to be additionally inconsistent, stating that the appellant had seen his partner after coming out of prison but the partner's witness statement saying they had not met after the appellant's prison sentence had ended.
10. Further, neither the appellant nor his partner indicated at all in their evidence that they had been attacked, a claim made by the appellant's brother-in-law, nor was there any reference to such an event in the appellant's medical records. The argument at paragraph 17 of the grounds that the panel was in error regarding the date of the park attack and when the appellant was in prison is not material where there was this clear inconsistent evidence before them as to whether the attack occurred at all. The panel were clearly entitled to find the brother-in-law lacked credibility because of the inconsistencies in his evidence and paragraph 16 of the grounds arguing otherwise has no merit
11. Further negative credibility findings on the appellant's sexuality are made at [40] to [43] regarding numerous inconsistencies in the appellant's statements made as part of his asylum claim regarding his sexuality.
12. It was not my view that the error concerning the appellant's ex-wife was a sufficiently material matter, when set against the weight of all these findings, such that the panel could have reached a different conclusion had they placed no weight on this point. The error as to the ex-wife having visited the appellant in prison is not material.
13. It was argued, secondly, that the First-tier Tribunal made a further error of fact at [52] when stating that there was a "lack of supporting evidence with neither prison medical records nor his own GP referring to a male partner". It was submitted that an entry in the appellant's prison medical records at Q19 of the appellant's bundle had referred to his homosexuality.
14. I can deal with this aspect of the ground quite simply. The entry at Q19 is merely that "[h]e reported that he had a boyfriend and feared this would be discovered as he is a muslim and would be killed if this were known." The prison medical records therefore contain this one assertion made by the appellant. It is in no way objective or corroborative evidence from the prison authorities as to their view of

the appellant's sexuality. It cannot be characterised as material and no error arises from it.

15. The second main ground was that the First-tier Tribunal erred in finding that the appellant had not shown that he was kidnapped in Pakistan.
16. It was argued that the criminal justice authorities had accepted that the appellant had been kidnapped in Pakistan. Ms Kullar conceded before me that the First-tier Tribunal was not bound by the approach taken in the criminal proceedings to the appellant's claim to have been kidnapped in Pakistan. The panel gave reasons for not doing so at [27]. Where that was so and the First-tier Tribunal also gave detailed reasons from [17] to [39] for finding that the appellant was not kidnapped or ransomed, I did not find that any error arose from the panel taking a different view on the claimed kidnap to that taken in the criminal justice proceedings.
17. The grounds at paragraph 6 argue that the panel had "independent evidence" that the kidnapping had occurred from Dr Qureshi, a Consultant Psychiatrist. The First-tier Tribunal indicated at [23] that less weight accrued to the opinion of Dr Qureshi concerning the appellant's ability to give evidence where he had been able to give very detailed evidence about his kidnap during the asylum process. At [29] they point out that the information given to the psychiatrist by the appellant was not consistent with his other evidence. In addition, Dr Qureshi sets out on page 2 of his report his instructions. They were not to provide an opinion on the appellant's credibility. There is nothing in the report that comes close to commenting on those matters and it is really only an assessment of the appellant's mental health and ability to give evidence. I did not find that the report amounted to had "independent evidence" of the kidnapping and could have amounted to determinative evidence in that regard, certainly not when considered against the wide-ranging shortcomings identified by the First-tier Tribunal at [17] to [39].
18. I can indicate conveniently here that the consideration given to the report of Dr Qureshi and findings at [53] and [54] also show that the suggestion at paragraph 6 of the second set of grounds that the panel "largely disregarded" the medical evidence has no substance.
19. I have indicated above that the First-tier Tribunal made sustainable findings on inconsistencies between the evidence of the appellant and that of his claimed partner regarding their relationship and were entitled to draw an adverse inference from the partner failing to attend to give evidence. At [18] the panel identified a further inconsistency in the accounts given by the appellant and his

partner regarding the kidnap. The submission at paragraph 8 of the grounds that the partner's evidence corroborated that of the appellant is misconceived therefore and their approach to the witness statement of the claimed partner does not disclose an error of law.

20. The grounds argue at paragraph 9 that the First-tier Tribunal should not have placed weight on inconsistencies in newspapers reports of the kidnapping. The same ground suggests that this was not permissible as newspapers are not always accurate. These newspaper reports were submitted by the appellant in support of his claim. It is misconceived to argue now that the panel should not have drawn an adverse inference from the inconsistencies in the information reported as they were poor sources of evidence.
21. The grounds also refer to the First-tier Tribunal failing to address the certification of the humanitarian protection claim. That cannot be material where there is no substantive case made out for humanitarian protection and the humanitarian protection certification would stand and fall with the panel's decision on the asylum certification which was upheld.
22. The grounds also state that the panel failed to consider Article 8. That is correct. It is now settled case law that only "a very strong case indeed" can outweigh the public interest in deportation; see SS (Nigeria) v SSHD [2013] EWCA Civ 550. The Court of Appeal has expressed the same high threshold in MF (Nigeria) v SSHD [2013] EWCA Civ 1192 as "exceptional" or "something very compelling". Neither the grounds of appeal to the First-tier Tribunal, submissions before me or evidence provided indicated how this appellant could meet such a high threshold where it was found that he was not kidnapped, is not gay and has immediate family in Pakistan who can assist with his mental health problems and general support on return. I did not find that a material error arose from a failure to provide a detailed Article 8 assessment.

Decision

23. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 20 June 2014

Anonymity

Under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I continue the non-disclosure order of the First-tier Tribunal on the basis of the appellant's mental health. This order precludes publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.