Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03674/2019

THE IMMIGRATION ACTS

Heard at Glasgow
On 10 October 2019

Decision & Reasons Promulgated
On 16 October 2019

Before

UT JUDGES MACLEMAN & DAWSON

Between

M Z I

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Olabamiji, of DMO Olabamiji, Solicitors
For the Respondent: Mr Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of FtT Judge Buchanan, promulgated on 28 July 2019, dismissing his appeal against refusal of protection, based on being a gay man from Bangladesh.

2. Ground 1, "error of law when looking for corroboration", (a) says there is no onus on an asylum seeker to produce corroboration, and (b) points to corroboration which was produced.

3. This ground targets paragraph 9.18 of the decision, which ends thus, "Although I recognise that there is no need to provide corroborative

© CROWN COPYRIGHT 2019

evidence … the absence of evidence which might reasonably be expected … without explanation … gives cause for me to give less weight to the appellant's account …".

4. We note that the judge expressed a similar approach at other points, such as paragraph 9.5.

5. The immigration rules provide at paragraph 339L as follows:

> 'It is the duty of the person to substantiate the asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:
>
> (i) the person has made a genuine effort to substantiate their asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim;
>
> (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
>
> (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
>
> (iv) the person has made an asylum claim or sought to establish that they are a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
>
> (v) the general credibility of the person has been established.'

6. The judge did not think that there is a legal obligation of corroboration (which would be an astonishing error to make). His observations and his approach are consistent with the immigration rules, which reflect the Qualification Directive, and with case law.

7. Point (a) in ground 1 is not well founded. Point (b) is a recital of evidence, leading nowhere.

8. Ground 2 is "error of law in assessing sexuality". It founds on UNHCR guidelines on difficulty and delay in disclosing sexual orientation. Mr Olabamiji (who took over acting only after the decision of the FtT was made) accepted that there was no reference to those guidelines in the FtT. The ground lays no basis for finding error of law by not mentioning materials which were not relied upon. The ground re-argues the case but does not show that the FtT's approach betrays ignorance of the principles enunciated in the guidelines. The ground asserts irrationality, but does not approach that high target. Finally, this ground says that the FtT

placed "undue weight" on absence of evidence from third parties, but that is only another way of formulating ground 1; and the degree of weight to be given to evidence, or absence of evidence, is, within reason, up to the judge.

9. The best point to be gleaned from ground 2 was emphasised by Mr Olabamiji in his submissions. It is unrealistic to expect third party confirmation of fleeting sexual encounters.

10. Ground 3 is "error of law in assessing medical evidence". Its first point is that it was speculative of the judge to find that the stressor for the appellant might have been his dealings with the Home Office, rather than tension with his family over his sexuality. This does not fairly represent the judge's close analysis at 9.47 – 9.49, where the finding that the appellant's GP might not be aware of the full circumstances is carefully explained.

11. We note that the appellant advances no criticism of the judge's view that the GP crossed into advocacy.

12. No error of law is shown to have been involved in declining at 9.49 to attach material weight to the GP's evidence.

13. The second point in ground 3 is that the judge erred in finding a conflict between the appellant at some points being wary of disclosing his sexuality and at others being open, and in failing to appreciate the appellant's strict Muslim and intolerant background. In our view, this also fails to reflect the full reasoning in the decision. Some of the apparent self-contradiction was not in contexts where the appellant was hampered by his background. There was a conflict in the evidence and the judge was entitled to find it difficult to reconcile.

14. Ground 4, "error of law in assessing material in support of the claim", uses language more of disagreement on the facts than of error of law: "undue emphasis", "reading too much into the contents of the email", "not beyond the bounds of possibility", and so on.

15. It was open to the judge to note that emails and texts might have been produced earlier than they were, even if the appellant had referred to them generally in advance. Mr Olabamiji accepted our observation that the evidence which is said in ground 4 not to have been taken into account is, in fact, all rehearsed in the decision.

16. Mr Olabamiji began to make a point which he said arose from paragraph 3 of the grant of permission, although not foreshadowed in the grounds, of unfairness based on the appellant's difficulties in giving evidence and on being on medication. On reflection, however, he withdrew that line of submission; correctly, in our view, as no basis had been laid for it in the grounds or by way of evidence, and the judge, as shown by 4.2 – 4.4, had been at pains to ensure fairness was applied.

17. Mr Olabamiji in the grounds and submissions has done his best to probe selectively for error and for an alternative view of the evidence, but we find that the challenge is essentially only insistence and disagreement on the facts. The one point of which we were persuaded is at [9] above, but that is a small element of a detailed and comprehensive decision.

18. The appellant has not shown that, read fairly and as a whole, the decision should be set aside for having involved the making of any error on a point of law. That decision shall stand.

19. The FtT made an anonymity direction. The matter was not addressed in the UT, so anonymity is maintained herein.

14 October 2019
UT Judge Macleman