



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

Appeal Number: PA/05636/2016

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 9th May 2017**

**Decision & Reasons Promulgated
On 12th May 2017**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

MR MD D M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY ORDER MADE

Representation:

For the Appellant: Mr Ly (Fadiga & Co)

For the Respondent: Mr E Tufan (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant in this matter is Mr MD DM. I shall refer to the parties as “the Respondent” who is Secretary of State and to the “Appellant.” This is an error of law hearing. The appellant appeals against a decision of the

First-tier Tribunal (Judge PJS White) (“FTT”) promulgated on 6th January 2017 in which the appellant’s appeal on asylum and humanitarian protection grounds was dismissed.

Background

2. The Appellant is a citizen of Bangladesh. He applied for asylum on the grounds of his sexuality, that he is gay and as a result he fears persecution on return to Bangladesh where homosexuality is a criminal act.
3. The Respondent in the refusal letter did not find his account to be credible and relied on matters under section 8 2004 Act as to credibility including the delay and timing of making the asylum application. While accepting that gay persons are members of a particular social group in Bangladesh, the refusal letter failed to consider the issues of risk on return if the appellant was found credible as to his core account.

FTT decision

4. The FTT in a detailed and considered determination found the appellant’s claim to be gay was not credible [19-35]. The FTT set out a variety of reasons in support and in addition found that section 8 of the 2004 Act applied as there was a delay of some years before the appellant applied for asylum and that he did so following his arrest [34]. The FTT also considered in the alternative risk on return and dismissed that claim because it found no evidence of a real risk of prosecution and further that the appellant could safely live out of his home area [36-37].

Grounds of appeal

5. In renewed grounds of appeal the appellant argued that the FTT erred by failing to apply the Respondent’s asylum policy guidance on sexual orientation when assessing the credibility of the claim. The FTT placed too much weight on irrelevant matters such as the format of Growlr messages [29]. The FTT failed to place weight on problems with interpretation and unfairly refused an application for an adjournment to allow the appellant time to deal with secondary issues as to risk on return, not previously raised by the respondent in the refusal letter but which were raised at the end of the hearing [36].

Permission to appeal

6. Permission to appeal to the Upper Tribunal (UT) was granted on renewal by UTJ Coker on 29th March 2017 primarily on the grounds that it was arguable that the FTT ought to have granted an adjournment to allow the appellant to deal with the secondary issues. In granting permission the UTJ observed that in the light of the finding that the appellant was not gay, there remained the issue of materiality. Permission was granted on all

grounds although UJT Coker observed that there appeared to be little in those grounds

Rule 24 Response

7. The Respondent opposed the appeal.

Submissions

8. At the hearing before me Mr Ly sought to rely on an unreported case of the Upper Tribunal. His application failed to meet the procedural requirements for reliance on an unreported case and I do not consider it.
9. Mr Ly produced a fresh bundle for the error of law hearing. He expanded on his grounds of appeal. His primary submission was that the FTT failed to apply the Respondent's guidance on determination of sexual orientation in reaching its findings as to the credibility of the appellant's claim to be gay. In particular the FTT failed to take into account the concerns raised as to the poor interpretation during the asylum interview, which informed the reasons for refusal. Further the appellant had not been given an opportunity to adduce further evidence to meet the second argument raised by the HOPO at the FTT hearing to establish evidence that he faced a real risk on return. The Refusal letter had simply dealt with the subjective issue of sexual orientation and so the appellant had not prepared to deal with the second point. The FTT had given opportunity to consider the matter which was raised at the end of the hearing and no application for an adjournment could be made. The objective material showed that there was a real risk of persecution in Bangladesh for gay men.
10. Mr Tufan responded that the FTT findings and reasons were entirely sustainable on the evidence before the FTT and that the FTT had taken into account the relevant guidance in assessing the appellant's credibility as to his sexual orientation. The appellant was seeking to renew arguments that were put at the FTT hearing on the evidence before it. There was no procedural irregularity; it was trite law that the appellant would have to show that he faced a real risk on return of persecution not simply that he was gay. Mr Tufan indicated that there were photographs which the FTT may not have considered which he viewed as graphic and potentially obscene, and which he thought could be relevant to the appellant's claim.

