



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

Case No: UI-2023-005519
First-tier Tribunal No: PA/51468/2023

THE IMMIGRATION ACTS

Decision & Reasons Promulgated

7th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**RA
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmed, Counsel
For the Respondent: Ms A Nolan, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 5 February 2024

The Appellant

1. The appellant is a citizen of Pakistan born on 10 December 1990. He appeals against a decision of Judge of the First-tier Tribunal Smyth dated 29 November 2023 which dismissed his appeal against a decision of the respondent dated 22 February 2023. That decision in turn refused the appellant's application for international protection made on 9 July 2020.

2. The appellant entered the United Kingdom on 31 March 2011 on a student visa. His leave lapsed in 2014 and he says there were difficulties with a previous firm of solicitors about whom he complained to the Solicitors' Regulation Authority. He made applications for leave to remain in 2015 which were unsuccessful.

The Appellant's Case

3. The appellant's case is that he is a bisexual man who if returned to Pakistan would be subject to persecution on account of his sexual orientation. He would be at risk from the authorities who are intolerant of same sex relationships, and from nonstate actors and members of the public generally. There is nowhere he could relocate within Pakistan to escape from this risk.

The Decision at First Instance

4. At [6] of the determination the judge directed himself on the burden and standard of proof applicable in asylum appeals writing: "The burden of proof rests on an appellant. The standard of proof is a reasonable degree of likelihood, which can also be expressed as a reasonable chance or a serious possibility."
5. The judge did not find the appellant to be a credible witness finding a contradiction between the appellant's case that he was bisexual and remarks the appellant had made to the respondent that he was gay. The appellant told the respondent that he had never had a relationship with a woman but that was contradicted by an application which the appellant had made in 2015 for leave to remain based on his relationship with a woman identified only by the letters LBC.
6. The appellant claimed to have close friends who were aware of his sexual orientation but the judge found it significant that no one had been called to give evidence in the appellant's support. The appellant did rely on a letter dated 21 November 2023 from Ms Emily Ching who works for a clinic which the appellant attended on 18 September 2019 where he received certain medication as a prophylaxis against HIV. At [19] of the determination the judge indicated why he placed no weight on this letter. The judge found the appellant's credibility was also damaged due to the appellant failing to take the opportunity to make his asylum claim at an earlier opportunity, such as when he submitted applications for leave to remain on 4th January 2014 and 3rd February 2015.
7. The judge did not consider there to be 'very significant obstacles' to the appellant's reintegration to Pakistan. The appellant spoke Urdu and had lived most of his life in Pakistan. He arrived in the UK on a student visa and given that he was educated the judge found the appellant would have brighter employment prospects upon return than some. He would also be able to rely upon the support of family. The judge dismissed the

appeal.

The Onward Appeal

8. The appellant appealed against this decision on grounds settled by solicitors. The grounds argued that the judge had applied the wrong standard of proof, had placed insufficient weight on the letter from Emily Ching which showed that the appellant had been attending the clinic between 2019 and 2021. The Appellant's claim was based on his sexual orientation as a bisexual male as he was attracted to both men and women. The judge had erred in failing to take into account or putting to the Appellant what the appellant's understanding of sexuality was. His cultural understanding of being a member of the LGBT+ community was that meant he was "gay".
9. Permission to appeal was granted by the First-tier Tribunal on 30 December 2023 on three grounds: (1) it was unclear that the findings made in [19] [regarding the letter from Emily Ching] were open to the Judge on the evidence, (2) Either being gay or bisexual would be sufficient to found a claim for protection based on the appellant not being a heterosexual, and (3) there was undisputed evidence that the appellant attended an HIV clinic claiming to have had sex with a man 9 months prior to his asylum claim.

The Hearing Before Me

10. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
11. Counsel for the appellant relied on his skeleton argument which made two main points. The first was that the judge had given insufficient weight to the letter from Emily Ching. The letter referred to a course of treatment given to the appellant following a sexual relationship with another man. The letter provided corroboration for the Appellant's account of homosexual relationships he had and of his sexuality. The contents of the letter had not been challenged by the Respondent at the hearing by way of cross-examination. The second point related to the terminology used by the appellant to describe his sexual orientation. The Appellant had submitted along with his male sexual partner a protection claim - it would logically follow, that the relationship the respondent was being asked to consider at that point in time was a homosexual relationship (the Appellant with his male partner). This did not make the Appellant any less of a bisexual man.
12. In oral submissions counsel noted that the judge acknowledged the letter from Emily Ching which predated the appellant's application for asylum by

less than a year. It was a bizarre conclusion to say it would make any difference when it predated the application. The appellant had been tested negatively for HIV on three occasions and the dates of those tests were provided. The judge did not give due weight to the letter. The judge had not found specifically that obtaining the letter was a premeditated action by the appellant and the credibility of the organisation giving the letter was not in dispute. It was not clear what the qualifying period for the letter would have been which meant that weight would then be attached to it. The treatment of the letter contaminated the judge's findings on the appellant's credibility.

