



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

Appeal Number: PA/00776/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 31 October 2018**

**Decision & Reasons
Promulgated
On 12 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**[A I]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W M Rees, Counsel instructed by Farani Taylor
Solicitors

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Hussain promulgated on 18 April 2018. The appellant is a Bangladeshi national born on 7 December 1992. He appealed from the Secretary of State's decision in January of this year to refuse his application for asylum or discretionary leave, alternatively leave to remain on family or private life grounds.

2. The principal issue for the judge to determine was one of fact, namely whether the appellant had made out his claim to be homosexual. The judge dealt with that matter and at paragraph 18, rejecting the claimant's contention. The judge was not satisfied that the appellant had discharged the burden of proof which lay on him in this regard.
3. Permission to appeal to this Tribunal was granted by Upper Tribunal Judge Plimmer on 18 September 2018. The following reasons were stated:

“It is arguable that the First-tier Tribunal made an adverse credibility finding regarding the appellant's claim to be gay at [13] prior to and separately from supporting evidence from witnesses as summarised at [14] to [15]. The reference to considering all the evidence in the round at [17] arguably focuses upon the documentary evidence alone - see [16] and [17]”.
4. Mr Rees, who represents the appellant today, settled the grounds which led to Judge Plimmer granting permission. He has augmented those written grounds with oral submissions this morning. His principal and fundamental submission, to adopt his words, is that the judge's commentary at paragraph 13 effectively meant that “the die was cast” and that led inevitably to the dismissal of the appeal.
5. Accordingly it is necessary to scrutinise with care the particular paragraphs of the decision on which I have heard detailed submissions from the representatives this morning. It set them out in full, beginning at paragraph 13.

“13. I have considered the appellant's claim and make an adverse credibility finding for the following reasons:

 - (a) The appellant claims that when his father discovered his sexuality he beat him and disowned him. However this is inconsistent with the evidence that his father supported him in applying for a student visa and continued to provide financial support whilst studying in the UK.
 - (b) The appellant states that he is unable to return to Bangladesh as his father was informed of his active gay relationships in the UK and has therefore lodged a criminal case against him in Bangladesh in or around October 2014. I do not find this credible given that, on the appellant's case, his father was aware of his sexuality before he left Bangladesh. There appears to be no credible reason for why the appellant's father would want to publicise his son's sexuality when he is not in Bangladesh furthermore there appears to be no credible reason as to why his father would start criminal proceedings against his son some 5 years after he left Bangladesh.
 - (c) The appellant entered the UK on 20.11.2010. He stated that he was involved in several gay relationships whilst in Bangladesh. This was discovered by his parents who beat him. This was the reason he states why he came to the UK to claim asylum. However, he entered the UK on a student

visa and despite several applications for extensions of his visa he failed to make his claim for asylum. He was given a notice of removal on 9.2.2015 but did not claim for asylum until 15.11.2016. He states that he was living freely as a gay man whilst in the UK and so no satisfactory explanation has been given for the delay. In the circumstances I make an adverse credibility finding pursuant to section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004) Act by reason of the appellant failing to make an asylum claim until 15.11.2016.

14. I also heard evidence from Mr [SC], he confirmed and adopted his letter at page 22 of the appellant's bundle. In particular he identified himself as gay and knew the appellant as gay also. I do not find the evidence provided by Mr [C] as reliable. This is because he confirmed that he had also been a witness in relation to another asylum claim at this tribunal in the previous week. He did not purport to be attending as a representative of any particular organisation so I am not satisfied that his evidence was either reliable or independent. In any event, on his own evidence he only came to know the appellant from 13.5.2017, this being after his claim for asylum.
15. I also heard the evidence from Mr [Z], he identified himself as a long time friend of the appellant. He confirmed that he knew that the appellant's sexuality as being gay and further was aware of the appellant's same sex relationship with [B] whilst in the UK. I do not accept the evidence of Mr [Z], this is because he purports to confirm the appellant's relationship with [B], which was said to have existed prior to his claim for asylum, however there is a complete absence of any evidence of [B]'s existence or that he was gay. Whilst corroboration of aspects of a claim for asylum is not necessary, given that these facts are said to have occurred in the UK, it is not unreasonable to expect the appellant to provide some supporting evidence. Given the vague nature of the details of the relationship I am not prepared to accept that the appellant has been in a relationship with [B] and Mr [Z]'s evidence is not satisfactorily supported.
16. The appellant has also submitted several documents to show attending gay events. In considering these documents I rely upon the guidance of **Tanveer Ahmed [2002] UKIAT 00439** which states that it is for an individual claimant to show that a document on which he seeks to rely can be relied on and that I should consider whether a document is one on which reliance should properly be placed before looking at all the evidence in the round.
17. Having considered all the evidence in the round I find that these are not documents that I can place any weight upon. This is because all post date his claim for asylum and given that he claims to have been openly gay since coming to the UK, there is a distinct lack of evidence to demonstrate this until after he claimed asylum.
18. I find that the appellant has not established to the standard of proof required that he would have a well-founded fear of

persecution for a Convention reason were he returned to Bangladesh”.

