



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

Appeal Number PA/10458/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 25<sup>th</sup> April 2018

Decision and Reasons Promulgated  
On 14<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

HAFIZ JAWAD AHMED  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: No appearance

For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for asylum on the basis that he is gay and that he would face persecution in Pakistan. The application was refused for the reasons given in the Refusal Letter of the 3<sup>rd</sup> of October 2017. The Appellant's appeal was heard by First-tier Tribunal Judge Beg at Taylor House on the 15<sup>th</sup> of November 2017 and dismissed for the reasons given in the decision promulgated on the 29<sup>th</sup> of November 2017. The Appellant sought permission to appeal which was granted by First-tier Tribunal Hollingworth on the 22<sup>nd</sup> of February 2018.

2. In the decision after setting out the Appellant's immigration history, the basis of his claim, the evidence received at the hearing from the Appellant and 2 witnesses the judge discussed the evidence and the findings made. The Judge had regard to the time that the Appellant had spent in the UK, the delays in his claiming asylum, the evidence of the supporting witnesses and the Appellant's own account of events. The Judge placed weight on the apparent delay in the Appellant's claim and that he would have been aware of the tolerant nature of society, particularly in London where he was living.
3. Although the Judge accepted the evidence of the witnesses called by the Appellant he found that that did not show that the Appellant was gay. He accepted that the Appellant was familiar with relevant terminology and sexual references and also that he mixed with gay men but that this was not by conviction but to assist his claim for asylum rather than a reflection of his genuine nature.
4. The grounds of application note that the Judge found Asifa Lahore to be a credible witness but did not take into account the evidence she gave about believing the Appellant was gay and why she believed it. Her evidence was that was transsexual and formerly identified as a gay man from Pakistan and had seen and observed the Appellant in a number of relevant settings. There were similar considerations with the other witness Mr Farukh and it had not been explained how 2 people could be so easily fooled. It is also complained that the Judge speculated, for example that the Appellant would have asked his father knew of his sexuality.
5. In the grant of permission First-tier Tribunal Judge Hollingworth he found that it was arguable that the Judge had given too much weight to the factors that discounted the evidence of the supporting witnesses and that a dispassionate analysis was lacking. It was arguable that the Judge had not set out a sufficient analysis of the consideration of the Appellant's personal perceptions in relation to the witnesses' evidence.
6. On the day of the hearing before the Upper Tribunal on the 25<sup>th</sup> of April 2018 the Appellant did not attend and there was no attendance by any representatives on his behalf. The case was last in the list which and the appeals were taken in the order provided for. Towards midday the representatives on the Upper Tribunal file were contacted by the clerk at may request, they explained that they were no longer acting for the Appellant and that he may have new representatives.
7. The Tribunal file show an address for the Appellant in NW4 and that notice of hearing was sent to the Appellant by first class post on the 20<sup>th</sup> of March 2018. There had been no contact by the Appellant or from any representatives on his behalf. If the Appellant had not received a notice of hearing I would have expected him to have been in contact with the Upper Tribunal to ascertain the progress of his case. I note that in the grounds of application for permission to appeal to the Upper Tribunal the Appellant gave a different address and that on the Upper Tribunal file has been updated so the Appellant is aware of the proceedings and means needed to maintain contact.

8. I am satisfied that the Appellant has been given adequate notice of the hearing and has had the opportunity to attend and instruct lawyers or other representatives on his behalf. I find that the Appellant had had notice of the hearing and has not taken the opportunity to attend the hearing of his appeal. The Appellant has experience of the appeals system and will be aware of the need to maintain contact with the Tribunal and to attend hearings that are listed. In the circumstances and having regard to the overriding objective I am satisfied that the appeal could properly be heard and so heard submissions from the Home Office, these are set out in the Record of Proceedings.
9. The grounds appear to proceed on the basis that as the witnesses found the Appellant's claims credible then the Judge should have done so too. Given the nature of their contact with the Appellant the witnesses are treated in the Grounds of Application as being in the nature of experts of a sort. There is no specific advantage to giving evidence in that capacity and no special weight to such evidence which has to be considered in the light of the guidance below.
10. I bear in mind the guidance on experts which is relevant. In the case of Re M-W (Care proceedings: Expert Evidence) [2010] EWCA Civ 12 in paragraph 39 Wall LJ stated "I regard the following as trite propositions of law: (1) Experts do not decide cases Judges do. The expert's function is to advise the Judge; (2) The Judge is fully entitled to accept or reject expert opinion; (3) If the Judge decides to reject an expert's advice, he or she: a. Must have a sound basis on which to do so; and b. Must explain why that advice is being rejected; (4) Similar considerations arise when a Judge prefers one expert's evidence to that of another. Judges must explain why they prefer the evidence of A to that of B."
11. The fact that credibility is not to be assessed by witnesses is reinforced by the observations in the case of MOJ [2014 UKUT 442 (IAC)]. It is the duty of an expert to advise the Judge and there are a number of jurisdictions where opinions on credibility are explicitly prohibited. Although there was no claim to expertise as such in this case the witnesses' position was analogous to that of an expert. The point is that the final decision was that of the Judge who would be in a position to take a wider view with more information overall than the witnesses whose contact with the Appellant was in a particular context.
12. In the decision the Judge did not doubt the beliefs of the witnesses but that was only one part of the evidence that had to be considered. The Judge was assessing the Appellant's case in the context of his immigration history including the delay in claiming, that he had made other applications to remain in the UK without raising this issue, the claims that he had made about events in Pakistan and the knowledge that his family had of his claimed sexual orientation.
13. The Judge's discussion of the issues raised was set out in paragraphs 28 to 55 of the decision. the Judge clearly had relevant guidance on these issues and the case law, particularly that of HJ (Iran) and HT (Cameroon) [2010] UKSC 31. The Judge had regard to inconsistencies in the Appellant's

accounts and the fact that he had lived in London when assessing the credibility of the Appellant's case.

14. Given the nature and contents of the discussion in the decision it cannot be said that the Judge treated the issue superficially or in any way unfairly. The Judge had not approached the process with any suggestion of inappropriate stereotyping as to how a gay person would be expected to socialise and had regard to how advice on sensitive topics can be accessed relatively easily in this day and age.
15. The decision has to be read as a whole and bearing in mind that the Judge has access to information that witnesses may not have. Read fairly I am satisfied that this is a decision that was open to the Judge for the reasons given and that it does not contain an error of law. The decision stands as the disposal of this appeal.

## **CONCLUSIONS**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 9<sup>th</sup> May 2018

## **Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

## **Fee Award**

In dismissing this appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 9<sup>th</sup> May 2018