



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01060/2018**

THE IMMIGRATION ACTS

**Heard at Field House
On September 26, 2018**

**Decision & Reasons
Promulgated
On October 4, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR F A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Reza, Solicitor

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.

2. The appellant is a national of Bangladesh. He claimed to have arrived in the United Kingdom in 2005 and he applied on March 22, 2012 for indefinite leave to remain. The respondent refused this application on August 10, 2012 as he had provided forged passports.
3. The appellant claimed asylum on January 13, 2017 but the respondent refused his application in a decision dated January 9, 2018 under paragraphs 336 and 339F HC 395.
4. The appellant lodged grounds of appeal on under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on January 22, 2018. His appeal came before Judge of the First-tier Tribunal Hosie (hereinafter called "the Judge") on February 20, 2018 and in a decision promulgated on March 22, 2018 the Judge dismissed his appeal.
5. The appellant appealed this decision on April 5, 2018. Permission to appeal was refused by Judge of the First-tier Tribunal Ford on May 21, 2018. The appellant renewed his grounds of appeal on June 7, 2018 and Deputy Upper Tribunal Judge McGinty found it arguable, on July 24, 2018, that the Judge had not given adequate and sufficient reasons for rejecting the witness evidence.
6. No Rule 24 response was filed by the respondent.

SUBMISSIONS

7. Mr Reza adopted the grounds of appeal and submitted that the Judge had erred at paragraph 68 of the decision in the assessment of the witness evidence. The Judge had failed to give adequate reasons for rejecting the evidence of Mr H or why he had attached little weight to the evidence of Mr A. Whilst there were some weak aspects to the appellant's case he submitted the Judge had failed to balance those findings against the evidence of the witnesses.
8. Mr Tufan submitted that whilst he accepted the Judge's reason for rejecting Mr A's evidence was flawed he submitted it was not a material error because the Judge had given detailed reasons for rejecting the appellant's account on grounds of credibility. He referred the Tribunal to the Judge's conclusion at paragraph 72 of the decision. The Judge had also been entitled to take into account Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 because the appellant had not only used false passports to both enter the United Kingdom and obtain employment illegally but had delayed in making his claim for asylum until after his other application had been rejected.

FINDINGS

9. The appellant claimed asylum because he was homosexual and argued that if he was returned to Bangladesh he would be at risk. The Judge who heard his appeal had to consider evidence given not only by the appellant but also by two witnesses.
10. Mr Tufan accepted that the Judge's finding at paragraph 68 was flawed in the sense that the Judge had been wrong to state that he was attaching

little weight to Mr A's evidence because he had previously been married with children. One of the issues I have to decide is whether this amounted to a material error in law.

11. The appellant gave evidence at the hearing and the Judge's decision sets out in some detail what happened at the hearing. At paragraph 60 the Judge reminded himself that where a doubt existed he should keep an open mind until the question of whether there was a risk was finally considered.
12. At paragraph 63 the Judge assessed the appellant's credibility and gave detailed reasons for making those findings. The grounds of appeal took no issue with those findings.
13. The Judge was critical that witnesses who had provided statements had failed to attend the hearing in circumstances where they could have attended. The Judge was entitled to attach little weight therefore to their evidence. This finding was not challenged in the grounds of appeal. Similarly, the findings made at paragraphs 65 and 66 remain unchallenged. The Judge also made findings under section 8 of the 2004 Act on credibility.
14. The issue is whether the Judge's approach to the witness evidence was so flawed that it would have undermined the Judge's findings on the other evidence.
15. The Judge was aware of the witness evidence as he set out in his decision and whilst there was an error in the way he dealt with Mr A's evidence I am satisfied that at paragraph 67 there were ample reasons given for rejecting aspects of Mr A's evidence and whilst the Judge's finding at paragraph 68 in respect of Mr A was unhelpful and incorrect I do not accept that this on its own would undermine the previous unchallenged findings about the appellant's claim. The Judge did not believe the appellant was homosexual and did not accept the evidence of either witness.
16. The other finding at paragraph 68 in respect of Mr H had to be read against the background of the whole decision. Whilst Mr H claimed that they had had sex this was something the Judge had rejected based on his earlier rejection of the appellant's own account.
17. The Judge's findings were open to him and any error highlighted in the permission was not material.

DECISION

18. There is no error in law I uphold the original decision.

Signed

Date 29/09/2018



Deputy Upper Tribunal Judge Alis

FEE AWARD
TO THE RESPONDENT

I do not make a fee award as I have dismissed the appeal.

Signed

Date 29/09/2018

A handwritten signature in black ink, appearing to read 'SPAL' with a stylized flourish underneath.

Deputy Upper Tribunal Judge Alis