



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07122/2018

THE IMMIGRATION ACTS

Heard at Field House
On 3 January 2019

Decision and Reasons Promulgated
On 07 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

S M P
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Rees (counsel instructed by Farani Taylor Solicitors)
For the Respondent: Mr S Walker (Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of SM, a citizen of Pakistan born 10 January 1985, against the decision of the First-tier Tribunal of 12 October 2018 dismissing her appeal, itself brought against the Respondent's refusal of his asylum claim of 25 May 2018.
2. The Appellant arrived in the UK in June 2011, having been granted a visa as a Tier 4 student; she was granted leave to enter until 13 December 2013. She

returned to Pakistan from 4 to 11 March 2012 and from 15 to 23 March 2013. She applied for further student leave on 26 December 2013, that application being refused on 4 May 2015. She claimed asylum on 24 November 2017.

3. Her asylum claim was based on this essential history, which is abbreviated and based on that provided by the First-tier Tribunal, as the full detail of her claim is not relevant at this stage of proceedings. She had met a man, Mr I, whilst studying at college in Pakistan. Although he was already married, they developed a relationship in secret. They secretly married in February 2011. She was subsequently threatened by his family. She reported this to the police who refused to acknowledge her complaint. She then took the opportunity to come to the UK to study.
4. In 2011 she began living with her friend [NG] in London in a shared house. Soon after her arrival here, Mr I's brother was convicted of murder. Subsequently her family in Pakistan received divorce papers for the Appellant, thus learning for the first time of her marriage to Mr I; thereafter her relationship with her family broke down and they had nothing more to do with one another.
5. [NG] became pregnant in 2012 and moved out of their London home. On 4 March 2012 the Appellant returned to Pakistan, and met up with Mr I; he told her that he was divorcing her due to pressure from his wife. They prepared the relevant paperwork together, and he signed it. However, before her return to the UK, he then told her that he would withdraw the divorce. Although she had returned to Pakistan on this occasion without telling anyone, Mr I's family nevertheless discovered her presence there, and subsequently abused the Appellant's own family.
6. Following the Appellant's return to the UK the same month, she learned that Mr I had resumed divorce proceedings, which he had now served on her family. She sought to persuade Mr I not to go ahead with the divorce proceedings when she returned to Pakistan in 2013, during which time they stayed together at a rented house, but one of Mr I's brothers learned of her presence there and warned her off. She had had no further contact with Mr I subsequently.
7. In early 2017 the Appellant encountered [NG] and her son in London, and learned of [NG]'s problems in her own relationship with the boy's father. In July 2017 they became increasingly friendly and in due course developed intimate feelings for one another; the Appellant subsequently came to identify herself as a Lesbian.
8. The First-tier Tribunal considered the evidence before it, which it described as including witness statements from two of the Appellant's friend's, [O] and [E]; it also heard oral evidence from the Appellant's alleged partner, [NG], and from another friend, [T]. It noted the evidence from [NG] stating

that she had reconnected with the Appellant in 2017; they had both been betrayed by men which had led them to become inseparably close, and one day they began kissing. She believed the Appellant to be “a hundred percent” homosexual.

9. The First-tier Tribunal concluded that the evidence of the Appellant's sexuality and concluded her claim to be lesbian was not credible because:
 - (a) The Appellant stated her physical relationship with [NG] began on Boxing Day in oral evidence, but in June 2017 in her witness statement;
 - (b) The Appellant's evidence as to her activities with [NG] the day before the hearing was that she had not accompanied [NG] on her appointment with a doctor, as she spent the day preparing for the asylum appeal; whereas [NG] stated they spent the whole day together;
 - (c) The Appellant stated they had not spent a night together for two weeks, whereas [NG] stated they had spent the previous weekend together;
 - (d) [T] stated that she had last seen the Appellant three weeks ago, whereas the Appellant said that she had seen her the previous Saturday; the Appellant stated [T] lived in Soho whereas [T]'s own evidence was that she lived in Lewisham.

I have corrected the various errors made in the decision appealed as to names and genders to avoid further confusion.

