Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10089/2016

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 12 September 2019	**On: 17 September 2019**

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

FE
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs A Basharat, instructed by Buckingham Legal Associates
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan born on 6 October 1985. He arrived in the United Kingdom on 11 December 2010 with a student visa valid until 13 May 2012 and was subsequently granted leave to remain until 5 September 2014. He was refused a further extension of leave and unsuccessfully appealed against the decision refusing his application. He became appeal rights exhausted on 30 September 2015. A further application made on 1 February 2016 was also unsuccessful.

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2. The appellant then claimed asylum on 15 March 2016. The basis of his claim was that he feared his wife's family and his own family in Pakistan on account of his sexuality. The appellant claimed to be bisexual and to have known that he was bisexual since the age of 14 years. His first relationship was with his friend Hamza, from 1999 until 2003 or 2004. He was caught with Hamza at school by some other students who beat him up and his parents were called into school to see the headteacher. He moved to another school and subsequently had three more relationships with men. He met his current wife M in 2010. He told her about his past and she accepted it. In December 2010 he travelled to the UK to study and he married M in January 2014 in Pakistan. In April 2014 M came to join him in the UK. On the same day that he was refused further leave to remain in the UK, he discovered that M's parents had complained about him to the police in Pakistan and they had come to arrest him. He believed that his former partner Z had complained to an Imam, who knew M's family, that he (the appellant) had coerced him and other boys into having sex and that led to them lodging a complaint. An FIR had been lodged against him by M's family. His own family was also against him now as he had humiliated them.

3. The appellant's claim was refused by the respondent on 7 September 2016. The respondent did not accept that he was bisexual but considered that even if he was, he could live discreetly in Pakistan with his wife and was at no risk on return. It was not accepted that his removal to Pakistan would breach his human rights.

4. The appellant appealed against that decision. His appeal was heard before the First-tier Tribunal and was dismissed in a determination promulgated on 21 October 2016. That decision was, however, set aside on appeal to the Upper Tribunal and was remitted to the First-tier Tribunal on 11 April 2017, to be heard afresh. The appeal was then heard by First tier Tribunal Judge Mill on 5 June 2019 and was dismissed in a decision of 14 June 2019.

5. Judge Mill had before him a psychiatric report for the appellant's wife, M, which referred to her mental health problems and concluded that she was not fit to give evidence. The judge noted that some photographs, included in the appeal bundle, showing self-inflicted scarring to M's arms, had been produced to the psychiatrist, but accorded no weight to the photographs as there was no indication that they were of the appellant's wife. The judge accorded only limited weight to the psychiatrist's report. The judge noted various inconsistencies in the appellant's account of his sexuality and the discovery by his family of his sexuality and did not believe his account. He accorded no weight to the FIR produced by the appellant, no weight to the evidence of two witnesses who attended the hearing and little weight to a country expert report. The judge rejected the appellant's claim to be bisexual and concluded that he was a heterosexual man in a loving relationship with his wife and that he would be at no risk on return to Pakistan. He considered that the appellant's removal would not breach his human rights. The judge considered that the appellant's wife's mental health problems arose around the time of her failed pregnancy and that she would be able to access medical treatment in Pakistan. He considered that any alleged tensions and difficulties with her family and his own family were as a result of difficulties in his wife conceiving and having a baby and that the couple could relocate to another part of Pakistan away from their respective families. The judge accordingly dismissed the appeal on all grounds.

6. Permission to appeal was sought by the appellant on various grounds, challenging the judge's assessment of the medical evidence and his credibility, the judge's approach to the expert report and the judge's assessment of the documentary evidence, and including assertions as to the conduct of the asylum interview and the judge's attitude.

7. Permission was granted on 30 July 2019 on the first ground in relation to the judge's approach to the medical evidence, although the other grounds were not excluded.

8. At the hearing both parties made submissions before us.

9. Whilst we consider that the grounds are largely disagreements with the adverse credibility findings made by the judge, and that the judge was entitled to draw adverse conclusions from various inconsistencies he identified in the appellant's evidence, we have to conclude that his approach to the medical evidence is such that his overall conclusions simply cannot be sustained.

10. The judge gave various reasons for according little weight to the medical evidence and according no weight to the photographs of scarring relied upon by the psychiatrist in her report. Whilst the weight to be accorded to the evidence is a matter for the judge, that cannot be the case when the findings are based upon factual errors or omissions. The judge considered there to be no indication that the photographs of scarring were of the appellant's wife, but such a conclusion ignored the psychiatrist's observation at paragraph 4.7, that M showed her deep scars on her entire forearm where she cut herself. Given that the psychiatrist saw the scarring on M's arms, she was clearly in a good position to assess and compare the photographs. Accordingly the judge's comments at [30] about the scarring and the photographs are simply unsustainable. At [65] the judge considered that the psychiatric report did not highlight a significant or serious suicide risk, but he failed to address the contrary view given by the psychiatrist at paragraph 13.8 of her report. The judge, at [65], implied that he believed the appellant's wife's mental health problems emanated from the loss of her pregnancy, but as the grounds make clear at [14], the evidence before the judge showed that M's mental health issues existed prior to the loss of her baby. In addition to these matters it is of concern that the judge, at [65], assessed the weight to be given to a medical opinion based upon his own observation of M's demeanour at the hearing which he was plainly not in a position to do and which was not open to him to do.

11. Accordingly we find the judge's approach to, and assessment of, the medical evidence to be deeply flawed. We have to conclude that that is material to the outcome of the appellant's claim, given the association made by the psychiatrist between M's mental health problems and her claim in regard to her husband's sexuality (see paragraphs 4.6 and 12.4 of the report). Whilst that association may ultimately be found not to carry weight, such a conclusion would have to be reached upon a full and proper assessment of the medical evidence and justified by cogent reasoning, all of which is unfortunately significantly lacking in Judge Mill's decision. As such, the judge's adverse credibility findings cannot be considered to be based upon a full and complete assessment of all aspects of the evidence and cannot be defended.

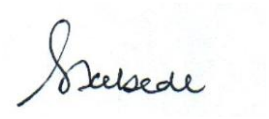
12. For all of these reasons the judge's decision cannot stand and must be set aside and re-made afresh. The most appropriate course would be for the case to be remitted to the First-tier Tribunal for a fresh hearing. This is particularly unfortunate given that the case has already been remitted once.

DECISION

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Mill and Judge Watt.

Anonymity

The First-tier Tribunal made an order for anonymity. We continue the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 

Upper Tribunal Judge Kebede Dated: 13 September 2019