



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

Appeal Number: PA/11565/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2019**

**Decision & Reasons Promulgated
On 15 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**[A G]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E S King, Counsel

For the Respondent: Ms S Cunha, HOPO

DECISION ON ERROR OF LAW

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Onoufriou dismissing his appeal against the decision of the respondent dated 18 September 2018 to refuse to grant him asylum and humanitarian protection in the UK.
2. The appellant is a citizen of Afghanistan, born on [~] 1985. He arrived in the UK on 3 March 2002 with a student visa valid until 15 May 2013. He first claimed asylum on 5 September 2016 which was refused on 5 March 2017. His appeal against that decision was dismissed by FtTJ Greasley on 25 April 2017. His applications for permission to appeal to the First-tier

and the Upper Tribunal were refused on 8 September 2017 and 30 November 2017, respectively. He then lodged further submissions on 20 July 2018, the rejection of which is the subject of this appeal.

3. The appellant's asylum claim was based on his sexuality. The judge was provided with a respondent's bundle of documents which he listed at paragraph 7 of his decision. At paragraph 8, the judge said he was provided with a substantial bundle of documents on behalf of the appellant, including witness statements from the appellant and two witnesses and a psychiatric report by Dr. Shortt dated 24 October 2018 and a country expert report on Afghanistan.
4. The judge heard oral evidence from the appellant and four witnesses. The judge's findings of fact and credibility are set out at paragraphs 30 to 48.
5. I heard submissions from the parties as to whether the judge erred in law in his decision.
6. Ms King relied on the renewed grounds of appeal upon which permission was granted. She submitted that there were two bases in the grounds but they are interlinked. The first was whether the judge correctly applied the **Devaseelan** guidelines; and the second was that looking at the evidence did the judge make adequate findings? She said that the two grounds are interlinked because the appellant had been disbelieved by Judge Greasley that he was gay and the evidence produced to support his claim postdated that first decision.
7. Ms King said that the instant appeal is a fresh claim, with new evidence considered by the Secretary of State with a right of appeal. The judge noted at paragraph 30 the original determination by Judge Greasley and at paragraph 32 stated that all the additional evidence provided by the appellant postdated his original hearing.
8. Ms King submitted that the four witnesses attended court on behalf of the appellant to confirm that he had attended various gay clubs, attended counselling on a weekly basis for nine months, and had contact with other support groups and had spoken about his sexuality. All this evidence had to be treated with anxious scrutiny and could not be dismissed solely on the credibility findings in an earlier hearing. She submitted that the evidence needed to be probed to reveal the weight and conclusions that could be drawn from it, but cannot be properly dismissed on **Devaseelan** principles solely due to its production after the first hearing.
9. Ms King referred the court to paragraph 33 where the judge considered the letter from Patrick Clements Genitourinary Medicine Centre dated 18 July 2018 which stated that the appellant had attended on multiple occasions since 2012. The judge stated that there were no reports of treatment prior to January 2018. The judge was more concerned at the discrepancy in dates between that letter and that of 31 January 2017 from the same centre. Ms King submitted that there was a slight discrepancy

but argued that the judge took from it that the evidence postdated the previous hearing.

10. I find that the medical evidence from Dr Shortt and from the Patrick Clements Genitourinary Medicine Centre was new evidence which fell under both the second and fifth of the **Devaseelan** principles as it was evidence emanating from an independent source that it was not necessarily tainted by the adverse credibility findings made against the appellant. In accordance with the **Devaseelan** principles this should have been a reason for the judge to consider it with anxious scrutiny and not to summarily dismiss it because it postdated the previous judge's decision.
11. I turn to consider the second ground relied on by Ms King which was that the judge failed to give adequate consideration to the evidence, in particular, the evidence of the witnesses. Ms King said [NN] gave oral evidence. The other three witnesses were tendered for evidence. They simply adopted their witness statements. There was no cross-examination of these witnesses by the HOPO.
12. Ms King said [NN] said in evidence that she had one-to-one sessions with the appellant on a fortnightly basis and also had telephone contact with him for about nine months. The judge noted that there was no cross-examination of her by the HOPO. Ms King said Ms [N]'s evidence goes to the core and corroborates the appellant's claim. It is from an independent source which the judge had to consider carefully. However, the only analysis of Ms [N]'s evidence was at paragraph 31 where the judge stated that the appellant had submitted supporting evidence from UK Lesbian & Gay Immigration Group confirming his attendance at both these organisations with representatives of both, attending the hearing and giving evidence that they believed he is homosexual.
13. Ms King said there was evidence from [AK] and [EG] who are connected to Micro Rainbow International. In their evidence they described the appellant's experiences of being gay and had no reason to doubt how the appellant had spoken out about being gay. Ms King said the only analysis of their evidence was at paragraph 32 where the judge said that both witnesses had given evidence that he had started attending Serpentine Galleries since October 2017, that is after his original appeal and prior to his further representations.
14. Ms King said that Mr Amandeep had also give evidence that he attends gay clubs with the appellant. The judge said this contradicted Mr Proctor's evidence that the appellant did not attend gay clubs. Ms King said it was open to the judge to query the weight to attach to Mr Proctor's letter but his evidence did not completely and intrinsically undermine the evidence of Mr Singh who was in court to confirm that the appellant went to gay clubs.

15. Ms King said that at paragraph 35 the judge dismissed the evidence of Dr Shortt because he did not accept the appellant's account and further, that Dr Shortt made no conclusions as to the appellant's sexuality.
16. Ms Cunha submitted that Judge Onoufriou had to take into account the findings made by Judge Greasley in not accepting that the appellant was gay and the new evidence. She submitted that Dr Shortt came to no conclusion as to the appellant's sexuality, yet again. The judge noted that the appellant's new partner Mr Proctor was not in court and that his evidence was inconsistent with Mr Singh's evidence. There was no evidence why Mr Proctor did not attend the hearing.
17. Having heard the submissions, I found that the judge erred in law for the reasons outlined by Ms King.
18. I find that the judge gave inadequate consideration to the evidence of the witnesses, in particular the evidence of [NN] who was an independent witness.
19. I also find that the fact that Dr Shortt's report did not conclude that the appellant was gay was not a sufficient reason to fail to consider the report properly. The purpose of the report was to carry out a psychiatric assessment of the appellant based on all the information provided by the appellant.
20. I find that the judge's constant reference to the evidence postdating the first determination was an indication that the judge did not apply anxious scrutiny to all the evidence that was before him.
21. I find that the judge's decision discloses material errors of law such that his decision cannot stand.
22. The appellant's appeal is remitted for rehearing at Hatton Cross by a First-tier Judge other than First-tier Tribunal Onoufriou.
23. An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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: 13 March 2019

Deputy Upper Tribunal Judge Eshun