



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

Appeal Number: PA/10382/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 19 March 2018**

**Decision & Reasons
Promulgated
On 27 March 2018**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SA
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 30 July 1989. He has been given permission to appeal against the decision of First-tier Tribunal Judge Shiner dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant entered the United Kingdom in 2010 on a student visa valid until 29 February 2012. He was granted further periods of leave as a Tier 4 student until 21 October 2014 but was unsuccessful in an application for leave

to remain on the same basis on 9 June 2015. He made three unsuccessful applications for leave to remain outside the immigration rules and on human rights grounds and then claimed asylum on 7 April 2017. His asylum claim was refused on 4 October 2017.

3. The appellant's asylum claim was made on the basis that he was gay and that he feared his family, community and the government on return to Pakistan. He claimed that he recognised his sexuality when he was aged 14 and accepted that he was gay when he was 18 years of age. He had been living an openly gay life in the UK. He had had two relationships in the UK. In February or March 2017 his family in Pakistan contacted him about an arranged marriage but he told his intended wife that he was gay and as a result his family found out and threatened him. He had had no further contact from his family since then. He feared that his uncle and brothers would kill him.

4. The respondent, in refusing the appellant's claim, did not accept that he was gay and considered that he would be at no risk on return to Pakistan.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Shiner on 14 November 2017 and was dismissed in a decision promulgated on 8 December 2017. The judge heard from the appellant and three witnesses and considered the appeal bundle containing evidence relied upon by the appellant in support of his claim to be gay. The judge did not accept that the appellant was gay and dismissed his appeal on the basis that he was at no risk on return to Pakistan and that his removal would not breach his human rights.

6. The appellant sought permission to appeal the judge's decision on the grounds that the judge had failed to give weight to the evidence of Ms Asifa Lahore, a sexual health worker from the sexual health charity NAZ, who had provided a letter of support and had attended the hearing in person and given oral evidence. It was also asserted that the judge failed to give reasons for rejecting the evidence of the two other witnesses who gave evidence in support of the appellant's claim to be gay and failed to explain why he gave little weight to other evidence.

7. Permission was granted in the First-tier Tribunal on the grounds that the rejection of Ms Lahore's evidence on the basis that she did not know the appellant other than in her capacity at NAZ was not adequately reasoned in the context of her evidence and that the rejection of the evidence of the two further witnesses was also arguably inadequately reasoned.

Appeal hearing

8. Neither the appellant nor his legal representatives appeared at the hearing. No explanation was provided for their absence. I observed that the notice of hearing had been served on both the appellant and his solicitors and there was no reason to suggest that neither party was aware of the hearing. In the circumstances I proceeded to hear the appeal in the appellant's absence.

9. Mr Jarvis made submissions before me. He submitted that the grounds of appeal were simply a disagreement with the judge's adverse findings. The judge had not mischaracterised the witnesses' evidence. He had considered all the evidence and provided reasons for making his adverse findings. He was entitled to conclude that the appellant had orchestrated a false sexual identity for the purposes of claiming asylum.

Consideration and findings

10. The grounds, in my view, are little more than a disagreement with the weight the judge gave to the evidence of the witnesses, and in particular to the evidence of Asifa Lahore from NAZ. The grounds essentially assert that the judge was not entitled to find against the appellant in terms of his sexuality on the basis of that evidence. However the weight to be accorded to the evidence was a matter for the judge and the judge's reasons for according the evidence the weight that he did were fully and cogently presented in his decision.

11. In a full and comprehensive decision the judge gave detailed consideration to all the evidence. At [52] he gave particular consideration to the evidence of Ms Lahore. He accepted that Ms Lahore was not seeking to mislead him but was not prepared to accept that her view of the appellant's sexuality was based upon reality given her limited knowledge of him. The grounds assert that the judge erred in that respect as he considered her evidence to be that she knew the appellant only professionally, whereas her evidence was that she had personal knowledge of him. However the judge gave full consideration to the extent of Ms Lahore's knowledge of the appellant. He was entitled to take account of her comment, that she did not know the "ins and outs of every case", to be an indication of a limit to her knowledge of the appellant and to weigh that against the other evidence. Likewise, the judge fully recognised that the evidence showed the appellant's attendance at NAZ and at gay events and his involvement in LGBT organisations since some time prior to his asylum claim being made, but was nevertheless entitled to give weight to the fact that there was no evidence of such attendance and involvement before early 2016, despite him having arrived in the UK in 2010 and having become aware in 2011 that homosexuality was not illegal in the UK.

12. The grounds also assert that the judge failed to give proper reasons for rejecting the evidence of the two other witnesses, Mr Farukh and Mr Coelho. However the judge gave full consideration to their evidence at [53] and [54] and assessed that evidence in the round with the other evidence. The judge provided reasons for according the weight that he did to their evidence, noting a lack of knowledge by both of whether the appellant was in a relationship and of events which they recalled. The judge also provided reasons for according the limited weight that he did to the evidence from Mr Romford in light of his absence from the hearing and the lack of opportunity for his evidence to be tested.

13. The judge's assessment of the weight to be given to the documentary evidence and the evidence of the witnesses was also made in the context of various other significant and, it seems to me, validly held, concerns. The judge noted that the appellant's claim in regard to his sexuality was made only in his current asylum claim, despite there having been plenty of opportunity previously to seek protection on that basis in the years since his arrival in the UK in 2010 and despite his claimed awareness since 2011 of homosexuality being legal, and in the context of the various other applications he had made. The judge noted in particular that the appellant had referred, in two previous applications made in June 2015 and January 2017 to a risk on return to Pakistan, but solely on the basis of his father's claimed assassination due to political involvement, with no mention of a fear of return based on his sexuality. The judge noted that the appellant had had the benefit of legal assistance with both applications. Another matter of note to the judge was that there was no evidence of the appellant's claimed previous relationships in the UK nor of his claimed gay lifestyle prior to January 2016. The judge considered the appellant's explanation for that at [51] and provided cogent reasons for rejecting it. The judge was unarguably entitled to consider these matters to give rise to concerns about the reliability of the appellant's claim to be gay and was unarguably entitled to draw the adverse conclusions that he did.

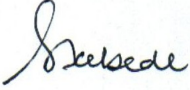
14. At [57] and [58] the judge drew together all the evidence, taking account of the evidence supporting the appellant's claim and the matters undermining his credibility and provided cogent reasons for reaching the adverse conclusion that he did. He was unarguably entitled to reject the appellant's claim to be gay and to reject his claim to be at risk on return to Pakistan on that or any other basis. Contrary to the assertion at [13] of the grounds, there was nothing irrational about such a conclusion. The judge's findings were fully and properly open to him on the evidence before him and for the reasons cogently given. For all of these reasons I find no errors of law in the judge's decision and I uphold the decision.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed 
Upper Tribunal Judge Kebede

Dated: 20 March 2018