



IAC-AH-CJ-V1

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

Appeal Number: AA/02416/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd October 2015**

**Decision & Reasons Promulgated
On 4th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR HAFIZ AWAIS ARIF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Waheed (Counsel)

For the Respondent: Mr S Kandola (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Spicer, promulgated on 23rd June 2015, following a hearing at Taylor House on 15th June 2015. In the determination, the judge dismissed the appeal of Mr Hafiz Awais Arif. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 24th April 1988. He appeals against the decision of the Respondent Secretary of State refusing his claim for asylum under paragraph 336 of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he risks persecution if returned to Pakistan because he is gay and it is not permitted in Islam to be gay "but he cannot control his feelings" (paragraph 35). In the UK, he shares accommodation with other Pakistani nationals, but he has not told them he is gay. He relies on them for help when he has no money. He worries that if he told them that he was gay that they would reject him. His claim is that he has attended the gay pride parade in the UK, where he took three photographs, which he submitted in evidence.

The Judge's Findings

4. In this case, the Appellant was unrepresented, on account of his solicitor having a medical appointment on the day in question, which it was alleged by the solicitor, made it difficult for him to attend the hearing. Through no fault of his own, therefore, the Appellant did not have the legal assistance that he expected at the hearing. The judge had before him a request for an adjournment on the day of the hearing. This was based on a clerical error that the Appellant's bundle of evidence had not been received by Counsel at 12 Old Square Chambers, with the result that the Counsel had been unable to attend the hearing (see paragraph 13).
5. The judge gave proper consideration to the Procedure Rules 2014 which empowers the Tribunal to adjourn a hearing under Rule 4(3)(h). The judge undertook to remedy any disadvantage to the Appellant by taking extra care to ensure that he was not unfairly prejudiced, but applying the Procedure Rules before him, and bearing in mind the overriding objective, the judge decided to proceed (see paragraph 14(ii)). The judge heard evidence from the Appellant's witness, Mr Nouman Al Haq, as well as from the Appellant, and there was cross-examination of the witnesses.
6. The judge considered the evidence of the Appellant's gay relationships in the UK. It was alleged that the Appellant had short relationships with a Mr Jay Kumar from Sri Lanka, and then with Mr Radhu Radesh. However, "the Appellant has no photographs or any other evidence of his two relationships because he wanted to keep them secret" (paragraph 34). Consideration was given to the Appellant's attendance at the gay pride parade, where he took three photographs, but the judge concluded that "the photographs were all taken on the same day" (paragraph 38). Moreover, "the Appellant did not claim asylum earlier because, when his visa expired, he applied for further leave to remain". The Appellant's argument was that he did not realise it was possible to apply for asylum as a gay man (see paragraph 39).

7. The Respondent Secretary of State's position was that she did not accept that the Respondent was a gay man at all (see paragraph 50). For example,

"There was no plausible reason why the Appellant should say he was in a relationship with 'Lee' in September 2014, if 'Lee' was a nickname for Mr Radhu Radesh, when according to his own evidence, his relationship with Radhu Radesh had ended almost a year before" (see paragraph 15(ii)).
8. Under the heading "is the Appellant a gay man?", the judge gave consideration to his sexual orientation and stated that, "I place little weight on the evidence of Mr Ulhaq, whose evidence was solely based on information given to him by the Appellant. He had never met either Mr Radhu Radesh or Mr Jay Kumar ..." (paragraph 61).
9. Ultimately, the judge reasoned that,

"Although I accept that corroboration is not necessary for a positive credibility finding, I agree with the Respondent that it would be expected that the Appellant would have some documentary evidence of his relationship with Mr Radhu Radesh, and Mr Jay Kumar, such as photographs or emails, or even tickets for entry to XOYO club, where he said that he met Mr Radhu Radesh. The relationship with Mr Radhu Radesh is claimed to have lasted for some nine months, and that with Mr Jay Kumar some three months. The lack of such evidence which might reasonably be expected adversely affects the Appellant's credibility. I do not accept that the Appellant had a gay relationship with Mr Radhu Radesh or Mr Jay Kumar" (paragraph 64).
10. Similarly, the judge placed no weight on the copy email evidence of the Appellant having registered with a number of lesbian and gay organisations (see paragraph 65). Indeed, the judge observed how on the Appellant's own evidence, he had no gay relationships in Pakistan and he was not viewed as being a gay man in Pakistan (paragraph 67).
11. The judge proceeded to dismiss the asylum claim as well as the claim to humanitarian protection, and after giving consideration to Article 3 ECHR claims, rejected these also. As far as the Appellant's Article 8 claims are concerned, these were also rejected.

Grounds of Application

12. The grounds of application state that the judge's reasoning in terms of the Appellant's sexual orientation was flawed in the light of the latest cases from the European courts. However, it was also stated that the judge was wrong to have refused an adjournment.
13. On 29th July 2015, permission to appeal was granted solely on the ground that the judge may have erred in law in refusing an adjournment. This was despite the fact that the judge gave full reasons for her conclusions that she was not satisfied that the Appellant was gay (see paragraphs 60 to 66). In granting permission, it was also noted that there was nothing in the specific point made in the grounds that the adjournment until the

afternoon was only necessitated by the need to read evidence sent at the last minute (see paragraph 16). This was because it might be said that if the solicitors had been made aware in the morning that the case was being put back to the afternoon, they would have had a further opportunity to arrange representation.

Submissions

14. At the hearing before me on 2nd October 2015, Mr Waheed, appearing on behalf of the Appellant, submitted that permission to appeal had only been granted on the specific issue of whether the refusal to grant an adjournment was an error of law. Mr Waheed made two submissions in this regard.
15. First, he stated that there were complex cases in relation to sexual orientation from the highest courts of the land and from the European courts in the form of **HJ (Iran)** and the **A, B and C v Staatssecretaris van Veiligheid** cases. They had been referred to in the skeleton argument submitted on behalf of the Appellant by his legal representatives. What the Appellant needed at the hearing was Counsel's assistance in being able to demonstrate how these cases really impacted upon the Appellant's case. The judge does not explain that she brought these cases to the attention of the Appellant and gave him time to consider them so that he might have something to say about these cases.
16. Second, there were other issues of wider importance such as sufficiency of protection and internal relocation that the judge could have alerted the Appellant to which she did not. Therefore, although the judge maintained that every care had been taken to assist the Appellant, the evidence shows that this was not necessarily so.
17. For his part, Mr Kandola submitted that the judge directed herself entirely appropriately in circumstances where the Appellant was without representation.
18. First, she had said,

"I explained to the Appellant that his case would not be prejudiced by the absence of his representative. I set out the procedure and told him that I would assist him in putting his case. I told him I am independent. I told him that I had read the Appellant's bundle which had been prepared by his solicitors" (paragraph 20).
19. Second, it was in this context, that the judge had informed herself of the duties that lay on her under the Procedure Rules 2014 in relation to the application for an adjournment and applied the overriding objective appropriately. Third, the background to this case does the Appellant's side no credit whatsoever. This shows that there was initially a faxed request on 12th June 2015 for the appeal time to be set for 3pm on 15th June to enable the solicitor to attend a medical appointment. However, there was no evidence to show that this was an urgent medical appointment that

could not be altered. The application was rejected. Thereafter, on the morning of 15th June 2015 there was a faxed request at 11.11am requesting an adjournment. It is quite obvious that this is rather late because hearings start at 10am in the morning. The basis of this application was that “due to a clerical error the Appellant’s bundle of evidence had not been received by Counsel at 12 Old Square Chambers”.

20. Why this should have been so is not made clear by the reference to a “clerical error”. Plainly proper instructions were not set in a timeous fashion. In any event, the request was after start of court business at 10am on 15th June 2015. The Tribunal would have been entirely right to have refused a request for an adjournment, applying the overriding objective, in circumstances such as these, and the Appellant’s remedy lay against his own solicitors and legal representatives for such fundamental errors in providing him with representation.
21. In reply, Mr Waheed submitted that the Procedure Rules refer to the overriding objective and that this has the principle of “fairly and justly” disposing of an appeal. The appeal here could not have been fairly and justly disposed given that the leading cases of **HJ (Iran)** and **A, B and C** were not brought to the attention of the Appellant.

No Error of Law

22. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. Notwithstanding Mr Waheed’s valiant efforts to persuade me otherwise, this application is without merit.
23. The judge has bent over backwards to be extraordinarily fair to this Appellant, has acted entirely in accordance with the law in applying the overriding objective and bearing in mind that she had to deal “with the case in ways which are proportionate to the importance of the case ...” and “using any special expertise of the Tribunal effectively” (see paragraph 14(ii)).
24. She has explained to the Appellant that “his case would not be prejudiced by the absence of his representative” and that she then “set out the procedure” for him and told him that she would assist him in putting his case. The suggestion that leading cases in the jurisdiction were not explained to him is a hopeless point. It would be otherwise if the judge herself was unaware of cases such as **HJ (Iran)** and **A, B and C**.
25. The judge was so aware, and no doubt was aware of how the argument was being put in the skeleton argument before her, and applies herself of these cases, and indeed then applied them to the appeal before her. A layperson, is not required to get to grips with such a complex case when the judge herself is fully aware of how it affects and applies to the situation before her.

26. As the judge had explained, “I told him that I am independent” and that “I would assist him in putting his case” (see paragraph 20). The same applies to any argument in relation to internal relocation and sufficiency of protection.
27. This was a case where the Appellant’s applications to join gay organisations all postdated the refusal of his application for further leave to remain on 28th June 2013. He had provided photographs taken at the gay pride parade in London but these do not show him as a gay activist.
28. The judge’s essential findings are at paragraph 64, where she makes it quite clear that corroboration is not necessary for positive credibility findings, but given that his relationship with Mr Radhu Radesh extended for some nine months and his case was that he had tickets for entry to XOYO club, some evidence of some sort at least would have been expected.
29. The judge was entirely correct in holding that, “the lack of such evidence which might reasonably be expected, adversely affects the Appellant’s credibility” (paragraph 64). The reasoning is meticulous and the care shown by the judge beyond question.

Notice of Decision

30. There is no material error of law in the judge’s decision. The determination shall stand.
31. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

2nd November 2015