



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

Appeal Number: PA/13694/2018

THE IMMIGRATION ACTS

Heard at Field House

On 16th April 2019

**Decision & Reasons
Promulgated
On 09th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MR MALIK [Z]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jaquiss, Counsel, instructed by Tower Hamlets Law Centre

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

DECISION AND REASONS

This is an appeal by Mr Malik [Z] against a decision of Judge Lucas, promulgated on 15th February 2019, to dismiss the appeal against refusal of his protection claim.

The Appellant is a citizen of Pakistan. He claims that he is homosexual and accordingly at risk of persecution on return to Pakistan by both state and non-state actors.

However, the judge did not believe that the appellant was gay. His reasons are shortly stated, beginning at paragraph 35:

- “35. The Tribunal has read and considered the background and ‘awareness’ evidence that has been submitted by the Appellant and does not find it to be genuine within the overall context of his claim. The sort of detail he has put in appears to be rehearsed and it is obvious that he has been advised by Mr [R] (and others) about what to include in his asylum claim.
36. He claims to have had three relationships in the UK and none at all in Pakistan. There is little or no reliable evidence of these relationships and indeed, no photographs at all prior to the period of his asylum claim in 2018. Indeed, there is no other evidence of attendance at gay clubs, involvement with the gay scene or any other Grindr chat before the period of lodging this claim for asylum.
37. The Tribunal has, of course, considered the evidence of photographs, Grindr chat and evidence of him working as a volunteer at a Pride event in London in 2018. But, none of this evidence is convincing and has clearly been put together to support and embellish a claim for asylum in the UK.
38. Even the submitted photographs lack real plausibility. Most of those included show his supporting witness, Mr [R], with whom he is not in a gay relationship. The fact is that the Appellant and Mr [R] appear to know little about each other. Mr [R] did not know the names of the Appellant’s parents or whether he has any siblings. His letter of support of the Appellant is dubious and it is clear that he has acted as a contrived witness, as he has in three previous asylum claims based on sexuality.
39. There is no other supporting evidence relied upon by the Appellant. There is no evidence from flatmates, no representative from Pride or person from the gay clubs that he states he attends, to lend support to the assertion that he is gay.
40. His reference to his parents calling him about an arranged marriage shortly before he claimed asylum in March 2018 lacks credibility and is quite clearly contrived in order to seek to create a risk that in fact does not exist.
41. He stated that his parents talked about his alleged arranged marriage on many occasions prior to 2018. Yet, the Appellant waited until 2018 to inform them that he was gay.
42. Which begs the question, why should he bother? By his own admission, he states that they are strict Muslims and would not approve of his sexuality. The point of telling them in 2018 is therefore lost on the Tribunal. The reality is that this assertion is both implausible and pure opportunism prior to lodging the current claim for asylum.
43. The immigration history of the Appellant does not assist him. He entered the UK as long ago as 2011 and has not claimed asylum until 2018. His leave was curtailed in 2013 and he has simply overstayed here prior to seeking to prolong his presence in the UK by lodging an implausible and opportunistic claim for asylum.

44. The Tribunal does not accept that the Appellant is gay or that he is at risk from anyone in Pakistan.”

The Grounds of Appeal against the decision may be conveniently summarised as follows. The judge does not explain, by way of example or otherwise, why he has concluded that the Appellant’s evidence was “rehearsed”, or why it was “obvious” that he had been advised by others as to what to include in his asylum claim. Whilst such matters may have been “obvious” to the judge, it was his task to make it obvious to the reader of his decision. He does not explain why he concludes that the Appellant’s evidence of the three gay relationships he claims to have had in the UK is “unreliable”. He also fails to say why he did not accept the Appellant’s explanation for the lack of photographic evidence of his relationship with a man he knew only as ‘Sherry’. He did not explain why he considered the supporting evidence of the Appellant’s witness, Mr [R], to be, “contrived”, and, “dubious”. He drew an adverse inference from the Appellant’s failure to call his flatmate to give evidence without saying why he did not accept the Appellant’s explanation for his inability to do so. No reason is given for the finding that the Appellant’s explanation for informing his parents that he was gay in 2018 (said to be because his parents were at that point intent on arranging his marriage to a female cousin) lacked credibility, or why it was, “quite clearly contrived”. Moreover, the judge failed to have regard to the recognised need for caution before drawing an adverse conclusion from a claimant’s failure to disclose his sexual identity at an early stage.

Despite the best endeavours of Mr Whitwell to persuade me to the contrary, all the above grounds are in my judgement made out. It does not suffice simply to characterise evidence as “rehearsed”, “unreliable”, “dubious”, or “contrived”, without providing evidence-based reasons for doing so. The only sustainable reason given by the judge for his adverse credibility findings was that the Appellant had remained in the United Kingdom unlawfully for more than five years after his leave to remain had expired. However, this alone did not suffice to justify a finding that the Appellant’s testimony was wholly unworthy of belief. It follows that this appeal is allowed and the decision of the First-tier Tribunal set aside.

The representatives agree that having regard to the reasons I have given for setting aside the First-tier Tribunal’s decision, the only appropriate course is to remit the appeal to be heard afresh at Taylor House before any judge other than Judge Lucas. Any further directions concerning the re-listing of this appeal must be a matter for the Resident Judge at Taylor House.

Before parting with this appeal, I should add that there may be good reasons for finding that the appellant’s claim is not credible. Nothing I have said in this judgement should therefore be taken as hinting at what is the appropriate outcome following a complete rehearing of this appeal.

Notice of Decision

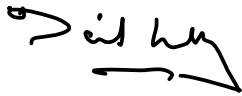
The appeal is allowed.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to be heard afresh before a judge at Taylor House, other than Judge Lucas.

No anonymity direction is made.

Signed

A handwritten signature in black ink, appearing to read 'id Kelly', with a horizontal line underneath.

Date: 18th April 2019

Deputy Upper Tribunal Judge Kelly