



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05746/2018

THE IMMIGRATION ACTS

Heard at Field House
On 10 September 2018

Decision & Reasons Promulgated
On 24 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR M A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman, Counsel instructed by Buckingham Legal Associates

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 1 October 1986. An anonymity direction is made in this case.
2. The Appellant arrived in the United Kingdom in May 2011 in order to study. The Appellant subsequently overstayed and claimed asylum on 23 January 2016 on the basis of his sexual orientation identifying himself as bisexual. This application was refused in a Decision dated 5 April 2018. The Appellant appealed and his appeal came

before Judge of the First-tier Tribunal Moore for hearing on 6 June 2018. In a Decision and Reasons promulgated on 23 June 2018, the judge dismissed the appeal on a number of bases, but essentially rejecting the premise of the Appellant's claim.

3. Permission to appeal was sought in time on the basis that the judge had made a number of material errors in law in his assessment of the Appellant's account. Permission to appeal was granted on 30 July 2018 by First-tier Tribunal Judge Buchanan, in particular with reference to grounds of appeal set out at [5], [7] and [11], but not restricting the scope of the matters that could be advanced at appeal.

Hearing

4. At the hearing before the Upper Tribunal, Ms Gherman sought to rely on the grounds of appeal and made the following submissions. Firstly, at [31] that the judge had minimised the evidence that the Appellant had been seen "*cuddling a boy in a motor vehicle*" and then informed people at the mosque which resulted in the Appellant being effectively shunned. Ms Gherman drew attention to the Appellant's witness statement at [33] which makes clear that he was seen by a member of his mosque, hugging and kissing his former partner. Ms Gherman submitted that the judge had also merged this incident, which took place in early 2014, into another point which was chronologically incorrect in that this event, the Appellant being witnessed with his former partner, had taken place earlier in 2013 and the judge had allied that incident with another aspect of the Appellant's claim set out at [33] of his witness statement in relation to the fact that his cousin, MK, became aware that the Appellant was having relationships with men and threatened him because the Appellant was engaged to his sister, N, and MK told him that he had sent a man to the Bradford mosque, as a consequence of which they came to know about his sexuality. MK informed the Appellant in December 2015 that his sexuality was known. Ms Gherman submitted that the judge had confused this evidence, found an inconsistency where, in reality, there was none, given that the two incidents were distinct, separate and took place in different years, and thus failed to analyse this evidence properly.
5. Secondly, she submitted the judge had erred at [35] in finding that the Appellant has, by his own account, not been in any committed relationship since he had been living in the UK despite his claim that he is a bisexual man and consequently he was not satisfied that the Appellant is bisexual. Ms Gherman drew attention to the Appellant's witness statement at [35] to [36] where the Appellant sets out that he had a relationship with SK, to whom he refers as his partner, and although the relationship ended in the summer of 2014 they did not lose contact entirely and continued to have casual encounters. Moreover, at [36] when considering the evidence of the two witnesses, Mr A I and Mr M C, the judge found an inconsistency between Mr C's account and that of the Appellant on a mistaken basis that "*This witnesses' evidence that the Appellant had a partner named S is not consistent with the Appellant's account that he never had a partner, and presumably S, if such a person existed, was simply some form of friend*". Ms Gherman submitted that the judge had clearly misunderstood the evidence and had failed to give the evidence anxious scrutiny.

6. Thirdly, Ms Gherman submitted that the judge had erred in respect of his consideration of the evidence of the Appellant in relation to H. The Appellant's evidence was that he had formed feelings for a boy named H when he was about 14 years of age. The judge rejected this evidence on the basis that he did not accept it would have taken H a month to consider the matter before informing the Appellant he shared the same feelings. Fourthly, that they were able to engage in a sexual relationship without having problems from people in the community finding out; and fifthly, that the Appellant had been unable to describe the emotional side of the relationship with H rather than simply stating they engaged in sexual activity over many years; and sixthly, the Appellant's personal statement dated 31 January 2016 made no reference to his sexual orientation.
7. Ms Gherman took issue with these findings submitting that in respect of the plausibility of the Appellant having a sexual relationship without being found out, the judge had failed to assess this evidence in light of the background evidence which makes clear that people do have same sex sexual relationships by finding a secure place to meet to avoid being detected and by exercising discretion.
8. In respect of the failure by the Appellant to mention his sexuality, this is explained by the Appellant at [41] where the Appellant stated he did not understand what the Statement of Additional Grounds meant. He was not legally represented and so he was only asked who he feared and not why, thus he only mentioned the name of the political organisation rather than his sexual orientation. Ms Gherman submitted that it was incumbent on the judge to take account of the Appellant's explanation that he had failed so to do.
9. Ms Gherman further submitted that the judge had erred at [31] in finding in respect of the telephone threats from MK that if the Appellant was studying as he has claimed at a college in Ilford he did not see why the Appellant would fail to provide MK with information of his studies in the UK and thereby address MK's concerns. However, this relates to the year 2015, whereas at [33] the judge found that the college in Ilford where the Appellant was apparently studying closed down in 2013 and since that time he had not been engaged in any other studies, which was clearly inconsistent with his earlier finding, when it was clear the Appellant was unable to send MK evidence of him studying after the college closed down in 2013.
10. Ms Gherman lastly submitted in respect of the finding at [35] that this was bizarre and inappropriate in that the judge rejected the Appellant's claim to be bisexual, essentially because he has not had a relationship with a female. He also further found erroneously that he had not had a sexual encounter whilst in the UK. She submitted when considered as a whole the decision of Judge Moore contains material errors of law in his assessment of credibility.
11. In his submissions, Mr Whitwell invited the Upper Tribunal when reviewing the assessment of credibility to take a step back and ask whether somebody reading the Decision and Reasons would understand the core findings and reasons. He submitted that Judge Moore had looked at the case in the round and given examples of reasons

for his credibility findings [27]. Mr Whitwell accepted that the judge had not appreciated that there were two independent events in relation to his findings at [31], but submitted that this only goes to the issue of materiality and the judge had given reasons for his findings. The judge was entitled at [33] to rely on the delay by the Appellant in claiming asylum. He was entitled to rely on the fact that the Appellant's sexual orientation had not been put first and foremost at [29], the Appellant referring to his apparent fear of SS. The judge at [29] did not accept the Appellant was in a relationship with H and at [35] was entitled to rely on a lack of partners which he submitted were cogent reasons for dismissing the appeal.

12. Mr Whitwell submitted in relation to the Appellant's relationship with SK at [35] the judge was clearly utilising the phrase "committed relationship" to mean someone who was a partner. Mr Whitwell submitted at [29] that the judge was entitled to place weight on the fact the Appellant had been unable to describe the emotional side of his relationship with H and that this was a sound reason. Mr Whitwell submitted that the judge had overall done enough, despite not grappling with the detailed side of the claim.
13. In reply, Ms Gherman accepted that the judge has set out the correct legal tests, however he had not then followed or applied these. She submitted it was speculative to say that the judge was referring to a committed relationship as being shorthand for "partner" and Ms Gherman submitted overall there were too many improper findings for the decision to safely stand.
14. I reserved my decision, which I now give with my reasons.

Findings

15. I find material errors of law in the decision of First-tier Tribunal Judge Moore. In particular at [31] of the decision the judge does appear to have confused and allied it to separate incidents:-
 - (1) the fact in 2014 the Appellant was seen in a vehicle having physical contact with his former partner which was witnessed by a passer-by who then informed people at the mosque; and
 - (2) the threats he received from his fiancée's brother who, through separate means had come to know of the Appellant's sexual orientation, this being later, i.e. December 2015.
16. The question is whether this error is material. I find this is a material error because the judge rejected the credibility of the Appellant's account looking at the evidence in the round, however, given there was a factual misapprehension of what the Appellant's account was, that finding is unsustainable. Secondly, I find the judge's finding at [35] that the Appellant "*has by his own account not been in any committed relationship*" to be factually incorrect in light of the fact that in his witness statement at [35] and [36] the Appellant clearly stated that he had had a partner called SK in 2014 and that this had come to the attention of the community in Bradford. Thus I find that is a material error

and the judge's findings at [35] are unsustainable, as is his finding that the Appellant's evidence is inconsistent with that of Mr C at [36], which finding is also unsustainable given that Mr C's evidence that the Appellant had a partner called SK was consistent with what the Appellant said in his witness statement.

17. The evidence in relation to the Appellant's former relationship with H when he was 14/15 years of age in Pakistan is less clear-cut, but I find in reaching adverse findings in respect of the Appellant's evidence on this point that the judge failed to take account of the background evidence in assessing the plausibility of the Appellant's ability to have a sexual relationship with H without being discovered whilst he was still in Pakistan.
18. There is merit also to the submission that the judge has made inconsistent findings at [31] in finding that he did not see why the Appellant would fail to provide MK with information about his studies in 2015, yet at [33] apparently accepting that the Appellant's college closed down in 2013 as he had not studied thereafter.
19. Whilst there are matters which the judge was entitled to take into consideration which go to the issue of the Appellant's credibility, such as the delay in making his asylum claim and his failure to mention in his personal statement in response to the Statement of Additional Grounds his sexual orientation, I find for the reasons set out above, that the judge made material errors in relation to his assessment of the relevant facts and his findings as to the Appellant's credibility as a whole are therefore unsustainable.

Notice of Decision

20. I find material errors in the Decision and Reasons of First-tier Tribunal Judge Moore.
21. I remit the appeal for hearing *de novo* before the First-tier Tribunal.

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 his 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 *Rebecca Chapman*

Date 20 September 2018

Deputy Upper Tribunal Judge Chapman