



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

Appeal Number: PA/01682/2020

THE IMMIGRATION ACTS

**Heard on: 6th January 2022
At: Bradford (remote hearing)**

**Decision & Reasons Promulgated
On 15 March 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**MR
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Murphy, Counsel instructed by City Heights Solicitors

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

DECISION AND REASON

1. The Appellant is a national of Bangladesh born in 1986. He appeals with permission against the decision of the First-tier Tribunal (Judge Bart-Stewart) to dismiss his appeal on protection and human rights grounds.
2. The basis of the Appellant's claim to have a well-founded fear of persecution in Bangladesh is that he is a gay man.

The Decision of the First-tier Tribunal

3. The appeal before the First-tier Tribunal was not the first attempt that the Appellant had made on the basis of his claim to be a member of a particular social group. He had claimed asylum in 2014 on the basis that he was gay, and an appeal against refusal of that claim had been dismissed by Judge Veloso on the 4th September 2016. In the present case Judge Bart-Stewart properly treated the decision of Judge Veloso as her starting point. She noted that Judge Veloso had made several negative credibility findings: the Appellant had at times been vague and inconsistent in his evidence; his evidence contradicted the documentary evidence, for instance about how often he attended meetings at gay support group 'London Friends'; his witnesses had not seen very much of him in gay clubs etc; he could not recall the name of internet dating sites that he claimed to use.
4. Having noted those *Devaseelan* findings, the Judge went on to make several negative credibility findings of her own, before dismissing the appeal on the grounds that the Appellant is not, as he claims, a gay man.

The Grounds of Appeal

5. The Appellant challenges the decision below on the grounds that the First-tier Tribunal:
 - i) Failed to assess the Appellant's evidence in light of the uncontested assertion that is a vulnerable adult, contrary to the guidance in The Joint Presidential Guidance Note No 2 of 2010, SB (vulnerable adult: credibility) Ghana [2019] UKUT 398 (IAC) and AM (Afghanistan) [2017] EWCA Civ 1123;
 - ii) This error compounds the central problem, which is that the decision does not assess the evidence in light of conclusions of a Consultant Psychologist Mai Atas-Kelly, namely that the Appellant's fragmented and disturbed memory is consistent with, and could therefore be explained by, his diagnosis of depression. The Tribunal there fails to treat the medical evidence as the factual context in which the Appellant's credibility needed to be assessed, contrary to the guidance in Francois Mibanga [2005] EWCA Civ 367;
 - iii) Misrepresented the evidence/made errors of fact/failed to assess the evidence with anxious scrutiny. At its paragraph 42 the Tribunal records the Consultant Psychologist who interviewed the Appellant as being "vague": in fact the doctor said no such thing anywhere in her report. At its paragraph 36 the Tribunal finds inconsistency between the

evidence of the Appellant and his witness about which year their relationship began: in fact both state that it was after a birthday celebration in 2017. In the same paragraph the Tribunal finds no evidence that these two men ever attended 'London Friends' together: in fact the evidence of the witness was that this was where he had met the Appellant. At paragraph 39 the Judge finds a contradiction between what is said by a witness in this appeal and what the same witness said before Judge Veloso: in fact the evidence remained exactly the same, namely that the witness knew all three of the Appellant's previous partners. At paragraph 41 the Judge finds that the Appellant and his claimed partner live at different addresses: this omits to have regard to their stated evidence that they live together, but they both have different postal addresses;

- iv) Acted unfairly in taking against the Appellant points that were not raised by the Respondent, nor put to the Appellant at hearing. The Appellant was thereby denied the opportunity to respond to the forensic challenge; had such an opportunity been afforded innocent explanations for each of the matters raised in the decision would have been provided, for which see the errors of fact above at (iii);
- v) There was a lack of reasons given for the conclusion that the Appellant's witnesses were inconsistent and lacked credibility. It is noted that the Appellant's claimed partner of over two years has been recognised as a refugee on account of his own sexuality: his account has therefore been recognised as credible, and the First-tier Tribunal nowhere takes that into account.

Discussion and Findings

6. Before me Mr McVeety accepted that the decision of the First-tier Tribunal was flawed for error of law and that it had to be set aside in its entirety. The Secretary of State does not challenge the medical evidence that the Appellant was suffering from anxiety and depression. The report of the Consultant Psychologist had concluded that these conditions were having a significant impact on the Appellant's ability to recall dates etc. In those circumstances consideration should have been given as to whether the Appellant was a vulnerable adult witness, and there is nothing on the face of the decision to indicate that this was done, or that the Tribunal took his medical conditions into account when considering his evidence. Mr McVeety accepted that this was an error in approach which vitiated the entire decision.

7. He further accepted that no weight appears to have been attached to the - again unchallenged - evidence that the man who claims to have been the Appellant's partner since 2017 has been recognised as a refugee on the basis that he has a well founded fear of persecution in Bangladesh as a gay man. Mr McVeety checked the Home Office record and confirmed this to be the case: this witness was granted upon application, the Home Office having accepted his claim was made out. Mr McVeety accepted that the failure to weigh that matter in the balance when assessing the credibility of this witness must have been a material error.
8. It follows that I need not assess the remaining grounds in any detail, save to record that I find them all to be made out. It is axiomatic that protection claims must be assessed with anxious scrutiny, and that the lower standard of proof is applied. Looking at the evidence as a whole, and the extent of the deficiencies in it identified by the Respondent, I am not satisfied that this is the approach that has been taken here. I set the decision of the First-tier Tribunal aside in its entirety. Mr Murphy submitted that in those circumstances the most appropriate course of action would be remittal to the First-tier, and for the case to be listed at Taylor House before a Judge other than Judge Bart-Stewart. I agree.

Anonymity Order

9. The Appellant continues to seek international protection. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate at present to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

“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, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decision and Directions

10. The decision of the First-tier Tribunal is flawed for error of law and it is set aside.
11. The decision in the appeal must be re-made by a Judge of the First-tier Tribunal other than Judge Bart-Stewart. Consideration must be

given as to whether the Appellant is a vulnerable witness prior to the hearing, and I would suggest, although this is a matter for the First-tier Tribunal, that this is a matter suitable for pre-hearing review process by the Respondent.

12. There is an order for anonymity.

Upper Tribunal Judge Bruce
6th January 2022