10. Having rejected the Appellant's claim in this regard, the Tribunal dismissed the appeal, on the basis that, her claim to be gay having been rejected, she would not be at any risk of serious harm in Pakistan.
11. Grounds of appeal challenged this decision, on the basis that
 - (a) No reference was made to the principles set out in *HJ (Iran)* and there was no finding on whether the Appellant would be perceived as Lesbian in Pakistan;
 - (b) Significant errors of fact undermined confidence in the decision: the Appellant's gender was mis-stated as was her name on the first page, elsewhere the witness [T] was ascribed the male gender, and the representatives before the First-tier Tribunal were not identified;
 - (c) There was a significant delay between the hearing and the promulgation of the decision, which was relevant to the assessment of credibility, notwithstanding that the Tribunal had correctly identified the existence of certain discrepancies in the evidence;
 - (d) All this cast doubt as to whether the First-tier Tribunal had had access to a reliable record of proceedings when it wrote its decision, particularly given it had not addressed the Appellant's advocates

submissions below that her oral evidence appeared to be affected by nerves;

- (e) The Tribunal had failed to consider the country evidence when assessing the Appellant's gender preference;
- (f) Furthermore, the Tribunal had not addressed the threats the Appellant asserted having received from Mr I's brother;
- (g) There was no decision made vis-à-vis the private life dimension of the Appellant's claim, including whether she faced very significant obstacles to integration in Pakistan given she would be returning as a lone woman.

12. Permission to appeal was granted by the First-tier Tribunal on 12 November 2018 on all grounds.
13. Mr Rees relied on the grounds of appeal. Mr Walker pragmatically accepted that it was difficult to counter the submission that there were significant flaws in the reasoning of the First-tier Tribunal. In particular, he drew attention to the extent of the factual errors as to names and genders of relevant individuals, the failure to record the oral evidence of two witnesses, and the unexplained three month delay in issuing a decision predicated wholly on credibility. Furthermore there was no reference whatsoever in the credibility findings to the background to the Appellant's asylum claim by way of events said to have taken place in Pakistan.

Findings and reasons

14. I consider Mr Walker was right to take the stance that he did. The flaws that he identified are very significant ones.
15. There is no absolute rule that a three month delay in determining an appeal on credibility grounds is necessarily unlawful. The matter has been discussed several times over the years in the context of immigration appeals, most recently in *SS (Sri Lanka)* [2018] EWCA Civ 1391, which explains that excessive delay in making a credibility decision is not itself a reason for setting a decision aside. The correct approach is to ask whether the delay has caused the decision to be unsafe such that it would be unjust to let it stand. A three month delay required the factual findings to be examined with particular care, but there was no rebuttable presumption in favour of remittance in Tribunal proceedings, and the earlier Court of Appeal authority of *Sambisavam* did not intend to identify a binding of rule of law to such effect.
16. Equally, the Upper Tribunal will not set aside a perfectly well reasoned First-tier Tribunal decision simply because of infelicities of expression, typographical errors or minor mistakes of fact. Its jurisdiction is generally limited to the detection of true errors of law.

17. However, notwithstanding these considerations, it seems to me that the credibility findings in this particular decision are vitiated by the combination of delay and factual error. I am concerned that, particularly in the context of an asylum claim based on gender preference, and given the relatively short reasons given for finding the Appellant to lack credibility, that significant details such as the gender of witnesses and the spelling of her partner's name were expressed wrongly. Furthermore, the fact that two witnesses gave oral (not merely witness statement) evidence is not apparent from the decision at all.
18. Furthermore, there are other real concerns with the assessment of the evidence. The Appellant and [NG] had both given evidence that their relationship sprung partly from their adverse experiences at the hands of their former partners. Yet there is no assessment of the extensive evidence that the Appellant gave regarding her relationship with Mr I whatsoever. Indeed, there was no acknowledgment in the reasoning of the First-tier Tribunal of her asserted difficulties with Mr I's family.
19. For these reasons, I consider that the decision cannot stand. As the credibility findings are central to the determination of the issues on the appeal, this requires a full re-hearing of all relevant issues before the First-tier Tribunal. For the assistance of a future Judge hearing the appeal, the salient issues (the relevance of each being dependent on the First-tier Tribunal's future fact finding) would appear to be:
 - (a) The Appellant's alleged fear of persecution on a return to Pakistan due to her gender preference as it has developed in the UK;
 - (b) Any alleged fear of persecution/serious harm that may arise from the relatives of her former partner, Mr I;
 - (c) The Appellant's private life in the sense recognised by Immigration Rule 276ADE(vi) which posits the question whether she faces very significant obstacles to integration in Pakistan, having regard to the possibility that she would be a lone woman on a return to Pakistan;
 - (d) The Appellant's Article 8 rights more broadly outside the Rules, i.e. whether she has a compelling case that the strength of her UK ties, including any durable same-sex relationship she may be accepted as being party to in the UK, amounts to private and family life with which her removal would represent a disproportionate interference.

Decision

The appeal is allowed to the extent that it is remitted to the First-tier Tribunal for re-hearing afresh.

ANONYMITY ORDER

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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 January 2019

A handwritten signature in black ink, appearing to read 'M A Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes