



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13417/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 4 June 2018

Decision & Reasons Promulgated  
On 8 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

H I  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Asanovic, Counsel, instructed by Lupins  
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the challenge by the Appellant against the decision of First-tier Tribunal Judge N M K Lawrence (the judge), promulgated on 5 March 2018, in which he dismissed the appeal on all grounds. That appeal had in turn been against the Respondent's decision of 30 November 2017, refusing the Appellant's protection and human rights claims. Those claims were based upon essentially two issues: first, an alleged land dispute in Pakistan; second, the Appellant's claimed homosexuality.

The judge's decision

2. The judge sets out numerous adverse credibility findings in respect of the land dispute issue ([8] - [24]). The whole of this aspect of the claim is rejected. The Appellant's claimed homosexuality is then considered and for reasons set out at [25] to [46] this too is rejected.

### **The grounds of appeal and grant of permission**

3. The grounds essentially make the following points. First, that the contents of [25] are confused or contradictory. Second, the judge failed to make any allowance for the Appellant's late disclosure of claimed sexual abuse as a child. Third, at [46] the judge appears to be contradicting himself when he says that the Appellant and his witnesses were truthful, having set out numerous adverse credibility findings in the preceding paragraphs. Fourth, the judge had failed to take the relevant written evidence of the Appellant into account. Fifth, the judge had failed to deal adequately with expert medical evidence from a psychiatrist, Dr Foster.
4. Permission to appeal was granted by First-tier Tribunal Judge Landes on 28 March 2018.

### **The hearing before me**

5. Ms Asanovic concentrated on the medical report of Dr Foster. She submitted that it had not been dealt with properly in [46]. The judge had either not had regard to it when considering other various issues of credibility in respect of past events and his claimed sexuality, or alternatively had failed to provide any reasons for rejecting what appeared to be unchallenged expert evidence. In respect of the apparent contradiction in [46] referred to in paragraph 6 of the grounds, she submitted that whilst this may appear to be a minor issue in itself, when combined with other matters, it undermined the whole of the decision.
6. Ms Pal submitted that the apparent error in [46] was simply a slip by the judge and it was clear that he meant to say that the Appellant and his witnesses had not be truthful. In relation to the report of Dr Foster she submitted that it had in fact been considered. Even if there were errors in relation to it, these were not material.
7. In reply Ms Asanovic noted a further point in relation to the treatment of the medical report. In [56] the judge had stated that Dr Foster had asked the Appellant for an explanation in respect of an apparent inconsistency, and it was not his (the expert's) role to have done so. Ms Asanovic pointed out that Dr Foster had not in fact asked the Appellant any such thing.
8. At the end of the hearing I reserved my decision.

### **Decision on error of law**

9. After careful consideration and with a degree of hesitation I have concluded that there are material errors of law in the judge's decision and I should set it aside in exercise of my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. My reasons for this conclusion are as follows.

10. I do not see the apparent contradiction stated in [46] as being of any material significance when viewed in isolation. It is unfortunate that the judge has made what in my view is a slip by failing to include the word “not” in the relevant sentence, but it is abundantly clear from everything that proceeds this and follows after this sentence that he was concluding that the Appellant and his witnesses were not truthful.
11. There is greater merit in the challenge relating to the issue of alleged sexual abuse as a child. With reference to [25], it is of real concern that the judge appears to be suggesting that it was wholly implausible that anybody who had been abused as a child could, as an adult, possibly go to what are described as “gay clubs”. I can see no rational basis whatsoever as to why historic abuse would render such actions in later life to be wholly implausible.
12. There is a second issue arising out of [25]. Having found that the Appellant’s actions were apparently implausible and therefore adverse to his credibility, the judge then appears to then attach little weight to the point. It really is unclear to me as to what the judge is trying to say here: is there a negative credibility finding or not? My concern here is compounded by the very brief treatment of the late disclosure issue relating to the claimed abuse as a child. This is only really dealt with in a single short paragraph ([26]). There is force in the challenge that the judge does not appear to have had any regard to issues surrounding late disclosure of past traumatic events (in this case childhood abuse, but common also to, for example, trafficking).
13. I find that [25] contains errors in respect of the judge’s reasoning. These errors, whilst of concern, would not in and of themselves lead me to conclude that the decision must be set aside. However, they do have a connection with what I regard as being the most important issue in this appeal, namely the treatment of Dr Foster’s report.
14. In terms of its substance, the report is only dealt with in a single paragraph, [46]. I will set the relevant passage out here in full:

“Dr Foster and (sic) Bamber Foundation based their assessment and conclusions on what the appellant told them. The appellant is motivated by a desire to secure leave to remain in the UK. It is not the function of Dr Foster to ascertain truth or otherwise of the appellant’s account. His task is to ascertain whether the account given by the appellant fits known criterion of psychiatric or psychological diagnosis. On the other hand the task of the Tribunal is to assess the truthfulness of the appellant’s account. In doing the Tribunal considers all of the evidence ‘in the round’. In the instant appeal, I take into account the oral evidence of the appellant and his cousin’s. I take into account the appellant’s witness statements, ‘s/c’, AIR, solicitor’s written submissions. I take into account the contents of the bundles before me. I take into account the background information.”
15. The problems with this consideration of the expert evidence are as follows.
16. First, it is well-settled now that assuming the author of the relevant medical report is suitably qualified and follows acknowledged professional methodology, such evidence cannot simply be rejected out of hand because a certain amount of reliance is placed upon what the author is told by an appellant. Medical professionals apply their

own expertise to the evidence provided to them and this will include presentational indicators as well as a reported history. What is said in [46] does not in my view appear to reflect a correct approach in this regard.

17. Second, Dr Foster's report covers a number of issues and makes clear diagnosis of PTSD and severe depressive episode. Whilst none of this would be conclusive of the credibility of the Appellant's account as a whole, on the face of this evidence there was clear potential support for aspects of the claim, particularly relating to past traumatic events and the claimed homosexuality. It is quite right that ultimately the truth of an account is a matter for the Tribunal. However, when viewing the evidence "in the round" and reaching findings, judges must include medical evidence in that assessment. It appears to me from a reading of [46] that the judge has taken all other aspects of the evidence in the round and has then rather left the medical report out of account until after an adverse view has been taken of the Appellant's own evidence.
18. Third, in my view there are no adequate reasons set out by the judge for rejecting what appears to be the entirety of Dr Foster's report. Therefore, even if this evidence had been considered properly and in the round, there is another legal error here.
19. Fourth, my concerns about the treatment of the medical evidence is compounded by what is said in [56]. The judge certainly appears to be criticising Dr Foster for allegedly asking the Appellant for an explanation on an apparent inconsistency in the evidence (thereby trespassing into the field of a credibility assessment). Having asked both representatives to look carefully at Dr Foster's report and having re-read it again for myself, it is clear that the doctor did not in fact ask the Appellant any such thing. I am satisfied that the judge has erroneously taken a point against the author of the report.
20. As I have mentioned earlier, there are a number of other adverse credibility findings, not all of which are necessarily affected by the errors I have set out above. This has given me pause for thought as to whether the errors are indeed material to the outcome of the appeal. Ultimately, I conclude that they are. Taking matters as a whole, if the medical evidence in particular had been considered appropriately it might well have had a supportive effect on core issues in the Appellant's claim, in particular that relating to his homosexuality. This is why I have deemed it appropriate to set the judge's decision aside.

### **Disposal**

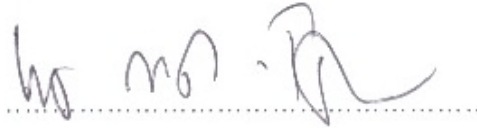
21. Both representatives were agreed that if I should find that there were material errors this appeal should be remitted to the First-tier Tribunal for a complete rehearing. Having regard in particular to paragraph 7.2 of the Practice Statement, I agree. The errors I have identified go to the core issue in this case, namely that of credibility. There is a need for a significant revisiting of all credibility issues in this case and that is why it is appropriate to remit.
22. I will set out relevant directions below.

**Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal.**

**I make an anonymity direction.**

A handwritten signature in blue ink, appearing to read 'W. Norton-Taylor', is written over a horizontal dotted line.

Signed

Date: 7 June 2018

Deputy Upper Tribunal Judge Norton-Taylor