



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

**Appeal Number: HU/08491/2020
(UI-2021-001113)**

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice
Centre
On the 11th March 2022**

**Decision & Reasons
Promulgated
On the 22nd April 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**ZA
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, instructed by Mamoon Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan whose date of birth is given as 1 January 1998. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his human rights appeal against the respondent's decision to refuse him entry to the UK under the Family Reunion provisions in the Immigration Rules.

2. The appellant applied, on 20 August 2020, for entry clearance to the UK under the family reunion rules to join his partner, the sponsor, who had been

granted leave to remain in the UK as a refugee on 8 February 2016. The appellant claimed to have been in a gay relationship with his sponsor since 10 February 2018 and to have been engaged in 2020. It was claimed that they could not get married as they could not register their marriage in Pakistan and neither could they live together in Pakistan as a gay couple.

3. The respondent refused the application on 29 October 2020 on the grounds that the requirements of paragraph 352A of the immigration rules were not met and there were no exceptional circumstances leading to unjustifiably harsh consequences for the appellant for the purposes of Article 8. The respondent did not accept that the appellant and the sponsor had been in a relationship akin to marriage for two years and noted that they had not lived together prior to the sponsor leaving the UK and coming to the UK and that the sponsor had not named the appellant throughout his leave to remain claim. The respondent noted further that the chat record transcripts produced by the appellant, dated 2019 to 2020, were untranslated and the nature of the communication between the appellant and sponsor was therefore unclear. In addition, whilst the appellant had produced payment vouchers dated 2019 to 2020 showing payments to him from the sponsor, the respondent did not accept that he had produced sufficient evidence to show that he and the sponsor were in a genuine and subsisting relationship. The respondent considered that the requirements of paragraph 352A(i), (ii), (iii) and (v) had therefore not been met.

4. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge McAll on 10 September 2021. The evidence before the judge was that the appellant's sponsor had been granted refugee status in the UK on the basis of his sexual orientation and had been granted indefinite leave to remain on 8 February 2016. The claim was that they had first met in 2011 (or 2009), when the appellant was 13 and the sponsor was 29 years old, although they were not in a relationship at that time. They claimed to have commenced a relationship on 10 February 2018, after the sponsor watched a video of the appellant on the Tik Tok social media website and contacted him. They became engaged without having met and had celebrations in their own countries. It was conceded, on behalf of the appellant, that he could not meet the requirements of the immigration rules, and the appeal was argued outside the rules under Article 8.

5. The judge found the evidence to be unreliable and considered that the sponsor was making up his evidence at the hearing. He rejected the claim that an engagement party had taken place in Pakistan and, likewise, that there had been an engagement party in the UK. Whilst the judge accepted that remittances had been sent to Pakistan from the UK, he did not accept that they were sent for the purpose claimed. He did not accept that the appellant and the sponsor were in a genuine relationship and did not accept that the appellant had established his claim to be gay. The judge did not accept that the appellant had established a family life in the UK and considered that Article 8 was not engaged. He found that even if the appellant and sponsor had genuinely met online and shared social media exchanges, there was not a genuine and subsisting relationship and he did not accept that there was an

intention for the couple to live together in the UK in a marriage or in a relationship akin to marriage. The judge concluded that the respondent's decision was not in breach of the appellant's Article 8 rights and he accordingly dismissed the appeal.

6. The appellant sought permission to appeal the decision on the following basis: that the judge had failed to give cogent reason for making the adverse credibility findings that he did; that the judge had considered issues which were not before him, namely the genuineness of the relationship which had not been raised by the respondent; and that the judge had failed to consider the most compelling circumstances, that the appellant and sponsor could not get married in Pakistan as the sponsor was a refugee and gay relationships were not acceptable.

7. Permission was granted in the First-tier Tribunal on 1 December 2021 and the matter then came before me for a remote hearing.

Hearing and submissions

8. The parties made submissions before me.

9. With regard to the first ground, Mr Greer submitted that the judge had made a series of observations and reached conclusions without giving reasons and he referred in particular, by way of example, to the findings made at [25], [26], [32] and [33], where the judge's conclusions were pure hypothesis. As for the second ground, Mr Greer submitted that that raised a matter of fairness as the judge had made an adverse decision on a matter which was not in issue, namely the appellant's sexual orientation. Mr Greer submitted, for the third ground, that the judge had erred by saying at [36] that he was taking the appellant's claim at its highest but he did not do so and if he had done so, and had accepted that the appellant was gay, the case was one which could have succeeded, both within and outside the immigration rules.

10. Mr Tan pointed out that Mr Greer's submissions differed from the actual grounds. In relation to the fairness point, it had always been obvious that credibility was in issue. As for the challenge to the judge's reasoning in relation to his adverse credibility findings, it was necessary to consider the judge's findings from [25] onwards as a whole. The grounds had made no challenge to the adverse findings at [27] to [31] which identified various inconsistencies in the evidence. The judge's concerns set out at [25], [26], [32] and [33] were understandable when considered within that background context. As for the judge's findings at [36], that was an obiter finding or a finding in the alternative which was that the appellant and sponsor were no more than digital friends. Ample reasons had been given by the judge for his adverse findings.

11. Mr Greer did not make any submissions in response.

Discussion and conclusions

12. As I pointed out at the commencement of the hearing, the grant of permission by the First-tier Tribunal did not provide any reasons as to the basis upon which permission was granted, but simply found the grounds to be arguable. In turn, the grounds presented by Mr Greer differed from the written grounds.

13. The fairness challenge in the written grounds was, it seems to me, completely unarguable, as it was based upon the plainly incorrect assertion that the genuineness of the appellant's relationship with the sponsor had not been raised by the respondent in the refusal decision. Clearly the genuineness of the relationship was a matter which formed a significant part of the refusal decision and the judge was therefore fully and properly entitled to make findings and reach a conclusion on it. Mr Greer's submission took a different slant to the grounds, asserting that the judge had erred by finding that the appellant was not gay, when his sexual orientation had not been disputed by the respondent. However, not only was that a matter which had not been pleaded in the written grounds, but it was also clearly not a matter which the respondent had specifically conceded. It was clear from the refusal decision that the respondent did not find the application as a whole to be a credible one and it was entirely open to the judge to consider the appellant's sexuality as part of his assessment of the claimed relationship with the sponsor. There was accordingly nothing unsafe or unfair in the judge concluding as he did at [33] in that regard.

14. As for the judge's reasons for making the adverse credibility findings that he did, I agree entirely with Mr Tan that the grounds simply pick parts of the judge's findings out of the overall context in which he reached his adverse conclusion and fail to acknowledge the background against which those findings were made. The judge gave cogent reasons, at [27] to [31] for concluding that the appellant and sponsor had not provided a credible account of their relationship and how they met, identifying various inconsistencies and discrepancies in their evidence. None of those findings were challenged in the grounds or indeed by Mr Greer, and neither were they even acknowledged. The written grounds only take issue with [32] and [33] of the judge's decision, and Mr Greer added a further challenge to [25] and [26]. Whilst those paragraphs, taken in isolation, may not have been expressed in the clearest of terms, it is entirely clear, when they are read as a whole with the other unchallenged findings at [27] to [31], why the judge made the adverse findings that he did. Accordingly the judge gave ample, cogent reasons for concluding that the appellant's and sponsor's evidence was not reliable and for concluding that they were not genuinely in a relationship. The judge was perfectly entitled to make the adverse findings that he did.

15. The third ground adds nothing to the appellant's case, given the properly made adverse conclusions reached by the judge in regard to the claimed relationship between the appellant and the sponsor. The judge was perfectly entitled to find, at [36], that the appellant's case, at its highest, was that he and the sponsor had formed an online relationship which did not meet the

requirements of the immigration rules. In any event that was, as Mr Tan submitted, nothing more than an obiter observation.

16. In all of the circumstances, the judge was perfectly entitled to find that the appellant and the sponsor were not in a genuine and subsisting relationship and to dismiss the appeal on the basis that he did. He gave full and cogent reasons for reaching the adverse conclusion that he did, based on the evidence before him. The grounds do not identify any errors of law in his decision.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 14 March 2022