



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01915/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 May 2018

Determination Promulgated  
On 19 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

ALI [R]  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J Heybroek

For the Respondent: Ms N Willock-Briscoe (Home Office Specialist Appeals Team)

**DECISION AND REASONS**

1. This is the appeal of Ali [R], a citizen of Pakistan born 1 January 1989, against the decision of the First-tier tribunal to dismiss his appeal on asylum grounds, itself brought against the decision to refuse his asylum claim on 25 January 2018.
2. The Appellant's asylum claim is based on his gender preference. He says that he is a gay man. He became aware of his sexuality from the age of 12 to 14. Unlike his friends he became aware that he was not attracted to girls. From the age of 15-16 he became aware of societal attitudes towards LGBT people.

3. He first formed a relationship in Pakistan aged around 19 with one [AA], who worked on the Appellant's father's land; they had intercourse after becoming close over a period of several months. and their relationship lasted two and a half years.
4. Following his arrival in the UK in May 2011, he lived with family friends. He began to live openly from the end of 2015, attending various London gay nightclubs, a Pride event in July 2017, and some 10 meetings of the LGBT support group NAZ from September 2016.
5. He had had one relationship in the UK, with [KP], who he met at college. Their relationship began after the Appellant supported [KP] through the breakdown of a previous relationship. They kept their relationship discreet meeting once or twice a month at [KP]'s place. Their relationship lasted from late 2012 or 2013 until 2015.
6. The Appellant was detained having come to the attention of the immigration service in July 2014. Following his release from detention some time afterwards, [KP] visited him at home and openly kissed him in the presence of the family friends with whom he lived. One of them slapped the Appellant and informed his family that he had been kissed by another man. The Appellant subsequently learned from a cousin in Pakistan that some of his family took such objection to his conduct that they would kill him if they had the opportunity. Subsequently he sought to reason with those family members to whom he could speak, his mother, sisters and cousins: but they did not accept his claim to have done nothing wrong, and told him not to return home.
7. The immigration history provided by the Respondent sets out that the Appellant arrived in the UK on 31 May 2011 and was granted leave to enter as a student; this was extended until 6 April 2014, though an extension application made in March 2014 was refused on 3 June 2014, without the right of appeal, because he was deemed to have used deception in obtaining his English language test results. The Appellant's evidence was that he was not served with that decision until 4 June 2014. He was then detained on 24 June 2014.
8. The Secretary of State refused his asylum claim, because of internal inconsistencies and vagueness in the Appellant's answers.
9. The First-tier Tribunal heard evidence from the Appellant, and from two witnesses, [UW] and [ZG] (the latter identifying themselves as Mrs [G]), recognised refugees from Pakistan; the Tribunal accepted that their gender preference must have underlain the grants of status. They had met the Appellant respectively in August and November 2016, and they had begun to speak to him about the possibility of claiming asylum on grounds of his sexuality from early 2017. Each had their own experience of pursuing such claims, which was the basis of the advice they gave him.
10. The First-tier Tribunal noted there was no rule of law requiring corroboration, though there was nevertheless no testimony save the Appellant's own to confirm

the way in which his family had learned of his sexuality. The Home Office had been unreasonable in effectively expecting to hear some sort of Damascene revelation rather than a gradual development of his awareness of his sexuality, and had wrongly stigmatised aspects of his evidence as vague given that the matters in question had not been further explored. His evidence that he was willing to keep his sexuality secret and discreet was consistent with the country evidence stating homosexual activity between men was common but was handled discreetly and secretly; it was technically illegal and imprisonment could follow.

11. The First-tier Tribunal noted that the Appellant put forward evidence from an account with the social networking application Grindr, though found that this material did not necessarily demonstrate its users' sexuality. It placed significant weight on his failure to challenge the English language deception allegation. He had failed to claim asylum for three years following his release from detention, and only after being notified of a refusal of leave to remain.
12. The First-tier Tribunal considered that the Appellant's two supporting witnesses were not impressive: their testimony of encountering him was remarkably similar, in that both had conversed with him having met him at a gay club, and then discussed an asylum claim. Their evidence was structured and practised: "As there are frequent appeals by Pakistani men on the basis of homosexuality, I consider that there is every likelihood that these two individuals have testified in other cases. I do not regard them as fully independent, corroborative witnesses and I give little weight to that testimony".
13. There was no evidence to support the Appellant's sexuality save for his claim to have been in a secret relationship with Kumar. Balancing the various factors identified, the First-tier Tribunal found the Appellant was not a credible witness as to his gender preference and dismissed his appeal.
14. Grounds of appeal contended that
  - (a) It was unreasonable to hold the Appellant's failure to lodge an appeal against the English language refusal given there was no facility for an in-country appeal in his situation;
  - (b) In finding that the Appellant's delay in claiming asylum counted against his credibility, the serious nature of "coming out" in the Appellant's community was not addressed: nobody knew he was gay at the time of his detention in 2014;
  - (c) The treatment of the witnesses' evidence was inadequately reasoned and irrational: there was no challenge made to their evidence by the Respondent's advocate at the hearing below.
15. Permission to appeal was granted on 10 April 2018 on the basis that whilst it was not arguable that the Appellant's late asylum claim counted against his credibility, nevertheless it was arguably wrong in law to have drawn an adverse inference from the Appellant's failure to pursue an out-of-country appeal, and to have failed to give adequate reasons for rejecting the evidence of the witnesses.

16. A Rule 24 response from the Home Office set out that the First-tier Tribunal was sustainable given the lack of supporting evidence.
17. Before me Ms Heybroek developed her grounds of appeal. The First-tier Tribunal had said in terms that the Appellant's evidence was undermined because the English language fraud "allegation remains unchallenged" which called in to question his general honesty. Furthermore, its reasoning that the bare fact that the evidence of the two witnesses was ostensibly structured and practised was insufficiently reasoned. Ms Willock-Briscoe replied that the reasoning was spare at times but legally adequate.

### Findings and reasons

18. The grant of permission to appeal was perfectly accurate in identifying the second ground of appeal as without merit. On the chronology of this case, the Appellant's gender preference had been publicly exposed, to his family at least, in the immediate aftermath of his detention, and so it is not obvious why revealing it to the Secretary of State would be especially difficult for him.
19. The issue of English language testing is rather more complicated than the grounds of appeal acknowledge. Clearly established dishonesty is relevant to a person's general credibility. No doubt an English language test cheat may also be a refugee, but it would be unrealistic to rule out evidence of their character to the assessment of the truthfulness of their asylum claim once the matter is put in issue. It is true that such allegations were, at the time the matter was raised in the Appellant's case, only challengeable by way of judicial review from abroad; it is equally true that they may be contested where an in-country right of appeal is available, see generally *Ahsan* [2017] EWCA Civ 2009.
20. Nevertheless, the actual reasoning of the First-tier Tribunal on this issue was clearly wrong, in that it would have been unfeasible for the Appellant to make a challenge to the 2014 decision at the time. I accordingly uphold this ground of appeal.
21. Significantly more important, though, is the issue of the witnesses. As the Tribunal stated in *AK* [2004] UKIAT 00230 §9:
 

“Whilst there is of course no general requirement for an adjudicator to set out at length the oral evidence given before him, and in many cases no useful purpose would be served by doing so, nevertheless he ought as a matter of good practice to summarise at least the material parts of the evidence which he has heard so as to enable an informed reader to ascertain the nature and content of that evidence, and also to enable him to be satisfied that the adjudicator has directed his mind properly to the material aspects of the evidence. In general, it is not sufficient for an adjudicator merely to record that a witness has relied on his or her witness statement, although there may be particular circumstances in which that would suffice, e.g. where the evidence in question relates to facts which are not in dispute between the parties, or which are irrelevant to the issues on which the outcome of the appeal will turn. 10. In addition to his failure to summarise properly the evidence given by the five witnesses called on the appellant's behalf, the adjudicator has also failed to make any assessment as to the credibility or otherwise of

that evidence, or to give any reasons for arriving at his assessment. Save in those exceptional cases where the material facts are not in issue between the parties, it is an *essential* part of an adjudicator's responsibility to make clear findings of fact on the material issues, and to give proper, intelligible and adequate reasons for arriving at those findings. An adjudicator who fails to do so is liable to find that his determination is vulnerable to challenge on appeal at the suit of the losing party.”

22. Here two witnesses had come to court and given live evidence, and that evidence was not challenged in cross examination or the submissions of the Presenting Officer who appeared below. The matters that concerned the First-tier Tribunal were not put to them. These were not peripheral concerns, but went to the very root of their reliability as witnesses. There was no ostensible explanation of how it was that the Tribunal identified their evidence as essentially rehearsed, and no overt evidence that they had given evidence in other appeals (and, by implication, false evidence that had been identified as such by other judges).
23. It is often remarked that asylum appeals require anxious scrutiny, and it seems to me that the question of the witnesses' credibility was not adequately dealt with here. Their evidence, as ostensibly independent witnesses of fact, including the development of their own relationships with the Appellant and their knowledge of his gender preference, was central to his case.
24. Given that the Appellant's credibility will have to be re-assessed afresh, I remit the appeal to the First-tier Tribunal for that exercise to be completed.

Decision:

The decision of the First-tier Tribunal was legally flawed and the appeal must be remitted for re-hearing afresh.

Signed:

Date: 31 May 2018



Deputy Upper Tribunal Judge Symes