



IAC-AH-CJ-V2

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

Appeal Number: AA/06302/2015

THE IMMIGRATION ACTS

**Heard at Manchester
On 16th December 2015**

**Decision & Reasons Promulgated
On 1st February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

AA

~~{ANONYMITY DIRECTION NOT MADE}~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ansari, Solicitor

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 23rd April 1991. On 22nd September 2011 the Appellant was granted leave to enter the United Kingdom as a Tier 4 Student. Prior to the Appellant's leave expiring the Appellant claimed asylum on 27th February 2013. The Appellant's appeal was dismissed by a Notice of Refusal dated 23rd March 2015. It was noted that the Appellant's claim for asylum was based upon a fear that if returned to Pakistan he would face mistreatment due to his sexual orientation.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Alty on 3rd July 2015. In a decision and reasons promulgated on 15th July the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be entitled to humanitarian protection. I note that before the First-tier Tribunal the Appellant was not legally represented.
3. On 27th July 2015 Grounds of Appeal were lodged to the Upper Tribunal. On 6th August 2015 First-tier Tribunal Judge Nightingale granted permission to appeal. Judge Nightingale noted that the grounds argued that the judge did not consider the facts or approach the case in a proper manner for an unrepresented Appellant. In particular, the grounds argue that the judge failed to have regard to the fact that the witness, who was the Appellant's partner, had been granted asylum based on his sexuality and his relationship with the Appellant. Further they argued that the judge had failed to have regard to the documentary evidence produced.
4. Judge Nightingale considered that it was arguable that the judge had failed to have regard to the relevant fact that the witness, [K], was a recognised refugee. Although that fact was mentioned in [K]'s statement and it was accepted by Judge Nightingale that whilst it is for the Appellant to establish his case, given that the Appellant was unrepresented it was also arguable that the judge had erred in failing to make further enquiries about [K]'s asylum status and the reasons for his recognition by the Respondent. Further Judge Nightingale found that it was arguable that the judge had fallen into error, at paragraph 33, by failing to have regard to relevant documentary evidence showing that the Appellant and [K] had been living together.
5. On 20th August 2015 the Secretary of State lodged a response to the Grounds of Appeal under Rule 24. The Rule 24 response contends that the Grounds of Appeal are a simple disagreement with the findings of the judge and that it was not, as claimed, incumbent on him to request the information regarding [K]'s claim from the Secretary of State and had he done so it was unlikely to have shed any light on the Appellant's claim. The Rule 24 response contended that the fact that [K] had succeeded in his claim did not mean that all the aspects of his claim were accepted and that [K] had attended and given evidence so the judge was well placed to make his own assessment of the credibility of the witness.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant is now represented and appears by his instructed solicitor Mr Ansari. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison.

Submissions/Discussions

7. Mr Ansari submits firstly that the Appellant being unrepresented meant that he did not understand the need to submit [K]'s screening interview and substantive interview in his reply and that the Appellant failed to have enquired further into this point. He submits that the judge did not give

proper consideration to what are known as the *Surendran* guidelines and that when conducting the appeal it is the duty of the Immigration Judge to “give every assistance, which he can give, to the Appellant”. He submits that as a result of a failure to follow the *Surendran* guidelines the judge should have requested confirmation from the Respondent about the reasons for the Secretary of State granting [K]’s asylum and that the judge made a mistake as to a material fact which could be established by objective and uncontentious evidence, where the Appellant was unrepresented an unfairness resulted from the fact that that mistake was made.

8. Secondly he contends it was irrational of the judge not to have found the Appellant to have been a homosexual. He points out that there were 22 questions in the asylum interview relating to the Appellant’s homosexuality and that the Appellant had advised he was in a relationship with [K] and that [K] had been granted asylum on the same factual basis as the Appellant. He submits it was only possible for [K] to have been granted asylum on the basis of his homosexual relationship. He submits the Appellant included [K]’s refugee status document in his bundle and had given evidence to the effect that [K] had been granted asylum on the basis of his homosexual relationship with the Appellant. Therefore he contends it was wholly irrational for the Immigration Judge to have concluded that the Appellant was not credible.
9. He asked me to find that there is a material error of law in the decision of the First-tier Tribunal Judge and to set it aside and to remit the matter back to the First-tier Tribunal for rehearing. Mr Harrison makes merely one submission namely that the Immigration Judge did not know the basis upon which [K]’s appeal had been granted. However he states that he cannot defend the decision of the First-tier Tribunal Judge, that it does disclose in the view of the Secretary of State material errors of law and he would not oppose the decision being set aside and being remitted for rehearing.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge’s factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge’s assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising

after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

12. I am considerably assisted in this matter by the very sensible, constructive and pragmatic approach adopted by Mr Harrison on behalf of the Secretary of State. Given the fact that the Appellant's partner had been granted asylum at an earlier hearing and the fact that the Appellant has contended that the claims are identical, it was incumbent upon the judge to consider the documentary evidence. The judge erred in failing to make further enquiries with regard to [K]'s asylum status and the reason for his recognition by the Secretary of State. In such circumstances I am satisfied that all these errors are material and in addition that the failure to have regard to the relevant documentary evidence showing that the Appellant and [K] were living together, was also a material error of law. The correct approach is consequently, it is agreed by the parties' legal representatives, to set aside the decision of the First-tier Tribunal Judge and to remit it to the First-tier Tribunal for rehearing with additional directions.

Decision and Directions

The decision of the First-tier Tribunal Judge disclosed a material error of law. The decision is set aside and is remitted to the First-tier Tribunal for rehearing. The following directions are to apply:

- (1) That the matter be remitted to the First-tier Tribunal to be heard at Manchester on the first available date, 42 days' hence with an ELH of three hours before any First-tier Tribunal Judge other than Immigration Judge Alty.
- (2) That the Home Office do advise the Appellant's legal representatives by 8th February 2016 as to whether they concede the claim that the grant of asylum to [K] (the Appellant's purported partner) was based solely on his relationship with the Appellant and whether, if that is acknowledged, the Secretary of State wishes to withdraw her Notice of Refusal and whether it is the intention of the Secretary of State to allow the appeal.
- (3) That there be leave to either party to file and serve an up-to-date bundle of evidence at least seven days prehearing, in the event that the Secretary of State does not make the concession considered in direction (2) above and that the appeal therefore is to proceed.
- (4) Urdu interpreter required.

~~No anonymity direction is made.~~

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris