



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

Appeal Number: PA/12638/2017

**THE IMMIGRATION ACTS**

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

**Decision & Reasons Promulgated  
On 13<sup>th</sup> November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**RIZWAN [A]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss S Anzani, Counsel, instructed by Connaughts  
For the Respondent: Ms Z Kiss, Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Flynn in which she dismissed the appellant's appeal against the decision of the respondent to refuse him asylum and leave to remain on Article 8 grounds. The judge rejected the appellant's account to be gay and at risk on return to Pakistan.
2. The appellant is a citizen of Pakistan born on 1 September 1983. He entered the UK on a student visa issued on 9 July 2012, valid until 16

January 2014. On 14 October 2003 he submitted an application for further leave to remain as a Tier 4 Student Migrant. The application was refused on 27 April 2015 and his appeal dismissed on 2 February 2016. His appeal rights were exhausted on 19 August 2016.

3. On 16 June 2017 the appellant claimed asylum on the basis of his sexuality. The respondent rejected the appellant's claim to be a gay man. She found that there were inconsistencies in his account and it was inconsistent with the background information. The letters of support were not from a trusted source and no weight was placed on them or on the photographs, which were self-serving.
4. The judge heard oral evidence from the appellant and three witnesses. The appellant said he had been in a relationship since February or March 2015 with [MA]. They met at a Desi Boyz event at a club. They began a romantic relationship in February 2015. The relationship became serious in December 2016. They became committed in December 2016 when his partner proposed to him.
5. He was aware of his sexuality and fighting it from the age of 16 to 18 when he was studying in Pakistan. When he came to the UK to study he became aware of his sexuality. At the time he did not think about whether his family would accept his sexuality. He did not join any LGBT group in the UK at that time.
6. He met his first partner, [A], in the UK in 2013 at Ku Bar in Soho. That relationship lasted for eight or nine months.
7. At the time he made his Tier 4 application, he was not aware that gay people attracted adverse attention in Pakistan. He did not have any such fears at that time. His parents could be killed because of his relationship. People thought killing them made them heroes. Law enforcement would kill him as a gay man.
8. He did not attend the London Pride events in 2013, 2014 or 2015. He first attended in July 2017, after his asylum claim. He did not go in previous years because he did not have many friends; no-one asked him.
9. He said his father died on 16 June 2016. That was the day of his interview with the Home Office. His brother rang him in the morning at about 6 or 7 am and said their father died because of him. He had informed his family about his sexuality at the end of April 2016 before his screening interview. His family had disowned him.
10. He said that he and his partner could not move in together due to financial difficulties. He was not getting a lot of support from the [Q] family until he moved in with them in June 2017.

11. The second witness to give evidence was [MA]. He said he met the appellant in April 2014 at a disco club. The relationship became serious in December 2016. He proposed to the appellant as he realised this was the person he wanted in his life. They moved in together in June 2017. They could not move in sooner because there were financial problems as well as other problems and they did not have a place where they could live together. They were living with friends, the [Q] family.
12. In cross-examination [MA] said he did not know the appellant before coming to the UK. They were not studying at the same college in Pakistan. The appellant did not live with him when he was living at [ ~ ] with a friend, [S], because they were in the process of getting to know each other. He proposed to the appellant in December 2016. He told his family in Pakistan about his sexuality on 4 April 2017. His father said he would kill him but he said he was so much in love. His family cut off his financial support. He told the appellant that he should do the same because he had told his family. The appellant's financial support was cut off then.
13. The third witness to give evidence was [SQ]. He lived with his wife and the appellant. He said the appellant has lived with him since June 2017. He had been friends with him for three or four years, since 2013. He met the appellant when they were working at KFC.
14. [SQ] said that from the beginning he realised that the appellant was gay, from his body language. He did not ask him directly. At the end of 2014 the appellant told him he was gay.
15. The fourth witness to give evidence was [HK]. He adopted his witness statement. He said that he was 100% gay. He started going to gay clubs in the UK in 2012. He had been involved with LGBT organisations in the UK since 2016.
16. The findings made by the judge are set out at paragraphs 70 to 105.
17. The core of the appellant's claim as stated by the judge is his fear of persecution by his family, religious people and the authorities on account of his sexuality.
18. The grounds upon which permission was granted argued that:
  - (1) The judge made unreasonable or irrational findings at paragraphs 77, 79, 81 and 85; and
  - (2) gave inadequate reasons for rejecting the supporting evidence including that of witnesses given orally at the hearing.Upper Tribunal Judge Grubb granted permission, saying that both grounds are arguable for the cumulative reasons set out in the grounds at paragraphs 5 to 8 and 9 to 12 respectively.
19. Miss Anzani relied on the detailed grounds of appeal.

20. I am in agreement with the grant of permission and proceed to highlight one or two errors in particular which I find undermine the judge's decision.
21. At paragraph 77 the judge said the appellant did not explain why he waited until just before he made his asylum claim to ask for [SQ]'s assistance, nor did he explain what other efforts, if any, he made in the period between December 2016 and May 2017 to find accommodation that he and [MA] could share, despite claiming they had been a couple since December 2016. I accept Miss Anzani's submission that this was not something the appellant was asked to explain during the course of the hearing, by either of the representatives or the judge. The appellant has been unfairly prejudiced by not being afforded the opportunity to respond to this particular concern.
22. I find for the reasons given in paragraph 6 of ground 1 that the judge's finding at paragraph 79 is unclear as to whether the judge is equating gay nightclubs to LGBTQ rights organisations as the two are very different entities, or whether she deduces that researching gay clubs online would either have necessarily drawn the appellant's attention to LGBTQ rights organisations or would mean that the appellant would certainly have undertaken distinct searches for LGBTQ rights organisations.
23. I also find that there is merit in the arguments in ground 2 that the judge gave inadequate reasons for rejecting the supporting evidence including that of witnesses given orally at the hearing. At paragraph 94 the judge found that whilst much of [MA]'s evidence was consistent with the appellant's account, she was satisfied that this was because they have agreed to support the other's asylum claim, not an indication that their evidence is truthful. Miss Anzani relied on **JK (DRC) [2007] EWCA Civ 831**, in which the Court of Appeal held that if a judge disbelieves a witness in evidence, he must state why he disbelieves it. The degree of reasoning required to support a finding of fact must depend on the circumstances in the particular case. In this case, as [MA]'s evidence was so pivotal, I find that greater reasoning was required by the judge for her finding.
24. At paragraph 97 the judge found that Ms Lahore did not explain the basis for believing that the appellant is gay. I find that the judge failed to explain why a trained sexual health worker, with personal and professional knowledge of the appellant, whom he has known for over a year, would be mistaken in her belief that the appellant is a gay man.
25. At paragraph 99 the judge attached less weight to the evidence of [SQ] and [HK] because they are both friends of the appellant. The judge went on to suggest that their failure to provide a detailed account of their reasons for their belief that the appellant is gay limits the value of their evidence. I find that it is unclear what further detail the judge required.

26. I also find as stated in the grounds that there is no identifiable assessment of the letters of support submitted by the appellant from his friends.
27. For these reasons, I find that the judge's decision cannot stand. I set it aside in order for it to be remade.
28. The appellant's appeal is remitted to Taylor House for rehearing by a judge other than First-tier Tribunal Judge Flynn.

**Notice of Decision**

The appellant's appeal is remitted for rehearing.

No anonymity direction is made.

Signed

Date: 6 November 2018

Deputy Upper Tribunal Judge Eshun