



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

Appeal Number: PA/13806/2018

THE IMMIGRATION ACTS

Heard at Field House

On 2nd May 2019

**Decision & Reasons
Promulgated
On 17th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR M A R B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E S King, Counsel instructed by Connaught Law
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Bangladesh, appealed to the First-tier Tribunal against the decision by the Secretary of State made on 30th November 2018 to refuse his application for asylum and humanitarian protection in the UK. First-tier Tribunal Judge Aujla dismissed the appeal in a decision promulgated on 30th January 2019. The Appellant now appeals to this

Tribunal with permission granted by First-tier Tribunal Judge Andrew on 5th March 2019.

2. The background to this appeal is that the Appellant entered the UK on 13th September 2009 with entry clearance as a Tier 1 (General) Student. He applied for further leave to remain in December 2011 and January 2012 and his applications were refused. His application for a judicial review was dismissed in March 2013. He was served with documentation as an overstayer in February 2013 and July 2013. In January 2015 he applied for an EEA residence card as an extended family member of an EEA national. That application was refused. On 9th February 2016 he was arrested and detained with a view to removal but was released from detention subject to reporting conditions in March 2016. He applied for asylum on 1st June 2018.
3. His asylum application was based on his claim that he is at risk of persecution in Bangladesh on the basis of his sexuality. He claims that he realised that he was bisexual when he was 16 years old. After he obtained a degree in Bangladesh he came to the UK to study for an MBA. He claims that he married a woman in the UK in December 2014 and that, in December 2016, after his wife discovered that he was bisexual she told his family in Bangladesh and the couple then separated. The Appellant claims that he would be persecuted in Bangladesh because of his sexuality.
4. In the reasons for refusal letter the Respondent accepted that the Appellant is a national of Bangladesh but rejected the Appellant's claim to be bisexual on the basis of inconsistencies and a lack of detail in his account. The Secretary of State rejected the Appellant's claim that he was forced to marry his wife in the UK.
5. The First-tier Tribunal Judge rejected the Appellant's account, found that it was not credible and dismissed the appeal.

The grounds of appeal

6. The Grounds of Appeal put forward two grounds. It is contended in the first ground that the judge made an error in considering the evidence from two witnesses. The second ground contends that the judge erred in concluding that, even if the Appellant were bisexual, he would live his life discreetly after returning to Bangladesh [52].
7. At the hearing Ms King submitted that the judge made a material error in his treatment of the evidence from the witnesses. In particular she highlighted the judge's conclusions at paragraph 42. She pointed out that the two witnesses attended court and gave oral evidence when they expanded upon their witness statements. It was her submission that the judge needed to make clear findings in relation to this evidence but he clearly failed to do so. She submitted that it was not clear whether the judge had relied on the submission made by the Presenting Officer in the First-tier Tribunal that the two witnesses were "serial witnesses" in asylum

appeals based on homosexuality as a reason to reject the evidence of the two witnesses. If so, in her submission, this was not a proper reason on which their evidence could be rejected. In her submission, these two witnesses had been granted asylum on the basis of their sexuality and it was not inconceivable that they would have made friends with gay men in similar situations to themselves. In her view the judge had not made clear why he gave no weight to the witness evidence. In her submission it is clear that the judge took as a starting point the rejection of the Appellant's account and used that to give no weight to the contrary evidence from the two witnesses.

8. Ms Jones accepted that there was an apparent error in relation to how the judge dealt with the evidence from the two witnesses. She accepted that the witnesses required consideration, but in her submission any error was not material. In her submission, although the judge referred to the witnesses as "serial witnesses", this was not the basis on which the evidence was rejected. She submitted that the witness statements from the witnesses did not say very much, just that the witnesses had seen the Appellant in a club. In her submission the judge started with the Appellant's history and took a holistic approach to the evidence. She submitted that if the decision is read as a whole, it is clear that the evidence from the witnesses would not have made a difference in light of the Appellant's oral evidence. She highlighted paragraph 43 where the judge made his concerns known to the Appellant's representative at the hearing.

Error of Law

9. The two witness statements are at pages 54 and 55 of the Appellant's bundle. Both witnesses claim to have known the Appellant since January 2017 and to have met him in an Asian gay club. Each witness claims that he knows that the Appellant is bisexual. One of the witnesses says that he saw the Appellant engage in intimate behaviour with other males and knew also that he was attracted to females. Both witnesses indicate that the Appellant has told them about problems with his family in Bangladesh.
10. The judge recorded the oral evidence of the two witnesses at paragraphs 32 and 33 of the decision. Both said in oral evidence that they had seen the Appellant kissing other men in a club. Each of them said that they had no personal knowledge about the Appellant's family's circumstances and that their knowledge was based on what the Appellant had told them. Both indicated that they had previously given evidence before the Tribunal; one had given evidence on at least three occasions and the other in one other appeal.
11. The judge dealt with the evidence of witnesses at paragraph 42 where he said:-

"Having considered the evidence presented to me and the Appellant's account, I have serious concerns about the Appellant's credibility for

the reasons I have given below. As I have found the Appellant's account not credible, I am unable to give any weight on the evidence of the two witnesses who incidentally stated that they only met the Appellant two years ago. They may have seen the Appellant attending gay clubs but it is my conclusion that that was part and parcel of the Appellant's elaborate plan to fabricate a false asylum claim. The remainder of the evidence of the two witnesses was based on what the Appellant himself had told them, for example that his family would kill him if he returned home. I also bear in mind the fact that the two witnesses were, what Mr Reader referred to as, 'serial witnesses' in asylum appeals based on homosexuality. One of the two had given evidence in at least three previous appeals. While that in itself was no good reason for me to reject their evidence, when I look at the totality of the evidence and bear in mind my fundamental concerns about the Appellant's own credibility, I find that I could place no evidence (sic) weight on their evidence."

12. I accept that it appears in this paragraph that the judge decided to not consider the evidence of the two witnesses at all. However, when the paragraph is read in the context of the rest of the decision it is clear that the judge did in fact analyse the evidence of the two witnesses in that paragraph in the context of the evidence as a whole. The judge said in that he looked at the totality of the evidence and then went on to do so from paragraphs 43 to 51. At paragraph 43 the judge analysed the Appellant's oral evidence. The judge considered that the Appellant was evading answering questions properly, that his account was inconsistent and without sufficient detail, that the Appellant was vague and evasive when answering questions. At paragraph 44 the judge accepted the Appellant had been attending gay clubs for two years. The judge considered the Appellant's account of his marriage at paragraphs 45 and 46 and rejected the Appellant's account of the background to his marriage finding that the Appellant married his wife because he was a heterosexual man who was in love with her and not homosexual or bisexual [46].
13. At paragraph 47 the judge rejected the Appellant's explanation for the significant delay in claiming asylum having arrived in the UK in September 2009 when, by his own account, he already knew that he was bisexual. At paragraph 48 the judge considered all of the other applications the Appellant had made which were rejected. The judge said that he did not believe that the Appellant would not attend gay clubs until two years ago when all of the applications he had made had been refused and he was at risk of removal if he were bisexual [48]. The judge found that the fact that the Appellant took it upon himself to attend gay clubs only two years ago when all his applications were refused seriously undermined the credibility of his claim, and the fact that the Appellant started to attend gay clubs two years ago when he was at risk of removal was simply motivated by his desire to defeat his removal from the UK as an overstayer, not because he was a bisexual at risk on return [48].

14. This finding is key to how the judge considered the evidence from the two witnesses. It is clear that the judge accepted that the Appellant attended gay clubs as stated by the two witnesses. However, what the judge rejected was any conclusion that his attendance at these clubs for a period of two years (after a number of applications for leave to remain had been refused) lent any credibility to his claim to be bisexual. This is the core of the evidence given by both witnesses. Anything else the witnesses said was simply recounting what the Appellant had told them.
15. It is clear from the judge's analysis that he considered the evidence as a whole, including the evidence from the two witnesses. The judge accepted that the Appellant had been attending gay clubs but did not accept that this led to the conclusion that the Appellant was bisexual as claimed in light of all of the other evidence, including the delay of nine years in claiming asylum [49-50], the circumstances of his marriage, the nature of the Appellant's oral evidence which concerned him to such an extent that he made his concerns known to the Appellant's representative during his oral evidence [43]. In these circumstances I am satisfied that the judge made no material error in his approach to the evidence of the two witnesses.
16. It was accepted by Ms King that the second ground only bites if Ground 1 was established. In my view if there was any error in the judge's assessment as to how the Appellant would behave in Bangladesh at paragraph 52, it is not material in light of my finding that the judge made no material error in his approach to the evidence of the two witnesses.

Notice of Decision

17. There is no material error in the decision of the First-tier Tribunal. The decision of the First-tier Tribunal will stand.

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: 14 May 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT

FEE AWARD

The appeal has been dismissed therefore there can be no fee award.

Signed

Date: 14 May 2019

A Grimes

Deputy Upper Tribunal Judge Grimes