



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/00247/2018
PA/00250/2018

THE IMMIGRATION ACTS

Heard at Field House
On 15 June 2018

Decision & Reasons Promulgated
On 29 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

(1) AR (PAKISTAN)
(2) AH (PAKISTAN)
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr G Lee, Counsel instructed by Rasheed & Rasheed Solicitors
For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal from the decision of the First-tier Tribunal (Judge Cameron sitting at Taylor House on 2 February 2018) dismissing their appeals against the decision of the Secretary of State to refuse to recognise them as refugees on account of their claimed sexual orientation.

The Reasons for the Grant of Permission to Appeal

2. On 27 March 2018, First-tier Tribunal Judge Landes granted permission to appeal for the following reasons: *"It is arguable that the Judge erred by not engaging with the evidence of the [third party] witnesses. He summarises their evidence but he does not explain what he made of their evidence and in particular why he rejected it or gave it little weight. Any error is*

arguably material given the evidence of the witnesses was potentially significant corroboration of the appellants' claims."

Relevant Background

3. The appellants are nationals of Pakistan. Each of them arrived in the UK as a student. Each of them subsequently sought to secure their immigration status in the UK through a reliance on at least one heterosexual relationship. In the case of the first appellant, he relied on two relationships with women. On 6 January 2016 he applied for leave to remain on family and private life grounds on the basis that he was engaged to a French national, Farida Omar. On 28 July 2016 his legal representatives made further submissions stating that he was now in a genuine and subsisting relationship with a Portuguese woman, Katarina, to whom he was engaged. The second appellant applied for a certificate to marry Ms Slepckova on 30 April 2010.
4. On 2 October 2017 the appellants entered into a same-sex civil partnership, and around the same time they claimed asylum on the basis that they would face persecution in Pakistan as homosexuals. Their applications for asylum were refused on 19 December 2017.

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

5. All the parties were legally represented before Judge Cameron. The Judge received oral evidence from the appellants and from two supporting witnesses, Mr Irfan and Mr Zia. Both stated that they knew that the appellants were living as a gay couple. Mr Irfan confirmed that he had seen the appellants together over the last 5 or 6 months. Both witnesses were cross-examined by the Presenting Officer.
6. Judge Cameron gave his reasons for dismissing their appeals in a decision which ran to 18 pages. He set out the submissions of the Legal Representatives at paragraphs [31]-[53]. He rehearsed the evidence of the appellants, and their respective immigration histories, at paragraphs [59]-[101] (page 8-13).
7. At paragraph [102], he summarised the evidence given by Mr Irfan, and at paragraph [103] he summarised the evidence given by Mr Zia. At paragraphs [104]-[106], the Judge referred to the additional evidence relied on by the appellants as corroborating their core claim, which included witness statements from other third party witnesses who had not attended to give oral evidence.
8. At paragraphs [109]-[120], Judge Cameron gave his reasons for finding the appellants not credible in the evidence which they had given. At paragraph [121], the Judge continued: *"I accept the appellants have provided witness statements in support and also evidence that they attend gay events and gay clubs. I also accept that they have gone through a civil marriage."*
9. At paragraph [122], the Judge said that he was not, however, satisfied that, *"after taking into account all of the evidence available"*, either of the appellants had been credible in relation to the current claim that they were homosexual. The inconsistencies in their

evidence, together with the fact that both the appellants had sought leave to remain on a number of occasions on other grounds including applying for a certificate of marriage, led him to the conclusion that the appellants had not been truthful in relation to their current sexuality and that this had been put forward as a ground now because their previous applications had been refused.

10. At paragraph [124], the Judge addressed the submission that, even if he did not accept the evidence of the appellants, they would still be at risk on return due to a perception that they were homosexual, in particular given how they dressed and carried themselves and expressed themselves. He did not accept that submission. The appellants had shown in the past that they were able to put forward grounds for leave which were not true. Although there were a number of photographs which clearly showed the appellants in settings such as gay festivals and gay clubs, *“the appellants have clearly shown themselves able to manipulate their position to their best advantage.”*

The Hearing in the Upper Tribunal

11. At the hearing before me to determine whether an error of law was made out, Mr Lee developed the case which he had pleaded in the grounds of appeal. He submitted that the evidence given by Mr Irfan and Mr Zia was on its face powerful corroboration that the appellants were gay, as claimed. At the very least, this evidence ought to have been engaged with. The Judge noted that the witnesses were called and what they said, but their evidence did not form part of his analysis of the appellants' case. He had not made any findings as to the credibility of the live evidence of these two witnesses. His approach was not consistent with the binding authority of **MK (Duty to give reasons) Pakistan [2013] UKUT 641 (IAC)**, where the Tribunal said as follows: *“If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that the witness is not believed or the document was afforded no weight is unlikely to satisfy the requirement to give reasons.”*
12. Ms Isherwood, on behalf of the Home Office, submitted that it was not necessary for the Judge to comment specifically on the evidence of the two witnesses. The shortcomings in their evidence had been highlighted by the Presenting Officer in closing submissions. Their evidence did not constitute powerful corroboration of the appellant's claims. It was not so cogent as to outweigh the adverse credibility findings that the Judge had made on the evidence given by the appellants themselves. Neither of the two supporting witnesses claimed to have seen overt evidence of the appellants being a genuine homosexual couple.
13. In reply, Mr Lee submitted that the Judge had simply not engaged with the evidence of the two witnesses, and so it was not known whether the Judge disbelieved the witnesses because he regarded their evidence as dishonest, or whether his explanation for not finding their evidence persuasive was that he was of the view that Mr Irfan and Mr Zia had been duped by the appellants - and that the behaviour observed by Mr Zia and Mr Irfan was all part of an elaborate charade.

Discussion

14. As a general rule, a judge is not required to make a specific finding on every piece of evidence. Moreover, the Judge's approach to the evidence of Mr Irfan and Mr Zia did not constitute a direct transgression of the guidance given in **MK** cited by Mr Lee. For the Judge did not say in terms that he did not believe their evidence. Nor did he say in terms that he gave no weight to their evidence. On the face of it, he took their evidence into account, alongside all the other available evidence, in reaching the conclusion that neither of the appellants had been credible in relation to their current claim that they were homosexual and, hence, were a genuine homosexual couple.
15. I accept Ms Isherwood's submission that it was open to the Judge to find that the evidence which undermined the core claim outweighed the evidence which supported it, in the context of an overall case theory that the appellants had, as the Judge found at paragraph [124], shown themselves able to manipulate their position to their best advantage. In short, the Judge was clearly of the view that the appellants were capable of cynically adopting – and had done so – the outward manifestations of being gay in order to procure an immigration advantage.
16. However, justice must not only be done, but must be seen to be done. The evidence of the live witnesses was potentially crucial corroboration, as they were available to be cross-examined, and the thrust of their evidence was that the appellants presented to them as a genuine gay couple. Such evidence had inherent probative value. Since the Judge did not directly engage with this evidence, it is not clear to the reasonable reader what he made of it. In particular, it is not clear whether the Judge did not believe them; or whether he did believe them, but he was of the view that the appellants had successfully pulled the wool over their eyes. The upshot is that there is a lack of adequate reasoning on a material issue.
17. In conclusion, I am persuaded that an error of law is made out, as pleaded in Mr Lee's grounds of appeal. As credibility is the central issue in these appeals, none of the findings of fact made by the Judge in his otherwise comprehensive and painstaking discussion can stand, and this appeal must be remitted to the First-tier Tribunal for a *de novo* hearing.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and must be remade.

Directions

This appeal is remitted to the First-tier Tribunal at Taylor House for a fresh hearing (Judge Cameron incompatible), with none of the findings of fact made by the previous Tribunal being preserved.

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

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

Signed

Date 28 June 2018

Judge Monson

Deputy Upper Tribunal Judge