



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09401/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 7 March 2018

**Decision & Reasons
Promulgated
On 16 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR MMAC
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones, instructed by Farani Javid Taylor Solicitors
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, appealed to the First-tier Tribunal against a decision made by the Secretary of State on 8 September 2017 to refuse his application for asylum in the UK. First-tier Tribunal Judge Abebrese dismissed the appeal in a decision promulgated on 15 November 2017. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Saffer on 4 January 2018.
2. The basis of the Appellant's claim is that he fears being returned to Bangladesh on the grounds of his sexuality. He claims that he realised that he was gay at the age of 12 after an encounter with two distant cousins

and thereafter with classmates. He claims that he was caught with his classmate by his uncle who informed other family members and he was beaten and sent away to live with an aunt. He says that he entered into a relationship at College claiming that he was discreet. The appellant and the man with whom he was in a relationship intended to travel to the UK but the Appellant travelled alone as the man could not raise finances. The Appellant claims that he has had two casual relationships in the UK with the last ending in March 2016. The Appellant claims to owe money to two friends in Bangladesh and that they have threatened his father and asked when he is returning to Bangladesh. The Appellant entered the UK on 2 January 2011 on a Tier 2 student visa valid until 30 April 2014. His leave to remain was curtailed. His subsequent application for leave to remain as a student was refused on 1 April 2014. He made an application for a European Economic Area Residence Card which was refused on 26 October 2015 and he withdrew his appeal against this decision. He contacted the Home Office on 15 March 2017 to initiate an asylum claim and he claimed asylum on 20 March 2017.

3. In considering the appeal the First-tier Tribunal Judge set out details of the Appellant's claim and his oral evidence. The judge made findings at paragraphs 37-55 of the decision. The judge found that the Appellant had not established that he is gay or that he has a subjective fear on his return to Bangladesh.

The Grounds of appeal

4. There are three Grounds of Appeal. The first ground contends that the judge erred in concluding that the Appellant's provision of more detail in his witness statement than in the asylum interview amounted to an inconsistency. It is contended that the judge failed to consider whether a person drafting a witness statement may be able to give more detail than in a Home Office interview. It is further contended that the judge erred in his treatment of the evidence of the witness, as, in finding him not credible, the judge failed to give any explanation for his implicit finding that the witness lied about having had a sexual relationship with the Appellant. Reliance is placed on the case of **EPI Environmental Technologies Inc & Anr v Symphony Plastic technologies PLC & Anr [2004] EWHC 2945 (Ch)** in relation to the evaluation of the witness's evidence.
5. It is contended in the second ground that the judge erred in failing to give a 'Lucas direction' to remind himself that he should '*bear in mind that a witness might lie for a number of reasons, such as shame, misplaced loyalty, panic, fear, distress and the fact that a witness has lied about some matters does not mean that he or she has lied about everything*' **R v Lucas [1981] QB 720**.
6. It is contended in the third ground that the judge erred in his consideration of risk and that the judge's decision as to whether there is a well-founded fear of persecution if the Appellant is a homosexual man in Bangladesh is confused.

7. Permission to appeal was granted by First-tier Tribunal Judge Saffer who noted that the decision is not easy to follow at times due to poor or no proof reading and that the lack of coherence in the decision suggests a lack of professionalism and care. He considered it arguable that the First-tier Tribunal Judge made a material error in finding that the Appellant did not require international protection before considering the documents submitted in support of his claim or deciding if he was gay and in deciding that he was not gay before considering the evidence of his witness. He noted that these points had not been raised in the grounds of appeal but considered that they are *Robinson* obvious.

