



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

Appeal Number: PA/08478/2017

THE IMMIGRATION ACTS

Heard at Field House

On 3rd April 2018

**Decision & Reasons
Promulgated
On 17th April 2018**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR DM ABU NASIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Collins, Legal Representative

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant who is a man from Bangladesh born on 3rd November 1984. He claimed asylum on the basis that he was a gay man and as such would be at risk on return in Bangladesh. The Appellant had arrived in the UK in August 2010 with a student visa valid until January 2015. His leave as a student was curtailed in May 2012 to expire in July 2012 because he was not studying. Five years later, in February 2017, he claimed asylum. That asylum claim was rejected by the Secretary of State and came before First-tier Tribunal Judge Bart-Stewart at Taylor House in October 2017 and in a

determination promulgated on 10th November 2017 she dismissed his appeal on all grounds.

2. The Appellant had claimed, in support of his claim to be gay, two incidents in Bangladesh. One incident occurred when he was at school when he claimed to have been touching a school friend repeatedly over a period of time culminating in his hugging him in the changing rooms when he was getting changed. That student complained and reported it to a teacher who however took no further action. In the second incident the Appellant claims he sexually assaulted his cousin when they were sleeping together in the same bed and despite quite a serious sexual assault in relation to what he claims was taking place, the cousin slept through it. The Judge found both of those incidents to have been fabrications by the Appellant. The Judge noted there was no supporting evidence before her in terms of any witnesses despite his claim to have been actively gay in the UK since he arrived. The Judge therefore found that he was not gay as claimed and therefore would not be at risk from anyone on return to Bangladesh. She found that he had not lost contact with his family and would not be at risk from them and would return to Bangladesh to resume the life he had had there prior to coming to the United Kingdom.
3. The grounds upon which permission to appeal was granted are six in number. The first ground falls into three parts. The first that the Judge failed to set out in her Decision and Reasons the legal test and principles that she had to apply. That I find is not an error of law. There are as many different styles of writing decisions as there are Judges. Some Judges set out the law in laborious detail over numerous pages at the beginning of a Decision and Reasons. Regrettably sometimes that is not accurate because it is an example of cutting and pasting and re-using old templates. Some more experienced Judges set out, in very brief form, the burden and standard of proof and some Judges will go straight to the actual issues without setting out the law. It is not an error of law not to set out the law; it is an error of law not to apply the correct law and the correct burden and standard of proof. This particular appeal was one of the more straightforward ones in that there was a single issue. The issue was, was it credible that this Appellant was gay? If that was credible the Judge had to decide how he would live in Bangladesh and if he was going to live discreetly whether that was through fear or general choice. She did set out the case of HJ (Iran) & HT (Cameroon) [2010] UKSC 31 on that basis.
4. The second criticism contained in Ground 1 is the use by the Judge of the words “fantasy” and “concocted”. The actual criticism of the Judge using those words is a little unclear. It is absolutely clear from reading the Decision and Reasons what the Judge meant, namely that the Appellant had made up the incidents that he said had happened in Bangladesh in order to support a claim to be gay. The Judge’s findings are absolutely clear and the ordinary definitions of “fantasy” and “concocted” makes clear what she meant. Perhaps the use of different words may have been better; however the reasoning is quite clear.

5. The third criticism in Ground 1 argues that the Judge failed to properly set out the HJ (Iran) test. The Judge did not set out the entirety of the test but she clearly had in mind that her task was to decide whether or not the Appellant was gay and if so how he would then behave and why in Bangladesh. There is no error of law there; she clearly applied the correct law.
6. The second ground argues that the Judge failed to identify which Immigration Rules she was dealing with. That is misguided because the Judge set out clearly in paragraph 1 of the Decision and Reasons that she was looking at paragraph 336 of the Immigration Rules in relation to asylum and paragraph 339F of the Immigration Rules in relation to humanitarian protection.
7. Ground 3 and Ground 4 were not pursued in front of me. Mr Collins was correct to do so. Ground 3 contained a criticism of the Judge failing to deal with Article 8 when the Record of Proceedings makes clear that in the absence of a finding that the Appellant was gay those matters could not be advanced and there was no family life in the UK. Ground 4 relates to the failure to make an anonymity direction and again that was abandoned by Mr Collins before me.
8. Ground 5 suggests that it was a material error of law to make two minor typographical errors in paragraph 50 and paragraph 51. Those typographical errors are *de minimis* and in no way infect the overall quality of the decision.
9. Ground 6 criticises the Judge for attaching no weight to a witness statement. That was not pressed in front of me. The Judge was entitled to attach no weight and she gave reasons why the main issue was that the Appellant was making an incredible claim to be gay without any supporting witnesses despite a very considerable period of time in the UK when he claimed to be actively gay.
10. I therefore find the Decision and Reasons does not contain a material or indeed any error of law and so the appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date 16th April 2018

Upper Tribunal Judge Martin

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 16th April 2018

Upper Tribunal Judge Martin