



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005119

First-tier Tribunal No: PA/50515/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

23rd January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

SLSM

Appellant

(ANONYMITY ORDER MADE)

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Reza, of JKR Solicitors

For the Respondent: Ms A. Ahmed, Senior Presenting Officer

Heard at Field House on 3 January 2024

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

1. The Appellant is a citizen of Bangladesh who made a protection claim based on his sexuality which the Respondent refused in a decision dated 10 January 2023.
2. In a decision ("the Decision") issued following a hearing on 3 November 2023 First-tier Tribunal Judge Chong ("the Judge") dismissed the Appellant's appeal of the Respondent's decision. In a decision dated 28 November 2023 First-tier Tribunal Judge Buchanan granted permission to appeal on the basis that there

were inadequate reasons given for rejecting some of the evidence put forward by the Appellant given the nature of a protection claim.

The FTT Decision

3. The Appellant claims to qualify for protection on the basis of being homosexual. In the Decision the Judge took into account the fact that the Appellant had made a protection claim in 2011 on the basis of his political opinion, which was not successful, but then did not make any further claim for protection until 2020. The Judge found it not to be credible that the Appellant would wait so long to make a protection claim based on his sexuality given that he said he had chosen to come to the UK as a country where he could be safe as a gay man. The delay in making the claim based on his sexuality damaged his credibility.
4. The Judge considered the Appellant's account of having had his first gay relationship with a man called Mohun in Bangladesh which, the Appellant said, caused him to be forced into a marriage. However, the Judge considered that the extent of evidence about this main part of the Appellant's account was limited. The Judge turned to consider the Appellant's marriage and the fact that he had not sought to end his marriage, despite saying that it was a forced marriage and he had been in the UK for some 12 years where he would not face the same pressures to remain in the marriage as in Bangladesh. Furthermore, the Judge took account of the fact that the Appellant has two children with his wife and it was unlikely that, as a man, he had been forced to have the children against his will. The Judge did not find the marriage and children undermined the Appellant's claim to be gay. Instead, the evidence about those matters undermined the Appellant's evidence that the marriage and children were forced.
5. The Judge then considered the evidence of the two witnesses who supported the Appellant's case. In relation to the first, Ms Md Saifullah, the Judge identified material inconsistencies in the evidence of the witness and the Appellant, including inconsistent evidence of the Appellant himself about the claimed relationship with Ms Saifullah.
6. The second witness was Ms Kawsar, who is chairperson of Apanjon, a Bangladeshi LGBT welfare association. The Judge says that in her Witness Statement Ms Kawsar describes seeing the Appellant being intimate with men in gay sex clubs. During oral evidence at the hearing she had clarified that this meant that she had seen the Appellant engaging in sex with other men. The Judge then considered this evidence in the context of the description of the clubs as being places where gay people could go upstairs into rooms for sex (rather than in the main club areas) and concluded that it was unclear therefore how Ms Kawsar could have seen the Appellant having sex. The Judge concluded that she found the evidence of Ms Kawsar to be unreliable.
7. The Judge took into account the evidence of another person but gave it reduced weight given that the person did not attend the hearing and gave broad evidence about the Appellant rather than direct evidence that the Appellant is gay. The Judge took into account the Appellant's own evidence, including attendance at Apanjon meetings, before ultimately concluding:

"...having taken into consideration of all evidence in the round, the Appellant's case raises various concerns: credibility issues due to the late claim, internal

inconsistencies and accounts that does not add up. The evidence relevant to his sexuality from Ms Kawsar was found to be unreliable. Only little weight can be attached to his claimed relationships with Mohun and Ms Saifullah and limited weight was attached to the evidence of Mr Hossain. I am not persuaded, even to the lower standard, that the Appellant is genuinely a homosexual person.”

The ground of appeal

8. Although the grounds of appeal lodged on behalf of the Appellant were quite extensive, Judge Buchanan only gave permission to appeal on the basis of an arguable error relating to the approach of the Judge to the evidence of Ms Kawsar; and Mr Reza confirmed at the hearing before me that he was not seeking to renew the application to rely upon the other grounds.
9. The ground of appeal relied upon by the Appellant is that the Judge had incorrectly assessed the evidence of Ms Kawsar and Ms Saifullah and/or had given inadequate reasons for reducing the weight given to it. More particularly, the Appellant says that: the evidence of the two witnesses was not challenged at the hearing by the Respondent; Ms Kawsar’s evidence that she had seen the Appellant having sex with another man established on a balance of probability that the Appellant is gay; the Judge should have put to Ms Saifullah that she was lying about her relationship with the Appellant as the Judge’s conclusions implied that was the Judge’s assessment; and the Judge failed to give plausible reasons for rejecting the evidence.

The submissions

10. At the hearing Mr Reza submitted that Ms Kawsar’s evidence should have been considered overall. She had described the care taken to be satisfied that a person was a member of the LGBT community before issuing a membership card to a person. Her evidence overall taken together with that of Ms Saifullah should have discharged the burden of proof on the Appellant. The Judge had imposed too high a standard of proof.
11. A Rule 24 response had not been provided by the Respondent, but Ms Ahmed confirmed that the Respondent opposed the appeal. Ms Ahmed submitted that the ground of appeal was little more than a disagreement with the Judge’s findings and an attempt to relitigate the case. The Judge had very carefully considered the evidence of both Ms Kawsar and Ms Saifullah. The weight to be given to the evidence was a matter for the Judge, provided adequate reasons were given as had been here. The Respondent had challenged the evidence in the review of the case and in cross-examination at the hearing.

My decision

12. In essence the ground of appeal seeks to challenge the Judge’s approach to the evidence in reaching the finding of fact that the Appellant is not gay. The Court of Appeal has set out clear guidance regarding the principles to be applied to assessing a judge’s assessment of evidence on appeal in Volpi v Volpi [2022] EWCA Civ 464 (at paragraph 2):

“i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

- ii) The adverb “plainly” does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
 - iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
 - iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
 - v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
 - vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract. “
13. Considering the approach of the Judge to the evidence of Ms Saifullah first, in the pre-hearing review the Respondent challenged the evidence of Ms Saifullah and identified inconsistencies in that evidence compared to that of the Appellant on matters of some import, such as where they had met and whether they had lived together. The Decision shows that those inconsistencies were not adequately addressed by the Appellant at the hearing. The Judge sets out a careful and well reasoned explanation of the inconsistencies and why they caused the weight given to the evidence of Ms Saifullah to be reduced.
14. In relation to the evidence of Ms Kawsar, I note that her Witness Statement says that she has no doubt about the Appellant’s sexuality based upon her personal observation of him, conversations with him and what she has heard from other Apanjon members. Ms Kawsar proceeds to say that others had told her that they had seen him getting intimate with other men at sex clubs. As I commented in the hearing, Ms Kawsar does not say that she saw the Appellant herself. Mr Reza said that the evidence of Ms Kawsar witnessing the Appellant came out in oral evidence at the hearing.
15. There is a significant difference between a person recalling what others had told them and witnessing a person’s intimacy themselves. The Judge clearly addressed this difference in the Decision. The Judge’s reasoning is rational and supported by the evidence. While it may be the case that a person embellishes one part of their evidence but does not embellish other parts the Judge was entitled to weigh up the impact of the inconsistencies in Ms Kawsar’s evidence and, indeed, its plausibility. Notably, the Court of Appeal in Volpi emphasised that “a judge is not required to make individual findings of fact on each piece of evidence” (at paragraph 59).
16. In the case of the evidence of Ms Saifullah the Judge concluded that it should be given reduced weight; and in the case of Ms Kawsar the Judge found her to be an unreliable witness. As Lord Justice Lewison commented in Volpi (at

paragraph 60), “whether to accept the evidence of a witness is a matter for the trial judge; and is particularly difficult to upset on appeal.” Furthermore, Lord Justice Lewison added that it is even more difficult where, as here, the judge found the witness to have been unreliable, describing that as “the quintessential function” of the judge who has seen and heard the witnesses. The Judge has set out clear reasons for her conclusions about the evidence and I find little basis to have been shown by the Appellant to show that the exercise of the “quintessential function” by her should be disturbed.

17. In relation to the submission that the Judge applied too high a standard of proof, the Decision correctly refers to and describes the lower standard on several occasions. That would be insufficient if the Decision shows that a higher standard was in fact applied, but I am satisfied that the correct standard was applied. The Decision is a carefully worded examination of the evidence setting out the reasons why little weight is given to the evidence that the Appellant is gay, before reaching a rationally supportable conclusion by reference to the evidence overall, applying the lower standard.
18. I have therefore decided that the ground of appeal is not made out and the Judge did not err in her approach to the evidence of Ms Saifullah or Ms Kawsar. Therefore, the Appellant’s challenge fails, and the decision of the First-tier Tribunal shall stand.

Notice of Decision

19. The decision of the First-tier Tribunal did not involve the making of an error on a point of law.
20. The decision of the First-tier Tribunal stands.
21. The anonymity directions continue to apply.

T. Bowler

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17/01/2024