



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

Appeal Number: PA/10466/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20 March 2019**

**Decision & Reasons
Promulgated
On 30 April 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**A K
(Anonymity Order Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Akinbolu of Counsel

For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born in 1987. He is a Sunni Muslim. He appeals against a decision of the respondent made on 17 August 2018 to refuse his claim for asylum.
2. The basis of his claim is that he is at risk on return to Pakistan because he is homosexual. Whilst aware of his feelings as a young man in Pakistan he was scared because he knew they were against his religion. As a result he

suffered mental health problems. He came to the UK in 2011 with leave as a Tier 4 student but ceased to study. He started living openly as a gay person. His family called him back so they could arrange a marriage for him at which point he disclosed his sexuality to them. His father's response was hostile. If returned he fears his family and that he will be at risk more widely for being gay.

3. The respondent in refusing the application did not believe the appellant's claim as to his sexuality. His responses about his awareness of such in Pakistan were inconsistent and lacked detail. Delay in claiming asylum, and only after his leave to remain as a student was curtailed, did not assist his credibility. Evidence about his activities in the LGBT community in the UK was non-specific.
4. He appealed.

First tier hearing

5. Following a hearing at Birmingham on 21 December 2018 Judge of the First-Tier Tribunal Obhi dismissed the appeal.
6. She heard oral evidence from the appellant and from two witnesses Mr UR and Mr MW.
7. Her findings are at paragraph [33]ff of her decision. In summary, she found against his credibility that there was no evidence that despite being in the UK since 2011 he had had a relationship with any person at any time; there were no photographs of him prior to claiming asylum; the evidence of his involvement with witness UR, who has refugee status on the basis of his homosexuality and who met the appellant in an LGBT club, was unsatisfactory, in particular that they would not have discussed how they came to be where they were or that the appellant would not have said he was from Pakistan and was afraid of returning there. Also, that the evidence of witness MW that the appellant, when with other young men at nightclubs did not seek to pick up girls and that in 2014 he found out that the appellant was gay and that he encouraged him to join gay clubs, merited (at [36]) *"limited weight ... as he is clearly someone who is close to the appellant and has an interest in him being successful in this appeal."*
8. In further adverse findings the judge found that the appellant's reference to his sexuality to his doctor was designed to embellish his claim. Also, delay in claiming asylum did not assist him.
9. The appellant sought permission to appeal which was granted on 6 February 2019.

Error of law hearing

10. At the error of law hearing before me, Mr Kandola agreed with Ms Akinbolu that the decision showed material error of law.

11. In the circumstances it suffices to deal with two of the issues raised by Ms Akinbolu with which there was agreement by the respondent. First, in respect of the statement and oral evidence of witness MW, the judge did not make a finding that he was a witness who lacked credibility on the basis of what he had to say but, rather, that because he and the appellant are close he has an interest in seeing the appellant successful in his appeal. That is the wrong approach (see **R (on the application of SS) v SSHD (“self-serving” statements) [2017] UKUT 164 (IAC)**). That case highlights the requirement for the most “*anxious scrutiny*” to be applied to all cases, in relation to all evidence, whatever the source and for full and proper reasoning.
12. Further, the judge made no reference to the evidence in the form of a statement of the appellant’s brother, KK (dated 19 December 2018) in which he confirms the appellant’s sexuality, of which he disapproves.
13. It was agreed that the failure to make adequate findings on the evidence of material witnesses amounted to a material error of law such that the case must be reheard.

Decision

14. The decision of the First-tier Tribunal shows material error of law. It is set aside. The nature of the case is such that it is appropriate under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-tier Tribunal for a fresh hearing on all issues. No findings stand. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Obhi.

An anonymity order is made. Unless and until a tribunal or court directs otherwise the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date 25th April 2019

Upper Tribunal Judge Conway