Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07288/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 5 January 2016	**On 14 January 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ABDUL RASHID

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Winter, Advocate, instructed by Maguire Solicitors (Scotland) Ltd
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, born on 25 June 1978. He has not requested an anonymity order, and none has been made.

2. The appellant appears to have come to the UK on or around 1 January 2004, although he made no asylum claim until detected as an overstayer in 2013. The respondent refused that claim on 19 June 2013. First-tier Tribunal Judge Farrelly dismissed his appeal by decision promulgated on 13 October 2015.

3. The appellant's first ground of appeal to the Upper Tribunal is based on failure to take account of or to assess country information. The judge found at paragraph 27 that the appellant left Pakistan on a genuine passport. The ground states that there was no evidence that he would

have been prohibited from leaving Pakistan. Mr Winter did not seek to add to this ground. The Presenting Officer said that it showed no error, but was simply a finding that the appellant left on his own regularly issued passport.

4. I agree that there is no error here. The judge was correct to note that there was no rational explanation of why the appellant would have required an agent to obtain a genuine passport in his own name, and that the simpler explanation was that this was a passport obtained through normal channels.

5. Ground 2 says that at paragraph 29 the judge failed to recognise that the Tribunal is precluded from finding the appellant incredible merely because he did not rely on his declared sexual orientation when first required to set out grounds of alleged persecution.

6. That is correct as a matter of general principle, but it misrepresents paragraph 29 of the determination. The judge there finds failure to claim on arrival to be an adverse factor. That was entirely open to him. As Mr Matthews pointed out, the appellant had a long time thereafter to state his case. The judge made no finding "merely because" sexual orientation was not declared at the outset.

7. Ground 3 is failure to consider cultural context. Mr Matthews submitted that this was a mere expression of disagreement. I see no reason to think that the judge closed his mind to cultural context which might lead to the appellant being slow to divulge his sexual orientation, as disclosed by the evidence on his behalf. This ground discloses no error.

8. Ground 4 submits that there was an onus on the respondent to verify the documentary evidence, and the overlapping ground 5 criticises the finding that the appellant did not establish the provenance of the documents, which bore their own dates and details. Mr Matthews said that at paragraph 34 the judge showed that he was aware of the limited circumstances in which there might be an onus on the respondent, and correctly explained why he did not find there to be an obligation on the respondent in this case. Again I prefer the submission for the respondent. *PJ* (Sri Lanka) [2014] EWCA 1011 at paragraph 30 says that simply because a relevant document is potentially capable of verification does mean that the respondent has an obligation to take that step. The obligation arises in exceptional cases. This case has a long history. The appellant does not appear to have advanced the argument that the respondent was under any such obligation prior to raising it in the present grounds. I see no error in the judge's analysis of the documentary evidence, or in giving it little weight.

9. Ground 6 says that the judge failed to evaluate the appellant's response to alleged inconsistencies in his narration of his escape, and did not undertake his own assessment of the appellant's evidence or explain why his explanations were not credible. I do not find this to amount to more than a further expression of disagreement with a decision which provides adequate reasons on this matter, and as a whole.

10. Ground 7 is the one which principally triggered the grant of permission, and on which Mr Winter centred his submissions. It is said that the judge failed to make findings on the evidence of a witness who said that the appellant told him about his sexuality and that the witness had dropped the appellant off at gay clubs, which was the principal or only supporting evidence regarding his sexuality. Mr Winter said that the gap was obvious. He accepted that to succeed he would also have to make out ground 8, which alleges that the findings eventually reached are contrary to *HJ (Iran) v SSHD* [2011] IAC596 because the appellant could not be expected to act discreetly if such were to avoid persecution. Mr Winter said that the determination accepted at paragraph 39 that there was no legal sufficiency of protection, and that paragraph 40 was contrary to the approach required by *HJ*. The appellant's evidence in his statement was that he behaved discreetly in Pakistan because he was in fear of the authorities.

11. Mr Winter's final submission was that errors were disclosed principally by grounds 7 and 8, but backed up by grounds 4 and 5, and added to by the remaining grounds, such that a fresh hearing was required.

12. The respondent's overall argument was that the judge correctly took a holistic approach, was not required to deal with every detail of the evidence, explained where weight was given, left nothing significant out of account, and reached an overall sustainable conclusion. In that context, the absence of a specific finding on whether the evidence of the witness was accepted or rejected was perhaps regrettable, but immaterial. In any event, the conclusion reached at paragraph 40 was that the appellant, if in Pakistan, would conduct himself with relative discretion as he had done in the past (without adverse consequences) "… *consistent with his upbringing, nature and the social mores in place. This is evidenced by the low level of activity he has described whilst in the UK where there were no restrictions. It is my conclusion his reason for so behaving is not out of fear of prosecution. Consequently, in line with paragraph 82 in Lord Roger's judgment [in HJ] I do not see a real risk of persecution arising.*"

13. On this final and overall point, again I prefer the submissions for the respondent. A further specific finding would at best have been that the appellant told the witness that he is homosexual, and that he had been dropped off occasionally at a gay club. The judge did not accept that the appellant had established he was homosexual. I see no error therein, but in any event the judge recognised the determination of sexual orientation to be a difficult exercise and went on to reach clear findings in the alternative. The conclusions quoted above from paragraph 40 are indeed in line with *HJ* and they are properly decisive of the case.

14. No error of law has been shown. The decision of the First-tier Tribunal shall stand.

Upper Tribunal Judge Macleman

13 January 2016