



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

Appeal Number: PA/07238/2016

THE IMMIGRATION ACTS

Heard at Field House

On 10th October 2018

Decision & Reasons

Promulgated

On 5th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR S A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones, Counsel instructed by Abbey Law

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant is a citizen of Bangladesh born on 1 January 1988. The appellant appealed to the First-tier Tribunal against a decision of the Respondent dated 30 June 2016 to refuse him asylum. In a decision promulgated on 5 March 2018 Judge of the First-tier Tribunal Wylie dismissed the Appellant's appeal (the Appellant's appeal having previously been considered and dismissed by the First-tier Tribunal in January 2017, the Appellant being successful on appeal to the Upper Tribunal).

2. The background of this case is that the Appellant claimed to be a gay man, from a strict Muslim family, although he was not strict about his religion. He claimed to have been abused by his uncle at the age of 12. He claimed to have become aware of his homosexuality as a teenager and claimed to have had homosexual relationships in Bangladesh. The Appellant claimed one of the relationships was discovered and the Appellant was abused on the basis of this relationship. The Appellant claims to have been in a relationship in the UK and has a number of gay and lesbian friends. The Respondent did not accept that the Appellant was credible. The Respondent did not accept the Appellant was gay or at risk in Bangladesh.
3. The First-tier Tribunal dismissed the Appellant's appeal. The judge did not find the Appellant credible and did not accept that he was gay. The judge went on to consider the risk on return and based on the Appellant's life in the UK the judge did not consider that the Appellant would live as an openly gay man in Bangladesh.
4. The Appellant appeals with permission from the Upper Tribunal. Although Mr Whitwell initially raised a preliminary issue, arguing that the appeal before the Upper Tribunal was out of time and that it was not open to the Deputy Upper Tribunal Judge to extend time, I was grateful to Ms Jones who provided the Notice of Decision issued to the Appellant, in respect of the refusal from the First-tier Tribunal, on 5 April. Having seen that Notice of Decision Mr Whitwell conceded that the application for permission to the Upper Tribunal was in fact in time. Mr Whitwell therefore withdrew this submission.

Grounds of Permission to the Upper Tribunal

5. Ground 1

It was argued that the judge erred in law in failing to attach appropriate weight to the evidence and in failing to understand the evidence. The Appellant's claim was based on him being a member of a particular social group and that he would be at risk from his family and the Muslim community and that the judge failed to understand this evidence.

Ground 2

It was argued the judge erred in failing to have regard to a material matter, in particular the application of the first stage of the test in **HJ (Iran) [2010] UKSC 31**. It was argued that the judge's conclusion, that the Appellant was not gay, was inadequate. The judge rejected the Appellant's evidence that he had suffered abuse and was assaulted before coming to the UK. It was submitted that the judge was demanding a higher standard of proof and failed to consider the decision in the Supreme Court in **RT (Zimbabwe) [2012] UKSC 38**, that it was discriminatory to expect claimants with sexuality based claims to surmount a higher hurdle of providing extrinsic evidence to corroborate their claims. In addition there were no findings made in the Appellant's claim to have been raped as a child. Similarly, it was submitted that the judge again made adverse credibility findings based on speculation and

assumption at [65] and [73] and his approach was contradictory at [72]. It was further argued that the First-tier Tribunal was dismissive of the evidence of LR, because he had been a witness in 10 appeals and it was argued the approach was irrational.

Ground 3

It was submitted that the evidence of the psychologist was imperative to the Appellant's case and the judge was dismissive of this evidence.

Ground 4

It was argued that the judge, at [78], found that the Appellant did not lead an openly gay lifestyle and that this was inconsistent with her findings that there was evidence from Mr L and his father that he had been in a relationship and this arguably was an irrational decision.

Ground 5

It was submitted that the judge did not properly deal with Article 8.

Submissions

6. Ms Jones noted that the judge's conclusions started at [45]. The judge noted, at [51], that there were receipts for payments made in gay venues but that these were in January and May 2016 shortly after the claim for asylum. At [60] the judge took into consideration that there was evidence from the psychologist. At [70] the judge found that there was limited evidence that the Appellant lived openly as a gay man. The judge gave little weight to the evidence from Mr L R and rejected the expert evidence at [71].
7. In respect of Ground 1 Ms Jones quite properly did not rely on this and conceded it was generic. In relation to Ground 2 it was not being suggested or argued that the judge applied the incorrect test in **HJ (Iran)**. It was the judge's approach to the evidence which was at issue. At [69] the judge had rejected the Appellant's evidence. Ms Jones submitted that his findings at [69] were inadequate and that there was a demand for corroboration which was unreasonable in the circumstances of the case; these were two individuals that the Appellant stated he had relationships with some time ago and had not met for over a decade and that the judge had reached negative credibility assessment, in part, because of improperly demanding corroboration. In addition, Ms Jones submitted that the judge had made no findings that the Appellant was sexually abused. There were two elements of the Appellant's case. The first was his rape as a child and findings needed to be made on this. The judge indicated that there should have been additional evidence from the two persons which he had had a relationship with. However they could not have given evidence in relation to his alleged rape. Ms Jones conceded that paragraphs 11 and 12 of Ground 2, which disputed the findings at [65], and [73], were essentially a disagreement with the judge's findings and she did not rely on them as it was not material. Equally she did not rely on

paragraph 13, which disputed the judge's approach at [72], as this also appeared to be a disagreement.

8. In respect of paragraph 14 of the second ground Ms Jones submitted that the judge appears to conclude, without evidence, at [70] that Mr L R gave evidence for monetary reward. For the judge to state that in the last two years Mr R had been a witness for ten persons appealing against refusal on asylum on the basis of sexuality was immaterial and no weight should have been placed on this. The judge failed to consider the evidence of an active gay man indulging in a wide variety of gay/sexual relationships.
9. In respect of Ground 3, although Ms Jones accepted the judge was not obliged to follow the psychologist's view, she was obliged to take it seriously and give adequate reasons as to why it was rejected. In one sentence the judge found that she did not doubt the sincerity of the witness but submitted it was not her role to challenge what was said by the Appellant. Essentially the judge was concluding that the psychologist had been fooled by the Appellant. Given that there were eighteen to twenty hour sessions between the psychologist and the Appellant, this was an inadequate dismissal of the expert evidence. The judge had not in any way explained how a finding that an expert such as this would be completely fooled and Ms Jones submitted that the expert had, in her report, given consideration to this issue and had indicated that she had found the Appellant genuine.
10. In Ground 4 Ms Jones adopted the Grounds, but conceded that Ground 4 was only relevant if Grounds 2 and 3 succeeded; although she submitted that it was well-made out, it was secondary. Equally in Ground 5 it was difficult to see how the Appellant could succeed under Article 8 if the negative credibility findings stood.
11. Mr Whitwell submitted that Ms Jones was mounting a disguised perversity challenge. In dealing with Ground 2 as a whole what the judge said in summary at [84] was that the Appellant had not discharged the burden of proof. What the judge has done is come to the conclusions on the basis of the evidence which is different from requiring corroboration.
12. Mr Whitwell submitted that the fact that there was no finding on the previous sexual assault was not material. It was difficult to see how a previous sexual assault at the age of 12 could alter the judge's conclusion in relation to sexuality, whether it did or did not happen was independent of the Appellant's sexuality and the judge's conclusion on that.
13. The third limb of Ground 2 relates to the evidence from Mr L R. Mr Whitwell submitted that at [70] the judge adequately deals with this. In particular, the judge notes the inconsistency of the Appellant's evidence with Mr R's and that is the reason why the judge gave little weight to the evidence. He submitted that the sentence where it refers to financial reward was not material and the judge draws no adverse inference from this. Drawn together there is no error in Ground 2.

14. If the judge's findings that the appellant was not gay stand, the remainder of **HJ (Iran)** is not relevant. The way the Grounds are written, Mr Whitwell again submitted, was a disguised perversity challenge and the judge had reached findings properly open to him.
15. In respect of Ground 3 and the weight attributed to the expert report, put succinctly the judge provides two clear reasons why limited weight is attached to this evidence. At paragraph 71 the judge states that he was aware of what the Appellant told the expert. The judge says there is a difference between judicial findings of fact in the adversarial system and a separate therapeutic environment. Secondly, at paragraph t [63] the judge notes that there was no mention in the psychologist's report of the appellant returning to Bangladesh for a month in 2012. The judge is noting that the expert had not been given a full account and that detracted from the weight that could be attached to her report, given the contradictory nature of what was told to the expert.
16. In respect of Grounds 4 and 5 Mr Whitwell agreed that they stood and fell with Grounds 2 and 3, but submitted that attending gay clubs and having gay friends is not indicative of sexuality in itself. In respect of Ground 5, the judge made a finding under paragraph 276ADE(1)(vi) that there were no significant obstacles to reintegration to Bangladesh, and that finding has not been challenged.
17. In reply Ms Jones submitted this was not a disguised perversity challenge. She submitted that the judge had to give some reasons why he did not accept the appellant's case. Ms Jones submitted that it was highly relevant as to whether the Appellant had been subjected to abuse as a child. Although the Presenting Officer made a valid point as to the difference between the adversarial process and the therapeutic environment and that weight was a matter for the judge, the judge did not give adequate reasons for dismissing the report and to suggest that a psychologist would be credulous was not the case. Lastly, in relation to Mr L R the evidence was set out at [56]. He is recognised as a gay refugee. The findings of the judge were set out which are not as characterised by Mr Whitwell. He undoubtedly did attach weight to the fact that it was noted that he had given previous evidence in ten cases.

Conclusions

18. I am not satisfied that any of the grounds of permission have any merit. I accept Ms Jones' concession that ground 1 is not properly arguable.
19. In relation to ground 2, I am not satisfied that this was a case of the judge requiring corroboration. The judge considered all of the evidence in the round and was entitled to reach the decision he did that the Appellant had not discharged the burden on him and had not provided a reasonable explanation for the gaps in his evidence. The judge carefully considered the evidence from [45] onwards including correctly directing himself to the appropriate legal tests.

20. The judge considered that there were letters from friends who know him as gay, together with photographs and receipts for payments in gay venues. The judge takes into consideration however that there were no dates or other information in relation to the photographs and that the receipts were dated shortly after the appellant's claim. Although the appellant provided letters from an ML and his father attesting to a relationship, the judge notes that neither were present and their evidence could be tested. The judge considered that evidence and noted that there was no mention of the appellant visiting Bangladesh and secretly visiting his mother in 2012 as he has claimed. The judge considered it to be 'beyond belief' that the appellant would not have shared his fears and concerns about return to Bangladesh at that time. The judge also considered, at [72] that given that the appellant claimed to have been in a relationship with Mr L for three years and it was claimed they were still good friends, he would have expected there to be texts or other social media to support his claim. Those were findings which were properly reasoned and open to the judge and were not challenged before me.
21. Ms Jones took issue with the judge's rejection at [69] of his claim to have had relationships in Bangladesh, in Mr Jones' submission because there was no evidence from these two persons. However, that is to consider [69] in isolation. At [69] the judge stated that she doubted the appellant's credibility and noted that he had not accepted his claim to have suffered 'abuse or assault' prior to coming to the UK. The judge at [65] noted that the various letters from the appellant's friends made 'no mention of him having been subject to abusive behaviour and assault because of his sexuality whilst in Bangladesh'. Given that Ms Jones, quite properly accepted at paragraph 11 of ground 2 amounted to a disagreement with the judge's findings at [65], there was no challenge to the judge's findings, which were available to him, that it was simply not credible that the appellant had not spoken to his friends, most of whom were of similar heritage, of the actual experiences he claimed to suffer.
22. It was open to the judge therefore to go on to find, at [66] that:
- 'I do not accept his evidence of having been subject to abuse and persecution in Bangladesh before coming to the United Kingdom in 2009. I consider that he left Bangladesh as arranged and with the assistance of his family to study in the United Kingdom and was able to visit his family in Bangladesh in 2012 without problem'.

Again, there was no substantive challenge to that well-reasoned finding.

23. In the context, of doubts about the appellant's credibility, considered in the round, including as outlined above, it was open to the judge to question the lack of any evidence in relation to the appellant's two claimed relationships in Bangladesh. Although Ms Jones pointed to how long ago these relationships were, there was no error in the judge drawing adverse inference from the lack of any attempts to contact these individuals, for example through social media, or from other persons he knew at college or university, where such evidence ought to have been reasonably available to the appellant. There is no error in that finding or

in the judge's conclusion that there was no reliable evidence of his sexuality in Bangladesh.

24. Equally, I am not satisfied that there was any error in the lack of any specific finding as to whether or not the Appellant was raped by his uncle in Bangladesh as a child. There were no positive credibility findings made by the First-tier Tribunal going to the the appellant's account and the judge noted, at [69] that she doubted the appellant's credibility, and at [76] was not satisfied that he was 'a genuine and reliable witness. Therefore it is evident that the appellant's claimed abuse in Bangladesh was not accepted. In any event and in the alternative, I am not satisfied that any error was material as it does not go to the core of the appellant's claim.
25. In respect of Mr L R, I agree with Mr Whitwell that the judge made the findings she did due to the inconsistencies in the evidence considered in the round. Although the judge recorded that Mr L R denied that he had received any reward for giving evidence she made no specific finding other than attaching little weight to the evidence.
26. Whilst the fact that Mr L R had been a witness for ten persons in the last two years was not a relevant factor when considered in isolation, the judge was entitled to consider this in the context of the inconsistency between the witness's evidence and that of the Appellant, which the judge noted in his conclusion on this witness at [70] but which she had considered in detail at [54] to [57] in terms of the extent of their relationship. The appellant claimed that they were in a relationship, whereas Mr R stated that they had casual sexual encounters. The appellant had stated that he thought that 'living together and 'having an open relationship with someone' meant the same thing. Considering the decision in its entirety, there was no material error therefore in attaching little weight to the evidence of this witness.
27. I am further satisfied that it was properly open to the First-tier Tribunal to find that there was a difference, essentially, in an assessment made in a therapeutic environment, such as that made by the expert, and the judge's assessment in the adversarial process, which looks at all the evidence in the round. The judge set out the psychologist's written and oral evidence including noting the length of the sessions between March and June 2016. The judge noted that the Psychologist concluded that 'at no point had she thought he was dissembling or was not genuine'.
28. The judge properly took into consideration, at [63] that there was no mention of the appellant's return to Bangladesh in 2012 to visit his mother. The psychologist had instead noted that he 'has been unable to call [his mother] or visit despite reports of her being unwell'. The judge was entitled therefore, on the available evidence, to record that there was contradictory evidence given to the psychologist. It was open to the judge in this context, where the judge had identified that the appellant had clearly given a conflicting account to the psychologist, stating that he had been unable to visit her, whereas it was a key part of his claim that he

visited, but in secret, in August 2012, to attach limited weight to the psychologist's evidence.

29. The judge also reached this conclusion considering all the evidence in the round, including the conflicting and unreliable evidence from the appellant generally. It is not the case therefore, as asserted in the grounds, that the judge was 'entirely dismissive' of the psychologist's account; there were adequate reasons for rejecting it as she did. I have reminded myself that adequacy means no more nor less than that. It is not a 'counsel of perfection'. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why he has lost (see **MD (Turkey) v SSHD [2017] EWCA Civ 1958**).
30. I am satisfied therefore that the grounds do not disclose any error of law, such that the decision should be set aside. As indicated at the hearing, ground four was only arguable if the previous grounds had merit. They do not. Even if they did, the grounds are a mischaracterisation of the judge's findings, in the alternative, on the **HJ (Iran)** test: the judge finds that there was limited evidence concerning his lifestyle in the UK, at [78], and that he would not 'live openly with another man in Bangladesh' given that he had not done so in the United Kingdom during the preceding eight years, at [79]. There was no error in those alternative findings and no challenge to the judge's further alternative findings, that he could relocate away from the family home, if required.
31. In respect of ground 5, again Ms Jones conceded that it was difficult to see how this could succeed if the negative credibility findings stand. In any event, I agree with Mr Whitwell's submission that there was no challenge to the judge's findings that there were no significant obstacles identified to reintegration. It was not identified what additional factors were not considered by the judge which could possibly have led to a grant of leave under Article 8. There was no error in the judge's conclusions.
32. The decision of the First-tier Tribunal does not contain any error of law, such that it should be set aside, and shall stand.

Notice of Decision

33. The decision of the First-tier Tribunal shall stand. The appellant's appeal is dismissed

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

Date: 25 October 2018

A handwritten signature in black ink, appearing to read 'M. Hutchinson', written over a horizontal line.

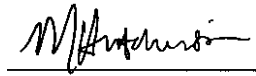
Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

The appeal has been dismissed and therefore there can be no fee award.

Signed

Date: 25 October 2018

A handwritten signature in black ink, appearing to read 'M. Hutchinson', is written over a horizontal line.

Deputy Upper Tribunal Judge Hutchinson