



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

Appeal Number: PA/05945/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 5th July 2019**

**Decision & Reasons Promulgated
On 19th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**HA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard (Solicitor)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Pacey, promulgated on 24th June 2018, following a hearing at Birmingham on 6th June 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on 22nd July 1996. He appealed against the decision of the Respondent dated 24th April 2018 refusing his claim for asylum and humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a member of a particular social group, because he is a gay Iranian man who would face persecution if returned, and additionally he is also an atheist, who would be ill-treated upon return as a non-religious person, which is forbidden in Iran.

The Judge's Findings

4. The judge noted how the Appellant in his screening interview has said that he held no religion and that he would be subject to persecution as a non-religious person if returned to Iran. He made no mention at that stage that he was also a gay person. During his asylum interview, however, he stated that he was a danger also because he was a homosexual and feared the government given that homosexuality was punishable by death. He had not mentioned this at his screening interview because he did not know anything about the country he was coming to. The Appellant had then explained how he had a boyfriend in the UK by the name of [FS], with whom he had been in relationship for about one and a half months. He also had three serious relationships which he went on to describe in evidence before the Tribunal. The judge did not find the Appellant to be credible because the appellant's explanation that he had not mentioned his homosexuality during his screening interview, because he did not know the country he was coming to, was not plausible. As the judge explained, "if he did not know the UK approach to homosexuality ... he could not have known if the UK adopted as punitive an approach to gay people as did Iran.... For all he knew he could have been travelling from the frying pan into the fire" (paragraph 68).
5. On the other hand, the judge observed that if the Appellant was aware of the actual UK approach to homosexuality, "then there was no reason for him not to have mentioned his sexuality at the screening interview" (paragraph 69).
6. The judge was also not impressed by the witnesses before the Tribunal. In short, the Appellant's claim was rejected wholesale. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge had engaged in a material error of law in relation to the evidence of a Miss [L] and that of Mr [S] whose credibility had been wrongly impugned by the judge. There had been apparently a discrepancy between to the oral and the written

evidence of Miss [L], but this discrepancy had not been put to the witness, and if this was so then this was contrary to the rules of natural justice.

8. On 23rd November 2018 permission to appeal was granted.

Submissions

9. At the hearing before me on 5th July 2019, the Appellant was represented by Mr Howard, who adopted the grounds of application. He submitted that if the judge was concerned about the discrepancy in the oral and written evidence of Miss [L], then this should have been explored by the Tribunal, because in her oral evidence, Miss [L] had said that she had “not met [F]”, whereas in her written evidence she had said that “she also knew his previous partner, [F]” (paragraph 34). Secondly, Mr Howard submitted that if one looks at the evidence of Mr [S] (at page 14 of the Appellant’s bundle). He makes it quite clear that he is the director of a voluntary organisation called Persian LGBT Advisory Services, where it provides “voluntary social activities for LGBT asylum seekers”. He explains that the appellant had contacted him via Facebook on 9th June 2016. He invited the Appellant to meet with him, and after a conversation he had come to the view that “I am aware the Appellant is openly active on Facebook page which I would refer to as an online activist where he shares information on LGBT community using his Facebook page...”. On that basis that the judge was wrong to have impugned his credibility.
10. For his part, Mr Mills submitted that the issues that were before the judge, both in relation to the Appellant’s atheism and his homosexual tendencies, were not new issues. If evidence was collected by the Appellant between the asylum interview and the Tribunal hearing, in a manner that the Appellant himself chose to do, then he should have been prepared to deal with it on the basis of oral testimony. These were not new points. The witnesses were not people whose evidence had previously been accepted. Both cases were simply black and white discrepancy cases where the judge was entitled to say that she would not attach any significant weight to such evidence, because as put before the Tribunal, the evidence was not persuasive.

No Error of Law

11. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, it is simply not correct to say that the discrepancy in the oral and witness statement evidence of Miss [L] was something that the judge should have probed herself with a view to ascertaining exactly what Miss [L] knew about Mr [F]. The judge noted that in her oral evidence Miss [L] stated she was aware that the Appellant had a relationship in the UK “but had not met [F]”. Then the judge noted how in her witness statement, Miss [L] had stated that she became friends with the Appellant when she met him in Calais at the “the jungle” in April 2016, and “when they became strong

friends he told her of his fear of persecution and that he was an atheist. She also knew his previous partner, [F]" (paragraph 34). It was for the Appellant's representative to probe this matter further. As the evidence stood, the judge was entitled to conclude that "Miss [L] has also been inconsistent in a written and oral account of whether she had met [F]" (paragraph 78).

12. Second, as far as Mr [S]'s evidence is concerned, I note that he is a director of the voluntary organisation called Persian LGBT Advisory Services. He wrote in terms that he was "aware the Appellant is openly active on Facebook page". He had stated that "I have acknowledged that the Appellant has made a strong relationship with the wider LGBT communities ...". He had further stated that "I have also seen that the Appellant has participated openly at this year's LGBT Pride with Christian LGBT parade ...". He ended his statement by declaring that "based on information that has been provided by the Appellant I can confirm that he is homosexual and would be subject of persecution...". (See page 14 of the Appellant's bundle). The manner in which the judge dealt with this evidence was one which was entirely open to her to do. What the judge states is that she would "attach very little weight to Mr [S]'s evidence" because "he said at the hearing that he had attended court since 2008 to support gay asylum seekers".
13. Nevertheless as the judge observed, "his support did not, on his own evidence, comprise independent verification of each Appellant's claim since he took the claim of each at face value, entirely taking their word for it without doing anything to verify their claim, in the way of what might be termed 'due diligence'. While he may well be well-meaning, the uncritical nature of his support means it is of very little probative value" (paragraph 79).
14. There is nothing in this particular analysis of the judge's detailed explanation that sits ill at ease with what the witness himself states in his statement of 4th June 2018 (at page 14 of the Appellant's bundle) when he makes it clear that "I am aware" or that "I have acknowledged". In any event, what the judge is referring to is actually what Mr [S] himself said in his evidence where he makes it clear that as a director of the voluntary organisation he supports gay asylum seekers taking each claim at face value. Accordingly, the decision of the judge in this particular case was clear, comprehensive, and well-reasoned and there is no error of law in it.

Decision

15. The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.
16. An anonymity order is made.
17. The appeal is dismissed.

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 their 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

Dated

Deputy Upper Tribunal Judge Juss

15th August 2019