



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/05465/2017
PA/05459/2017

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre
On: 18th June 2018

Decision and Reasons Promulgated
On: 22nd June 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

QA

AH

(ANONYMITY DIRECTION MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms W. Bremang, Counsel instructed by First Law Solicitors
For the Respondent: Mr C. Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are nationals of Pakistan born in 1983 and 1993 respectively. They appeal with permission the decision of the First-tier Tribunal (Judge Sharkett) dated 18th August 2017 to dismiss their linked protection appeals, which had been brought on the grounds that they faced a well-founded fear of persecution in Pakistan because they are homosexual.

2. Judge Sharkett did not accept that either man is gay, or that either Appellant faces a real risk of harm in Pakistan as a result of his sexuality. She produced what Judge Osbourne, in granting permission, fairly describes as a “careful and nuanced” decision. Permission was nevertheless granted, on the basis of this central ground: did the Tribunal act unfairly in refusing an application for an adjournment so that further evidence could be adduced?

The Decision to Proceed

3. At the outset of the determination the First-tier Tribunal records that the bundles had been delivered late. The solicitor in attendance explained that this was because he had believed that the matter would be adjourned. He maintained that it was in the interests of justice to adjourn, and that the medical evidence sought would be of vital importance to the resolution of the case. The Appellants had each mentioned, during their asylum interviews, being assaulted by their families before they left Pakistan and so it was not the case that they had only latterly alleged past ill-treatment. An adjournment was further sought on the basis that the second Appellant wanted to be treated as a ‘dependent’ upon the first.
4. The application was refused by Judge Sharkett. In respect of the medical evidence the Tribunal noted, in common with Judges McClure and Cruthers, that these appellants have both lived in this country a long time. Even if they had not apprehended the need to obtain medical evidence – or assistance – until they decided to make a claim for protection, they had still had over a year in which to do so, the claims having been lodged in April 2016. There was no indication on the face of the note from the HBF how long it would take to prepare a report, or if the organisation was even prepared to take the cases on. Nor was there any explanation as to why such a report was necessary for the just resolution of the case. As for the status of the Second Appellant Judge Sharkett saw no reason to adjourn to permit the Respondent to re-evaluate his position. He had already claimed asylum in his own right, and been interviewed. There was absolutely no point in that application now being merged with that of the First Appellant.
5. The Appellants now submit that the First-tier Tribunal’s approach was unfair, and that unfairness tainted its evaluation of their overall credibility to the extent that the decision must be set aside and the hearing remitted for hearing *de novo*.
6. Given the reasoning of the First-tier Tribunal, and indeed the Designated Judges who had refused adjournments on the papers, it is important to assess the matter in the context of the chronology. The history of these cases, insofar as is relevant to the matter before me, is as follows:

18th Nov 2010 *The Appellant AH arrives in UK direct from Pakistan*

28th January 2011 *The Appellant AQ arrives in UK direct from Pakistan*

30th December 2011 *AH's visa expires*

27th June 2012 *AQ's visa expires*

28th April 2016 *Both men claim asylum*

25th May 2017 *Asylum refused*

6th June 2017 *Wiseman's Solicitors take over conduct of the case*

7th June 2017 *Appeal lodged with First-tier Tribunal*

8th June 2017 *Notice of hearing served*

22nd June 2017 *CMR before Judge Gladstone. Appellants' representative makes application for adjournment to obtain medical evidence from Helen Bamber Foundation (HBF). The Tribunal declines to consider it and advises that the application should be made in writing, and supported by confirmation from HBF that Appellants will be seen.*

23rd June 2017 *Appellants' solicitors renew the application for an adjournment in writing, as advised by Judge Gladstone. The letter is supported by an automatically-generated acknowledgment slip from the HBF indicating that the Appellants have completed an online self-referral form.*

27th June 2017 *Designated Judge of the First-tier Tribunal McClure refuses adjournment on grounds that there is no indication of how long the wait to see the HBF might be, and noting that the Appellants have both been in the UK for several years.*

3rd July 2017 *Appellants' solicitors renew the application for an adjournment, stressing that the appeals were listed very quickly and that they have not had time to prepare their cases.*

4th July 2017 *Designated Judge of the First-tier Tribunal Cruthers refuses adjournment request. It is noted that the Appellants have both been in the UK for some time, and that if there is 'evidence of past torture' to be found in their medical records this could have already been provided. The HBF has given no indication that they will actually see the Appellants.*

6th July 2017 *Substantive hearing. Bundles served at hearing.*

18th August 2017 *Decision of the First-tier Tribunal promulgated, dismissing the linked appeals.*

7. As can be seen from this brief history, the First-tier Tribunal Judges were collectively correct in their assessments that the Appellants had both been in the UK for a considerable amount of time. Before me Ms Bremang pointed out that if the Appellants' claims are true, they may have found it difficult, in the immediate aftermath of their escape from Pakistan, to contemplate seeking help, or evidence. They had both got student visas and perhaps just wanted to knuckle down and not think about the past. It was not until 2016 that they realised that they could seek international protection. I am prepared to accept that between 2010-2016 there was no obvious reason for either man to be seeking a medico-legal report.
8. The same cannot be said, however, of the need to obtain help. If either of these gentlemen bears the physical or psychological sequelae of ill-treatment to the extent that a report by (for instance) the HBF is necessary, one would have expected to see them accessing support at a much earlier stage. As Judge Sharkett notes, it would appear that no effort was made to produce before her evidence of the same. The medical evidence before her consisted of one letter from the Second Appellant's GP, stating that he suffered from depression. The Appellants have now produced the entirety of their medical records in the UK. No explanation has been given as to why these were not available before Judge Sharkett.
9. The GP notes relating to the Second Appellant show that he registered with the doctor in March 2011, and after his initial assessment did not return to the surgery at all until the 23rd March 2016, four weeks before the asylum claims were made, when he told his doctor he was depressed because his family would not accept that he is gay. There were thereafter numerous visits, when the Second Appellant repeatedly informs his GP that he feels depressed and that he is gay.
10. The First Appellant registered with his GP in May 2012. Again, there is very limited contact with the GP for the first four years, with the sole complaint made that he suffers from acne and is overweight. Again, the record of contact between patient and doctor dramatically increases around the asylum claim is made, with an entry on the 31st March 2016 "family issue – family at home in Pakistan have been informed that he is homosexual – pt v worried about this".
11. It is very difficult to see how these medical notes could possibly have assisted the Appellants in their claim before Judge Sharkett. What they illustrate is that the depression both men claim to suffer from was apparently non-existent prior to spring of 2016. That was not consistent with their claims that the depression arises from events in Pakistan in 2010. Nor was there any indication that either man had suffered any physical problems as a result of the alleged assaults. I would further note that the First Appellant's evidence to his doctor on the 31st March 2016 (see above) is entirely inconsistent with the claim put to the First-tier Tribunal, that the family had made their discovery in 2010. I am not therefore satisfied that there was any conceivable error in the First-tier Tribunal proceeding in the absence of this evidence, which could after all very easily have been obtained prior to the hearing.

12. In respect of the potential evidence from the HBF and/or a private psychiatrist, I am satisfied that the First-tier Tribunal made a careful and fair assessment of whether or not it would be appropriate to adjourn to see if such reports could be obtained. Ms Bremang is right to say that these appeals were listed with unusual speed by the First-tier Tribunal, but there was still a clear two weeks between the solicitors receiving instructions and apparently doing anything to try and obtain medical evidence. Possibly as a result of that delay there was no evidence before the First-tier Tribunal that the reports were going to be prepared, and if so in what time frame. The Tribunal cannot be expected to delay determination of appeals indefinitely. The solicitors failed to act because they assumed that the Tribunal would adjourn the cases; when they didn't the solicitors now complain that it was unfair because they had assumed that the adjournment would be forthcoming. There was no error in approach by the First-tier Tribunal.
13. I am fortified in my decision by the fact that to date, there are still no reports from the HBF, nor any evidence from any of the other medical experts that the grounds of appeal allege the Appellants might have instructed. It should be noted that I hear this appeal over a year after the hearing in the First-tier Tribunal. Ms Bremang's instructions on this point are that the HBF was not, at the time of the referral, prepared to see the Appellants on a pro bono basis. The other psychiatrists would have charged money, and this was money that the men did not have. As a result they decided to wait until the outcome of this appeal before obtaining a report. If I set the decision of the First-tier Tribunal aside, they will either pay for a report or wait until 'sometime later in 2018' when HBF may be able to do it for free. That is not an acceptable basis upon which to conduct litigation in this Tribunal. The import of Ms Bremang's instructions is that if I remitted these appeals, they still would not be ready to proceed. In light of the overriding objective of the fair and speedy resolution of claims, the First-tier Tribunal was quite right to refuse an adjournment for the reasons that it gave.
14. Ms Bremang did not pursue the complaint about the Second Appellant not being treated as a dependent. She was right to do so. Apart from being nonsensical – he had already claimed in his own right – it would have been no basis upon which to adjourn in any event, since both men elected to give evidence.
15. I would add this. The appeals are dismissed, after cogent analysis, on the grounds that the account given is fundamentally inconsistent with the country background evidence, and importantly, incontrovertible facts such as the dates that the Appellants applied for their visas. It is very difficult to see, on the specific reasoning offered, why a diagnosis of depression by a relevant expert would have made any difference to the outcome.

Standard of Proof

16. Although it is alleged that the First-tier Tribunal applied too high a standard of proof, the remainder of the excessively long grounds amount to no more than a

disagreement with the findings of fact made. The First-tier Tribunal properly directs itself to the lower standard, and applies it throughout the determination. The inconsistencies in respect of the chronology, including how the men funded their escape and where they lived in the meantime, were glaring, and were in any event relied upon by the Respondent. There was no arguable unfairness in the Tribunal placing weight upon them. It will be, in most situations, unwise for a Tribunal to analyse the body language of witnesses before it, but in this case the Judge did no more than draw a distinction between her own observations, and those claimed by the witness.

17. Although I commend Ms Bremang's careful advocacy on behalf of her lay clients, these appeals are ultimately without foundation.

Anonymity Order

18. This appeal concerns the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

"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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

19. The decision of the First-tier Tribunal contains no error of law and it is upheld.
20. There is an order for anonymity.

Upper Tribunal Judge Bruce
20th June 2018