



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

Appeal Number: PA/09998/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 12 March 2020

**Decision & Reasons
Promulgated
On 19 March 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**MK
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr G Brown, instructed by Arshed & Co

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. 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 appellant(s).

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lewis promulgated 29.11.19, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 1.10.19 to refuse his claim for international protection on the basis of a well-founded fear of

persecution on return to Pakistan on grounds of sexual orientation as a gay man.

2. Designated First-tier Tribunal Judge Manuel refused permission to appeal on 7.1.20, suggesting that the largely generic grounds was no more than an exercise in sophistry, and that the First-tier Tribunal Judge was entitled to draw the inferences made and that full and secure reasons had been given for dismissing the appeal on adverse credibility findings.
3. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Canavan granted permission on 21.1.20. Judge Canavan noted that the grounds were not well particularised and that some of the points were weak. However, it was found at least arguable that the judge may have erred in assessing the credibility of the appellant's claim to be a gay man.
4. In particular, Judge Canavan found it at least arguable that insufficient weight was given to the finding that the appellant's claimed partner MR had been found to be "an honest and reliable witness" by First-tier Tribunal Judge Thorne in MR's own protection appeal, in assessing what weight should be given to MR's evidence in the appeal of MK. "It is arguable that there was nothing inherently implausible about MR's explanation that he did not mention the appellant as his partner when his appeal was heard soon after they first began seeing one another and the relationship was not well established. It is at least arguable that the judge failed to conduct a holistic assessment of the evidence given that he accepted that the appellant shared accommodation with MR, that MR was found to be a credible witness and was granted protection status based on his own sexual orientation and that there was at least one other witness who gave evidence in support of the claim." However, Judge Canavan considered the grant of permission a "borderline decision" but found the grounds sufficiently arguable to justify more detailed consideration at a hearing.
5. The respondent's Rule 24 response, dated 31.1.20, submits that Judge Lewis directed himself appropriately. It is submitted that the grounds are without merit in attempting to provide an explanation for the delay in the appellant making an asylum claim. It is pointed out that at [30] the judge noted that at the relevant time the appellant was good friends with a man who had already been granted refugee status on the basis of being a gay man. It is submitted that in those circumstances it was open to the First-tier Tribunal Judge to find that the appellant would have been aware of the asylum system in the UK. It is submitted that the remainder of the grounds are no more than a disagreement with the findings of the Tribunal.

Error of Law

6. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.

7. The according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor, unless the exercise is irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions, the appraisal of the evidence or assessment of credibility, or the evaluation of risk does not give rise to an error of law. Unless a judge's assessment of proportionality is arguably completely wrong, there is no error of law. Nor is it an error of law for a judge not to have regard to evidence of events arising after the decision or for no account to have been taken of evidence not put before the tribunal. Irrationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because a judge has concluded that the story proffered is untrue. However, if a point of evidence of significance has been ignored or misunderstood, that may be a failure to take into account a material consideration.
8. The appellant made a previous protection claim in 2016, the appeal against the refusal of which was dismissed by First-tier Tribunal Judge Malik in 2017 and subsequently by the Upper Tribunal in 2018. The impugned decision arose from further submissions made in September 2018 and the issue of judicial review proceedings, leading to the latest decision of 1.10.19.
9. In essence, the appellant claimed that he is a gay man and that he is or was at the time of the appeal hearing in a relationship with MR, who was found to be gay in his own protection claim appeal in 2017 and who has since been granted refugee status on that basis.
10. In the previous appeal decision from 2017 relating to this appellant, he was found to lack credibility. Pursuant to Devaseelan (Second Appeals - ECHR - Extra-territorial Effect) Sri Lanka [2002] UKAIT 00702, the respondent and Judge Lewis were entitled to take the previous findings of fact as the starting point for consideration of a protection claim made on the same basis of sexual orientation, as it is clear from [7] and [17] of the decision that Judge Lewis did. Judge Malik found that the appellant had fabricated the core of his claim, making a false asylum claim. Judge Malik was aware and took into account that AY had been granted refugee status on the basis he is homosexual. Although the appellant's present case is that he met MR in June 2017 and became friends at that time there was no reference to MR in the 2017 appeal and MR was not called as a witness. In his witness statement the appellant maintains that he did not enter into a relationship with MR until the end of August 2017. However, in the appeal hearing before Judge Lewis the appellant relied on photographs of him with MR taken in June 2017 and another in July 2017, as well as others showing them kissing in August 2017.
11. From [19] and [25] of the decision it is clear that Judge Thorne's decision in relation to the supporting witness MR was considered and taken into

