



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

Appeal Number: PA/03016/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 19th September 2018**

**Decision & Reasons
Promulgated
On 5th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR K K
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr A Alam, Counsel instructed by M-R Solicitors

DECISION AND REASONS

1. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision made by the Secretary of State on 19th February 2018 refusing his application for asylum and humanitarian protection made on 27th August 2017. His appeal was allowed by First-tier Tribunal Judge Traynor in a decision dated 29th May 2018. The Secretary of State now appeals against that decision with permission granted on 1st August 2018.
2. The background to this appeal is that the appellant claims to have entered the UK on 9th October 1997. On 4th September 2012 he applied for

indefinite leave to remain on the basis of his long residence in the UK, but this application was refused and his appeal rights were exhausted on 21st October 2013. His request to have this application reconsidered was refused in March 2015. He was encountered by Immigration Officers in 2013 and he was arrested on 1st March 2016 and served with removal documents as a person liable to removal. His application for judicial review was refused. His subsequent application for leave to remain under the ten year family/private life route was refused on 14th February 2017. His subsequent application for leave to remain outside the Rules was refused on 10th January 2018. On 22nd August 2017 he claimed asylum. This application was made on the basis of his claimed sexuality. The basis of his claim is that he has known he was gay since childhood. He claims that he was caught by his father at their home with his boyfriend and that his father beat him. He claims that as a result of this he left Pakistan on 9th December 1997. He claims that he has been in a number of gay relationships in the UK. He says that he fears persecution in Pakistan as a result of his sexuality.

3. The First-tier Tribunal Judge heard oral evidence from the appellant and his claimed partner as well as from another witness. The First-tier Tribunal Judge found that the appellant had “provided a credible, consistent and entirely truthful account regarding the core issue of his claim for asylum, namely that he is a gay Pakistani man” who left Pakistan on account of his sexuality and that he fears returning there because of the adverse consequences he is likely to face [47]. The judge allowed the appeal on asylum, humanitarian protection and human rights grounds.

The grounds of appeal

4. In the Grounds of Appeal to the Upper Tribunal the Secretary of State asserts that the judge made a material misdirection of law in relation to his findings as to the appellant’s credibility. The Grounds assert that the appellant is not a homosexual as claimed. It is contended that the appellant failed to mention his sexuality in any claim previously and has only made this claim as a last ditch attempt to remain in the UK. It is asserted that the appellant’s previous asylum claim was based on his family and private life and that was dismissed in 2013 and he did not mention his sexual orientation until 2017. It is contended that the judge failed to take proper account of the appellant’s previous appeal which found that he was not credible. It is contended that it is not credible that the appellant was not aware that he could claim asylum on the basis of his sexuality until 2017. It is further contended that the appellant claims to be in a relationship with Mr A, who attended the hearing to give evidence, but it is contended that the evidence given suggests that they are more likely to be flatmates rather than in a gay relationship. It is contended that the appellant and Mr A have conveniently claimed that they are in a relationship and that little or no weight should be given to their evidence. It is contended that, although they claim to have been in a relationship for a number of years, they have not provided any evidence of corroboration aside from photographs and it is suggested that the appellant should have

been able to provide a letter from his landlord but had failed to do so. It is contended that little weight should be given to Mr A's evidence as he himself attempted to make a late claim of homosexuality in his own asylum claim which was subsequently dismissed and he failed to attend his hearing to give evidence. The grounds contend that the appellant's evidence and that of Mr A is not credible and their evidence was given purely to bolster each other's late asylum claim. In conclusion it is submitted that the appellant is not a homosexual as claimed and therefore there would be no risk upon his return to Pakistan.

5. In granting permission, Judge Hollingworth considered it arguable that the judge should have attached greater weight to the chronology reflecting the claims made by the appellant and that the assessment of the credibility of Mr A required further examination in light of his history. It was considered arguable that the examination of inconsistency referred to by the judge requires re-evaluation in light of these factors.

The submissions

6. At the hearing Mr Tufan submitted that the challenge in this case was on the basis of lack of adequate reasons and the Section 8 issues. He accepted that the appeal centred on credibility and that the Presenting Officer at the hearing had accepted that if the appellant was credible he would be at risk in Pakistan. He highlighted that the appellant and his claimed partner had never made a claim based on sexuality before. Although he accepted it was not before the judge, he submitted that the appellant's claimed partner is currently in the process of making a voluntary return to Pakistan. He contended that, although the couple claimed to be in a relationship, apart from photographs there was no further evidence, and in particular no evidence from their landlord. In relation to the Section 8 issue which the judge dealt with at paragraph 46, he contended that this was a cursory consideration by the judge who gave the benefit of the doubt to the appellant and he contended that this was a perverse finding.
7. In response Mr Alam contended submitted that the Secretary of State's grounds amount to a disagreement with the judge's credibility findings and are an attempt to re-argue the case in the Upper Tribunal. He submitted that the Secretary of State had the opportunity to make these arguments in the First-tier Tribunal and in any event it is clear that such arguments have been rejected by the judge. In his submission the grounds identify no error of law. He submitted that in the Section 8 consideration at paragraph 46 the judge reached conclusions open to him. He submitted that it was open to the judge to make the credibility findings made having heard from the appellant and the witnesses who were subject to cross-examination. He pointed out that the judge referred to **Devaseelan [2002] UKIAT 00702** and the previous decision as he was required to do. He submitted that the judge referred to documentary evidence to show the couple were living together. In his submission the judge noted at paragraph 25 that the witness became emotional and that

this was something the judge was entitled to take into account. He highlighted that the judge referred at paragraphs 22 and 23 to the previous decision in relation to the appellant's partner. He further highlighted that the judge had considered the evidence from the witness at paragraph 47. This witness had been subject to cross-examination also and the judge found the appellant to be credible, consistent and truthful in relation to the core issue in his appeal. In his submission the judge considered all factors and came to a decision in favour of the appellant.

8. Mr Tufan had nothing further to add.

Error of Law

9. The Secretary of State's grounds raise issues of credibility and weight. I agree with Mr Alam's submission that they fail to identify any error of law. In my view the judge reached conclusions open to him on the evidence. The judge took into account the oral evidence of the appellant, his partner and another witness who were subject to examination-in-chief and cross-examination. At paragraph 40 of the decision the judge said that he considered that any internal inconsistencies in the appellant's account were minor and centred on whether or not the appellant recalled a particular date or a following date or even a year. The judge found that the appellant had provided a consistent account of the fact that he left Pakistan in circumstances which he considered required him to depart from that country on account of his sexuality. The judge considered that the core of the appellant's claim had been reliably and consistently stated.
10. At paragraph 42 the judge took into account that there was no evidence of the appellant being involved in any heterosexual relationships with anyone in the UK. The judge took no adverse inference from the fact that when he made his application for leave to remain in 2013 the appellant did not raise his sexuality as a reason why he could not return to Pakistan and considered that his account put forward in 2013 was otherwise not inconsistent with the claim put forward now. The judge found that the appellant was reticent about talking about his personal life and in 2013 was not as overtly sexually active within the gay community as he is now.
11. At paragraph 43 the judge found that the appellant had given the best account that he can in recalling circumstances and relationships from some years ago, finding that there was "a thread of credibility" running through the appellant's account on the basis of which the judge was satisfied that the appellant has told the truth and has described his involvement in other relationships which have ultimately failed. The judge went on at paragraph 44 to acknowledge that it is difficult for a person who is gay to prove their sexual identity and that this appellant remains a private man and is discreet. The judge gave weight to the fact that, in his claim for asylum, the appellant's partner referred to a same-sex relationship with a person identified as KK who the judge was satisfied was the appellant. The judge accepted that the appellant and Mr A have lived together for two years and are in a settled relationship. The judge took

into account Mr A's emotional response when describing how he had been estranged from his family. The judge found that the appellant and Mr A have a strong affection for each other. The judge said that he had "no doubt" as to the sexuality of both Mr A and the appellant [45].

12. The judge went on at paragraph 46 to consider the provisions of Section 8 of the 2004 Act and in particular took into account the appellant's very late claim for asylum given his claimed entry into the UK in 1997. The judge considered that the appellant should be given the benefit of the doubt in relation to what knowledge he possessed of making an asylum claim on the basis of his sexuality earlier. The judge accepted that the appellant learned only a matter of months prior to making the claim that he could advance an asylum claim on the basis of his sexuality. Accordingly, the judge did not draw adverse inference from the delay in claiming asylum and considered that it did not damage the appellant's credibility.
13. The judge considered the evidence from the appellant's witness at paragraph 47 and concluded that he had "no reason to doubt that evidence" and noted that he was not challenged by the Secretary of State's representative.
14. The judge concluded that when he had considered all of these factors in the round the appellant had provided a credible, consistent and entirely truthful account regarding the core issue of his claim for asylum, namely that he is a gay Pakistani man who has fled from that country on account of his sexuality and that he fears returning there because of the adverse consequences that he is likely to face. The judge went on to find that the appellant was at risk throughout the whole of Pakistan and that there was no effective state protection.
15. I have set out the summary of the judge's findings above. In my view it is clear that the judge took into account all of the evidence before him in making these findings. The judge dealt with the points against the appellant in considering his credibility, and, taking these factors into account, went on to find that the appellant was credible. The question of weight to be attached to various factors is a matter for the judge. The judge did take into account Section 8 but concluded that the delay did not adversely affect the appellant's credibility for the reasons given in paragraph 46. These were conclusions open to the judge on the basis of the evidence before him.

Notice of Decision

The First-tier Tribunal Judge's decision does not contain a material error of law.

The decision of the First-tier Tribunal shall stand.

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 his 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
Deputy Upper Tribunal Judge Grimes

Date: 26th September 2018

TO THE RESPONDENT
FEE AWARD

No fee is payable therefore there can be no fee award.

Signed
Deputy Upper Tribunal Judge Grimes

Date: 26th September 2018