



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

Appeal Number: PA/09576/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

Heard on 23 January 2019

On 20 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**WAQAR [A]
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Javed, Solicitor

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Pakistan born on 5 April 1993. He appeals against a decision of judge of the first-tier Tribunal Hembrough sitting at Hatton Cross on 3 September 2018 in which the judge dismissed the appellant's appeal against the decision of the respondent dated 20 July 2018. That decision was to refuse the appellant's application for international protection.

2. The appellant entered the United Kingdom on 30 August 2011 with leave as a Tier 4 (General) Student Migrant valid until 26 January 2013. This was extended until 7 June 2014, but his leave was curtailed on 23 January 2014 as his college was removed from the sponsorship register. On 17 April 2014 the appellant was granted further leave to remain under Tier 4 until 31 July 2015 but on 24 December 2014 his leave was again curtailed and again it was because his college was removed from the sponsorship register. Thereafter the appellant remained in the United Kingdom unlawfully. On 25 January 2018 he claimed asylum and was interviewed substantively on 9 July 2018. It was the respondent's decision to refuse that application for asylum on 20 July 2018 that has given rise to the present proceedings.

The Appellant's Case

3. The appellant claimed to have a well-founded fear of persecution because of his sexual orientation as a gay man. He came to realise he was gay when he was 9 years old when he had sex with a schoolfriend, S. The relationship was conducted in secret but when he was about 14 years old his older brother walked in on the couple as they were having sex at the family home. Both boys were beaten by the appellant's older brother and the appellant was also beaten by his father. However, he continued his relationship with S in secret until about 2009 when S was forced to marry.
4. When the appellant was 15 he was raped by a neighbour called Imran. After the appellant finished his secondary schooling in Pakistan his parents pressured him to get married. To avoid this pressure the appellant decided to come to the United Kingdom to study. He did not claim asylum on arrival as he did not know anything about it. Since being in the United Kingdom he had had a relationship with a Pakistani man which ended when the man returned Pakistan to marry. He had not had any other relationship since. He lost contact with his family in October 2017 when they pressed him to return to Pakistan and he told them he would not do that because he was gay. His brother called the appellant and told him he would kill the appellant if he returned to Pakistan. The appellant wished to live openly as a gay man, but he could not do this in Pakistan.

The Decision at First Instance

5. The judge began his findings at [31] of the determination indicating his familiarity with the respondent's revised operational guidance in relation to sexual orientation in asylum claims. The judge acknowledged that the determination of an appellant's sexual orientation was by no means an easy task. At [37] the judge noted that there were a number of significant inconsistencies between the account the appellant gave at the asylum interview and that given in a witness statement which caused the judge

to doubt the appellant's credibility. The incidents which the appellant recounted in his asylum interview were in the appellant's view at least the keystones of his asylum claim upon which he had no doubt reflected prior to making his claim at a time of his choosing. The judge found the inconsistencies difficult to reconcile in those circumstances. The appellant had been unable to explain the discrepancies when asked about them in cross examination.

6. The judge did not find it credible that the appellant would muster a gang of older boys to attack Imran (see [44]). The appellant's claim to be subject to round-the-clock surveillance from his brothers after the relationship with S was discovered was inconsistent with the assertion that the appellant and S were able to maintain their relationship by meeting in fields. The appellant's claim to have a relationship with a man in the United Kingdom contained discrepancies. He had referred to the man as Al Haider in interview and Ali in his witness statement. No one had come forward to confirm the relationship even though the appellant said they had lived openly as a gay couple for 3 years. There were no photographs showing the appellant and his claimed partner together. The judge rejected the explanation that they had been stored on an old phone which the appellant had now changed given the ease with which data could be transferred between phones.
7. On the one hand the appellant had said in interview that he had not had any further relationships in the United Kingdom but on the other hand his witness statement said he had had a number of casual encounters with men. The judge rejected supporting evidence from witnesses who made statements, at [49] to [53]. At [53] the judge wrote: "Taken at its highest the evidence of all of the witnesses was that the appellant has been attending LGBT events and gay clubs since 2017. In doing so I consider that there is a high possibility that he has been laying the trail with a view to making an opportunistic asylum claim based on sexual orientation". The appellant's failure to claim asylum until after 7 years from his arrival in the United Kingdom further undermined his credibility. Article 8 was not pursued with any degree of vigour. The judge dismissed the appeal.

The Onward Appeal

8. The appellant appealed against this decision arguing that despite being aware of the guidelines on international protection claims based on sexual orientation the judge had highlighted various credibility issues and inconsistencies between the appellant's witness statement and asylum interview. The judge had not considered the clarifications and further details presented in the appellant's evidence. There was no consideration of the sensitive issue of rape which was being discussed or the fears and traumas that the appellant would have faced. The judge had not considered the entirety of the appellant's evidence.