6. Mr Rees made detailed submissions in relation to the three elements of paragraph 13 which he says amount to a pre-judgment of the fundamental factual issue whereby, to coin his phrase, the die was cast. In relation to subparagraph (a) he suggests that it was not open to the judge to make that finding, indicating that the father sending the son to the United Kingdom was to “straighten him out”. In relation to paragraph (b) he says there is an explanation for the appellant acting as he did which the judge should have considered; and in relation to paragraph (c) again it is suggested that there is a perfectly credible explanation for the delay, namely that the appellant only agitated to seek asylum once the relationship with his family had broken down.
7. These criticisms of the judge are not well-founded. Analysing and assessing evidence is a matter for the tribunal of fact and ascribing weight to different parts of the evidence is part and parcel of that process. That First-tier Tribunal Judge has the benefit of hearing live evidence and having it tested in cross-examination, a privilege denied in the reviewing function of the Upper Tribunal. I do not consider that giving indications at this stage in the decision that the judge had concerns with the appellant’s credibility in relation to the appellant’s evidence is in any way a pre-judgment of what came afterwards. Reading the decision in a detached holistic makes abundantly clear that the judge considered at all the evidence in the round.
8. Mr Rees’ criticism of paragraph 14 is rooted in the fact that the judge seemed to give diminished weight to Mr [C]’s evidence on the basis that he had given similar evidence in another case at the same Tribunal centre the previous week. Whilst I agree, and Ms Willocks-Briscoe properly concedes, that this particular matter is not expressed well, nor is it something upon which the judge should have placed particular reliance, the final sentence of paragraph 14 reads: “In any event, on his own evidence he only came to know the appellant from 13.5.2017, this being after his claim for asylum”. So, although there can be criticism of the judge for the remarks he made in relation to Mr [C], the probative value of such relevant evidence as he was able to give is unaffected.
9. Next comes the judge’s assessment of the evidence of Mr [Z]. Here Mr Rees’ particular criticism is directed towards the fact that there was apparently a photograph of the gentleman named as [B] in the bundle of documentation before judge. The existence or otherwise, the photograph is not and cannot be determinative. What paragraph 15 makes clear is that the judge is properly assessing the weight that he could place upon Mr [Z]’s evidence and its relevance. Significantly, the judge records “the vague nature of the details of the relationship” which Mr [Z] was able to provide. The judge came to a careful evaluation of the quality and probative value of Mr [Z]’s evidence and concluded, as he was entitled to

do, that it did not satisfactorily support the appellant's claim to have been in a homosexual relationship with [B].

10. No proper criticism can be made of the judge for giving little weight to documentation purporting to show the appellant's attendance at gay events when, as is common ground, those matters all post-date the claim for asylum being made.
11. During the course of oral argument Mr Rees made criticism of the judge for not making reference to a legal opinion, duly authenticated, provided by a Noushad Parvez practising as CLP (Counsels Law Partners) from an address in Bangladesh. Mr Rees submitted that this evidence should have been referred to and weighed in the balance.
12. In particular, Mr Rees took me to paragraph 1.5 of this legal opinion which reads: "In UK, Mr. [I] regularly goes to the gay club with his partner". The difficulty for Mr Rees is that that quotation is taken from a passage of the letter beginning Summary of Facts which speaks at 1.1 as being "information provided by you". All this expert legal opinion does is to recite the instructions received in relation to the appellant. It cannot amount to relevant and admissible evidence as to the appellant's sexual orientation. The judge can be criticised for not expressly citing that legal opinion. Reference is made to the criminal law and the legal position in Bangladesh, a matter which as it transpired was not contentious. There was no need to make reference to the legal opinion which, in any event, contained nothing of relevance to the factual issue of whether the appellant is homosexual.
11. Mr Rees raised one final point, although he properly accepted this was not included in the Grounds of Appeal. It concerned the relevance and applicability of **HJ (Iran)**, and the distinction between the appellant's *de facto* sexual orientation and how it may be perceived. This is not a ground of appeal, nor has any application been made to amend the grounds, therefore it does not fall for consideration. For the avoidance of doubt, had permission been sought to advance it as an additional stand-alone ground, it would not have found favour because it has no relevance to this decision which was one of fact, the principles of **HJ (Iran)** having no impact upon the assessment of evidence as to the appellant's sexual orientation.
12. Viewing the decision in the round and taking into account all Mr Rees' submissions, I can see no basis upon which it would be appropriate to set aside the decision of the First-tier Tribunal. The judge has clearly given full regard to all the evidence and come to a conclusion which was open to him on that evidence. I can find no error of law either as propounded in the grounds or as argued in oral submissions this morning. It follows that this appeal must be dismissed.

Notice of decision

- (1) Appeal dismissed and decision of First-tier Tribunal affirmed;

(2) No anonymity direction is made.

Signed *Mark Hill*

Date

6 November 2018

Deputy Upper Tribunal Judge Hill QC