



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001621

First-tier Tribunal Nos:
PA/53966/2022
LP/00002/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13th February 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

M S U
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Malik, Counsel, instructed by Lex House Solicitors
For the Respondent: Ms S Rushforth, Senior Presenting Officer

Heard at Cardiff Civil Justice Centre on 5 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant, a citizen of Bangladesh, appeals with permission against the decision of First-tier Tribunal Judge Roblin (“the judge”), promulgated on 17 March 2023. By that decision the judge dismissed the Appellant’s appeal against the Respondent’s refusals of his protection and human rights claims.
2. The core of the Appellant’s account was firmly based on his assertion that he was gay and that this of itself would place him at risk if returned to Bangladesh. The Respondent had accepted that an individual living an openly gay life in Bangladesh would be at risk of persecution. However, the Respondent, for reasons stated in her decision letter, did not accept the fact of the claimed sexuality.

Decision of the First-tier Tribunal

3. The judge’s decision is in my view conscientious and thorough. He set out what was a relatively lengthy history in respect of various sets of proceedings in which the Appellant has been involved in the United Kingdom. These included two previous appeals. In respect of each, the Appellant had asserted that he was gay but was disbelieved, first by First-tier Tribunal Judge Walker in September 2018 and second by First-tier Tribunal Judge Page in November the following year. The judge correctly directed himself to the Devaseelan principles and there is no suggestion that he erred in respect of his application thereof.
4. At [80] the judge accepted that in principle the evidence of the Appellant’s claimed partner Mr A had corroborated the Appellant’s own account and that this weighed in favour of credibility. However, in the same paragraph the judge went on to conclude that there were “elements of the Appellant’s account which are inconsistent and are so

implausible as to be incapable of belief". In the following paragraphs the judge sets out the various aspects of the evidence which he deemed to be ultimately untruthful as a result of which the core of the Appellant's account was entirely rejected. In summary the adverse findings were based on:

- (a) the inability of the Appellant to recount his claimed partner's birthday, as opposed to his date of birth;
- (b) the evidence adduced being inconsistent with the Appellant's claim that he was in a committed relationship with Mr A;
- (c) the Appellant's failure to state that he was gay when he first arrived in the United Kingdom;
- (d) the evidence relating to communications between the Appellant and Mr A being thin and again not indicative of a genuine relationship;
- (e) that photographic evidence did nothing more than indicate a friendship and added very little to the substance of the Appellant's case;
- (f) that letters provided by three individuals were to be accorded little weight as none of those individuals attended the hearing to face questioning by the Respondent's representative.

The grounds of appeal

5. The grounds of appeal take issue with all of those adverse findings just set out, asserting that amongst other errors the judge had failed to give adequate reasons or had possibly misunderstood the evidence in certain respects.
6. Permission was granted by the Upper Tribunal in tentative terms, it being deemed "just arguable" that the judge might have erred with particular reference to the findings set out at [84] of his decision.

7. Following the grant of permission, the Respondent provided a rule 24 response dated 21 July 2023.

Discussion and conclusions

8. At the hearing Mr Malik provided concise and helpful submissions for which I am grateful. These are a matter of record and I do not propose to set them out here. In essence he relied on the grounds of appeal. In all the circumstances, I did not need to call on Ms Rushforth for submissions.
9. Notwithstanding the need for appropriate caution before interfering with a decision of the First-tier Tribunal and bearing in mind that this judge had heard live evidence, had had regard to two previous adverse decisions, and had considered a good deal of documentary evidence, I am satisfied that there are no material errors of law in the decision. This conclusion is based on the following reasons.
10. In view of the Appellant's inability to state Mr A's birthday, as opposed to his date of birth, and in light of the fact that a similar adverse credibility issue had been taken by the two previous judges, it was plainly open to the judge to find that this had a negative impact on the Appellant's credibility, with reference to what is said in [83]. The judge did not indicate that this was a decisive point against the Appellant, nonetheless it was clearly a relevant consideration amongst others.
11. In respect of [84], the judge plainly had regard to all of the relevant evidence relating to the visits and other aspects of the claimed relationship. The Appellant had put his case forward on the basis that he was in a committed relationship with Mr A. In light of the limited visits across a fairly significant period of time it was open to the judge to conclude that the evidence was not indicative of a close or a committed relationship with Mr A. It is true of course that people of whatever sexuality will engage in a variety of relationships. The point is that this Appellant put his case forward on the basis that it was a committed

relationship and although another judge might have made a different finding on similar evidence, it was rationally open to this judge to make the finding that he did. Again, it was one finding amongst others and of course the judge's decision must be read sensibly and holistically.

12. Still in respect of [84], it was open to the judge to take account of the undisputed fact that the Appellant had not stated that he was gay when he first came to this country.
13. In respect of [85] and the other forms of communication between the Appellant and Mr A, the judge made what I consider to be a balanced assessment. He accepted that there had been conversations, albeit to a limited extent over the course of time, but it was open to the judge to take account of the fact that there were no itemised telephone calls going to show direct phone calls between the Appellant and Mr A and providing details of, for example, the duration of the calls.
14. Turning to [86], the judge took account of the photographs. He accepted that they did show the Appellant and Mr A. It was open to the judge to conclude that those photographs did nothing more than suggest a friendship. Having looked at the photographs myself, there is nothing which would have compelled any rational judge to have concluded that the two individuals were in a committed intimate relationship. The judge was also entitled, although in my view this did not form any significant part of his reasoning, to have expected more photographs if the relationship had been committed as claimed.
15. The judge clearly had regard to the letters from the three individuals; he did not disregard them entirely, but concluded that little weight should be attributed to them. This was on the clear basis that none of them had attended the hearing to give evidence. I am satisfied that no explanation for their non-attendance was provided to the judge. He was plainly entitled to significantly reduce the weight attributable to what they said given the fact that they did not put themselves out to be questioned by the Respondent at the hearing.

16. Bringing all of the above together and emphasising the cumulative effect of the judge's adverse findings, I conclude that he was fully entitled to reject the core factual basis of the Appellant's claim, namely that he (the Appellant) was gay. In light of those conclusions the judge was then plainly entitled to dismiss the appeal on all grounds.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and that decision shall stand.

The Appellant's appeal to the Upper Tribunal is accordingly dismissed.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 19 October 2023