



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

Appeal Number: PA/01549/2017

THE IMMIGRATION ACTS

Heard at Taylor House

Decision & Reasons

Promulgated

On 3 July 2017

On 17 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**JA (PAKISTAN)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Alam, Wilson Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Mill sitting at Hatton Cross on 14 March 2017) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international or human rights protection, on account of his claimed homosexual orientation.

The Reasons for the Grant of Permission to Appeal

2. Permission to appeal to the Upper Tribunal was initially refused by First-tier Tribunal Judge Robertson on 20 April 2017. As his reasons anticipate the Secretary of State's subsequent Rule 24 response opposing the appeal, is it convenient to set them out here:

"I appreciate the application is important to the appellant. However, his appeals on asylum, Article 2 and Article 3 grounds were dismissed because he failed to establish that he was a homosexual; he and his witnesses were found to be lacking in credibility. The only challenge to this finding was to be found at para 11 of the grounds of application wherein it is stated that the Judge declined to examine the material laid before him. This submission has no arguable merit because the Judge considered the evidence of the appellant at [20] - [23] and [27], the evidence of his witnesses at [24] - [26], and the documentary evidence as provided at [28] - [33]. The Judge's credibility findings were open to him on the evidence before him and were not unreasonable or irrational."

3. On a renewed application for permission to appeal, Upper Tribunal Judge Finch granted the appellant permission to appeal on 25 May 2017 for the following reasons:

"The First-tier Tribunal Judge applied a standard of proof which appears to be considerably in excess of that of a reasonable degree of likelihood. He also did not take into account any objective evidence when considering actions taken by the appellant. In addition, he did not adopt the approach recommended in **Karanakaran -v- Secretary of State for the Home Department [2000] EWCA Civ 11**. As a consequence, it is arguable that First-tier Tribunal Judge Mill's decision did contain arguable errors of law and it is appropriate to grant permission to appeal."

The Error of Law Hearing

4. At the hearing before me to determine whether an error of law was made out, Mr Alam developed the arguments advanced in the permission application. In reply, Mr Duffy submitted that in effect the appellant was mounting a perversity challenge. He submitted that the threshold for this was very high.

Discussion

5. Although not cited to me, I have had regard to **Muse & Others v Entry Clearance Officer [2012] EWCA Civ 10** on challenges to the adequacy of a judge's reasons. In **South Bucks District Council v Porter (2) [2004] UKHL 33**, cited with approval by the Court of Appeal at paragraph [33], Lord Brown said:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues

falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration.”

6. The appellant is a national of Pakistan, whose date of birth is [] 1992. He entered the United Kingdom with valid entry clearance as a student in September 2011. His student visa was curtailed to expire on 16 November 2011, and the appellant did not return to Pakistan before the expiry of his visa. On 20 November 2015 he applied for leave to remain in the UK on private life grounds, and the application was rejected. He made a further application for leave to remain in the UK on private life grounds on 21 April 2016, and this application was under consideration when the appellant claimed asylum in or about January 2017.
7. His claim was that he realised that he was a gay man in Pakistan in 2008, when aged 15 or 16. He did not have any relationships with other males whilst in Pakistan. He said that he started attending gay clubs in London in 2014, and he had embarked on a relationship with a man named “IK” who he had met here. He said that this was his first and only gay relationship. He said that in October 2015 he had told his family in Pakistan about his sexuality, and in response they had made threats to kill him if he returned to Pakistan.
8. At the hearing of his appeal, the Judge received evidence from the appellant, and from two supporting witnesses, “SK” and “HA”. Neither of the two supporting witnesses claimed to have been in a homosexual relationship with the appellant, although HA said that he had had oral sex with the appellant at a club in London on 28 January 2017 in a toilet cubicle, as the Judge noted in his subsequent decision at paragraph [25].
9. The Judge found that the appellant and his supporting witnesses were not credible for the following reasons: (a) the appellant had been inconsistent in his explanation as to why he was found by Immigration Officers in October 2016 behind the counter of a restaurant; (b) he had not availed himself of the opportunity to claim asylum at the earliest reasonable opportunity; (c) the appellant was inconsistent as to the trigger for him eventually making an asylum claim - in his asylum interview he said that he had told his family about his sexuality in October 2015, as a result of which they had made direct threats against him, and in his oral evidence he said that a friend of his had travelled to Pakistan in October 2015 and had made the disclosure to his family; (d) SK contradicted both these two versions of events, as he was very clear in his oral evidence that it was in 2014 that the appellant had received threats from his family in Pakistan, and he said that he had advised the appellant in 2014 that he should therefore make an asylum claim; (e) even if the appellant’s family did not find out about his claimed homosexuality until October 2015, this was still some 9 months before the appellant made his asylum claim; (f) SK claimed to have been very good friends with the appellant since his arrival in the

UK in 2011, but he was apparently unaware of the appellant's sexuality until 2014 - whereas the appellant had said in his asylum interview, in answer to question 54, that his friend had known him to be homosexual since the time that he had met them; (g) the Judge found that SK did not know the appellant well, despite his own and the appellant's claims otherwise, and he had not given evidence to support the alleged same-sex relationship which the appellant claimed to have had with IK; and (h) the appellant had not been credible or consistent about the claimed relationship with IK - he had been unable to name the snooker club where he claimed to have met him in August 2014 in his asylum interview, he had given vague details about where the man lived, and he stated that he had started dating IK in October 2015, which was inconsistent with the parallel claim that both this family and that of IK were told in October 2015 of their relationship as it had grown stronger by then.

10. At paragraph [28], the Judge noted that the appellant had submitted various documents to support his asylum claim and the fact that he was homosexual. He directed himself that the appellant was required to show that documents could be relied upon and that they could not be seen in isolation, following **Tanvir Ahmed**. At paragraph [29], he held that the letter from Naz, a Sexual Support Group for ethnic minorities, was self-serving.
11. At paragraphs [30]-[31], he held that the same applied to a ticket displaying his name to attend the London Pride 2016 event on 25 June 2016, and numerous other leaflets and emails received from a variety of LGBT sources. At paragraph [32], the Judge said that the appellant did not claim to be actively involved in the gay community. However, in his substantive asylum interview, he said that he had attended LGBT UK when it was located in Normand Street, Southwick. In fact, it was based some 1.5 miles away in Aldersgate Street, London. The Judge observed that the appellant provided no explanation for this discrepancy.
12. At paragraph [34], the Judge gave his reasons for not accepting that the appellant was gay. In summary, he made a late asylum claim after having received an immigration decision; he was inconsistent about how his family in Pakistan found out that he was gay; his witnesses who had claimed to know him well did not appear to do so and were not credible and reliable; he had not independently established that he was in a gay relationship for more than one year; and he appeared to have a lack of knowledge and/or participation in the LGBT life in the UK; he had failed to evidence that he was a homosexual; and he had failed to regularise his stay after overstaying and his second application for leave to remain was made after his alleged sexuality was made known to his family and others in Pakistan, and some time before his asylum claim. All of those factors undermined his claim. He did not find the appellant to be a credible and reliable witness, and he did not rely on this evidence.
13. At paragraph [4] of his decision, the Judge had directed himself that the lower standard of proof applied. I am not persuaded that the Judge has

failed to apply the lower standard of proof in accordance with his self-direction. In effect, the error of law challenge is that he must have applied too high standard of proof, as he has rejected evidence which he ought not to have rejected.

14. But an error of law challenge on this basis is not sustainable for the reasons given in **Muse**. The reviewing court cannot simply infer that the Judge has applied the standard of proof incorrectly and/or the wrong standard of proof. The party asserting such an error of law has to identify something in the decision which is indicative of the judicial decision-maker applying the wrong standard of proof. The appellant has failed to do this.
15. One discernible theme in Mr Alam's submissions was an argument to the effect that the evidence was so strong that it was perverse for the Judge to find that the core claim was not made out to the lower standard of proof. However, the evidence brought forward by the appellant was not particularly compelling, on an objective assessment. He had not produced any documentary evidence of threats received from his family in Pakistan, and his former claimed sexual partner had not come forward to give supporting evidence of the appellant's homosexuality. The Judge accepted at paragraph [27] that it might be impossible for the appellant to "engage" an ex-partner to give evidence, but it was open to him to find, as he did, that there was "a vacuum of evidence" to support the existence of the relationship which was said to have been sustained for some time.
16. Another theme of Mr Alam's submissions was that some of the findings made by the Judge were inadequately reasoned. However, this is not the same as the Judge failing to apply the correct standard of proof. Moreover, most of the Judge's findings were not specifically challenged as inadequately reasoned by Mr Alam.
17. Mr Alam submitted that the private life application which the appellant had made in 2015, and again at the beginning of 2016, had been made on the basis that he was in a gay relationship. This is consistent with the appellant having obtained from Naz a letter dated 12 January 2016 confirming that he had first used their services on that day during which he had an HIV test, and confirming that he presented as a gay man of Pakistani heritage. But this does not detract from the finding made by the Judge that the appellant failed to provide any adequate or credible explanation for why he did not claim asylum sooner than August 2016.
18. Mr Alam submitted that the Judge wrongly rejected the evidence from Naz at paragraph [29], as Naz is (he submits) an independent organisation. However, the author of the letter from Naz was not purporting to give expert evidence. All he was doing was confirming that the appellant had attended the service on the day in question, asking for an HIV test, and that he presented as a gay man of Pakistani origin. It was open to the Judge to find that the letter was self-serving, as it was not a letter which presented as being issued in the ordinary course of business. The appellant had clearly asked for the letter to be written. It was this open to

the Judge to find that the timing of the letter raised suspicions regarding the purpose for which the appellant had attended the Naz service. The Judge added that there was no indication, "*as is sometimes seen in letters from the Naz Project that the individual's claims of sexuality are believed/supported.*" The Judge further observed that there was no evidence to suggest that the appellant had maintained contact with or used Naz services at any other time. So, it was open to the Judge to attach no weight to the Naz letter as materially advancing the core claim, for the reasons which he gave.

19. Mr Alam also submitted that the Judge had failed to make findings on letters of support from witnesses who had not attended the hearing to give oral evidence. However, the Judge was not obliged to consider every piece of evidence individually. The evidence of the witnesses who had attended the hearing, and who had been tendered for cross-examination, had much greater potential probative value than the evidence of those who had only provided letters of support. The Judge gave adequate reasons for finding that HA and SK were not credible and reliable witnesses.
20. In granting permission to appeal, Judge Finch observed that the Judge did not take into account any objective evidence when considering actions taken by the appellant. This was not a point developed by Mr Alam, and it does not appear to me to be a point of any merit. All the appellant's relevant actions have been in the United Kingdom. The objective evidence as to the situation which the appellant would face on return to Pakistan would only be relevant if the Judge had found that the appellant was gay.
21. At paragraph [35], the Judge found that the first test set down in **HJ (Iran)** was not met. In the circumstances, he did not find it necessary to go on to consider the issue of sufficiency of protection or risk to the appellant on return to Pakistan, other than to observe generally that those who are homosexual were likely, at least, to face harassment and intimidation within Pakistani society. But, in view of his primary findings, these matters were, he said, irrelevant to the consideration of the appellant's case. The position taken by the Judge on risk on return does not disclose any error of law.
22. In the permission application, the appellant's representatives cited the case of **Karanakaran** for the proposition that, "*an asylum claim could succeed even though the person assessing it might doubt part of the account.*" This is undoubtedly right, but the permission application fails to explain how this observation is relevant to the decision under appeal.
23. The Judge has unequivocally stated that he attaches no credence to the oral evidence of the witnesses before him, or to the contents of the salient documents which were relied upon in support of the core claim. It was open to the Judge to make these findings for the reasons which he gave, and no breach of the guidance given by the Court of Appeal in **Karanakaran** is made out.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly 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 16 July 2017

Judge Monson

Deputy Upper Tribunal Judge