IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003463

First-tier Tribunal Nos: PA/55458/2023
LP/02885/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 27th November 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN

Between

HM
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Balać, Counsel of Black Antelope Law
For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 20 November 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

Introduction

1. The appellant appeals with permission the decision of First-tier Tribunal Judge Rakhim ("the judge") promulgated on 24 May 2024 dismissing the appellant's appeal against the respondent's decision dated 8 August 2023 refusing his asylum claim.

Background

2. The applicant is a citizen of Bangladesh born in 2003. He claims to have left that country in 2019. He entered the UK on 15 July 2021 with the assistance of the European Intake Unit because he has a British uncle in the country. On the day of his arrival he claimed asylum initially on the basis that his uncles in Bangladesh forcefully took his father's land, beat him and threatened to kill him and, as a consequence, his mother sent him out the country for his own safety. However, subsequent to making that claim the appellant also told the Home Office that he feared persecution on return to Bangladesh on the basis that he is bisexual. The respondent refused the appellant's application for asylum finding that he was not credible.

3. The appellant then exercised his right of appeal to the First-tier Tribunal. In dismissing his appeal, the judge also found the appellant to be lacking in credibility. In summary, the judge did not accept that the appellant faced a real risk of persecution in Bangladesh either because he feared his uncles due to a land dispute or because he was bisexual.

Appeal to the Upper Tribunal

4. The appellant subsequently applied for permission to appeal to the Upper Tribunal. Permission to appeal was granted by Upper Tribunal Judge Rastogi on 19 September 2024. The reasons for the grant of permission were that the judge had made an arguable error of law in requiring the appellant to provide corroborative evidence in support of his protection claim, specifically as regards his sexuality.

Findings – Error of Law

5. The Court of Appeal considered the extent to which corroborative evidence is required in a protection claim in the case of **MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216**. At [77] of that judgment, the Court of Appeal (per Singh LJ) found as follows:

> "It is important to appreciate the legal effect of these provisions. What both Article 4(5) of the Qualification Directive and para. 339L of the Immigration Rules provide is that, where certain criteria are met, corroborative evidence is *not* required. It does not follow from this that, where one or more of those criteria are not met, corroborative evidence *is* required. The correct legal position is accurately summarised in the Home Office guidance, which I have quoted above. In those circumstances the decision-maker (here the tribunal of fact) must still consider whether, on the facts of the case, it is appropriate to give the appellant the benefit of the doubt, bearing in mind the relatively low threshold of "reasonable degree of likelihood".

6. Paragraph 339L of the Immigration Rules says:

> "339L. It is the duty of the person to substantiate the protection claim or substantiate their human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:
>
> (i) the person has made a genuine effort to substantiate their protection claim or substantiate their human rights claim;
>
> (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
>
> (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
>
> (iv) the person has made a protection claim or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
>
> (v) the general credibility of the person has been established."

7. At the error of law hearing before me, Ms Balać, representing the appellant, argued that the judge made a material error of law and that his decision should accordingly be set aside. Ms Balać argued that in assessing the appellant's credibility the judge erred in requiring corroborative evidence despite having acknowledged multiple times in his decision that corroboration is not required in asylum claims. Ms Balać relied on the case of **Kasolo v Secretary of State for the Home Department (13190)** which states that it is a misdirection to imply that corroboration is necessary. Ms Balać argued that this was reiterated in the case of **ST (Corroboration – Kasolo) Ethiopia [2004] UKIAT 00119** at [14] where it is emphasised that there is no requirement for corroboration. Ms Balać referred to [33] and [37] of the judge's decision in particular. At [33], the judge said as follows:

> "The Appellant's evidence, as per the PIQ was that he is now with his uncle and "have been able to reveal my sexuality as bisexual & feel that I can openly practice my life choices here." The Appellant said in oral evidence that he shared everything with his maternal uncle in the UK who advised him to tell the Respondent. However, there is no statement from the uncle to support these assertions. Whilst corroboration is not required in asylum claims, I have to consider the lack of easily obtainable evidence that has been omitted. The Appellant is represented and says he only confided in his uncle as his uncle adores him and cares for him. The Appellant then says only his maternal uncle knows that he is bisexual and no one else knows, not even his aunt (his maternal uncle's wife)".

8. At [37] the judge said:

> "I am mindful the Appellant had been in the UK since July 2021, and for him to say that he had attended a bar where he is open about his sexuality, and this was in the month leading up to the hearing, causes me to question his motivation for attending. I considered that if he had genuinely attended

> then he would have provided the alleged photo in support. Whilst I am mindful corroboration is not required, the Appellant was saying he has this evidence on his phone yet was not offering this up into evidence. This evidence was easily obtainable, is alleged to be sat on his phone, yet is not even offered up to his own lawyers. The lack of this easily obtainable evidence undermines the Appellant's credibility".

9. Ms Balac also relied on [39] of the decision:

> "Additionally, I find that there was no reason given at all on why such evidence was not provided. This applies to the photos of the Brighton [bar] visit and any supporting evidence from the uncle. I thus considered an adverse inference can, and should, be drawn from the lack of this evidence. I considered it likely that the Appellant's account of Brighton was not truthful and was simply stated to bolster and support his claimed asylum on the sexuality grounds".