The submissions

8. At the hearing Ms Jones submitted that the judge erred at paragraph 42 where he said that he attached no weight to the documents in light of his findings in the preceding paragraphs. Ms Jones submitted that the judge erred at paragraph 51 in his treatment of the evidence of the witness who claimed that he had a relationship with the Appellant. She submitted that the judge erred in finding that the witness was not credible due to inconsistencies between his account and that of the Appellant rather than making clear findings as to whether he found the witness credible and failed to grapple with the crucial part of the evidence of the witness, that is his claim that he had a relationship with the Appellant. In her submission the judge further erred in failing to consider why the witness would lie about this. She contended that the judge did not approach the evidence of the witness in a proper and coherent way. She submitted that it is also apparent that the judge found that the Appellant was not credible before considering the witness's evidence [49]. In relation to ground 2 she submitted that inconsistencies do not mean that a witness is lying about everything. As regards ground 3 she submitted that the risk on return was considered extremely briefly and that paragraph 54 is confusing and contradictory. She referred also to paragraph 41 where the judge said that the Appellant was not in need of international protection. In her submission the judge failed to consider the evidence in the round.
9. Ms Fijiwala submitted that the judge had made no material error in the decision. She pointed to paragraph 40 where the judge said that he had considered *Tanveer Ahmed* and found that the Appellant had not discharged the burden of proof. She submitted that the judge reached this conclusion at paragraph 40 and the following paragraphs contain the reasons for that conclusion. She pointed out that the judge also said that he looked at all of the evidence in the round. In her submission the judge's comments at paragraph 41 are in relation to delay, he is not saying there that the Appellant is not in need of international protection. The judge found that the documents were submitted to bolster the Appellant's claim and then went on to look at the claim from paragraph 43 onwards. In her submission it was open to the judge to find that there were inconsistencies between the Appellant's evidence in his witness statement and that in his interview. She submitted that the findings made about the Appellant's evidence were open to him and that he did not need to conclude that the Appellant was lying. She submitted that the judge properly considered the

documentary and oral evidence before concluding that the Appellant is not gay. She further submitted that the judge gave reasons for finding that the witness was not credible and that he was entitled to make that finding given the inconsistencies between the Appellant's evidence and that of the witness. In her submission the judge considered all of the evidence in the round before concluding that the Appellant is not gay. In her submission the judge made no error in considering the objective evidence at paragraph 54.

10. In response Ms Jones submitted that the fact that the judge said that he had considered all of the evidence in the round did not mean that he had done so. In her submission the judge made a finding at the outset that the Appellant was not in need of international protection and then at paragraph 42 rejected the documents based on that finding. She submitted that paragraph 54 is not coherent.

Error of Law

11. I firstly consider the grounds of appeal as set out in the application for permission to appeal and amplified by Ms Jones at the hearing.
12. The first ground contends that the judge erred in his consideration of inconsistencies in the Appellant's evidence because he had given more details in his witness statement than in his asylum interview and that he erred in concluding that the witness was not credible due to inconsistencies in his evidence.
13. The judge considered the Appellant's evidence at paragraphs 43-48. The judge noted that the Appellant's claim to be gay is based in his account of his early experiences as a child in Bangladesh when he had sex with two cousins. The judge took account of the fact that in his asylum interview the Appellant was unable to expand on his description of his feelings or emotions when he realised that he was gay, however in his witness statement he said that he was confused by the experience. The Appellant also said in oral evidence that he was raped by his cousins but that he enjoyed the experience. The judge found this part of the Appellant's account to be contradictory and inconsistent [44]. In my view these findings were open to the judge on the evidence. The judge also found the Appellant's evidence as to his claimed relationship to be inconsistent and not credible because the Appellant was more expansive in his witness statement than in his asylum interview and the judge considered that this was to bolster the Appellant's claim [45]. Again this conclusion was open to the judge on the evidence. It is clear from the asylum interview that the Appellant was given every opportunity to put forward his case and I do not accept any contention that the judge could not take account of the differences between the asylum interview and witness statement in assessing credibility. The judge considered that the fact that the Appellant did not provide evidence from or about the two men he claims to have had casual relationships with in the UK [46]. In my view this finding too was open to the judge in the circumstances. The judge considered the Appellant's evidence about his attendance at a gay club noting that he

had not provided any evidence of this and rejecting the Appellant's explanation as to why he had no photographs or emails. The judge also took account of the fact that the Appellant produced only recent receipts as evidence of his attendance at the club. The judge also took account of the Appellant's reference in the asylum interview to his 'gender change' and his explanation at the hearing that he is gay and wants to have sex with girls and concluded that this evidence was incoherent and confused and damaged his credibility [50]. In my view the judge was entitled to reach the conclusions he did about the Appellant's own evidence.

14. The judge considered the witness's evidence at paragraphs 51-52. The judge set out the reasons why he did not consider that the evidence from the witness was credible at paragraph 52. These included the fact that the evidence was vague as to the nature of the claimed relationship between them and there were conflicts between his evidence and that of the Appellant as to where they met. In my view these are sufficient reasons for concluding that the evidence of the witness was not credible.
15. There is no need for the judge, in expressing doubts about the evidence of the witness, to conclude that the witness was lying. That would be to apply the wrong standard to the assessment of the evidence. The judge is obliged to apply the lower standard to the assessment of evidence; this cannot go so far as to require the judge to reach a conclusion as to whether and why an Appellant or witness is lying.
16. I find that ground 1, which challenges the judge's assessment of the evidence of the Appellant and the witness, has not been made out.
17. The second ground is linked to the first and contends that the judge erred in failing to give a 'Lucas direction'. However, as set out above, the judge did not have to reach any conclusion that the Appellant and/or his witness were telling lies in relation to some or all of their evidence. His role was to consider the credibility of their evidence. This is what he did. I find that this ground has not been made out.
18. The third ground relates to the findings in paragraph 54 where the judge said:

"54. I also find that the objective evidence provided by both parties suggest that in general LGBT persons are not at real risk of persecution under the law in Bangladesh and that the onus is on the applicant to show that they will be at risk. The appellant has not discharged this burden even on the lower standard of proof. The appellant has not provided credible evidence that he will be at risk on return be at risk (sic) for reasons stated above. The objective material provided by the appellant did indicate that individuals have been killed on the basis of their sexuality however the subjective evidence of the appellant does not indicate that he will face a real risk of persecution and as indicated in the country information on Bangladesh each case must be determined on the evidence."
19. I find that, if there is any error in this paragraph, it is not material. The judge found that the Appellant's evidence was not credible; he found that

the Appellant had not established that he is gay and therefore had not established that he is at risk in Bangladesh. There is no material error in this paragraph and accordingly this ground has not been made out.

20. I have considered the issues raised in the grant of permission to appeal. The judge granting permission to appeal appears to have misunderstood paragraph 41. It is suggested that the First-tier Tribunal Judge may have erred in finding that the Appellant did not require international protection before considering the documentary evidence or deciding whether the Appellant is gay. However at paragraph 41 the judge was considering the delay of six years in claiming asylum and said: “... *I find that if he were in genuine (sic) of international protection he would have sought the assistance of the authorities at a much earlier stage*”. This comment is clearly limited to the delay issue and is not a definitive conclusion as to the Appellant's claim. Accordingly there is no merit to Ms Jones' submission that the judge erred in finding at paragraph 41 that the Appellant is not in need of international protection before finding at paragraph 42 that he attached no weight to the documents.
21. The grant of permission to appeal also raises the possibility of an error in the judge's finding that the Appellant was not gay before considering the evidence of the witness. Ms Jones submitted that the judge erred in failing to consider the evidence in the round. I accept that on first reading it appears that the judge reached conclusions on various parts of the evidence without considering all of the evidence in the round. Whilst in my view it would have been clearer in terms of presentation and the flow of the decision to set out the conclusions at the end, the judge made no material error. This is because he set out the overall conclusions at paragraph 40 where he said that he had considered the principles set out in Tanveer Ahmed and that he looked at all of the evidence in the round including the documentary evidence in concluding that the Appellant had not discharged the burden of proof upon him. I find that reading the decision as a whole it is clear that the judge set out his conclusions in paragraph 40 and then gave the reasons for the conclusions in the subsequent paragraphs. Hence the criticism that he reached conclusions as to the Appellant's sexuality before considering the evidence of the witness does not hold up. I accept that there appears to be proof reading issues with the decision and that it could have been structured better. However the judge dealt with all of the evidence and reached conclusions open to him on that evidence and made no material errors.

Notice of Decision

22. The decision of the First-tier Tribunal Judge does not contain a material error of law.
23. 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 their 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: 11 April 2018

TO THE RESPONDENT
FEE AWARD

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

Signed
Deputy Upper Tribunal Judge Grimes

Date: 11 April 2018