



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

Appeal Number: PA/13710/2018

THE IMMIGRATION ACTS

**Heard at Field House UT
On 13th May 2019**

**Decision & Reasons Promulgated
On 03rd June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**M H H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Clarke, Counsel

For the Respondent: Ms Pal, Senior Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction is made. As a protection claim, it is appropriate to do so.

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan, born 22nd January 1984. She appealed against a decision of the Respondent dated 21st November 2018 to refuse her asylum claim made on the grounds of her sexuality. Her

appeal was heard by the First-tier Tribunal (Judge Greasley) which in a decision promulgated on 18th January 2019 dismissed the appeal.

2. Permission to appeal was granted on a renewed application to the Upper Tribunal, in the following terms:

“It is arguable that the Judge’s credibility findings between [45] and [50] are inadequately reasoned. It is arguable that the Judge looks for corroboration unnecessarily at [50]. The grounds are arguable.”

Therefore the matter comes before me in the Upper Tribunal.

3. The Appellant pursues this appeal on three grounds:

- The first ground is a claim that the judge has rejected the Appellant’s documentary evidence as carrying little weight and failed to give sufficient reasons for that rejection. The documentary evidence in question includes photographs, an e-mail and a letter submitted from female friends with whom the Appellant claimed to have had relationships. It is said that failure to have proper regard to this evidence resulted in unfairness because this was evidence which supported the Appellant’s claim.
- Grounds 2 and 3 take issue with specific findings made by the judge. Firstly it is argued that a finding at [49] (that the Appellant’s family would not have let her go to Dubai as she was a lesbian) was an irrational one. Secondly at [46] the FtTJ’s finding that the Appellant’s credibility was damaged in that she had two long term relationships with women who were not in themselves lesbian, was also irrational in that no credit had been given for the fact that this information had been volunteered by the Appellant herself.

Error of Law Hearing

4. Before me Mr Clarke appeared on behalf of the Appellant and Ms Pal for the Respondent. At the outset of the hearing Mr Clarke handed up a bundle of documents headed “Index to supplementary bundle” and date stamped received 7th May 2019. The documents included the Appellant’s supplementary witness statement, which Mr Clarke said formed the basis of the Appellant’s submissions before me, and which I admitted. In addition further documentary evidence was attached including a witness statement from Ms M.R., GP records, copy photographs and a “Deed of Disinheritance” dated 28th September 2016. I ascertained that none of these documents were before the FtT nor had they been served in accordance with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Mr Clarke was unable to assist on why this was so. I will reference this additional evidence further in this decision.
5. Mr Clarke’s submissions kept to the lines of the grounds seeking permission. The main thrust of his submissions was that the judge’s approach to the evidence was erroneous. At [50] the judge had looked for corroboration of the Appellant’s claim. This was erroneous for two

reasons. Firstly the judge had given insufficient attention to the documentary evidence, namely the email and letter from the Appellant's friends which had been produced in support of the Appellant's claim. It was insufficient to simply say that he gave the documents little weight because they were from friends. If the judge found this evidence to be unreliable he needs to set out why it is so. This needs to be referenced against the Appellant's own account that she was in a relationship with various women whilst in Dubai.

6. The second reason why the judge fell into error, revolved around the photographs which the Appellant produced in support of her claim of lesbian relationships in Dubai. The judge indicated that the photographs did not show the Appellant to be in a "specific lesbian relationship". This is not the correct test. It indicates that the judge closed his mind to the central question which needs to be considered as the first stage, namely is the Appellant a gay person? The FtTJ had failed to have regard to relevant evidence relating to her sexuality and had used his credibility finding regarding the Appellant's early experiences as determinative rather than looking at matters holistically. There was a possibility therefore that had the evidence concerning the Appellant's lifestyle in Dubai been properly evaluated and balanced against the other adverse factors, the outcome of the appeal may well have been different.
7. Ms Pal on behalf of the Respondent defended the decision. She submitted that the judge's credibility findings were ones which were fully open to him to make. The judge had set out his findings in [46] to [50] and those findings were adequate to enable the judge to reach the conclusions he did. A judge was not obliged to set out every piece of evidence before him. The grounds amounted to no more than a disagreement with the judge's decision.