13. The questionnaire was made by the appellant and his partner at the time Mr Osman. It said that the appellants were gay. The form was not completed by either man themselves but by someone on their behalf. At the time the form was completed the appellant was in a same-sex relationship. The judge had not appreciated the context in which this claim was made, the appellant and his partner at the time were living together but subsequently the relationship broke down. As a result of these errors the judge came to a conclusion that was not open to him. The determination should be set aside and the matter remitted back to the First-tier.
14. In reply the presenting officer argued that the appellant's grounds of onward appeal were no more than a disagreement with the judge's findings. The judge had correctly applied the case of HJ Iran answering the first question in the negative as to whether the appellant was or was not gay or bisexual. The judge's assessment of the evidence was a matter for him. Much was made of the terminology employed but the judge quoted in the determination a number of occasions when the appellant had said he was gay not bisexual. The initial presentation the appellant made to the respondent was that he was gay it was only more recently the appellant was now saying he was bisexual. That was a significant discrepancy. The judge had not just looked at the questionnaire completed by the appellant but had also looked at all the evidence in the round. The context for this was that the appellant was asked in interview about the application in 2015 for leave to remain in which he said he was to marry a woman.
15. In relation to the weight which the appellant should put on the letter from Emily Ching, that was a matter for the judge to decide. The judge was responding at [19] to a submission made on the appellant's behalf that it was significant that the appellant had attended the clinic several months before making his application for international protection. There was no error in the judge attaching little weight to the letter. He had not taken anything out of the letter that was not already there.
16. In response counsel argued the judge had not explained at [19] why he placed little weight on the letter from Emily Ching. Secondly there was a problem with the terminology that had been used by the appellant. The appellant did not use the word homosexual at the time he was in a

relationship with another man. To look at the questionnaire without appreciating the context in which it was made would lead to error. The form was completed by someone else at a time when the appellant was in a relationship with another man hence the use of the word "gay". The judge had the opportunity to make a valid assessment and the appellant was entitled to a reasoned judgement but there were errors in the determination such that it should be set aside.

Discussion and Findings

17. This is a reasons based challenge to a determination in which the judge did not accept the credibility of the appellant and did not accept that the appellant was gay or indeed bisexual. Although the grounds of onward appeal sought to argue that the judge had applied the wrong standard of proof, it is plain from the extract from the determination I quote at paragraph 4 above that the judge was very much aware of the burden and standard of proof in asylum claims.
18. The judge relied on discrepancies in the appellant's evidence in arriving at his conclusion on credibility. For example, when the appellant first made his claim for asylum he referred to himself as being gay but after it emerged that the appellant had made an application in 2015 on the grounds he intended to marry a woman the appellant began to refer to himself as bisexual. The judge thought this was a significant discrepancy. The appellant seeks to explain the discrepancy found by the judge as being merely a question of terminology. It was a matter for the judge what weight he placed on the evidence before him.
19. The judge was concerned about the way the appellant dealt with the 2015 application when interviewed by the respondent. That was the appellant's opportunity to make a full disclosure to the respondent who would be deciding the appellant's application for international protection. Evidently, the judge did not find that the appellant had dealt adequately with the matter. It was not a question of terminology it was a question of the credibility of the appellant's replies in interview and the weight to be placed on that evidence was a matter for the judge.
20. The appellant counters with a letter from Emily Ching who works for a clinic which the appellant attended some months before making his application for international protection. The appellant relies on this as support for his claim that he did have sex with other men. At [19] the judge explained that he did not give much weight to this letter for two main reasons. The first was that the letter merely confirmed what the appellant had told the clinic that he had had sex with another man. The second point was that the attendance at the clinic was made some months before the application for international protection. The judge's concern appears to be that the appellant was merely seeking to bolster his claim by putting down a marker that he had attended a sexual health clinic.

21. The letter from Ms Ching was very brief, it gave no indication as to what if anything the appellant told the clinic besides the bald fact that he had had sex with another male. Ms Ching put in her letter that: "If we can provide any further information please do not hesitate to contact us". It is noticeable that nothing further was asked of Ms Ching. One assumes that some form of explanation has to be given by a patient before they receive prescription only medication but no effort appears to have been made to obtain any further information from the clinic to substantiate the appellant's account. Instead, as the respondent pointed out in submissions to me, the letter was very brief.
22. The issue of when the appellant applied to the clinic for prophylactic medication was considered significant by the judge because it was only some months before the appellant's application for international protection. The judge does not appear to have been suggesting that there was a particular time which if the appellant had made his application to the clinic before that time his application would have been credible. The timing of the application to the clinic was nevertheless significant for the judge. The judge had the benefit of seeing the appellant give evidence and answer questions and it was open to him to form a view on the credibility of the appellant's claim. I agree with the characterisation of the grounds of onward appeal that they are no more than a mere disagreement with the findings of the judge.
23. The letter from Ms Ching was brief, there was no supplementary evidence from the clinic and it was not surprising in those circumstances the judge was not prepared to place much weight on the letter. The appellant had delayed several years before making his claim for international protection on the grounds of sexual orientation. During that time he had made applications to the respondent for leave to remain on a completely different basis that he was in a relationship with a female. This was not a matter of terminology, this was a matter of inconsistency in the appellant's case. The appellant had no explanation for the delay in making his claim for asylum. In those circumstances the adverse view taken of the appellant's credibility was one that was open to the judge. In those circumstances I do not find any material error of law in this determination and I dismiss the appellant's onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT