



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

Appeal Number: PA/02642/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 06th April 2016**

**Decision & Reasons Promulgated
On 14th April 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

MUHAMMAD FAHID ASHRAF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E. Wilford, Counsel instructed by Hartley Bain Solicitors
For the Respondent: Mr L. Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed against the respondent's decision to refuse his asylum and human rights claim. It is not necessary to set out the appellant's full immigration history for the purpose of this decision save to say that he made a number of failed applications for leave to remain before claiming asylum on the ground that he would face persecution for reasons of his sexual orientation if returned to Pakistan.

2. First-tier Tribunal Judge Watt (“the judge”) dismissed the appeal in a decision promulgated on 29 January 2016. The judge noted the evidence that was relied upon in support of the appeal [19]. He heard evidence from the appellant and Mr Siddique, who he says is his partner in the UK [21-27]. He noted that there were a number of witness statements in the appellant’s bundle but none of the other witnesses attended to give evidence [28]. The judge went on to make adverse credibility findings as to the genuine nature of the appellant’s relationship with Mr Siddique with reference to his immigration history and late disclosure of his claimed sexual orientation [34-38]. In assessing whether the witnesses gave credible and reliable evidence he also noted:

“39. I did not regard either of the witnesses as credible or reliable. In particular, Mr Siddique presented his evidence in a very odd manner. He was extremely aggressive at the commencement of his evidence and spoke exceedingly quickly. He then became emotional at the end of the evidence for no apparent reason.

40. Looking at all the evidence in the round in this case I am not satisfied that there is a gay relationship between the appellant and Mr Siddique. I consider it more likely that the relationship is a sham invented by the appellant and Mr Siddique to try to obtain asylum for Mr Ashraf in this country.”

3. The appellant seeks to appeal the First-tier Tribunal decision on the following grounds:
 - (i) The First-tier Tribunal failed to take into account and make findings in relation to evidence that was material to a proper determination of the appeal. In particular, the judge failed to make any findings regarding the witness statements testifying to the genuine nature of the relationship.
 - (ii) The First-tier Tribunal erred in placing weight on the demeanour of the appellant’s partner and/or failed to give adequate reasons for concluding that his evidence was unreliable.
 - (iii) The First-tier Tribunal failed to give adequate reasons to explain negative credibility findings. For example, the judge failed to consider the appellant’s explanation for late disclosure of his sexual orientation or the explanation as to why at least one of the witnesses was unable to attend.
4. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision involved the making of an error on a point of law.
5. While it was open to the judge to take into account matters giving rise to concerns about the credibility of the appellant’s claim, such as his immigration history, it is apparent from an overall reading of the decision

that the judge focussed on those matters without making any clear findings in relation to the evidence that might support the appellant's claim. Although evidence provided in witness statements where a person does not attend to give evidence is not usually given significant weight the judge noted that the appellant had provided a number of supporting statements but failed to make any findings as to what weight he placed on them. The appellant provided an explanation as to why Mr Siddique's mother was unable to attend although no explanation appears to have been offered for the absence of the other witnesses. The appellant's bundle also contains photographs and other evidence to suggest that the appellant and Mr Siddique may live at the same address but no findings were made as to what weight was placed on that evidence.

6. It seems clear that the judge had some concerns about the way in which Mr Siddique presented his evidence at the hearing because he mentioned it in two places in the decision. However, taken alone the demeanour of a witness is a poor measure of reliability. Even if Mr Siddique presented his evidence in "an odd manner" it was incumbent on the judge to give adequate reasons to explain why his presentation rendered his evidence unreliable. Nothing in the decision suggests that the judge asked Mr Siddique why he behaved in the manner he did or that he considered any alternative reasons for his presentation at the hearing. The judge failed to make any clear findings to explain why he rejected Mr Siddique's evidence.
7. While the judge was entitled to take into account certain matters that undermined the appellant's credibility he failed to take into account other material matters that might support his claim. As such the First-tier Tribunal erred by omission.
8. It was agreed at the hearing that if I found that the decision contained an error of law then the appropriate course of action would be to remit the appeal to the First-tier Tribunal for a fresh hearing before another First-tier Tribunal Judge.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

I set aside the decision and remit the appeal to the First-tier Tribunal for a fresh hearing

Signed  Date 11 April 2016

Upper Tribunal Judge Canavan

