



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004035

First-tier Tribunal No: PA/53909/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

21st February 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MAS
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr G Brown, instructed by MRG Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 19 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the decision of the Upper Tribunal (Judge Canavan) issued on 2.1.24, the appellant, a national of Pakistan, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Farrelly) promulgated 7.5.23 dismissing his appeal against the respondent's decision of

11.9.22 to refuse his claim for international protection made in May 2019 on grounds of a risk of persecution arising from his sexual orientation as a gay person.

2. The First-tier Tribunal Judge concluded that the appellant had failed to demonstrate to the lower standard of proof that he is gay as claimed.
3. Following the helpful submissions of both legal representatives, I reserved my decision to be provided in writing which I now do.
4. In summary, the original overlapping grounds argued that the First-tier Tribunal provided inadequate reasons in reaching conclusions; applied too high a standard of proof; and failed to properly assess the material supporting evidence.
5. The renewed grounds emphasise the argument that the First-tier Tribunal applied an elevated standard of proof, which is said to be demonstrated by the reference at [27] of the decision to the evidence of the witnesses supporting the claimed sexual orientation, with the judge stating, "However, I did not find their evidence about the appellant powerful. Ultimately, (they're) simply stating their evidence is that he is gay." It is submitted that the judge was looking for powerful evidence and also seeking objective material to support the assertions of the witnesses.
6. When the First-tier Tribunal (Judge Cox) refused permission on 7.9.23, it was suggested to be "unfortunate" that the judge used the adjective 'powerful', but on a reading of the decision as a whole it was said to be plain that the judge had considered and applied the lower standard of proof.
7. In granting permission on the renewal of the application, Upper Tribunal Judge Canavan considered that, "It was open to the judge to take into account the appellant's poor immigration history, which included deception, in assessing the credibility of his late claim to be at risk as a gay man. The judge had an opportunity to assess the witnesses who gave evidence in support of the appellant's claim in person and in writing. It might have been open to the judge to find that their evidence was insufficient to outweigh the factors that weighed against the appellant's credibility. It is unclear whether that history was put to any of the witnesses to comment on. However, it is just arguable that the judge gave insufficient reasons to explain why he appeared to place little weight on the evidence of several people, two of whom gave oral evidence. Although the second point relating to the use of language and the standard of proof is weaker, given the judge's clear reference to the low standard of proof, I do not limit the grant of permission."
8. At the outset, it is worth noting that at [18] and [19] of the decision the judge confirms that no conclusion was reached before consideration of the totality of the evidence. In this case, the judge had to assess the credibility of the claim of gay sexual orientation against several competing factors or strands of evidence, some of which supported his claim such as the statements and oral evidence of witnesses, but others of which undermined the credibility of the claim, including his poor immigration history and the failure to make his claim promptly. That he evidently made bogus business visa applications was certainly undermining of his credibility. It was also undermining of the credibility of the claim to have been gay long before arriving in the UK that he had previously made a claim based on a relationship with a woman. Unarguably, the judge was required and entitled to consider the latest claim against the background of a poor and dishonest immigration history.

9. Mr Brown argued that at [27] of the decision the judge was looking for objective evidence in support of the appellant's claim by stating, "I realise there is a subjective element in my assessment of the witnesses but I see little objective material to base an assessment upon." I do not agree with that submission and note that at [26] the judge stated, "I realise there is no need for corroboration in a protection claim", and at [29] stated, "Ultimately, I (am) faced with a very difficult issue to determine objectively." It is clear on any reading of the decision that the judge conducted a balancing assessment on the evidence, knowing that there could not be objective evidence to confirm someone's claimed sexual orientation.
10. As stated above, the claim turned on the credibility of the asserted sexual orientation. The judge did not mistake or overlook any relevant aspect of the evidence. Undoubtedly, the judge made a correct self-direction as to the standard of proof at [30] of the decision.
11. Mr Brown made no challenge to the judge's use of the phrase "I do not find this evidence particularly impressive," in relation to Mr K's evidence, at [27] of the decision. However, much was made of the use of the word "powerful" in relation to the oral evidence of Mr G and the witness statement of Mr R. Mr Brown submitted that the judge was here applying a higher standard of proof. In reply, Mr Bates submitted that the adjective 'powerful' could apply irrespective of any standard of proof, low or high.
12. Having carefully considered the decision as a whole, I am satisfied that notwithstanding the use of the phrase "powerful" the judge was not in fact applying a higher standard of proof. Perhaps an alternative phrase such as 'not persuasive', or 'insufficient to outweigh' those factors adverse to the appellant's credibility might have been better. However, the point the judge was making was in effect that the evidence comprised subjective opinions which the judge could only assess in the round, taking the evidence as a whole.
13. It is clear from [29] of the decision that the judge was ultimately weighing the claim and the evidence in support against those negative factors previously identified and there summarised. I am satisfied that it is plain to any reader of the decision that the lower standard of proof was applied but after careful consideration the judge was not persuaded to that lower standard of the genuineness of the claimed sexual orientation.
14. As to the quality of the evidence and the complaint that the judge failed to properly assess the supporting evidence, Mr Brown took me to the statements of the witnesses. However, weight is always a matter for the judge. It is clear that the evidence was considered and taken into account. I cannot see any basis for arguing that the findings were irrational or ones that no reasonable judge could have arrived at.
15. Although not strictly part of the grounds, Mr Brown took his lead from the grant of permission to argue that the judge ought to have put the appellant's history to the supporting witnesses for comment, as he suggested might be done in a case involving religious conversion. I am not satisfied that there was any obligation on the judge to put the appellant's history to the oral witnesses for comment, as that history was a matter of record and not strictly relevant to their purported opinion or assertion that the appellant is gay. I cannot see what advantage there would have been for the appellant as even if they were aware of his history, it would not have served to strengthen the reliability of the evidence or the weight to be given to it.
16. In the circumstances, and for the reasons outlined above, I find no material error of law in the making of the decision of the First-tier Tribunal. The judge

properly balanced the conflicting evidence, reaching conclusions and findings of fact open on that evidence.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 February 2024