



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

Appeal Number: PA/05332/2018

THE IMMIGRATION ACTS

**Heard at Field House
On October 8, 2018**

**Decision & Reasons
Promulgated
On October 17, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Counsel instructed by Archbold Solicitors

For the Respondent: Mr L Tarlow, 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 who 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 claims to have entered the United Kingdom on May 11, 2012 as a student. On July 11, 2013 he was given notice that his leave was curtailed with effect from September 10, 2013. The appellant lodged a further application for leave to remain as a student and he was given leave until June 5, 2015. However, this leave was subsequently curtailed with effect from January 6, 2015.
3. The appellant lodged an application for leave to remain on the basis of his family and private life on January 6, 2015 but the respondent refused this on March 24, 2015. The appellant appealed that decision and the appeal came before the First-tier Tribunal. His appeal was dismissed on October 22, 2015.
4. The appellant subsequently lodged a claim for asylum on October 11, 2017 on the grounds that he was homosexual and that returning him to Pakistan would place him at risk of persecution. The respondent refused his application under paragraphs 336 and 339M/339F HC 395 on April 14, 2018. The appellant appealed that decision under Section 82 of the Nationality, Immigration and Asylum Act 2002 on April 24, 2018.
5. His appeal came before Judge of the First-tier Tribunal Hussain on May 25, 2018 and in a decision promulgated on June 29, 2018 the Judge dismissed the appellant's claim for protection.
6. On July 13, 2018 the appellant lodged an application for permission to appeal and on August 13, 2018 Judge of the First-tier Tribunal Hollingworth found it was arguable there had been an error in law.
7. The matter came before me on the above date and on that occasion I heard submissions from both representatives.

SUBMISSIONS

8. Mr Iqbal adopted the grounds of appeal that had been prepared by his instructing solicitors. He submitted that there were three grounds of appeal, two of which overlapped, namely grounds 1 and grounds 3. Ground 2 was a separate ground but he submitted that these grounds together amounted to an error in law.
9. Mr Iqbal submitted that in considering the appellant's appeal the Judge had materially erred in his approach to the witness evidence provided by Mr A and Mr S. He submitted that the Judge had failed to make findings on credibility in relation to their evidence when he was of course required to do so. He further argued that the Judge had attached too much weight to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The Judge had started his assessment on credibility with his assessment under Section 8 and whilst a finding under Section 8 was a factor the Judge could take into account when considering overall

credibility, he submitted the Judge had focused on this point excessively. The appellant had explained that he had only felt it necessary to claim asylum when he did because that was when he became aware he could claim asylum.

10. Mr Tarlow responded to the application and submitted that there had been no material error and that the arguments now being advanced were a mere disagreement. He pointed to the Judge's decision which set out adequate and well-reasoned findings. All findings had been open to the Judge and the assessment under Section 8 was clearly one open to the Judge.
11. Mr Iqbal submitted that the finding in paragraph 43 of the Judge's decision lacked reasons. Whilst it was open to the Judge to make such a finding it was necessary to provide reasons for that conclusion. He invited me to find an error in law and to remit the matter back to the First-tier Tribunal for a rehearing.
12. Having heard submissions, I reserved my decision.

FINDINGS

13. The appellant's appeal before the First-tier Tribunal was based solely on a protection claim. The appellant argued that he was homosexual and that as a gay person he would face persecution from the authorities in Pakistan. The current CPIN and case law supports such an argument. The issue therefore for the Judge was whether he accepted the appellant was a homosexual.
14. In deciding the appeal, the appellant had a bundle of documents which included supporting evidence. Two witnesses also attended the hearing and gave evidence on behalf of the appellant and both witnesses were cross-examined by the respondent's representative. Neither witness claimed to have been in any relationship with the appellant but both expressed their views that they believed he was gay as they had both seen him kissing other men. Witness S had previously been granted refugee status on the basis of his sexuality.
15. In considering the appellant's claim the Judge also had regard to the background evidence and noted, as I accepted earlier, that being gay would place the appellant at risk of persecution. At paragraph 28 of his decision the Judge identified the sole issue to be whether or not the appellant was homosexual.
16. Mr Iqbal criticised the Judge for placing too much emphasis on Section 8 of the 2004 Act. The Judge quite fairly at paragraph 30 stated that the starting point was assessing whether the respondent was justified in attacking the appellant's credibility. Mr Iqbal criticised the Judge's approach but the Judge concluded that there were inconsistencies between his written evidence and other documents as to when he first

became aware of his sexuality. The Judge ultimately proceeded on the basis that by 2015 he was involved in the gay scene and concluded that the appellant knew being gay would place him at risk of persecution in Pakistan and ultimately found that his failure to raise this as an issue prior to lodging his application in October 2017 meant an adverse credibility finding could be drawn against him.

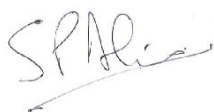
17. The Judge accepted that the appellant may have given the appearance of socialising with other men but he concluded, as was open to him, that he did this to bolster a claim for asylum. He noted at paragraph 40 of the decision that in his detailed written statement he had not claimed to have had a sexual partner in the United Kingdom but had identified one of the persons in the photographs as being a sexual partner, but that he had now returned to Pakistan. Put simply, the Judge did not accept the account and coupled with his failure to claim asylum earlier than 2017 he found the appellant's claim to be homosexual to lack credibility.
18. Mr Iqbal has criticised this approach but I accept Mr Tarlow's submission that those findings were both open to the Judge and were well-reasoned. The Judge had taken into account the appellant's immigration history and other factors before reaching that conclusion.
19. The second criticism raised by Mr Iqbal was the approach taken to the two witness statements. Those witness statements and their live evidence had to be looked at against a background that the Judge did not accept the appellant's core claim. These witnesses saw what they claimed to have seen but were not the appellant's partners. The Judge concluded that even if they had seen the appellant kissing other men this was part of the appellant's attempt to be granted protection and was a claim he had put forward after all other applications had failed.
20. The Judge considered the evidence of both witnesses at paragraph 42 and in respect of the evidence provided by Mr A he found that the account put forward by the witness did not make sense, bearing in mind the appellant had claimed that he had been exploring his sexuality since 2013. With regard to Mr S the Judge had concerns about his evidence given the timing of their accounts.
21. The Judge concluded at paragraph 43 that the account was manufactured and that there was no truth in his claim. Mr Iqbal argued that this was a strong finding to make, but the Judge gave his reasons for reaching that finding.
22. I am satisfied there is no material error in law.

DECISION

23. I find there is no material error in law and I uphold the original decision.

Signed

Date 10/10/2018

A handwritten signature in black ink, appearing to read "SPARIS", with a long horizontal stroke extending from the end.

Deputy Upper Tribunal Judge Alis_

TO THE RESPONDENT
FEE AWARD

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

Signed

Date 10/10/2018

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

Deputy Upper Tribunal Judge Alis