



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

Appeal Number: PA/14247/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28<sup>th</sup> October 2019**

**Decision & Reasons  
Promulgated  
On 21<sup>st</sup> November 2019**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**S A  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Reza, Solicitor at JKR Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Hanbury promulgated on 6 August 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 19 November 2018 was dismissed.

2. The Appellant is a national of Bangladesh, born on 10 November 1985, who first arrived in the United Kingdom in 2008 on a family visit visa. He made an application for leave to remain on the basis of Article 3 of the European Convention on Human rights which was refused in 2009 and a further application on private and family life grounds was made and refused in 2013. The Appellant claimed asylum in 2018 on the basis that he would be at real risk of persecution on return to Bangladesh as a gay man.
3. The Respondent refused the application the basis that it was not accepted that the Appellant was gay because his claim was vague, incoherent and implausible. The Respondent also found as damaging the Appellant's credibility, the delay in his claim for asylum pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. For essentially the same reasons the Respondent did not accept that there was a valid claim for humanitarian protection, nor any breach of Articles 2 or 3 of the European Convention on Human Rights. Separate consideration was given to the Appellant's right to respect for private and family life, but he was not found to have any partner or child in the United Kingdom and he did not meet the requirements of paragraph 276 ADE of the Immigration Rules on the basis that there were no very significant obstacles to his reintegration into Bangladesh. There were no exceptional circumstances to warrant a grant of leave to remain.
4. Judge Hanbury dismissed the appeal in a decision promulgated on 6 August 2019 on all grounds, with the appeal only substantively being pursued on the asylum grounds. The asylum claim was dismissed on the basis that the Appellant's claim was found to be completely incredible, in particular that the Appellant had claimed to have been in relationship in Bangladesh with strong homosexual tendencies but did not make any claim for asylum until April 2018. The Appellant appeared to be an intelligent individual and has been legally represented in earlier claims for leave to remain, in which he did not rely on being gay. The First-tier Tribunal found that the Appellant's gay life had been manufactured late in the day as a means of avoiding removal and had surrounded himself with gay men in recent times solely for the purpose of bolstering his claim. In relation to the Appellant's claimed relationship in Bangladesh, the account was found to be inconsistent and implausible given the cultural context.
5. The First-tier Tribunal found the evidence given by Mr H and others to be totally unreliable with no weight attached to the evidence, which was characterised by a lack of detail. The First-tier Tribunal was not satisfied that the witnesses had any detailed knowledge of the Appellant and it was noted that the witnesses regularly gave evidence on behalf of the appellants before the Tribunal, in one case in 15 or so appeals and in another in 50 or more appeals. The First-tier Tribunal found that the Appellant's witnesses gave the impression of being paid advocates on his behalf rather than independent witnesses who kept gave factual evidence in a straightforward way. Finally, the First-tier Tribunal found that the

evidence of Mr R did not add anything to the Appellant's claim and shed little light on his sexuality.