Consideration of Error of Law

8. Having heard from the parties and carefully considered the judge's decision, I am satisfied that the grounds are made out. The assessment of credibility in an appeal such as this is always a highly fact-sensitive task. This is particularly so in an appeal where the Respondent's case is that the Appellant is not a credible witness and had provided an unsupported account of her sexuality. The judge's task is to consider the evidence carefully and, where the Appellant's account was rejected, set out his reasons for rejecting the evidence. At the least it is necessary for the judge to give a brief explanation of the conclusions that he has reached on the central issues; **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)**.
9. In cases such as the instant one it is necessary as a first stage analysis to make a finding on whether or not the Appellant is in reality a gay person; **HJ (Iran)**. In coming to that conclusion it is necessary for the judge to identify and resolve key conflicts in the evidence and explain in clear and

brief terms his reasons so that the parties can understand why they have won or lost.

10. Whilst I accept that the judge has made sustainable credibility findings on the Appellant's evidence concerning her early relationships in Pakistan, the difficulty in this case is that I do not see that the judge has applied the same anxious scrutiny to the Appellant's evidence concerning her claimed relationships in Dubai. It has always been a key part of the Appellant's case that once she arrived in Dubai, she adopted a lifestyle of forming lesbian relationships. Whilst it is correct to say that the Respondent did not accept the credibility of the Appellant's claim because of inconsistencies in her answers in interview, I cannot see that the judge has dealt sufficiently with the evidence put before him in support of the Appellant's claim.
11. This brings me to the documentary evidence which the Appellant provided. The judge finds that this evidence is of little weight. Whilst he is correct in saying that the photographs in photocopy form depict the Appellant with a number of young women in social settings, he goes on to qualify it by saying they do not serve to demonstrate the Appellant is in a specific lesbian relationship. He then discounts the e-mail and letter as not being objective and independent. I find there is no proper analysis of why he rejects this evidence. It appears that the judge has formed a view that the Appellant's evidence concerning her relationship with her two cousins (1998 to 2001) was not credible. He has imported those credibility findings into saying that the whole of the Appellant's account is incredible.
12. That is the wrong approach. I am reinforced in this view in that the key event that prompted the Appellant to leave Pakistan and travel to Dubai stemmed from an incident which she claims took place in 2016. This involved being caught kissing her neighbour Lubna and receiving a beating as a result. This has always been a central part of the Appellant's case and I cannot see that the judge has dealt with this evidence and made a finding on the credibility or otherwise of this part of the claim.
13. It follows therefore that I find that the judge failed to make adequate findings of fact on those aspects that lay at the heart of the Appellant's case. It follows therefore that the decision of the FtTJ is infected by a material error of law. The decision is set aside and will have to be remade.
14. I then considered whether to remit the case to the FtT or to remake the decision myself. In my judgment, the appropriate course is to remit the matter to the FtT for hearing afresh with no findings preserved. In reaching my decision I have taken into account that in determining the appeal, the nature and extent of judicial fact-finding necessary will be extensive and the fact that there is presumably further evidence to adduce.
15. I refer to the additional documentary evidence which Mr Clarke sought to adduce before me, namely the statement of Ms M.R., GP records, copy

photographs and the “Deed of Disinheritance”. None of this evidence was before the First-tier Tribunal. No reason was given to me why this evidence had not been made available to the First-tier Tribunal. If the Appellant wishes to adduce this evidence at the next hearing, then an appropriate application should be made to the First-tier Tribunal. It should be accompanied by an explanation of why this evidence has only been submitted now. This is with particular reference to the Deed of Disinheritance which is dated as far back as September 2016.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 18th January 2019 is set aside for material error. The appeal is remitted to the First-tier Tribunal (not Judge Greasley) for that Tribunal to remake the decision.

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 her or any member of her 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 C E Roberts Date 29 May 2019

Deputy Upper Tribunal Judge Roberts