



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

Appeal Number: PA/13837/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 10 June 2019**

**Decision & Reasons Promulgated
On 21 June 2019**

Before

**UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

Between

**S.A.H.S.
(ANONYMITY DIRECTION MADE)**

Appellant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. B. Malik, Counsel, instructed by direct access

For the Respondent: Ms. A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of the First-tier Tribunal Judge issued on 24 January 2019, by which the asylum appeal of the appellant was refused.

Anonymity

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim.

Background

3. The appellant is a national of Pakistan. He arrived in this country in 2011 and married a British citizen in 2012. He applied for compassionate leave to remain, outside of the Immigration Rules, in March 2013 and this application was refused by the respondent on 22 May 2013. The appellant divorced his wife in June 2014, and he applied for leave to remain on human rights (article 8) grounds by means of an application dated July 2014. The respondent refused this application in September 2014. He claimed asylum in April 2018 asserting that he had a well-founded fear of persecution due to his bisexuality.

The hearing before the First-tier Tribunal

4. The appeal was heard on 17 January 2019. The appellant was supported by two witnesses who attended the hearing. The Judge accepted that appellant's identity and nationality but found him incredible as to the core of the claim. She acknowledged that a young person's sexuality evolves, but the appellant had provided very different answers as to how he came to realise that he was bisexual. She further found that the appellant, who has lived in the south-west of England since his marriage ended, provided no valid reason as to why he did not attend LGBT clubs in his local area.
5. As to the appellant's personal history, the Judge observed contradictions in his evidence. His statement that his marriage ended due to an affair with a male that lasted seven months was not borne out by the marriage having continued for some 20 months after the relationship

was said to have ended. It was further noted that the appellant had failed to provide a clear and consistent account as to how he fell out with his family over his sexuality. Inconsistencies between the witnesses as to the whereabouts of the appellant's present partner, who did not attend the hearing, was noted as was the appellant's lack of knowledge as to matters such as his partner's date of birth.

6. The Judge determined that that the appellant was inconsistent in his observation that he would openly inform black and white people as to his bisexuality, but not members of the Pakistani and/or Asian community.
7. The appellant gave evidence supported by a witness, Mr. Ali, that he did not attend Mr. Ali's LGBT club in London because the club does not have dark rooms available for intimate liaisons, which he prefers. The Judge decided, *'I find that going to a dark club where no one can see what is going on can also be because then it is not necessary to have intimate relationships and it is the ideal place to go if you are trying to give the impression of being bisexual without you having to become involved with anyone. I can find no valid reason why the appellant, who is not working and has little money, would choose to go all the way to London where there are LBGT clubs in his home city.'*

Grounds of appeal

8. Grounds of appeal were drafted by the appellant's then solicitors, detailing:
 - i) The Judge provided inadequate reasons for finding that the appellant's account as to the realisation of his sexuality was vague and inconsistent;
 - ii) The Judge failed to consider evidence presented as to why the appellant only attends a club in London; and
 - iii) The Judge failed to consider the evidence presented holistically, in particular a record of conversations conducted on Grindr.
9. I granted permission to appeal, as a Judge of the First-tier Tribunal, by way of a decision sent on 4 April 2019. I observed, *inter alia*:

'It is arguable that the Judge may have failed to adequately consider relevant conscious cultural sensitivities that may arise in the appellant being open to heterosexual members of the wider Asian community [54], failed to provide adequate reasons as to why it is implausible that the appellant would prefer a particular style of LGBTQ club [55] or provide adequate reasons as to why attendance at one LGBTQ club for six years 'does not demonstrate that the appellant is living an

openly bi-sexual life in the UK' [55]. It is further arguable that there is inadequate reasoning as to why the appellant's non-attendance at a club operated by a friend adversely impacts upon his credibility: reasons having been provided for such non-attendance by both the appellant and Mr. Ali [56]. It is also arguable that the Judge has failed to apply the appropriate standard of proof when deciding: 'I found it telling that other than a few photographs of the appellant sitting on a man's lap in a club, which could be posed as well as genuine ... the appellant was not able to produce anything to substantiate his relationships' [65]. It is arguable that the arguably flawed findings materially impacted upon the judge's assessment of risk.'

The hearing

10. The appellant attended the hearing before us. Mr. Malik asserted that the decision was unsafe consequent to numerous material errors of law. With regard to the purported contradiction of the appellant being open as to his bisexuality, other than with members of the Pakistani and Asian communities, he drew our attention to the respondent's '*COI: Pakistan, sexual orientation and gender identity*' (version 2), April 2016 where it is confirmed that sexual relations between males is illegal and that there is a well-established stigma to being gay in Pakistan.
11. As to the finding that attending one club in London does not demonstrate that the appellant is living an open bisexual life, Mr. Malik contended that it was a decision made in isolation and was not an accurate reflection of the overall evidence presented as to sexuality. At its core, it is said to be no more than a bare assertion as to credibility. Further, Mr. Malik contended that the Judge provided inadequate reasons as to why the appellant is not credible as to why he does not attend Mr. Ali's club. His evidence is supported by Mr. Ali, a person holding a respected position in the LGBT community and no clear findings are made as to Mr. Ali's credibility. The Judge further erred by failing to undertake a holistic assessment, in particular by failing to consider the Grindr messages filed with the Tribunal which evidences how the appellant interacts publicly and how he identifies himself.
12. We note Mr. Malik's candour in observing that elements of the appellant's evidence were reasonably considered problematic by the Judge, whose reliance upon several clear discrepancies were accepted to be unimpeachable.
13. Ms. Everett expressed sympathy with the challenge to the Judge's finding that the appellant's evidence as to being open as to his sexuality

