



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10223/2017

THE IMMIGRATION ACTS

Heard at Field House
On 9 May 2018

Decision & Reasons Promulgated
On 18 May 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

M N I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 13 March 1979. He appeals the decision of a First-tier Judge following a hearing on 10 November 2017 to dismiss his asylum appeal. There was no appearance of the appellant before me. There had been a previous hearing before the Upper Tribunal on 9 April 2018 when the appeal had been determined in his absence by an Upper Tribunal Judge when it was discovered subsequently that he had been outside the court and had indeed signed in. The Upper Tribunal Judge accordingly set his decision aside.

2. In view of this history the court clerk made a careful search for the appellant at 12.30 p.m. without success. Notice of the proceedings appeared to have been communicated to the appellant's residential address and Mr Kotas had no record of any change of address. In the light of this I was satisfied that the appellant had had notice of the proceedings and there appeared to be no explanation for his non-attendance. I determined it was in the interest of justice to proceed with the hearing in the absence of the appellant under Rule 38.
3. The appellant claimed to have had gay relationships in Pakistan and had had such a relationship with an individual named N. in the United Kingdom. The judge summarised the appellant's case in paragraph 2 of his decision. The appellant's friend N. was no longer willing to give a statement in support of the appellant. The judge summarised the evidence given by the appellant and a witness, [AL]. Having correctly addressed himself to the law and the burden and standard of proof and found that the respondent had been fully justified in relying on Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the appellant's credibility was damaged by the delay in making his asylum claim. However, the judge made his assessment looking at the overall evidence (paragraph 19). The judge concludes his credibility assessment as follows:
 - "20. Other than a (sic) prolonging this determination, no purpose would be served by repeating the Secretary of State's reasons for finding against the appellant. For my part, I am able to confirm that I agree with the reasons given by her. The appellant's interview gives a flavour of the incoherent nature of some of his claims.
 21. That incoherence was maintained in the long witness statement that the appellant produced. This statement was meant to be a response to the Secretary of State's reasons for finding against him. However far from helping him, it reinforces the incredulity of many of his claims. For example, he now claims that the sexual encounters he had when he was young were 'rape' and that they were traumatising. However, reading his interview one would get the impression that a (sic) far from being traumatising, he actually enjoyed the experience and one almost gets the impression that they were rampant. He must of course since the interview have been presented with the over the top account he gave and in order to water that down, he is now putting a different gloss on it.
 22. Equally incredible is the appellant's claim that since 2015 he has been going out to gay clubs, something that he in fact he (sic) denied in his interview. In fact, he went a step further and produced a membership card for a club called Disco Rani. The appellant said that he has been going to clubs as his 2015 (sic), [AL], representing Naz, testified that the appellant has been going there since 2016.
 23. Although I have not previously heard [AL] give evidence, I have come across letters similar to the one written on page 73 of the appellant's bundle from Naz. I am not entirely clear of the status of this organisation, but I think it is both an advocacy group as well as health support organisation specialising in work with south Asian homosexuals.

24. [AL] was able to confirm that the appellant has been a user of her organisation service December 2015 (sic). How she could also testify that appellant attended LGPT nightclubs such as Club Kali and Disco Rani remained a mystery. In fact, the appellant himself did not claim that he went to Club Kali. I did not find [AL] to be a credible witness and therefore do not accept that she is a (sic) position to testify to the appellant's homosexual.
 25. What is also unexplained is why if the appellant has had the benefit of the organisation called Naz, then he would have made an asylum claim earlier. As noted above, it is my recollection that Naz is an advocacy group. They of all people will, therefore, have been aware of the procedure and right to seek asylum by people worried about there (sic) sexual orientation in being returned to there (sic) home country. Yet this apparent (sic), who has been unlawfully here since 2011 and has already had a number of encounters with the Home Office, including being able to make an application in October 2016 on article 8 grounds, left it to make an asylum claim on the day he is notified of his proposed removal two days later.
 26. I note that when it was explored with the appellant as to why it is he did not seek asylum knowing that he had no time to remain in this country he claimed, 'I was not going back'. If so, then how is it that he was going to remain here? He would have been aware that he cannot simply continue to live here otherwise he would not have made the application that he did in October 2016 to regularise his immigration status.
 27. If the appellant had the benefit of assistance from Naz, he was a homosexual having been in a relationship with the same man in the United Kingdom as well as in his home country, and his immigration status precarious, then he has not put forward any reasonable explanation as to why he would have applied for asylum earlier.
 28. The timing of his application is very clearly indicative of the last minute desperate effort to frustrate his removal.
 29. There are in the appellant's bundle a number of photographs with him and another man. I presume it is his view that these somehow prove that he is homosexual. From my part in the light of the adverse credibility finding that I have already made these do not add any weight to his claim.
 30. It follows from above that I do not accept that the appellant is a homosexual. I conclude therefore that the appellant has no subject for fear of being ill-treated because of his sexuality in return to Pakistan.
 31. There is no claim to family life. As far as his private life is concerned, he has not put forward a claim independent of asylum for reaming (sic) in this country. In any event, he could not satisfy paragraph 276ADE of the Immigration Rules. Bearing in mind the public interests in section 117B of the Nationality, Immigration and Asylum Act 2002, I find that it is in the public interest to remove him."
4. Accordingly, the judge found that the appellant failed in his asylum claim and he also dismissed his appeal on humanitarian protection and human rights grounds.
 5. Grounds of appeal were settled by those then representing the appellant and the judge was criticised for effectively adopting the Secretary of State's reasons for refusal as his

own. It was said that the judge had not read the interview questions carefully and it was submitted that the appellant had been entirely consistent in his account. It was acknowledged that the questioning at interview “jumps about a bit and requires careful reading”, but it was claimed that the judge’s assessment appeared not to have properly engaged with the evidence. It was said that the judge had simply adopted the Secretary of State’s reasoning and his approach to the evidence of the witness, [AL], had also been unsatisfactory. There was a lack of anxious scrutiny and the appeal should be reheard.

6. Permission to appeal was granted by the First-tier Tribunal on 15 January 2018.
7. At the hearing before me Mr Kotas relied on the response that had been filed on 1 February 2018 and it was denied that the judge had merely adopted the respondent’s reasoning without engaging with the evidence, and indeed found that the appellant’s attempt to deal with the issues raised by the Secretary of State were incoherent. It was clear that the judge had read the interview.
8. Mr Kotas submitted that the decision was more than adequately reasoned. It was not incumbent on the judge to rehearse the refusal letter. It was clear why the losing party had lost the appeal. The judge had adopted the argument in relation to Section 8 which had been put forward by the respondent. The appellant had made his asylum claim after a removal decision had been made on 13 March 2017. In addition to that issue the appellant had used deception. When the appellant was found attending a wedding in September 2013 it was noted that he was the holder of a student visa and it was admitted at interview that he was not a genuine student, but that he had come to the UK to receive medical treatment for his eye. The appellant wished to make a voluntary departure but pointed out that his passport had expired and he was given appropriate advice. On a subsequent visit the appellant said he wished to use the NHS to deal with his eye problem and was advised that he should not be using the National Health Service unless he paid for the costs himself. There was no mention of a wish to claim asylum. The appellant had denied at question 135 of his interview that he had been going to gay clubs in the United Kingdom. This contradicted what had been claimed at the hearing.
9. In the alternative it was plain on the evidence that the appellant had not been openly gay and had and would practise discreetly if returned to Iran. Reliance had been placed in the decision on **HJ (Iran) [2010] UKSC 31** and the guidance given at paragraph 82 of the decision. The appellant had chosen to live discreetly simply because that was how he himself would wish to live and not because of any fear of persecution. The claim failed on that ground alone. Moreover, the appellant had not turned up to pursue his appeal and there had been no requests for an adjournment. The appellant was not serious about pursuing a weak appeal.
10. At the conclusion of the submissions I reserved my decision. I have carefully considered the material before me. I remind myself that I can only interfere with the judge’s decision if it was flawed in law.

11. The judge, as I have said, properly directed himself on legal issues and the question of the burden and standard of proof. The judge starts off his consideration by referring to Section 8 of the 2004 Act and this was a case in which there had been a lengthy immigration history as the respondent points out where the appellant practised deception and also had ample opportunity to express his fears of return but said nothing about them. The judge was entirely right to find the respondent was fully justified in relying on Section 8 in the circumstances of this case, but reminded himself correctly that the matter was not determinative of credibility.
12. It was not incumbent on the judge to go through each and every paragraph of the decision letter. He was entitled to refer to it rather than to set it out paragraph by paragraph. It was plain that the judge had read the interview which he found to be in parts incoherent, and to find that the appellant's witness statement did nothing to dispel the incoherence. I am not satisfied that the judge simply relied on a summary of the record of interview as claimed in the grounds. In ground 8 it was argued the judge had approached matters on the wrong basis: it was pointed out "This was not a judicial review but a de novo appeal." However I see no evidence that the judge did not approach matters fully conscious of what he had to do and as I have said, he directed himself correctly on the law. It is also apparent that he looked into matters for himself as submitted by Mr Kotas. In paragraph 25 the judge was entitled to find that if the appellant had had the benefit of attending Naz since 2015, it was unexplained why he had not made an asylum claim earlier. This was said to be a point in the appellant's favour in paragraph 9 of the grounds, but I am far from satisfied that the judge did not properly approach the issues in the way that he did and he was entitled to make the point that the appellant had left it to a very late stage to make his asylum claim. In paragraph 26 the judge considered the appellant's explanation for the delay and it is plain that he rejected it. No reasonable explanation had been put forward as to why he could not have applied for asylum earlier. The judge was entitled to take the view that the application had been a last minute desperate effort to frustrate removal.
13. In the light of the judge's findings that the appellant was not homosexual, it was not necessary for him to explore the alternative way in which the Secretary of State's case was put and to which Mr Kotas alluded at the hearing.
14. It was open to the judge to deal with the case in the way he did. It was a short decision but none the worse for that. While he made reference to the respondent's decision it is quite clear that he came to his own independent judgment on matters. The grounds go little further than expressing disagreement with the factual analysis of the judge.

Notice of Decision

15. I am not satisfied that the decision was materially flawed in law and I direct that it shall stand.

Anonymity Direction

16. The First-tier Judge made an anonymity order, which I continue.

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.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed

Date 14 May 2018

G Warr, Judge of the Upper Tribunal