



IAC-AH-CJ-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/06243/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 August 2015**

**Decision & Reasons Promulgated  
On 17 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**ZH (PAKISTAN)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Appeared in person

For the Respondent: Mr P Duffy, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against the decision by the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international or human rights protection. Although the First-tier Tribunal did not make an anonymity direction, out of caution I consider that it is appropriate for the appellant to be accorded anonymity for these proceedings in the Upper Tribunal, having regard to the nature of the appellant's asylum claim.

**The Reasons for Granting Permission to Appeal**

2. On 4 March 2015 First-tier Tribunal Judge Baker granted the appellant permission to appeal for the following reasons:
  - “1. The unrepresented appellant, who was also unrepresented at the hearing, seeks permission to appeal a decision of Judge P Rowlands, promulgated on 6 February 2015 following the hearing on 23 December 2014 in which his appeal against the refusal of asylum was dismissed.
  2. This Pakistani male, born on 6 August 1979 sought to come to the United Kingdom as a visitor in 2010. His application was refused. Following appeal he was issued with a family visit visa valid from 22 September 2011 to 22 March 2012. He overstayed his visa by more than two years and was encountered on 7 May 2014 following arrest by the police. He was served with IS.151A papers and claimed asylum on the same day. That application was refused. His appeal within the fast track procedure was dismissed on 2 June 2014. On 10 June 2014 he became appeal rights exhausted. His further submissions, claiming for the first time to be a gay man, were treated as a fresh asylum claim and that claim was refused on 18 August 2014.
  3. There is merit in the grounds that there was procedural impropriety amounting to an arguably material error of law. The unrepresented appellant handed in to the judge an affidavit written in Pakistani language but, as noted in the decision at paragraph 7, because the judge could not read the untranslated affidavit it was returned to the appellant.
  4. Although the judge addressed both this affidavit, its provenance and other documents in paragraph 7, 8, 10 and 29, it is arguable that in not asking the appellant to translate the content to him or to tell him his understanding of the content of the letter, the judge may have made a material error of law. Whilst it is correct that the judge considered the letter and the affidavit supplied in the context of the guidance of **Tanveer Ahmed**, it is not possible to discern that he obtained information from the appellant as to what was contained in those documents, rather concentrating on the provenance of them, which he rejected as an incredible account in respect of each, so undermining his credibility.”

### **Relevant Background**

3. Although the appellant was unrepresented at the hearing before Judge Rowlands, he had previously been assisted in the preparation of his appeal by a firm of solicitors. They compiled an appellant’s bundle containing, among other things, a chronology of events and the appellant’s medical notes from his period of detention at Harmondsworth; and a supplementary bundle dated 4 November 2014 containing letters purportedly signed by the appellant’s claimed gay partners Ahmed and Imran (Ahmed writing from an address in Riyadh and Imran writing from

an address in Wissembourg) and a psychiatric report dated 11 October 2014 prepared by Dr Ruth Sagovsky following an interview of the appellant at Harmondsworth the day before. In her opinion, it was not possible to give a clear diagnosis. The appellant fulfilled the criteria for a moderate depressive illness and for PTSD. Although both disorders could lead to memory impairment, she did not think either was currently of a severity fully to account for his cognitive problems. In order to be clear about the nature and degree of his cognitive problems he would need full neuropsychological investigations:

“I formed the opinion that his difficulties were genuine and that they were likely to have been caused by the head injury he suffered as a young man. However, without further detailed testing, I do not think it is possible to know the nature and degree of the problem, to what degree his problems are more pronounced because of concomitant depressive illness and PTSD, and to what extent he might be exaggerating.”

4. Dr Sagovsky was asked by the appellant’s lawyers to opine on the appellant’s capacity to take a meaningful part in the asylum and appeals process. In her opinion, the appellant had a reasonable understanding of the asylum process:

“He says that he forgets what his lawyer tells him but agreed that he mostly understands what she says at the time and can remember things for long enough to weigh them up and make decisions, even if he later doesn’t remember the details. In my opinion he has the capacity to take a meaningful part in the asylum and appeals process with the support of his lawyer.”

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

5. As set out in the refusal letter, the appellant’s core claim was that he had suffered past persecution in Pakistan on account of his homosexuality. He was born on 6 August 1979, and he had had a relationship with Ahmed from about 1995 to 2004, when he was aged 16 to 25 years old. He had also had a sexual relationship with his cousin Imran from 2005 until 2011. When he was aged 23, his family accused him of being gay and he admitted it, as his family had seen him with Ahmed. Alternatively, he tried to keep his sexuality a secret, but his family had found out because he had begun dressing as a girl when he was over 25. Alternatively, in 2005 when he was aged 25 his family realised he was gay and threw him out of the family home. After being thrown out of the family home, he had gone to live with Imran in the same room as his mother’s home. Imran’s mother, the appellant’s aunt, did not know he was gay and did not accept his sexuality. Alternatively, she agreed that she and Imran loved each other because they had been close as children, and so she allowed them both to share a room together. In 2006 his family tried to kill him and injured him severely. He had medical reports from hospital, but he could not provide these. While living at his aunt’s home, his family had attacked him there five times. He did not move from his aunt’s home despite these attacks because he could not afford to go anywhere else, and he wanted to remain with Imran.

6. He had not initially claimed asylum on the basis of his sexuality, because his solicitor had told him that if he did so he would be deported back to Pakistan. He also did not initially express his gay identity in the UK because he did not know where gay clubs and centres were, and he felt embarrassed. He had not been in an intimate relationship with Caroline. He had begun a gay relationship with Qasim at Harmondsworth Immigration Detention Centre. He could not remember exactly when the relationship began, but it was around 15 June 2014.
7. Judge Rowlands' decision contains a detailed account of the proceedings at paragraphs 7 to 11. As the arguable error of law identified by Judge Baker is that of procedural unfairness I set out the judge's record of the proceedings in full:
  - "7. He said that he had left some of the evidence at home this was because he had a problem with his memory. He couldn't even remember when he came to the UK when I was going through his immigration history with him. He said that everything that he had said regarding his previous asylum claim was lies. He had a problem with his memory. He handed to me an untranslated affidavit which I had to return to him because I couldn't read it. He said that [Ahmed] was in Saudi Arabia. He handed me what appeared to be a copy of an email, he said that he had received it by email. When I put it to him that it had been signed he said then that it had been sent to his address...He confirmed that they appeared to have put his email address or at least their email address on the documentation. He said that his partner in the detention centre [Qasim] had had his appeal refused and had been returned to Pakistan.
  8. In cross-examination he said that he had got the letters from [Imran] and [Ahmed] last month while he was in detention. He said he hadn't had contact with anyone whilst he was in detention and didn't know how they knew where to send it. He used to speak to Imran before he had gone into detention sometimes weekly sometimes monthly but he didn't speak to him after detention. He was asked whether he had had any contact with Imran's mother after detention and he said he thought so but he couldn't remember. He then said he had contact before detention but not in detention he couldn't remember contact during detention. He was asked how he had got the documents then and he said there was a possibility that he might have had contact with him but simply forgot. He said he had not read the letter.
  9. It was put to him that in interview he had said that Imran was a cousin and he was asked again whether he was and he said he didn't remember saying that Imran was a cousin. He said he was a cousin but not a real one he just called his mother auntie. They were not related by blood at all. He said he had called him a cousin in interview because he considered him as one because he called his mother auntie. It was put to him that he had written the documents and signed them and he said he couldn't do that he didn't have the ability to do those things.
  10. He was then asked about the letter from [Ahmed] and whether or not he had contacted him since he had come to the United Kingdom and he said he spoke to him on the telephone and on Facebook and email.

He said that was before he was detained. He was asked why that had not been produced before and he said that he had a problem and forgets half the things. He said he had no contact with him in detention only a relationship with Qasim. He said he had lost all contact numbers when he came out of detention. He said he got a letter about a month ago after he came out of detention. They appeared to have his UK address. I asked him how they had known his address and he said that Stratford Avenue was not his address he was living with friends in an address in Second Avenue in Manor Park. It was put to him that in the medical report he told the Psychiatrist that he had lost Ahmed's number so how could he have had contact with him and then he said that he had had contact with him before he went into detention but it was true that he had lost his number. He was asked whether he had lied about losing the number and he said he didn't remember that he said he had lost his number. It was put to him that he had made no mention of contact with Ahmed and he said he couldn't remember he said the letter had come with a document in another language he had not produced that.

11. In answer to a question from me he said that he had current relationship with someone but they cannot show themselves because they were here illegally...That was the end of his evidence."
8. The judge's findings are set out at paragraph 24 onwards. At paragraph 27, the judge noted that, during the first appeal process, the judge found him to be lucid and articulate with no indication of difficulty of recollection. Despite what was said in the medical report, Judge Rowlands was satisfied that even now there was no firm evidence of his lack of recollection and it was only when he found himself in difficulties in explaining matters that he turned to "I have memory problems" for assistance. The judge continued in paragraph 29:

"The two documents provided by former boyfriends caused great concern, particularly as he has previously provided a marriage certificate and false business documents in relation to his visit visa application. Clearly he has the ability to access false documents. He says that they were both sent to him by the main concern. At first he claimed that they were emailed but when challenged about the fact that they had signatures on them he changed that to them being posted. He said he had lost contact with his people before detention and could give no credible explanation as to how the documents turned up at his address. Taking into account the principle in the case of **Tanveer Ahmed** I am not satisfied they can be relied upon as credible evidence of the facts contained therein and they can be relied upon to provide support to his claim to be gay."
9. At paragraph 30 the judge returned to the claim that the appellant had memory problems which accounted for some discrepancies in his account. The judge referred to the medical notes from detention which suggested that it was not until he had visited the medic on a number of occasions that he first claimed that he had these memory issues.
10. The judge went on to find the appellant had not shown to the required standard that he was a gay person and consequently that he would be at risk on return. He was not satisfied he was telling the truth about his

sexuality, and he was most certainly not a credible witness. It had already been decided by at least one judge that there were no other risk factors for him on return, and his claimed fear from his uncles had previously been determined as being unfounded.

### **The Hearing in the Upper Tribunal**

11. At the hearing before me, the appellant produced a number of documents, some of which I arranged to have photocopied. The documents which I did not arrange to be photocopied related to his ongoing medical and therapeutic treatment for, or arising out of, his mental health issues, such as depression for which he continues to take medication.
12. The documents which I did have photocopied comprised what is in effect a skeleton argument in support of the appeal which builds on the grant of permission by Judge Baker; a photocopy of the affidavit tendered by the appellant at the hearing in the First-tier Tribunal, and a translation of that affidavit apparently made by the appellant himself. The appellant informed me that the application for permission, and the skeleton argument, were both prepared by his roommate at the accommodation where he presently lives.
13. I asked the appellant about the provenance of the affidavit. He said that it had been made by his father on 22 February 2012 (as stated on both the original and the translation) and that a copy had been sent to him by his father shortly after this date.
14. According to the translation, his father declared in the affidavit that he had already paid 2,000,000 Pakistan rupees to the appellant as part of his inheritance; but was withholding the remainder of his promised inheritance (another 2,000,000 Pakistan rupees) because his son was very disobedient and rude, and he was in relation with bad people. According to the appellant's translation, the affidavit ends with a declaration that his father has no more relations with his son, and disclaims responsibility for any of his son's words or actions in the future.
15. The appellant confirmed that the message of the affidavit was true. His father had given him 2,000,000 Pakistani rupees towards his inheritance, and had declared in the affidavit that he was withholding the remainder of his promised inheritance.
16. On behalf of the Secretary of State, Mr Duffy submitted the judge had given adequate reasons for rejecting the appellant's claim, and that the judge's failure to establish what the affidavit said did not translate into material error of law. There was no indication that the appellant had sought an adjournment, and in any event, taken at its highest, the affidavit did not salvage or enhance the appellant's general credibility. The document added little to the case. It did not contain a threat against the appellant's life or person, and it made no reference to the appellant's asserted homosexuality.

### **Discussion**

17. While the appellant had lawyers acting for him, he provided them with documents in support of his claim which they included in one of the two bundles prepared for the appeal hearing. Although the appellant claimed to have received the affidavit from his father in 2012, he did not apparently produce it to his lawyers when they were assisting him in preparing his appeal.
18. As the appellant was unrepresented at the hearing itself, it is arguable that the judge should have established the import of the document, by, for example, asking the appellant to give evidence through the court interpreter as to what the document said.
19. But the difficulty for the judge was that, in the absence of a certified translation, he could not be confident that he was being provided with an accurate translation. Moreover, the affidavit's provenance and inherent reliability were inevitably called into question by two material factors which the judge is likely to have had in mind:
  - (a) the fact that the document had not been included in the bundles of documents prepared for the appeal hearing by the appellant's solicitors, even though the document had purportedly come into existence over two and a half years previously; and
  - (b) the appellant's track record of producing false documents, as he did for his visit visa appeal.
20. So, on the particular facts of this case, I do not consider that there was procedural impropriety or unfairness in the judge not seeking to establish what the affidavit actually said. If its contents materially assisted the appellant's claim, it was reasonable to expect the appellant to have communicated this fact to his lawyers, and for them to have arranged for the document and a certified translation to be included in the main or supplementary bundle. Although there was evidence that the appellant suffered from mental health problems, these were not so severe as to prevent the appellant from understanding the asylum process and giving adequate instructions to his lawyers.
21. There are cases where, even though the judge is not at fault, the evidence which has not been taken into account is of such materiality as to render the proceedings procedurally unfair in retrospect. This is plainly not such a case. Taken at its highest, the affidavit does not materially support the appellant's core claim. His father does not allege that the appellant is gay, and he does not make any threat against his life or person. Indeed, it is strongly arguable that the contents of the affidavit are not consistent with the core claim, and thus undermine it. If it were true that the appellant had been ejected from the family home in 2005 on account of his homosexuality, it is difficult to see how it would come about that the appellant's father would delay for seven years before making a declaration that he was withholding the remainder of his son's inheritance.

22. In conclusion, and for the reasons that I have given, I find that the decision of the First-tier Tribunal was not vitiated by an error of law, and the decision stands. This appeal to the Upper Tribunal is dismissed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson