



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003512
First-tier Tribunal No: PA/53073/2021
IA/09192/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 March 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department

Appellant

and

AAMIR HAMID

Respondent

Representation:

For the Appellant: Mr Broachwalla

For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 30 January 2023

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal. The appellant was born on 8 September 1975 and is a male citizen of Pakistan. By a decision dated 10 June 2021, the respondent refused the appellant's claim for asylum. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 23 June 2022, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal. The appellant claims international protection on the basis that he is homosexual.
2. The judge has carried out a robust assessment of the evidence. For the most part, he has sought to address the matters raised by the Secretary of State in the refusal letter. However, I agree with the Secretary of State that, whilst the judge says that he has taken Section 8 of the Asylum and Immigration (Treatment of

Claimants, etc.) Act 2004 and the appellant's delay in claiming asylum into account [21], it is unclear how exactly he has done so. This is not a simple case of a single period of delay prior to a claim. As the judge records at [17], it was the respondent's case that the appellant's credibility was damaged because he had delayed 'in making his claim [for asylum] in 2005 and 2015 or until after he was arrested in 2019.' Having arrived in 2005 as a sector-based work migrant, the appellant had done nothing to regularise his status after becoming an overstayer until 2014 when he made a claim for an EEA residence card. When that application was refused, the appellant left the United Kingdom and travelled to Ireland in December 2015 where he made an asylum claim. However, he left before completing the claim process because he 'did not like Ireland.' The appellant travelled to the United Kingdom from Ireland in 2016 and did nothing to regularise his status until he claimed asylum on 21 December 2019, five days after being arrested and served with papers as an illegal entrant. In my opinion, the judge should have sought to deal with this troubling immigration history and, in particular, the successive periods during which the appellant has not chosen to claim asylum on the basis of his sexuality. For the judge to say only 'accept that the delay in claiming asylum undermines the credibility of the Appellant. I must still assess the merits of the claim against that reduced credibility backdrop' is, frankly, on the particular facts not enough.

3. There are a number of problematic aspects to the appellant's account. Potentially most damaging of all to the appellant's credibility is the application for an EEA Residence card which the judge accepts the appellant made in 2014/15. The application was made together with a woman sponsor (Rute Alexandra Reis Xavier). However, the appellant claims to have no knowledge of her or of the application. The judge found that the appellant had a relationship with this woman and had made the appellant (which bears his photograph) [22].
4. The problem is that, although he seeks to address the relationship with a woman which the appellant had in 2008/2009, the judge has not considered the 2014/15 relationship which, as I say, is potentially very damaging to the appellant's credibility as a witness. Of the 2008/09 relationship the judge writes [27]:

I do not accept that the discrepancy as to whether he only had a relation with a man while here and the claim to also have had a relationship with a woman in 2008/09 is material, as he disclosed in his screening interview the 2008/09 relationship and the claim to be gay in his screening interview, and may not have articulated himself as well as he could in his substantive interview due to the dialect barrier and health issue/medication.

The reasons given by the judge for explaining the various discrepancies in the appellant's evidence include: that he was on medication when interviewed [23]; that he is from a conservative society where 'it (*sic*) may not have been part of normal language 20 or so years ago and he simply does not have the vocabulary'; 'he does not have 'to provide "chapter and verse" or intimate information' [24]; 'the dialect barrier and his health issue/medication may have led to confusion as to what he meant' regarding the issue of an FIR in Pakistan; that he 'may not have articulated himself as well as he could in his substantive interview due to the dialect barrier and health issue/medication' when asked about his relationship with a woman in 2008/09. However, at no point in the decision does the judge seek to explain how the appellant in 2014/15 could have

made an application for an EEA residence card which he now does not recall making together with a woman whom he cannot now remember. The appellant has had the opportunity, with the assistance of an interpreter whom he understands and at a time when his memory may not be affected by medication, to provide an explanation for what is, by any standard, an extraordinary failure of memory but he has not taken it. Whilst the appellant's powers of recollection may have been affected by medication on the particular day of an interview, there is no medical evidence to explain his failure to recall the 2014/15 application or the female sponsor with whom he made it. Indeed, the judge records at [7] that the appellant 'has no medical conditions.'

5. The judge's failure to make any finding on the 2014/15 application vitiates his credibility assessment. Accordingly, I set aside the decision. As the error falls within the credibility assessment of the judge, I will not preserve any findings of fact. There will need to be a hearing de novo which is better conducted by the First-tier Tribunal to which the appeal is returned for that Tribunal to remake the decision.

Notice of Decision

The First-tier Tribunal's decision is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing de novo.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 31 January 2023