



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01454/2017

**THE IMMIGRATION ACTS**

Heard at Liverpool Employment Tribunals  
On 7<sup>th</sup> February 2018

Decision & Reasons Promulgated  
On 2<sup>nd</sup> March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[B S]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr T Mahmood (Counsel)

For the Respondent: Mr C Harrison (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge E. M. M. Smith, promulgated on 21<sup>st</sup> March 2017, following a hearing at Bennett House, Stoke-on-Trent, on 13<sup>th</sup> March 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal.

## **The Appellant**

2. The Appellant is a male, a citizen of Iraq, and was born on [ ] 1992. He appealed against the decision of the Respondent Secretary of State, dated 24<sup>th</sup> January 2017, refusing his application for asylum and humanitarian protection under paragraph 339C of HC 395.

## **The Appellant's Claim**

3. The Appellant's claim is that from the age of 14 years, he realised he was gay, and thereafter entered into a relationship with a boy named Herish at school and had sex with that boy. After that relationship had ended, in 2009 he was caught by staff hugging and kissing a boy called Mustafa, as he attempted to pull Mustafa's trousers down, which resulted in his expulsion from the school. His father became aware of this and banned him from leaving the house. The Appellant was required to accompany his father to their shop and to live and to remain there. After some three years, his father began to allow him to leave the shop on his own to build furniture for customers. In 2015, he met a man called Omed, who was married, but notwithstanding this, a relationship developed between the two of them, and after six weeks they began a sexual relationship. After a year the Appellant's father and brothers found out and questioned Omed and threatened to kill him. At that stage Omed encouraged the Appellant to leave Iraq and on 5<sup>th</sup> August 2016 the Appellant left Iraq. He arrived in the UK on 16<sup>th</sup> August 2016. His screening interview took place on 17<sup>th</sup> August 2016, and his SEF interview was on 14<sup>th</sup> January 2017. The Respondent issued her refusal letter on 24<sup>th</sup> January 2017.

## **The Judge's Findings**

4. The judge did not find the Appellant to be credible in the account given (see paragraphs 16 to 21). It was not credible that if an act as serious as pulling another boy's trousers down, which had been witnessed by other staff, would not have resulted in the incident being reported to the Authorities. The Appellant could not explain why he had not been reported. The judge held that, "that assault had been witnessed by staff" with respect to the Appellant's "homosexual tendencies" and it was "quite incredible" that the Authorities had not been informed (para 18).
5. Second, the Appellant also gave inconsistent accounts. His account in his SEF interview (question 85) was very different from the account he gave in his screening interview. In the first account, the Appellant stated that the school simply told him to leave and to go and get his father, but the Appellant did not return thereafter to school. In the second account he states that he did return to school with his father and goes into some detail as to what happened (paragraph 19).
6. Third, the judge held that the Appellant's claim in relation to the relationship with Omed was also lacking in credibility because it was not credible, given the watchful eye kept on him by his family, that he was able to develop a relationship with Omed without alerting Omed's family or his own about this. Even less credible was the statement that he met with Omed in the shop and in other public places without being found out. (Paragraph 20).

7. Finally, although two witnesses attended on the Appellant's behalf, namely, a Mr [H], and a Mr [O], both could only say that their knowledge of the Appellant's homosexual tendencies was one which was imparted to them by the Appellant himself (paragraph 23).

### **Grounds of Application**

8. The grounds of application state that the judge failed to give adequate reasons for findings on material matters. The judge also failed to give the Appellant the benefit of the doubt. She placed too high a standard of proof on him. The Appellant had applied for asylum on the basis of his homosexuality.
9. On 20<sup>th</sup> September 2017, the Upper Tribunal granted permission to appeal on the basis that although the Grounds of Appeal amount to "lengthy disagreements with the decision" it was arguable that the judge failed to give reasons for rejecting the explanations provided by the Appellant "in his witness statement".
10. On 11<sup>th</sup> October 2017, a Rule 24 response was entered to the effect that this was an attempt to re-litigate the matter because the judge had given perfectly credible reasons at paragraphs 16 to 25 for rejecting the Appellant's claim that he was a homosexual. In fact, the Appellant appeared to be incredulous that part of his claim had been rejected. In his witness statement he states that he was "very surprised" when parts of the AIR and SCR were read back to him. He appeared to think that there was nothing contradictory in his answers. Second, the suggestion that the reason why the school did not tell Mustafa's parents that the boy had been assaulted at school by the Appellant was that this "would lead to killing and bloodshed", but this explanation was entirely speculative for the motives of the school. In fact, at the hearing, the Appellant had said that he was not sure why the school had not reported the issue. The judge had found that the failure was not credible as reporting it would have protected Mustafa's reputation and avoided any accusation that the school condoned what was regarded as a serious offence.

### **The Hearing**

11. At the hearing before me on 7<sup>th</sup> February 2018, the Appellant was represented by Mr T Mahmood, of Counsel, and the Respondent was represented by Mr C Harrison, a Senior Home Office Presenting Officer. Mr Mahmood submitted that insofar as there were any inconsistencies in the Appellant's oral account given at the hearing, these could have been dispelled with had the judge given regard to the written evidence in the witness statement. I pointed out to Mr Mahmood that it did appear to be the case that the grounds of application themselves made no reference to a failure by the judge to have regard to what was in the witness statements, and after some reflection, Mr Mahmood properly accepted, that that was indeed the case.
12. For his part Mr Harrison relied upon the Rule 24 response. Essentially, he submitted that this was a case involving the weight that the judge should give to various parts of the evidence. That was a matter that was entirely within the discretion of the judge. The judge did not see it fit to give weight to the witness statement over and above that which the Appellant had himself stated by way of oral evidence at the hearing. The two witnesses who attended on behalf of the Appellant were only able

to say that they had no personal knowledge of the Appellant's sexuality. One of them indeed, was a failed asylum seeker, who had been found on appeal not to be a creditworthy witness. The Appellant could have called more witnesses. The witnesses were not barred from giving evidence about the material matters.

13. In reply, Mr Mahmood submitted that there were two witness statements on behalf of the two witnesses attending. The witness statements were important. The Appellant's own witness statement explained why Mustafa's family were not informed. This was in order to "avoid bloodshed".

### **No Error of Law**

14. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
15. First, the grounds of application place no reliance upon witness statement evidence as having been excluded or overlooked by Judge E. M. M. Smith.
16. Second, insofar as the witness statements do provide an explanation, for example, as to why the assault on Mustafa was not reported, either to his parents, or to the Authorities, on the basis that this "would lead to killing and bloodshed", this was a matter which the judge considered to be speculative. Indeed, the judge gave two very clear reasons. First, that it would have protected Mustafa's reputation. Second, that the school would have had to report it for fear they would have been accused of condoning such serious acts (see paragraph 18).
17. Accordingly, there is nothing in the point that the witness statement evidence was not taken into account.
18. Finally, and in any event, the judge gave ample other reasons for why the claim was lacking in credibility in any event. For all these reasons, this application cannot succeed.

### **Notice of Decision**

19. There is no material error of law in the original judge's decision. The determination shall stand.
20. No anonymity direction is made.
21. I dismiss the appeal.

Signed

Dated

Deputy Upper Tribunal Judge Juss

26<sup>th</sup> February 2018