10. In response to Ms Balać's submissions, Ms Gilmour, on behalf of the respondent, submitted that [15] of the decision in **ST** says that "An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support". Indeed, the tribunal in **ST** is clear at [15] that the fact that corroboration is not required in protection cases does not mean that an immigration judge is required to leave out of account the absence of documentary evidence which might reasonably be expected. Paragraph 339L of the Immigration Rules clearly makes sense in the context of those fleeing persecution from a foreign country and the resulting difficulties that that person may find in obtaining corroborating documentary evidence to support their case, especially if that country is in a state of turmoil. However, in the present case the evidence that the judge was referring to that he thought the appellant could reasonably be expected to obtain in support of his appeal was evidence that was readily available in the UK. It included not only a witness statement from the appellant's British uncle, whom he lived with, but also a photograph that the appellant claimed was on his phone of him visiting a gay bar in Brighton.

11. Ms Gilmour also submitted that it would be inappropriate to read [33] and [37] of the judge's decision out of context and not consider the other findings made by the judge. Ms Gilmour relied upon [19] of the judge's decision which she said introduced the issues of credibility. There, the judge said as follows:

> "I made a rounded assessment of the Appellant's evidence and his credibility as a witness. I considered the Appellant to provide inconsistent evidence and his account was not plausible. There were a lack of details and I considered the Appellant's account had at times changed and at times he was saying things to bolster his asylum appeal. He was not a persuasive witness and I struggled accepting any of his account. I considered his evidence attracted little to no weight".

Ms Gilmour also referred me to [24] where the judge expressed scepticism about the appellant's claim to be bisexual based on when he had raised sexuality as an issue in his asylum case. The judge took into account that the appellant only mentioned the land dispute as a ground for asylum in his screening interview and there had been no mention of the sexuality ground. At [25], the judge found that the appellant only raised his sexuality as a ground in the Preliminary Information

Questionnaire dated 22 July 2021, a week after he had completed his asylum screening interview. Even then the judge found that the primary reason for the appellant seeking asylum was the land dispute, which was something that the appellant had abandoned at the hearing before the First-tier Tribunal.

12. At [26], the judge considered the appellant's explanation for the delay in claiming to be bisexual but he found that the appellant's explanation actually undermined the credibility of his account. That was because the appellant had claimed that he had not mentioned that he was bisexual because he was nervous during his screening interview and that this led to inconsistencies. However, the judge found that this undermined his credibility because the appellant had also claimed that he was keen to answer all the questions asked of him and he did not know that he would be provided a further opportunity to state his case. At [27], the judge took issue with the appellant's oral evidence at the hearing. The judge had found that despite twenty minutes of evidence-in-chief and extensive cross-examination he was still unable to explain things to the judge, something the judge unsuccessfully sought clarity on. At [30], the judge found that nowhere in any of the asylum interviews, witness statements or oral evidence was there any evidence of any personal conflicts regarding the appellant's own feelings or any attraction he had towards any other men. He had simply described society in Bangladesh but failed to address his own situation. The judge therefore found that the appellant had likely claimed to be bisexual in order to bolster his asylum claim. Ms Gilmour submitted therefore that the judge's findings in relation to the appellant's failure to produce certain pieces of evidence had to be considered in the context of those adverse credibility findings already made against the appellant.

13. I accept that the judge's findings in relation to the absence of corroborating evidence has to be considered the context of the numerous adverse credibility findings that the judge made in relation to the applicant. This is not a case where an otherwise credible appellant has lost their appeal on the basis of a lack of corroborative evidence.

14. I am satisfied that **MAH** and **ST** are not authority for the proposition that the absence of corroborative evidence can never be taken into account by a judge hearing a protection appeal. I am also satisfied that the judge was reasonably entitled to take into account that there was evidence that the appellant could easily have obtained in the UK in support of his claim to be bisexual, yet without good reason had failed to explain why he had been unable to provide it. That finding itself is not contrary to the contents of paragraph 339L of the Immigration Rules, which says that where a claimant's account is not supported by documentary or other objective evidence there will be no need for further confirmation when specified conditions are met, which include that all material factors at the claimant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant material has been given. It is clear from reading the judge's decision that he was not satisfied that the appellant had provided a satisfactory explanation as to why he had not provided a witness statement from his uncle or the photograph on his phone that he said proved he had been to a gay bar.

Conclusion – Error of Law

15. On careful consideration, I am satisfied that the judge did not make an error of law in taking into account the appellant's failure to produce corroborative

evidence either in the form of a witness statement from his uncle or the photograph of him at the gay bar. In accordance with [15] of the decision in **ST**, when assessing the case in the round, the judge was reasonably entitled to take into account the absence of documentary evidence which might reasonably be expected to be obtained by the appellant. As explained earlier, this was not a case of the appellant failing to produce evidence from Bangladesh: it is a case of the appellant not providing evidence that was available to him in the UK, including evidence on his own phone.

16. For these reasons, it follows that the appellant's appeal falls to be dismissed.

Notice of Decision

There is no material error of law in Judge Rakhim's decision.

The appeal is dismissed.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20th November 2024