



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/05516/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 January 2018**

**Decision & Reasons  
Promulgated  
On 5 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**MDC**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Hussain, Raiyad Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh who was born on 14 February 1975. He made a claim for asylum, which was refused by the Secretary of State in a decision of 18 May 2017. He appealed against the decision and his appeal was dismissed by First-tier Tribunal Judge Froom in a decision promulgated on 4 July 2017 following a hearing on 30 June 2017. Judge Froom found the Appellant to be wholly lacking in credibility and dismissed his claim to be at risk on account of his sexuality. He found that the Appellant was not homosexual as claimed.

2. The Appellant was granted permission by Judge of the First-tier Tribunal J Gibb on 11 September 2017. The salient parts of the grant of permission read as follows:
  - “3. The grounds, accompanied by a copy of the appellant’s 28 page patient record, complain that the judge erred in: regarding the appellant’s claim to be unwell at the time of his asylum interview and at the hearing as a fabrication designed to delay removal. The grounds claim that the Secretary of State has failed to respond to the appellant’s ill health, incorrectly certified him to be fit to attend interview when he was not, and the appellant has been denied the chance to present his claim and prepare for his hearing.
  4. The grounds are arguable, and justify further examination. The patient record is incomplete without the clinic letters and test results from Hillingdon Hospital referred to but not appended.
  5. The determination is thorough and detailed, but there are comments by the judge at [10] and [23] to the effect that he did not accept the appellant’s claims to be unwell and drew an adverse inference as to credibility as a result. The judge also referred to the appellant’s failure to prepare for the hearing and provide supporting evidence at [25], a point that would have been impacted by a genuine claim of ill health.”
3. The matter came before me on 16 October 2017. On this occasion the Appellant was unrepresented and sought an adjournment to instruct solicitors and to obtain medical evidence. I granted an adjournment and the matter came before me on 8 January 2018. The Appellant was represented on 8 January by Mr Hussain. The thrust of his representations was that the medical evidence now produced established that the Appellant was unwell at the relevant time rendering Judge Froom’s findings unsafe. Mr Melvin submitted that the Appellant has been feigning illness and the evidence now produced, that was not before the judge, does not establish that he has a genuine health condition.
4. The Appellant’s asylum interview was scheduled to take place on 18 February 2017. However, this was cancelled he stated that he was not feeling well enough. A healthcare referral was made to establish whether he was fit for interview and on 25 April 2017 there was a response from healthcare at the detention centre stating that he was not suffering from any medical condition that would warrant detention unsuitable nor render him unfit for interview. A substantive asylum interview was re-booked to take place on 8 May 2017. However, this was cancelled because the Appellant again stated that he was too unwell to attend. The hearing before Judge Froom took place on 30 June 2017.
5. The judge made findings in relation to the Appellant’s health as follows:

- “10. By coincidence, on 26 June 2017, I had refused the appellant bail at a separate hearing. The appellant attended that hearing through a video link. On that occasion the appellant had been represented by counsel. I refused bail. It is right to record that, among my reasons for finding there was a high risk that the appellant would abscond and not attend his asylum hearing were the fact the appellant had a history of failing to attend his asylum interview and he had not provided a shred of evidence to show he had any significant health condition. In fact, Healthcare had confirmed he was fit to be interviewed. I inferred the appellant was deliberately obstructing the process. I also gave weight to the appellant’s attempt to persuade me that he had not tried to escape from immigration officers during the enforcement operation in February 2017 notwithstanding the contents of a report I was shown to the contrary. I did not regard the appellant’s account of having jumped over a fence because he believed there might be a fire in the restaurant to be credible. I concluded the appellant was prepared to mislead when it suited his purposes.
11. In the light of this, I considered whether, in view of my duty of judicial impartiality, it was appropriate for me to hear the asylum appeal as well. I consulted the Guide to Judicial Conduct, dated March 2013, at paragraph 3.11. This states that a previous finding by a judge against a party, including findings on credibility, will rarely provide a ground for disqualification. I carefully considered my position and concluded it was appropriate for me to continue and that I could give the appellant a fair hearing. The determinative issue in his appeal was likely to be whether or not he was gay. This was not a matter canvassed at the bail application and in no sense had the matter been prejudged the bail hearing. In any event, the reasons I gave for refusing bail were based on my assessment of the risk of absconding and I could approach the matter of the appellant’s asylum and human rights claims with an open mind notwithstanding the reasons given for refusing bail.
23. I considered the appellant’s explanations for not attending his interviews. He claimed on both occasions to be suffering from acute stomach pains. However, Healthcare confirmed after the first aborted interview that he was not suffering from any health condition. The appellant’s evidence to me was vague. He said he had pain in his stomach and thought he may have an ulcer. He said he was taking paracetamol for it. That was what he had been given. He took another ‘red tablet’ but he did not know what it was. I do not accept he would be prescribed paracetamol if he was suffering from a suspected ulcer as it is well-known paracetamol irritates the stomach. The appellant was plainly able to engage at both his bail hearing and the asylum appeal hearing. He was able to answer questions. I do not accept he

was too unwell to attend his interview and I draw an adverse inference from this behaviour.

24. I gave the appellant ample opportunity to provide a full account at the hearing but his evidence was vague. He mentioned having some relationships with men in the UK but he did not volunteer any additional information. He did not appear to have thought about obtaining supporting evidence from these men. He said none of his friends knew he was bisexual but his cousin and her husband knew. Asked why she had not attended to support his appeal, he said he thought they were on holiday. He accepted his cousin's husband had attended as the proposed surety at his bail hearing earlier this week. He did not know where they had gone on holiday. He did not ask for an adjournment so that they could attend. Even allowing for a degree of reticence and embarrassment in discussing publicly such personal matters, the appellant was plainly unable to give the kind of detailed evidence regarding his sexual experiences which could reasonably be expected of a person claiming to fear persecution on account of his bisexuality."

6. I have before me evidence that was not before Judge Froom. I have the Appellant's patient records covering his time in detention between 27 March 2017 and 30 July 2017. In addition, I have correspondence from medical professionals and X-ray reports. I have done my best to build a picture of the Appellant's health condition from the piecemeal evidence before me. I am not a medical professional. There is no comprehensive medical report. The evidence establishes that the Appellant has since 27 March 2017 complained of ill health. On 17 July 2017 he was referred to radiology and an X-ray was taken of his chest. The report pertaining to that reads as follows:

"Impression - right upper lobe consolidation with volume loss. Findings would be consistent with infection including TB. Malignancy is less likely but is within the differential given volume loss. Clinical correlation is advised.

Onward hospital referral to the TB clinic if clinically appropriate or respiratory should be considered for further assessment and management."

7. As a result of the X-ray he was put into isolation whilst in detention pending the results of further tests because it was suspected that he had TB. He was referred to the TB unit. The Appellant was seen by his GP on 22 July 2017, who thought that it was likely that he would be tested positive for TB. On 2 August 2017 there was an entry in the patient notes which indicates that the Appellant was tested negative for TB. However, he remained in isolation until he had been seen at the chest clinic and further tests were undertaken.

8. There is a clinic letter of 21 November 2017 prepared by Dr Emma McGuire of Barts Health NHS Trust (Department for Infectious Diseases) following a review of the Appellant on 21 November, which indicates that the Appellant has started TB therapy. The following is stated:

“I have reviewed the investigations done to date and discussed the findings with MDC today. I’ve explained that the MRI scan of his head was normal, and the scan of his spine has shown degenerative changes at multiple levels without compression of the nerves. The bronchoscopy results are so far negative on TB culture. I’ve explained that the liver scans have shown fatty liver changes and simple cysts which were reviewed at the HPB MDT. We have been advised that these appear benign and do not warrant further investigations from an HPB perspective.

We discussed today the need to continue to investigate for TB and for other potential underlying causes of his persistent fevers, sweats, weight loss and pains. I’ve explained that a diary of his symptoms and fever would be extremely useful and that he should register with a GP and see an optometrist. I’ve discussed his case with Dr Lambourne today and we have agreed with MDC to arrange a CT PET scan and to send further blood tests detailed below in order to exclude other less common infections and to assess for any evidence of underlying malignancy.”

9. Under the heading “Radiology” the following is stated: “Appearances likely to represent old TB. There is no evidence of active disease.” Under the heading “Plan/Recommendations” the following is stated:

“As MDC continues to be unwell and under investigation for possible disseminated TB or other inflammatory condition which is causing significant pain we strongly recommend that he no [sic] be made to wait in queues for detention centre ‘check-ins’ and would advise reducing the number of check-ins which he is required to make in person if possible.”

The clinical outcome form indicates that there will be continuing active monitoring of the Appellant’s health condition.

10. The medical evidence that has now been presented to me (both that which pre-dates the hearing and that which post-dates the hearing before Judge Froom) does not undermine Judge Froom’s conclusion. He would not have reached a different conclusion had it been before him. It does not establish unfairness. There is no evidence that the Appellant had TB at the material time or any other properly diagnosed condition. The evidence establishes that he complained of symptoms and told medical practitioners he felt unwell and underwent tests. There is evidence that he has had TB, but not in the recent past. There is no evidence of any further tests/diagnoses after November 2017. There is no evidence that the Appellant was too unwell to properly participate in the proceedings on 30 June 2017 or attend two pre-arranged asylum interviews in April and May 2017. The

Appellant complained that he thought he had a stomach ulcer at the hearing before the FtT. Judge Froom was entitled to attach weight to the evidence from Healthcare and the circumstances of the bail hearing and to conclude that the Appellant was deliberately obstructing the process. The evidence now relied on does not undermine the conclusions reached by him. Had the patient notes and other material before me been before Judge Froom he would not have reached a different conclusion. They do not establish that the Appellant had a genuine health problem capable of preventing him from engaging with the proceedings and prepare his case.

11. The judge properly attached weight to the delay by the Appellant making an asylum claim. In his view this significantly undermined his credibility. The Appellant made a human rights application in 2009. He did not mention his sexuality or any other reason for fearing return to Bangladesh at that time (despite the fact that his evidence before Judge Froom was that he had by that time had a long-term relationship with another man). The judge took into account the Appellant's evidence that he realised it was dangerous to be gay in Bangladesh about six months ago. The judge rejected this and was entitled to. The Appellant had lived in Bangladesh until he was 24. The judge concluded that the Appellant's failure to claim asylum until after he was detained and facing removal indicated that he did so in order to frustrate his removal and that his claim was not credible.
12. There is no evidence post 21 November 2017 which would suggest that the further investigations recommended by Dr McGuire have been undertaken and if so the results of those. I note from the clinic letter that the next clinic date recorded is 12 December 2017. The Appellant did not produce evidence at the hearing before me relating to this. He is no longer in detention.
13. For all of the above reasons I conclude that Judge Froom had he had the evidence before him that I have been shown by the Appellant would not have reached a different conclusion. There is no procedural unfairness and the decision of Judge Froom is maintained.

### **Notice of Decision**

The appeal is dismissed.

### **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

Joanna McWilliam

Date 28 January 2018

Upper Tribunal Judge McWilliam