but not willing to discuss it with members of the Pakistani and Asian community, was contradictory but observed that this did not adversely impact upon the Judge's overall assessment. She also accepted that the Judge's consideration as to why the appellant did not attend Mr. Ali's club may be problematic, but significant weight was not placed upon it within the subsequent assessment. The appellant was wrong in asserting that no consideration was given to Mr. Ali's evidence as the Judge addressed discrepancies between his evidence and that of the appellant at [64]. She noted that the appellant attending only one club in London and not attending clubs closer to his home was one where an unfavourable inference could reasonably be made and ultimately it was not considered by the Judge to be a significant blow to the appellant's credibility. Further, the Judge clearly noted the Grindr evidence at [19].

Decision on error of law

14. We find that the Judge erred by failing to provide adequate reasons in finding at [54] that the appellant was contradictory in his evidence when asserting that he was open as to his bisexuality, by his subsequent clarification that he was open to persons outside of the Pakistani and Asian communities. Consideration of this element of the appellant's evidence should properly have expressly addressed the respondent's COI 'Pakistan: Sexual orientation and gender identity' (version 2.0) April 2016, in particular its observations at 7.1.1:

'The Immigration and Refugee Board of Canada (IRB) reported in January 2014 that, according to Inter-Press Service, Pakistan's "conservative Muslim society" views homosexuality as a sin. A survey conducted by the Washington-based Pew Research Centre published in June 2013 showed that 87 per cent of respondents in Pakistan were of the opinion that "homosexuality should be rejected by society". Several sources indicated that gay men and lesbians were rarely open about their sexual orientation.'

15. Further, the COI details at 7.1.2:

'The Canadian IRB noted in a report of 9 January 2015 that, according to the BBC, "homophobia has wide social and religious sanction" and that according to the International New York Times, discrimination and prejudice against sexual minorities "run deep" in Pakistani society. Other media sources described the gay community in Pakistan as "underground". The Pakistan country advisor for the IGLHRC said that transgender people are the only "visible" sexual minority in Pakistan, while there is "a lot of invisibility" among gay men and lesbians, who keep their sexual orientation hidden. According to a WEWA representative, no lesbians or gay men could be open about their sexuality and move "freely" in Pakistani society.'

16. We further find that the Judge failed to provide adequate reasons as to why the appellant would prefer a particular style of LGBTQ club over another when determining at [56] that *'I find that going to a dark club where no one can see what is going on can also be because then it is not necessary to have intimate relationships and it is the ideal place to go if you are trying to give the impression of being bi-sexual without you having to become involved with anyone.'* The reasoning is couched in terms of commencing from a position of disbelief rather than undertaking a plausibility assessment.
17. As to the Judge's approach to the photographs relied upon by the appellant, she makes no firm finding of fact as to whether they are staged or not. However, she places no adverse weight upon them, and we find she considered the evidence before her in the round. We further accept that the same approach was adopted towards the filed screen shots from Grindr, which are clearly referenced at [19] and so forms part of the Judge's general assessment.
18. Upon consideration of the decision as a whole we are satisfied that the Judge did not err in law in her assessment of the evidence presented by Mr. Ali as to why the appellant did not visit his club. The Judge was aware that Mr. Ali enjoyed a respected position within the LGBTQ community and had been accepted as a credible witness in two other appeals before the First-tier Tribunal. However, she provided clear reasons as to concerns in relation to his evidence, at [64], and noted a significant discrepancy on another issue between the evidence of the appellant and Mr. Ali. Whilst the Judge could have expanded her reasoning at [56], we find that her explanation as to why she did not accept to the lower standard that the appellant and Mr. Ali were reliable on this particular issue was sufficient in the circumstances.
19. Further, we find that the Judge provided adequate reasons as to why the appellant's history of visiting only one LGBTQ club in London during some six years' residence in this country was implausible. The burden was placed upon the appellant to establish his claim and he simply stated that he went to the club because it had dark rooms. The Judge noted that the appellant had provided no valid reason as to why whilst residing in the south-west of the country, unemployed and possessing little money, he would travel to London when there were suitable clubs in his home city. Such reasoning cannot be considered to be irrational in the circumstances.
20. We remind ourselves that any error must be material in order to render the decision unlawful. As observed by Brooke LJ in R (Iran) v. Secretary of State for the Home Department [2005] EWCA Civ 982; [2005] Imm AR 535, at [15], appellate courts are anxious not to overturn a judgment at

first instance unless it really cannot understand the original judge's thought process when s/he was making material findings. Upon careful consideration of the decision and reasons, we accept Ms. Everett's submission that the Judge did not place significant weight on the erroneous elements of her decision. Rather, she placed appropriate weight upon the significant discrepancies in the evidence presented before her and we note Mr. Malik's appropriate concession that these findings were unimpeachable. In such circumstances, we find that the errors identified at [14] - [16] above were not material in substance and do not undermine the lawfulness of the Judge's conclusions on the evidence before her.

Notice of Decision

21. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
22. The decision of the First-tier Tribunal is upheld.
23. The appeal is dismissed.

Signed: **D. O'Callaghan**

Upper Tribunal Judge O'Callaghan

Date: 19 June 2019