



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

Appeal Number: PA/01706/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 30 May 2019**

**Decision & Reasons Promulgated
On 12 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR KASRUL ALAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Uddin, Solicitor

For the Respondent: Mr A Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 20 September 1985. He appealed against the decision of the respondent refusing to grant him asylum and humanitarian protection in the United Kingdom. Judge of the First-tier Tribunal Geraint Jones QC dismissed the appellant's appeal in a decision dated 26 March 2019. The First-tier Tribunal Judge found the following in his decision.
2. The appellant's claim was based on his membership of a particular social group in that he is bisexual. The appellant came to this country on 28 October 2008 as a working holidaymaker and remained in this country

without permission until 29 December 2010. It was only after he was arrested that he claimed asylum some ten years later. The judge noted that in the appellant's witness statement dated 27 December 2017 where he alleges that he supported vulnerable third gender and gay people in Bangladesh and that brought him to the adverse attention of a group of students and he was attacked by them for this support. The appellant's claim in his 27 December 2017 witness statement the appellant said he was a gay rights activist. The judge found that however the appellant's evidence morphed into the appellant's claim that he was a transgender person himself.

3. The judge relied on Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and he took that against the appellant's credibility. He did not place reliance on documents provided by the appellant at pages 12 to 17 of his bundle of documents to corroborate his account that his family has disowned him. The judge did not place any reliance on the letter that the appellant provided that he had harassed his mother and father, and even if such a complaint had been made, the judge noted, the police did not take any action. The judge then considered background evidence that false documents are easy to obtain in Bangladesh. The judge found that he has no hesitation in his conclusion that the appellant is a would-be economic migrant who told lies in a bid to remain resident in this country.
4. The judge stated that in December 2017 the appellant did not adduce any documents to support his claim and whatever documents he subsequently has provided are purely to support his embellished and metamorphosed assertions. He found that the translations of the report are nonsensical, ungrammatical and lacking appropriate syntax, which he would not expect in an official document. The judge also found that the appellant's claim that he has lived on the charity of others since 2011 not credible and found that the appellant has been working in this country. He found the appellant not credible and said that the appellant's narrative was a tissue of lies regarding the appellant's alleged bisexuality.
5. The grounds of appeal state the following. The primary ground of appeal is that the judge did not take into account the medical evidence which was in the bundle of documents. There are also suggestions that the judge was biased in some of the utterances that he made in his decision, such as that "When that visa expired the appellant chose to flout and abuse the immigration laws of this country by remaining as an illegal overstayer". First-tier Tribunal Judge Robertson in a decision dated 24 April 2019 said that it is arguable that the judge did not make any reference to the appellant's medical condition and that if that is the case and if it is found to be material then maybe the rest of the findings are unsafe.
6. At the hearing I heard submissions from both Mr Uddin and Mr Tufan in the error of law submissions.

7. Mr Uddin in his submissions took me to the evidence in the bundle which states that the appellant had referred himself to the doctor who showed that the appellant showed signs of PTSD. He also referred me to the letters provided and said that the appellant should have been considered a vulnerable witness according to the Joint Presidential Directions and quoted me some case law. I asked him how would that be a material error that the medical evidence had not been considered given the Judge's findings that the appellant is not bisexual, he pointed me to paragraph 10 the decision where the judge stated that it is very noticeable that at the interview the evidence given by the appellant metamorphosed and was upgraded. This is explicable only on one of two bases: either the appellant's memory of what had transpired whilst he was in Bangladesh was very much better than it had been when he prepared his statement dated 27 December 2017; or he has embarked upon deliberate embellishment with a view to beefing up the basis upon which he puts his claim. Mr Uddin argued that the other explanation could have been the appellant's mental state.
8. Mr Tufan accepted that the judge has not referred to the medical evidence in his decision and said that the medical documents show that there has been merely a referral. The judge took into account Section 8 issues and relied on the judge's decision in his findings about how the appellant's claim has metamorphosed. He did not find that this would have been material to the eventual decision.
9. In respect of Article 3 and Article 8 Mr Tufan argued that case law suggests that an appellant who has been in this country unlawfully and with a medical history that he has demonstrated would not succeed in any event.

Findings

10. I have considered the decision of First-tier Tribunal Judge Geraint Jones QC with great care. I have considered the submissions made by both parties. I accept that the judge has not made any reference to the medical evidence in his decision. That is not to say that he did not consider the documents that were before him and the medical evidence was amongst those documents. The judge found that the appellant was not credible and gave cogent reasons for his findings. The appellant's evidence, the judge's noted was inconsistent. The most relevant inconsistency being that the appellant at first in his statement dated 27 December 2017 said that he was a gay rights activist and that he sympathised with gay rights but did not claim to be a gay or bisexual himself. It was only later that the appellant's claim changed into that he is a bisexual and that he has sex both with men and women. The medical evidence is no more than a referral to a doctor on what the doctor has been told by the appellant about his condition. No medical report was provided. Therefore a differently constituted Tribunal would not come to a different conclusion based on the limited medical evidence.

11. The judge also did not find the appellant credible under Section 8 and he was entitled to do so given that the appellant's claim that he fled Bangladesh due to many fears, including political ones, and that he would not claim asylum earlier. This was a finding the Judge was entitled to make on the evidence before him.
12. At paragraph 10 of the decision, that the judge states that the appellant's evidence that he is a bisexual can be explained by two hypotheses: one, that he had a much better memory when he prepared his statement on 27 December 2017, or he has deliberately embellished his claim. The judge said that the appellant had deliberately embellished his claim to procure the outcome which he desires. Mr Uddin stressed that the medical evidence might have persuaded the judge otherwise in that the medical evidence explains the inconsistency. I still do not accept that this would have explained why the appellant would say that he is a supporter of bisexual people when he was in Bangladesh and then say that he is actually a bisexual himself.
13. The judge was entitled to place the weight he deemed appropriate on the documents provided by the appellant. I have considered the documents because Mr Uddin took me to them at the hearing and I find that there is no document which would established any point of law which would impact as to the correctness of the decision. It may be an error for the judge not to have referenced the medical documents in his decision, but in I find that it is not a material error because the medical documents in themselves do not explain the inconsistencies in the appellant's evidence. It is also not incumbent on the judge to reference every piece of evidence produced by the appellant.
14. It is clear from the decision that the judge did not find the appellant's claim credible and gave cogent reasons for his findings that the appellant is a not a bisexual and is an economic migrant who only claimed asylum after he was arrested. On the evidence before him, there is no perversity in the conclusions that the judge reached. The grounds of appeal are a quarrel with the decision of the judge and have no merit.

Notice of Decision

16. I find that there is no material error of law in this decision, real, actual, perceived or embryonic and the judge came to a sustainable conclusion on the evidence before him. Appeal dismissed.
17. No anonymity direction is made.

Signed

Date 10th day of June 2019

Deputy Upper Tribunal Judge Chana

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and therefore there can be no fee award.

Signed

Date 10th day of June 2019

Deputy Upper Tribunal Judge Chana