9. It was irrational to question the appellant's evidence just because despite his personal preferences he was engaged in sport that he did not generally like. This was a reference to [38] in which the judge had noted that the appellant's witness statement said the appellant had always preferred to engage in girls play and did not like sports but had then gone on to say that his first sexual encounter with S was after they had played cricket. The 2nd ground argued the judge had failed to take into account material evidence and there was a factual misunderstanding infecting the credibility assessment. The appellant had referred to his partner in the UK as Ali Haider in the asylum interview.
10. The 3rd ground took issue with the rejection of the appellant's supporting witnesses. The appellant had relied on evidence from the specialist LGBT charity called Apanjon which campaigned for equality and justice for the LGBT community. The judge had made no credibility findings against the supporting witnesses but had failed to give appropriate weight to their evidence. There was a statement from the founder of Apanjon that the appellant had been not only attending events but mixing intimately with other men and availing himself of the organisation's counselling services. Another witness had confirmed in cross examination that he knew the appellant to be gay not only because he had witnessed the appellant being intimate with other gay men but because some of those men were also his, the witness', personal friends. The witness evidence was not entirely derived from what the appellant told them as the judge had claimed. The evidence from these witnesses, the photographs demonstrating *sur place* activities and the appellant's own detailed witness statement satisfied the standard of proof.
11. The application for permission to appeal came on the papers before judge of the first-tier tribunal Lambert on 21 October 2018. In refusing permission to appeal she wrote that the decision disclosed adequate evidence-based reasons for concluding that the appellant's evidence as to homosexuality was not credible and that the appellant would not be at risk on return to Pakistan and there would be no breach of article 8. The grounds had taken issue with the findings made by the judge but in effect amount to no more than a disagreement and an attempt to reargue the case.
12. The appellant renewed his application for permission to appeal to the upper tribunal on the same grounds as submitted to the first-tier. The renewed application came before Deputy Upper Tribunal Judge Shaerf on 13 December 2018. In granting permission to appeal he wrote that the grounds challenged in some detail the judge's treatment of the evidence and his failure to make specific credibility findings in relation to the witnesses for the appellant. The judge's findings at [38] to [42] and [44] to [45] arguably did not fairly reflect the documentary evidence. The inconsistency referred to at [46] (Al or Ali) was arguably not a discrepancy, absent any other reason and there appeared not to be one.

[53] referring to “a high possibility” was arguably speculative (see paragraph 7 above).

The Hearing Before Me

13. In consequence of the grant of permission the matter came before me to determine in the first place whether there was a material error of law such that the determination fell to be set aside, and the appeal reheard. If there was not, then the decision at first instance would stand.
14. For the appellant his solicitor argued that the crux of the appellant’s application was that the evidence had not been considered by the judge in a holistic fashion. The supporting witnesses’ evidence had not been looked at in the round. Although the judge had referred to the guidelines on the treatment of evidence they had not been applied. There was no reference to any alternative explanations in [44] where the judge stated that if the appellant had mustered a gang of older boys to attack Imran he must have had to put forward some reason for the attack which was likely to have involved the appellant disclosing the fact of the rape. A supporting witness had given dates when he had seen the appellant. The witness gave evidence of what he saw himself. For the judge to say that the witness evidence was generic was an error of law.
15. In reply the Presenting Officer said that the first ground in relation to non-application of the guidance had no merit. The judge had reminded himself of the guidelines and recognised the cultural issues at [35] when he acknowledged that it was not always appropriate to invoke delay as the basis for undermining the credibility of an appellant’s claim because for cultural reasons some appellants were likely to be reluctant to discuss their sexual orientation. At [43] the judge appreciated that witnesses sometimes had problems with recall and the sequence of events. The judge’s conclusions overall were sound.
16. There were difficulties with the appellant’s account which the judge highlighted. The inconsistencies were difficult to reconcile. The guidelines did not mean that one ignored credibility issues. The judge had not disagreed with the witnesses just because their evidence was generic. At [52] he had said that none of the witnesses demonstrated any real knowledge of the appellant who appeared to have parachuted into their lives sometime in 2017. Although the witnesses variously made reference to the appellant “flirting, making out and being intimate” with other gay men no specifics were given. The judge had to make an assessment in the round of all the evidence. A determination could always be criticised for insufficient detail.
17. In conclusion the appellant’s solicitor referred to the last line of [52] where the judge had said: “I have not found [the appellant] to be credible as regards his background”. The witnesses had been recording aspects of the appellant’s behaviour which they themselves had seen.

Findings

18. The challenge in this case to the judge's findings is essentially a reasons-based challenge, that the judge gave inadequate reasons for his findings and/or placed insufficient weight on other evidence given by supporting witnesses. It is apparent from a fair reading of the determination that the judge self-directed appropriately in the approach to cases such as this. It did not follow that the appellant's evidence had to be accepted just because he claimed to be a vulnerable witness. The judge factored in the claim for vulnerability but nevertheless found the appellant to lack credibility. The overall credibility finding was that he did not accept that the appellant could show to the lower standard that the appellant was in fact gay. The first question **HJ Iran** was answered in the negative and, assuming that answer was correct, the case stopped there. The question was whether the judge gave legally adequate reasons for his conclusions, in particular that the appellant was not gay and that the ill treatment the appellant described had not occurred.
19. The appellant by way of support for his account, in addition to his own evidence called a number of witnesses, four in all, whose evidence was briefly summarised at [29] of the determination. The grounds disagreed with the weight that the judge placed on that evidence. Their evidence was that they moved in the same social circle as the appellant and regularly saw him at various gay clubs and events as demonstrated by photographs submitted. The judge's concern about this evidence was expressed at [52] which I have quoted above, see paragraph 16. What the judge was concerned about was the lack of specifics. If the witnesses had seen the appellant in the circumstances they described it was reasonable to have expected them to be able to be more specific about what they did or did not see.
20. According to the grounds, one at least of the witnesses, Mr Amir had seen the appellant being intimate with other gay men. The difficulty with that was that it contradicted what the appellant himself had said in interview, which the judge referred to at [47]. The appellant had not had any further relationships in the United Kingdom "not having found anybody nice". The appellant's witness statement was in line with the witness statements of the persons called on his behalf but the inconsistency between the interview and the witness statement was not adequately explained by the appellant. In those circumstances it was open to the judge to form an adverse view of the appellant's credibility.
21. I do not agree that the judge formed a negative view of the appellant's credibility and then as an afterthought rejected the appellant's supporting witnesses. Rather the judge carefully considered those witnesses and found them unreliable because of the lack of detail which could readily have been expected they would give and their lack of knowledge of the appellant and his life before they were "parachuted"

into the appellant's life (as the judge put it). The judge was entitled to indicate as he did that little weight could be placed on the evidence of the supporting witnesses. The appellant's inconsistency between his interview and his statement about relationships was not adequately addressed by the appellant.

22. The 2nd ground points out that the judge was wrong to conclude that two different names had been given for the partner that the appellant lived with. That may be correct, but it is difficult to see how far such an error takes this case when the most important point was the lack of supporting evidence to indicate that this relationship with a partner had ever existed. The appellant did not say that this was a casual relationship with Mr Ali Haider which might possibly explain the lack of supporting material, rather he said that they lived as an openly gay couple for three years yet none of the appellant's witnesses were able to talk about this relationship. There were no photographs or other evidence showing that the relationship had ever existed. The judge rejected the appellant's explanation for the lack of supporting evidence. Whilst supporting evidence is not necessarily a requirement for asylum appeals, the absence of it in circumstances where that evidence could reasonably have been obtained but is not, can found the basis for an adverse credibility conclusion, see **TK Burundi**.
23. At [53] the judge was concerned that the appellant was fabricating a case by being seen at gay clubs and events since 2017 in order to lay a trail for a further asylum appeal. That was criticised in the grant of permission as being arguably speculative but the appellant had been in United Kingdom for six years before these activities began and in those circumstances it was open to the judge to consider whether the motive for the appellant's sur place activities might be to fabricate a claim rather than demonstrate that he was in fact gay. It was not being suggested that one could only enter gay clubs or take part in events if one was gay, and the mere fact therefore of attending premises would not of itself advance the appellant's case.
24. The appellant relied on his witnesses, but they were not believed for the cogent reasons which the judge gave which I have outlined above. The supporting witnesses were unimpressive. It is incorrect for the grounds to assert that the judge made no adverse credibility findings against the witnesses. At [52] the judge commented that the witnesses' evidence was based on the incredible evidence of the appellant, thus finding the witnesses incredible in their assertions.
25. There were a number of difficulties with the appellant's account, the judge drew attention to those difficulties in several paragraphs but in particular at [43] and noted that the appellant had been unable to explain the discrepancies between his interview and his witness statement when cross-examined about the discrepancies at the hearing. That was in a situation where the appellant had had ample time to prepare for the

hearing of his asylum appeal and yet he still had no valid explanation for the serious discrepancies in his account. The judge appears to have been in no doubt that the account the appellant gave had changed from the time when he was interviewed by the respondent to the time the appellant came to make his witness statement. There was no adequate explanation why the account should have changed and it was open to the judge to draw an adverse inference from such a change.

26. Overall the grounds of onward appeal in this matter are no more than a disagreement with the decision. I do not find that there is any material error of law in this determination I dismissed the onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 15 February 2019

.....
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 15 February 2019

.....
Judge Woodcraft
Deputy Upper Tribunal Judge