Discussion and conclusion

11. I am satisfied that there is no merit in the grounds complaining that the Respondent's guidance was not considered. It is clear at [5] that the FTT

had this document and considered it. The findings made by the FTT are perfectly sustainable on the evidence before the FTT and the FTT gave full and proper reasons in support in a decision amounting to 14 pages. It was not necessary for the FTT to set out in detail references to the guidance as to how the assessment of sexual orientation was conducted. The decision and reasons referred to the relevant evidence and reached a conclusion having regard to all of the evidence and which were not unreasonable or irrational. The FTT found that the appellant's evidence was not credible and it gave reasons for placing little weight on the letters, photographs and witness statements of Mr Hussein, Mr Stokes and Growlr evidence re Mr Flourn [28, 29 30-31], and found them to be unreliable evidence. As to the photographs I reminded Mr Tufan that the appellant had not raised concerns as to the FTT's dealing with the photographic evidence. Whether they were graphic or not was not relevant to the FTT finding that it placed little weight on the photographs as they could have been posed or staged. The FTT found that the evidence was not reliable to establish that the appellant is gay and found his claim as a whole to be implausible. The findings as to the poor interpretation are in my view fully reasoned and sustainable on the evidence and set out in some detail by the FTT at [24-25]. As the FTT did not find the appellant to be credible as to the core of his claim, the arguments as to **HJ (Iran)** do not arise. The FTT properly applied section 8 of 2004 Act. Having looked at the decision and reasons as a whole I am fully satisfied that the core issue and evidence before the FTT was carefully considered and properly reasoned. The FTT made sufficient findings on the main aspect of the claim. The application is in effect a disagreement with the findings and reasons given by the FTT which are neither irrational nor perverse.

12. On the issue of the application for an adjournment, I am satisfied that there was no procedural irregularity that led to any unfairness to the appellant. The onus is on the appellant to prove his case that he is entitled to refugee status. It was not simply a question of dealing with the issue of his sexual orientation which was the focus of the refusal letter. The burden is on the appellant to show that he faces a real risk of persecution for a Convention Reason. The fact that the respondent failed to consider the issue of risk on return in the event of a positive finding that the appellant is gay, is not material. Furthermore the FTT did in any event go on to consider the risks on return in the alternative, with reference to the background material [36-37] which was adduced by both parties. I am not satisfied that any unfairness arose for the appellant by failing to provide an opportunity to adduce further evidence at the end of the hearing. Firstly the appellant's legal representative was prepared to deal with risk on return with reference to background material included in the appeal bundle and further he would appreciate that the appeal went beyond establishing the credibility of a Convention reason. Significantly Mr Ly made no reference made to any specific evidence that the appellant wished to rely on and none was given at the hearing before me. The FTT stated that Mr Ly did not raise any argument that the point should not be taken or seek an adjournment [36]. Mr Ly disputes this arguing that an

adjournment application was precluded because the hearing had come to an end and in any event it was unfair given that the issue was not raised in the refusal letter. I take the view that the FTT fully and fairly considered all the relevant evidence and issues and that no unfairness has been shown towards the appellant.

13. As to the arguments that the FTT failed to consider **HJ (Iran)** I find no merit in this argument given that the FTT found that the appellant was not gay. Accordingly it was not necessary for the FTT to go on to consider whether or not he would be able to live openly in Bangladesh. Mr Ly raised the issue of the further evidence of an email from Mr Stokes and confirmed that his solicitors had forwarded the same to the Tribunal. This was not a matter raised in the grounds of appeal and it was clear that at the time of determining the decision and reason there was no confirmation of that evidence and in any event I do not consider that this would be a material error of law.

Decision

14. There is no material error of law disclosed in the decision which shall stand. The appeal is dismissed.

Signed

Date 11.5.2017

GA Black

Deputy Judge of the Upper Tribunal

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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.

NO FEE AWARD

Signed

Date 11.5.2017

GA Black

Deputy Judge of the Upper Tribunal