### **The appeal**

6. The Appellant appeals on essentially three grounds as follows. First, that the First-tier Tribunal failed when assessing the delay in the Appellant's asylum claim, to consider the context and in particular the complexity of the journey for a person 'coming out' from a Bangladeshi Muslim background and this Appellant's limited education and consequent lack of understanding and perception. The latter is said to be a plausible explanation for the Appellant's lack of clear expression and apparent inconsistencies in his claim. Secondly, that the First-tier Tribunal materially erred in law in assessing the witness evidence, rejecting the evidence of multiple witnesses solely on the basis that they had attended multiple appeal hearings before the Tribunal this was an irrelevant consideration, particularly given the small size of the Bangladeshi gay community where everyone knew each other. Thirdly, that the First-tier Tribunal materially erred in law in finding that Mr R's evidence added little to the claim, given that he stated he took the Appellant to play clubs as early as 2016, which could not have been for the purposes of bolstering his claim made later in 2018.
7. At the oral hearing, on behalf of the Appellant, Mr Reza submitted that the grounds of appeal amounted to far more than mere disagreement with the outcome and that the First-tier Tribunal had failed in its duty to give adequate reasons for the decision, the ones appearing within it not being sufficient. In particular, there was no express reference to or consideration in the decision of the Appellant's written statement or the skeleton argument on his behalf, in particular in relation to the issue of delay. In cases concerning a person's sexuality, delay does not necessarily adversely affect their credibility, particularly for this Appellant who had limited education and came from a very conservative background. To the contrary the Judge was under the impression that the Appellant was well educated, but he had only completed primary school. The combination of these factors may have impeded the Appellant from coming forward with his asylum claim.
8. The First-tier Tribunal did not reject the evidence of Mr R, which included evidence of the Appellant attending gay clubs two years prior to his asylum claim did not therefore support any view that the claim was manufactured. The evidence was also corroborative of the existence of the Appellants ex-partner.
9. In relation to the other witnesses, this should not have been rejected solely because they had given evidence in other appeals, particularly as one of the witnesses came in her capacity as chair of an LGBTQ+ organisation and where there is a small and close-knit community of Bangladeshi gays numbering only hundred and 50 to 200 and people.

10. On behalf of the Respondent, Mr Kotas submitted that the appeal was essentially a reasons challenge and that in summary, adequate reasons have been given as to why the Appellant's appeal was dismissed. It was submitted that the Tribunal were entitled to put into the mix the fact that the Appellant arrived in the United Kingdom in 2008, had made unsuccessful applications for leave to remain and only at the last minute, 10 years later, did he claim asylum. There were lengthy periods where the Appellant does not claim to have expressed any sexual preference towards men and there were relevant plausibility findings on his account. The First-tier Tribunal did not refer to the Appellant as being well educated, but that he appeared intelligent, which is a different point. It has to be remembered that the First-tier Tribunal had the benefit of oral evidence from a number of witnesses, together with the written evidence available on the file. Overall, it was submitted that it was open to the First-tier Tribunal to reject the Appellant's claim on the basis of lack of detail and inconsistencies, with findings made that were open to the First-tier Tribunal on the Appellant's credibility and plausibility of his claim.

### **Findings and reasons**

11. In relation to the delay in claiming asylum, there was no written evidence before the First-tier Tribunal from the Appellant directly giving any reasons as to why he only claimed asylum in 2018, 10 years after he entered the United Kingdom and after a number of failed applications for leave to remain on other grounds. In his asylum interview, the Appellant states that he did not claim earlier because he did not know that such a claim could be made and he did not know that he was allowed to be gay in the United Kingdom until around 2016, albeit he claims to have been attending gay clubs since 2015. The matter was however covered in the skeleton argument submitted to the First-tier Tribunal on his behalf, in which it was asserted that the delay in claiming asylum should not affect the credibility of the claim given the Appellant's cultural and religious background, not making it easy for him to come out openly and by reference to his lack of knowledge that a gay man could claim asylum will be assisted on that basis. Even once the Appellant new about the process, he was hesitant to come forward.
12. The First-tier Tribunal's decision does not expressly rely on section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to find the Appellant's credibility as damaged by his late claim for asylum, however the timing of the claim was referred to. In paragraph 34 of the decision, the Judge states that "*this was a very late claim advanced many years after his last application to regularise his immigration status had failed in 2013. All other avenues were closed to the appellant by that time.*" This paragraph contained nothing further in relation to credibility or delay. There was however a finding earlier in paragraph 30 that although it was appreciated that matters of sexuality are personal and that the Appellant came from a culture significantly less tolerant of homosexuality, that in any event it must be obvious to the Appellant from his involvement with the "gay scene" in the United Kingdom that he could

openly exercise his rights as a homosexual here. In paragraph 31 it was found to be incredible that the Appellant would not advance his claim until April 2018 by not relying on this most important detail in his life, particularly when legally represented.

13. Although there is no express reference in the decision of the First-tier Tribunal to the decision in A, B, C v Staatssecretaris van Veiligheid en Justitie (Cases C-148/13 - C-150/13), I find that there has in substance, been a consideration and rejection of the Appellant's reasons for delay in claiming asylum, which expressly refer to his cultural background, the personal nature of a person's sexuality and note his claimed involvement with other gay people and visiting gay bars 2 to 3 years prior to his asylum claim, as well as this claimed relationship in Bangladesh before arriving in the United Kingdom. These are all relevant factors and sufficient reasons are given for rejecting the explanation for delay, even in this particular context.
14. As to the Appellant's level of education, although his evidence is that he only completed primary education up until year six, that is not necessarily inconsistent with the First-tier Tribunal's finding that he appears to be an intelligent individual. The lack of any formal education is not determinative of intelligence and in any event, this was a relatively minor part of the reasoning in the context of the other findings.
15. For these reasons I find no error of law in the First-tier Tribunal's decision and findings made on the delay in the asylum claim. In any event, the decision contains much wider adverse credibility findings against the Appellant (including about the plausibility of his claim, inconsistencies in it and the lack of detail about a claimed lengthy relationship in the United Kingdom) which go far beyond the timing of the claim and it is therefore difficult to see how any detailed consideration of the context or case law could have made any material difference to the overall adverse credibility findings.
16. The second ground of appeal concerns the First-tier Tribunal's assessment of two particular witnesses and the lack of weight attached to their evidence. The primary reasons for the lack of weight attached given in paragraph 35 of the decision is that the evidence was "*characterised by lack of detail*" with the First-tier Tribunal not being satisfied that the witnesses had any detailed knowledge of the Appellant. One witness was inconsistent about how long he had known the Appellant for and in both cases, the timing of the involvement of the witnesses came only after the Appellant's asylum claim was refused by the Respondent.
17. In addition, the First-tier Tribunal questioned how a court or tribunal could attach significant weight to the evidence of a person who gives evidence regularly on behalf of appellants and whether the individuals were actually known to them or not. However, the First-tier Tribunal does not refer to any other decisions nor any concerns about the evidence given in other cases, adverse comments on their credibility or

the like. Whilst this shows a lack of reasoning as to why numerous attendances before an appeal tribunal could or should affect the weight to be given to evidence, in this case it was one of a number of reasons why little or no weight was given to the evidence of these two witnesses in particular. I find that in any event it was open to the First-tier Tribunal to attach little weight to the evidence on the basis that it lacked detail and did not contain detailed knowledge of this Appellant in particular, or any detailed evidence as to his involvement with the organisations which they belong to. The First-tier Tribunal Judge did have the benefit of hearing that oral evidence, together with the written statements, which on their face do lack detail. For these reasons alone, it was open to the First-tier Tribunal to attach little or no weight to this part of the evidence, which is a matter for the Judge who heard the oral evidence. I therefore I find no material error of law on the second ground of appeal.

18. Finally, the Appellant appeals on the basis that the First-tier Tribunal's treatment of the evidence of Mr Rajon was also flawed as this could not have been sought to bolster a late asylum claim in 2018, because it related to events as early as 2016. However, I find that the First-tier Tribunal was rationally entitled to conclude that this evidence added nothing of substance to the Appellant's claim given the finding that the Appellant's claim had been manufactured relatively late in the day, surrounding himself with gay men and attending gay events to bolster his claim rather than because of his genuine sexuality. At its highest, Mr R's evidence is that he believes what the Appellant has told him about his sexuality and that he has dropped him to gay venues in the past. It was open to the First-tier Tribunal, in the context of the findings made and when all of the evidence was considered in the round, to find that this witness' evidence does not substantively advance the Appellant's claim, nor did it have a material bearing on the outcome of it. For these reasons I find no error of law in the final ground of appeal either.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

### **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 their 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   
2019

Date 11<sup>th</sup> November

Upper Tribunal Judge Jackson