account; it was not ignored. However, it was for Judge Lewis to make his own decision on the evidence and the judge was not in any way bound by the findings of Judge Thorne. Judge Lewis heard the oral evidence of not just the appellant but MR and a further witness, AY, who had also given evidence on the appellant's behalf in the 2017 appeal hearing, and was able to form his own assessment of the evidence and the appellant's sexual orientation claim. From [25] onwards the judge considered the claim and the supporting evidence. AY was granted refugee status as a gay man in 2015. Both MR and AY supported the appellant's claim to be a gay man. It is not the case that the judge ignored the fact that both AY and MR had been found to be gay in their own respective asylum claims. The judge is not bound to accept the evidence of either witness merely because either or both of them have been found credible in their own protection claim appeals. It was for example, possible that MR was gay but was not being truthful about his relationship with the appellant. In that regard, MR at his hearing in September 2017 made no reference to any relationship with this appellant and did not produce evidence relied on in the appellant's most recent appeal and which was already in existence at the date of MR's appeal. The judge considered MR's explanation for this, set out at [33] but at [34] found the evidence not credible, for cogent reasons set out therein. His explanation for that was that 'we did not accept each other in that regard.' That was obviously inconsistent with the situation sought to be conveyed by the photographs and this appellant's claim that by the end of August 2017 they were in a relationship. Further reasoning for rejecting the appellant's account is given at [35] of the decision. These are all matters addressed by the First-tier Tribunal in 2019 and amount to cogent reasoning supporting the findings of Judge Lewis.

12. The renewed grounds assert that the findings on the central issue of whether the appellant is gay are unsafe. It is pointed out that when AY said he met the appellant in August 2016 was only two months before the appellant's arrest and therefore only a two-month window that would have allowed the appellant to become aware of how to claim asylum. The fact remains that this was one of the reasons Judge Malik gave for rejecting the credibility of the appellant's account; the explanation was not believed.
13. It is further argued that having found at [31] that the appellant and MR were cohabiting is a finding more than that two people merely live together. It is submitted that cohabitation often involves a romantic or sexually intimate relationship on a long-term or permanent basis. However, the judge gave cogent reasons for finding that although they were living together or cohabiting, that did not demonstrate that they were in a sexual relationship.
14. Further grounds criticise the judge's treatment of the photographs, suggesting that they showed the development of the relationship with MR. However, for the reasons explained above, the judge found the photographs inconsistent with the evidence of MR and did not accept, applying the lower standard of proof, that they were taken on the dates claimed by the appellant. Further, at [34] the judge noted that although

the photos showed the appellant and MR embracing on dates said to be in August 2017, this was at a time when MR's account was that he and the appellant "did not accept each other in that regard" at the time when he gave evidence in support of his own asylum appeal in September 2017, in which he had produced photographs of himself with another allegedly gay man but did not produce any of the photographs now relied on which are allegedly from July and August 2017. Also, as stated above, it was the appellant's case that they were in a relationship by the end of August 2017 but MR did not disclose any such relationship to Judge Thorne. About that he now says that he was not asked about any current relationship and they were "still getting to know each other." Given the above, there can be little surprise that Judge Lewis found the claim entirely incredible. I am satisfied that all of the challenged findings were entirely open to the judge on the evidence. That the judge did not specifically put points to the appellant about the dates of the photographs during the hearing does not demonstrate any material error of law as the inconsistency in the evidence was plain on its face.

15. The remaining grounds are no more than a mere disagreement with the decision. In MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC) the Upper Tribunal held that, "A judge considering an application for permission to appeal to the Upper Tribunal must avoid granting permission on what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal judge's assessment of the evidence." This is such a case. In my view, the grounds were rightly described by Designated Judge Manuell as "an exercise in sophistry."
16. The only point of any weight in Mr Brown's submissions was the argument that the fact that MR had been found credible and granted refugee status on the basis of sexual orientation should carry some weight. I agree but find that it has been adequately taken into account and appropriate weight given. The difficulty for the argument is that the judge has given very clear and compelling reasons to reject MR's credibility on the issue that he has been in a relationship with the appellant. The judge did not go behind the finding of Judge Thorne that MR is a gay man. As pointed out above, it does not necessarily follow that he must be believed about being in a relationship with this appellant. The findings of the First-tier Tribunal were entirely open and sustained by cogent reasoning.

Decision

17. For the reasons set out above, the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Upper Tribunal Judge Pickup

Dated 12 March 2020

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.

Signed

DMW Pickup

Upper Tribunal Judge Pickup

Dated: 12 March 2020