



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/13838/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC

On March 4, 2019

**Decision &
Promulgated**

On March 7, 2019

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shea, Counsel, instructed by Fawad Law Associates

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

DECISION AND REASONS

1. The appellant, a Pakistani national, entered the United Kingdom in August 2012 as a student. On December 4, 2015 he claimed asylum but before his claim could be decided he moved address and failed to notify the Home Office. His claim was closed. He thereafter made a further application for asylum on February 8, 2017. The respondent refused this application on December 8, 2017.
2. The appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on December 22, 2017.

3. His appeal was heard by Judge of the First-tier Tribunal Juss on May 18, 2018 and in a decision promulgated on August 1, 2018 the Judge dismissed his appeal on all grounds
4. Permission to appeal was sought on August 13, 2018. The challenge to the Judge's decision centred around paragraph 17 of the Judge's decision.
5. Judge of the First-tier Tribunal Grant-Hutchinson refused permission on August 27, 2018. The appellant renewed his grounds of appeal and on August 27, 2018 Upper Tribunal Judge Reeds granted permission to appeal finding it arguable the Judge had erred by failing to apply the fourth test set out in HJ (Iran) [2010] UKSC 31 namely to consider why the appellant was living discreetly.

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

6. 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.

SUBMISSIONS

7. Mr Shea adopted the grounds of appeal and submitted that the Judge had erred in finding the appellant was not covered by HJ (Iran). The respondent and the Judge had both accepted the appellant's sexual orientation including the fact the appellant had been convicted outraging public decency for which he received a Community Order on November 11, 2015. This was evidence that the appellant would not act discreetly, and the Judge had erred in failing to make that finding. There was evidence in the form of a newspaper report which the Judge failed to attach weight to and the Judge had taken his answers about living discreetly in the United Kingdom out of context and had failed to consider that he had been living in a Pakistani community where such behaviour was not tolerated.
8. Mr McVeety submitted there was no error in law. The Judge had rejected the newspaper article and the grounds of appeal had not challenged that finding. Whilst the appellant stated in his witness statement that he lived openly as a gay person and that he feared persecution were he to be returned this had to be considered against his oral evidence that he gave at the hearing in which he denied living openly and when asked why he was unable to give a real reason. Mr McVeety submitted this was not a case covered by HJ (Iran).

FINDINGS

9. When this appeal came before the First-tier Judge, the respondent accepted the appellant's claimed sexuality and the Judge was aware the

appellant had been convicted of outraging public decency in relation to an incident that occurred on June 24, 2014. The Judge referred to evidence provided by the appellant in his oral evidence which he stated contradicted what was contained in his witness statement. In paragraph 17 of the decision, the Judge set out aspects of the cross-examination and recorded that the appellant was discreet about his sexuality and when asked to explain why he was discreet, he had said there was no particular reason.

10. In submissions Mr Shea submitted that this answer was taken out of context and failed to consider the fact the appellant was living within a Pakistani community where such behaviour would not be tolerated.
11. The issue the Judge had to deal with was whether the appellant would choose to live discreetly in Pakistan through a fear of persecution. If he chose to live discreetly through choice rather than persecution, there would be no refugee claim.
12. At paragraphs 15-18 the Judge reminded himself of the appropriate tests to be applied. Whilst reliance was placed on the newspaper article the Judge rejected that article and gave adequate reasons which were not challenged in the grounds of appeal. The Judge went on to find that even if he was wrong about the newspaper the appellant could move away from his own village although the question of internal relocation had to be considered against the question of why the appellant would choose to live discreetly.
13. The key issue for the Judge was whether he accepted the appellant was only living discreetly through fear of persecution.
14. In rejecting this claim the Judge placed more weight on his oral evidence, as against his written statement, and in particular the fact that he had chosen since being released from custody in November 2015 to live discreetly. The fact he may have had sex once in discreetly did not mean the appellant intended to live his life that way.
15. Having considered the submissions advanced by Mr Shea, I find there is no error in the Judge's decision.
16. Mr Shea's argument of why the appellant had stated in oral evidence that he was living discreetly was contradicted by other evidence he had given in cross-examination. He had claimed he attended LGBT clubs and had registered himself on gay websites. Despite these claims he had not adduced any evidence of membership or pictures of him with other gay men relying on the fact that he could not print out such information in a library. This overlooks the fact the appellant was legally represented, and it would have been open to him to obtain such evidence through his solicitors. The Judge also asked a number of questions about his relationship with a male called "I" and I am satisfied that it was open to the Judge to reach the conclusions he did in paragraph 19 of his decision.

17. Whilst permission to appeal was given on the basis it was arguable the Judge had failed to apply the test set out in HJ (Iran) I am satisfied that he did follow the guidance in that case and found the case did not apply because his decision to live discreetly was through choice rather than a fear of persecution. In such circumstances, the appellant was not covered by HJ (Iran).

NOTICE OF DECISION

18. I find there is no material error in law and I uphold the decision.

Signed

Date 05/03/2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as I have dismissed the appeal.

Signed

Date 05/03/2019



Deputy Upper Tribunal Judge Alis