



IAC-AH-SAR-V1

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

Appeal Number: AA/09229/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11th January 2016**

**Decision & Reasons Promulgated
On 17th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**W J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones, Milestone Solicitors

For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant a citizen of Pakistan born on 12th December 1983, appeals with permission against the decision of Judge of the First-tier Tribunal Oxlade made on 30th September 2015 when the judge dismissed his appeal against the Secretary of State's decision dated 15th June 2015 to remove him. That decision followed a refusal to grant him asylum, humanitarian protection and protection under the European Convention on Human Rights.

2. The background history is that on 25th July 2011 the appellant made an application for leave to enter the UK as the spouse of a British national present and settled in the UK and to whom he was married in July 2010 in Pakistan. He entered with leave on 28th November 2011 and his leave expired on 28th December 2013.
3. That marriage broke down and as a result of the receipt of a letter dated 21st December written by the appellant's wife to the respondent, the Secretary of State curtailed the appellant's leave on 4th July 2013 and a decision was made to remove him.
4. The appellant made an appeal against that decision which was heard and dismissed by First-tier Tribunal Judge Herbert, whose applications to the Upper Tribunal were ultimately refused and the appellant became appeal rights exhausted on 28th October 2014. It is important to note that throughout his claim the appellant maintained that he had chosen to marry his wife and that after he came to the UK his marriage was consummated and that a job that had been promised by his father-in-law did not materialise so he left to seek work and the family froze him out. He maintained that he wished to reconcile with his wife.
5. Following his failed attempt to secure leave on the basis of his marriage, the appellant on 4th March 2015 made an appointment to claim asylum and was interviewed on 12th March and 10th June 2015. It is relevant to note that there was a copy of a nullity petition on file dated 31st July 2013 and also a judicial separation petition filed by the appellant's ex-wife dated 27th April 2012 which merely relies on the fact that "the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent".
6. Filed in support of the appellant's claim was the evidence of the appellant's gay partner, HB, dated 25th June 2015 and also the statement of a friend, the name of SG, dated 25th June 2015. SG attended and gave oral testimony at the hearing before First-tier Tribunal Judge Oxlade and the contention and challenge to the First-tier Tribunal's decision is that there is a failure to engage with that evidence.
7. It was asserted by the appellant in his grounds for application for permission to appeal that the First-tier Tribunal Judge had not paid account to the detailed evidence given by the appellant and his partner which was mutually consistent as to the course of their relationship, the events within it and the life they lead together. The judge did not state why she rejected the evidence. In addition a former neighbour of the appellant gave evidence that she knew the appellant was in a homosexual relationship and observed the couple frequently on occasions. It was submitted that the judge rejected the evidence of the partner and witness because she had already rejected the evidence of the appellant. That amounted to an error of law.

8. At the hearing before me Ms Jones relied essentially on the grounds as stated above. Paragraph 44 was the crucial section of the decision and despite the extensive evidence including oral evidence the judge had not taken this into account.
9. Ms Sreeraman pointed out that the appellant's account differed sharply between his two hearings and there were manifest discrepancies. The context was that the appellant's account was fabricated.

Conclusions

10. Between paragraph 37 and 38 the judge set out the differences in the appellant's version of events particularly in relation to his marriage before Immigration Judge Herbert in 2014 and before her in 2015. Judge Oxlade went on to find at paragraphs 40 to 43 that there were still some inconsistencies in his final position, namely that the appellant stated that he knew he was gay by November 2011 and that he told his wife he had relationships with men in 2013 at which point he had also learnt he had been rejected by his family. The judge essentially found that his account was largely fabricated and that he was advancing on the one hand a case before the First-tier Tribunal in 2014 that he was heterosexual and hoping to reconcile with his wife, whilst on the other hand pursuing a seriously gay relationship with his partner and pursuing an altogether different claim before the First-tier Tribunal in 2015. The judge at paragraph 39 identified further discrepancies in the appellant's account, rejected the idea of having consummated the marriage and noted that he was not seeking a reconciliation with his wife at all. In short, the judge found that the appellant's accounts differed so widely that he struggled to maintain consistency even in his latest account.
11. The judge took into account that a person can struggle with their sexual identity but noted that in interview he told the First-tier Tribunal in 2014 that he wanted to reconcile with his wife because at the time he did not know he was gay, [AIR question 223]. This, however, conflicted with his claim that he told his wife in 2011 that he could not consummate the marriage because he was gay. In interview he said that to hide one lie he had to tell so many lies and that he chose his lawyer for the first hearing because he was a good liar.
12. What seriously undermined the appellant's case in the eyes of the judge was that he knew that he was gay in November 2011 and if it was true it must have been obvious to him that he could not have returned to Pakistan but considerable time had passed during which the appellant could have made an asylum claim and yet he continued to advance a largely fabricated account.
13. The critical passage of the decision of the First-tier Tribunal Judge is at paragraph 44 where the judge states as follows:

"The Appellant, partner, and witness say that the Appellant is now in a genuine relationship. That does mean that the Appellant was advancing

one case before the Tribunal until late 2014 (being heterosexual and seeking a reconciliation with his wife) whilst at the same time pursuing a serious gay relationship with his partner, in which he was openly expressing his relationship with a male partner in public. I have had the benefit of hearing their evidence, and together with the Appellant's evidence, considering the appeal in the round with the other evidence I do not find his claim to be gay to be credible and reliable".

14. I can appreciate the disquiet that the judge had in relation to the appellant's evidence. That is understandable. I note that in his asylum interview the appellant stated between questions 172 and 188 that he was openly gay (prior to the hearing before Judge Herbert) and indeed told his friends at the post office.

15. Nonetheless it is incumbent upon the judge to assess the evidence of each witness in particular when considering credibility and as set out in **SA (Iran)** [2012] EWHC 2575 (Admin) at [16]

"On any view, the First Tier Tribunal judge had reached strong adverse findings against the Claimant, rejecting her credibility. It was appropriate that that be taken as the starting point. But a starting point is just that; it does not imply that the end point must be the same'

and further at [21]

"Mr Mandalia argued that because the Claimant had given evidence about her husband's conduct and membership of the Basij, the evidence of her son added nothing, and could not make a difference. That approach by Mr Mandalia (which echoes that of the Home Secretary) is one which a moment's reflection will show is unarguable, if advanced as some rule of general application. In cases where credibility is in issue, the fact that a witness' account is corroborated by that of another witness can add to its credibility. Were it otherwise, prosecutors in criminal cases, or parties in personal injury actions, would not seek to call as many eye (or other) witnesses of events as can give relevant evidence, nor would Defendants in criminal cases advancing a defence of alibi be keen to call any supporting witnesses if they can do so"

16. **AK Turkey [2004] UKIAT 00230** also emphasises that it is important to summarise the evidence properly and to make an assessment of the credibility of that evidence and give reasons for arriving at that assessment. The judge in this case merely referred to the benefit of hearing the witnesses' evidence and together with the appellant's evidence did not find his claim to be gay credible and reliable. The difficulty is that the judge does not summarise or engage specifically with the other two witnesses' evidence. It would also appear that the partner and neighbour attended the hearing of 25th June 2015 to give oral evidence.

17. I can accept that the judge was viewing the evidence against the background of the appellant's credibility but there was a need to make clear findings in respect of the evidence of the witnesses and not just give a passing reference to that evidence and as **AK Turkey** finds

“[10]... Save in those exceptional cases where the material facts are not in issue between the parties, it is an essential part of an adjudicator's responsibility to make clear findings of fact on the material issues, and to give proper, intelligible and adequate reasons for arriving at those findings. An adjudicator who fails to do so is liable to find that his determination is vulnerable to challenge on appeal at the suit of the losing party ...”

18. Despite an otherwise lucid and well reasoned decision, the judge has not adequately addressed the evidence of the appellant's witnesses and as such I find there is an error of law. As such I find that there is an error of law and the appeal, as the credibility findings are in issue, should be remitted to the First-tier Tribunal.
19. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 10th February 2015

Deputy Upper Tribunal Judge Rimington