



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/08197/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 January 2019**

**Decision and Reasons  
Promulgated  
On 21 January 2019**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**Mr MUHEB ULLAH HASAN  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Reza, Counsel (instructed by JKR Solicitors)

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Permission to appeal was granted by Deputy Upper Tribunal Judge McGeachy on 29 November 2018 against the decision to dismiss the Appellant's protection appeal made by First-tier Tribunal Judge Housego in a decision and reasons promulgated on 20 August 2018.

2. The Appellant is a national of Bangladesh, who had entered the United Kingdom as a Tier 4 (General) Student in 2011. Subsequently his leave to remain was curtailed on two occasions, and an Article 8 ECHR application was refused. He was due to be returned to Bangladesh in 2016 but absconded. Another Article 8 ECHR application made in 2017 was refused in 2018. On 4 January 2018 the Appellant claimed asylum on the grounds of his sexual orientation, which was refused on 13 June 2018.
3. Judge Housego found that the Appellant was not credible, for a number of reasons: see [65] of his decision and reasons where those reasons are set out in detail. Thus the appeal was dismissed.
4. Permission to appeal was refused by First-tier Tribunal Judge Juliet Grant-Hutchison on 20 September 2018 but was granted by Deputy Upper Tribunal Judge McGeachey because it was considered arguable that the judge had applied too high a standard of proof to the Appellant's sexual orientation claim.
5. Mr Reza for the Appellant relied on the grounds submitted and the grant of permission to appeal. The judge had accepted the credibility of three witnesses who attended the hearing, which evidence corroborated the Appellant's claim. One witness had been accepted to have had sexual relations with the Appellant: see [64] of the determination. The judge had not given reasons why he gave their evidence no weight, given the sexual orientation issue on which the whole appeal depended. The judge had demanded too high a standard of proof. The appeal should be allowed and the decision remade in the Appellant's favour, given the positive findings made about the corroborating witnesses.
6. Mr Bramble for the Respondent submitted that the complaints about the determination took the Appellant's case no further. The judge had explained why he could ultimately give little weight to the witnesses. Their evidence emanated from the Appellant, who was not at all credible. There was no material error of law in the First-tier Tribunal's determination and the judge's findings were sustainable. The appeal should be dismissed.
7. There was nothing which Mr Reza wished to add by way of reply.
8. The grant of permission to appeal was in the tribunal's view an over generous one, effectively accepting that it

was arguable that an experienced judge of the First-tier Tribunal had made a fundamental and egregious error by applying too high a standard of proof. Such allegations are routinely made in generic permission to appeal applications such as that lodged in the present appeal. Such allegations should only be made where they can be supported by closely reasoned argument, not by extracts from a determination taken wholly out of their essential context. The Appellant's abusive immigration history and belated protection claim speaks for itself.

9. Judge Housego set out the burden and standard of proof accurately and in considerable detail at [6] to [11] of his determination. He also referred specifically to HJ (Iran) [2010] UKSC 31, and LC (Albania) [2017] EWCA Civ 351, decisions relevant to the factual enquiry he was obliged to undertake. The judge reminded himself of the lower standard of proof applicable in his final review of the evidence: see [67] of his determination. There is simply no substance to the assertion that the judge applied too high a standard of proof when assessing the evidence before him.
10. Indeed, the grounds submitted on the Appellant's behalf bore little relation to the determination. Contrary to the assertions made, the judge explained exactly why he gave no weight to the evidence of the three witnesses, the first two of whom only he described as "credible". (His intended meaning for "credible" in this context was "seemingly honest" or perhaps "worthy of consideration".) The source those witnesses identified of their belief that the Appellant was gay was the Appellant himself – a source who was found by the judge to be thoroughly dishonest. There was no description of any personal observation or knowledge of the Appellant's behaviour by the witnesses. Their evidence attracted little weight and was far from sufficient to corroborate the claims of the Appellant, who was himself almost entirely unreliable.
11. The last of the three witnesses who appeared at the First-tier Tribunal hearing claimed he had had "occasional" sexual relations with the Appellant. Importantly, the evidence of this witness was *not* found by the judge to be credible nor was it so described. The judge merely indicated that this claim was the "best point" for the Appellant because the testimony of the witness and the Appellant matched. Hence, it required careful consideration, which it duly received: see [67] of the determination. The judge went on to find that the Appellant's unreliability was overwhelming. He took care

to consider the case on an alternative basis, and found that the appeal still fell to be dismissed.

12. In the tribunal's judgment the First-tier Tribunal Judge had reached careful and sustainable findings, in the course of a thorough, balanced determination, which securely resolved the issues and applied the correct lower standard of proof. The tribunal accepts the submissions made by Mr Bramble. The tribunal finds that there was no error of law and the onwards appeal must be dismissed.

### **DECISION**

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

**Signed**

**Dated** 10 January 2019

**Deputy Upper Tribunal Judge Manuell**