



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

Appeal Number: PA/01767/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 February 2019**

**Decision & Reasons Promulgated
On 06 March 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR K S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Asanovic, Counsel, instructed by Elaahi & Co Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. In a decision posted on 20 December 2018 Judge Ross of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a citizen of Pakistan, against the decision made by the respondent on 22 January 2018 refusing his protection claim. The basis of the appellant's claim was that he would be at risk on return by virtue of his gay sexual orientation.
2. The appellant's main grounds of appeal are two-pronged, the first (1) challenging the judge's treatment of the issue of interpretation, the

second (2) taking issue with the judge's treatment of the evidence the appellant had produced to show he had been in a gay relationship in the UK.

3. I can be brief because both parties agree with me that the judge's decision is legally flawed.

4. The crux of ground (1) centres on what the judge stated at paragraphs 25-26:

"25. When the hearing resumed after the short adjournment, Ms Dayken made an application that the hearing be adjourned. She said that she had received instructions from the appellant that his answers were not being properly interpreted by the interpreter. She said that one example arose when the appellant was being asked whether his mother had told him about the FIR in the same conversation in which she accused him of indulging in activities. She referred to the appellant's answer that he had not understood the question leading to him giving inconsistent answers. Ms Brown objected to the appeal being adjourned and observed that the appellant's evidence had actually flowed very well. Ms Brown also observed that the appellant's English was good enough for him to notice that the questions were not being properly translated however, the appellant had not anytime said that he did not understand a question before answering it.

26. I refused Ms Daykin's application. I considered that there was no material upon which I could conclude that either the questions were not being properly translated or that the appellant's answers were not being properly translated".

5. Ms Daykin who represented the appellant at the hearing, has sworn a statement which states that the actual state of affairs was that problems with the interpreter became apparent about a third way through the hearing. In response to perceived difficulties, Ms Daykin raised with the judge concerns that the interpreter was not correctly interpreting questions being put to the appellant. Ms Daykin records that in relation to a question the appellant was asked about how his parents sent him money in the UK, the interpreter gave an answer indicating that they paid money to someone in Pakistan who then gave it to a relative in the UK. The appellant interrupted, stating that was not what had been said and "[t]he interpreter then stated he could not continue with the hearing". Ms Daykin's second submission to the judge arose at the end of the evidence-taking and was to ask for the hearing to be abandoned and start with a new interpreter, alternatively to adjourn. The grounds continue:

"11. The application to adjourn was based on the interpretation issues observed in court summarised above. Furthermore, the Appellant was uneasy and confused by the interpreter and not satisfied that he had interpreted questions exactly and particularly when asked questions about the conversations with his mother the interpreter distinguished between the first and second conversation which was not the actual question.

12. The application to adjourn was in order to obtain the recording and check the accuracy of the interpretation in light of the issues that had arisen. The FTTJ refused the application and stated that he had to consider the interests of justice and that we had been going since 11.30 and it was now 2pm. That he hadn't picked up interpreter problems. The FTTJ was satisfied that the Appellant understands and couldn't see how an adjournment would help.
 13. The hearing concluded and the decision was reserved. The appellant's representative requested a copy of the recording immediately after the hearing and was informed how to make the request in writing. This was done prior to receiving the FTT's determination but has yet to be received. A transcript of the recording will be produced when the recording is made available.
 14. It goes without saying that accuracy of interpretation in protection cases that turn on credibility is fundamental to a fair hearing. The recording of FTT hearings is relatively new but the advantage of such recordings is that the issues that arose in this hearing could have been effectively dealt with by a short adjournment and it was appropriate in the interests of justice and fairness and was the proportionate step in all the circumstances".
6. Produced in time for the hearing before me was a bundle of email correspondence relating to the efforts of the appellant's representatives to obtain the audio transcript of the hearing.
 7. In deciding ground (1) I face several difficulties: first, no audio transcript has been made available; second, the Home Office Presenting Officer's note does not even record that the appellant's representatives sought an adjournment; third, the judge's Record of Proceedings only covers the adjournment request summarily. The upshot is that the only detailed record of what happened is that produced by Ms Daykin and, in the absence of any record contradicting it, I consider it would be unsafe to reject it. I further note that the Home Office Presenting Officer's submission as recorded in paragraph 25 of the decision appeared to accept at one point that questions were not properly being translated. For the HOPO this showed that the appellant's English was good enough not to need an interpreter, but the appellant had elected to give his evidence through an interpreter and the judge did not suggest that he should not be afforded interpretation facilities. Also, to have sought to rely on the fact that the translating "flowed quite well" does not assist if it was in fact inaccurate.
 8. I also consider ground (2) properly identifies a shortcoming in the judge's treatment of the documentary evidence concerning an ex parte non-molestation order that had been issued against the appellant's friend in 2015. Regarding this the judge stated at paragraphs 43-44 as follows:
 - "43. I accept that an ex-parte non-molestation order was made against the appellant's friend on 30 January 2015 and a substantive order was made on 4 March 2015 which expired on 30 July 2015. The documents relating to that application are contained in a separate bundle headed 'Applicant's bundle'. I note that appellant or his

representative has ticked box 6 which describes the relationship as '*were cohabiting*'. Box 13, which describes where, '*you are having, or have had an intimate personal relationship which is or was of significant duration*', has not been ticked. In his witness statement in support of that order, the appellant stated that they were in a homosexual relationship with each other from January 2013. That statement is dated 12 January 2015. The appellant also stated he left the 'cohabitation home' on 10 November 2014. I regard a relationship which lasted from January 2013 to November 2014 to be one which was of a significant duration. The fact that the relationship was described as one of cohabitation rather than being an intimate personal relationship also casts doubt on the truth of the relationship which existed. It is also recorded in the Order that at the time the court dealt with the case, the respondent had not attended court and had not booked in with the court usher. Once the case was concluded at 10.35am and the parties had left court, the respondent then walked into court and stated that he had seen his name on the court list and had come into court. The respondent confirmed that he had no issues with the order remaining in force.

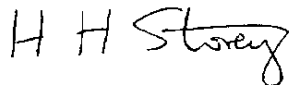
44. I find that the non-molestation order, whilst probative of cohabitation, is not probative of a same sex relationship between the appellant and the respondent to that application. Nor is the non-molestation order proof of the truth of the appellant's statement provided in support, which was untested and not challenged".
9. The difficulty with this assessment is first of all that the form instructs that only one box is ticked, and second that the court's own guide to non-molestation orders defines a cohabiting relationship as one involving a couple living together and the form provides a separate box (box 7) for the situation where "Both of you live or have lived in the same household". In assessing this evidence, the judge should also have taken into account that the appellant's first witness statement, dated 12 January 2015, described the appellant as being in a homosexual relationship with this person.
10. Nothing I have said to this point should be taken to suggest a view as to whether the appellant should be accepted as credible or not, but the difficulties I have identified in the judge's decision necessitate that I set it aside for material error of law and remit to the FtT (not before Judge Ross) and not before the same interpreter.
11. To conclude:
- The decision is set aside for material error of law.
- The case is remitted to the FtT (not before Judge Ross).
12. An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 28 February 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a long, sweeping underline that extends under the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal