



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

Appeal Number: PA/14258/2018

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice

On 28th October 2019

**Decision & Reasons
Promulgated**

On 19th November 2019

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**EC
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert of Counsel, instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr S Kotas, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Loke promulgated on 17 July 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claims dated 14 December 2018 were dismissed.

2. The Appellant is a national of Albania, born on 7 April 2003, who claims to have arrived clandestinely in the United Kingdom on 14 June 2018 and claimed asylum on 18 June 2018. The basis of the Appellant's asylum claim is that he would be at risk on return to Albania as a gay man. In a decision dated 14 December 2018, the Respondent refused the Appellant's asylum claim but granted him limited leave to remain as an unaccompanied asylum seeking minor. The asylum claim was refused as implausible and with adverse credibility findings made under section 8 of the Assignment Immigration (Treatment of Claimants, etc) Act 2004 because the Appellant had failed to claim asylum in either France or Belgium prior to his arrival in the United Kingdom. Further, there would be a sufficiency of protection available to the Appellant in Albania and he would be able to internally relocate.
3. Judge Loke dismissed the appeal in a decision promulgated on 17 July 2019 on all grounds. The First-tier Tribunal found the Appellant to be a vulnerable witness on account of his age and therefore applied the Joint Presidential Guidance Note number 2 of 2010, noting in particular the different ways in which a person's age can affect their evidence and in paragraph 12 a number of matters relied upon by the Respondent were attributed solely to the Appellants age and not points which were material consistencies or affected the Appellant's credibility. The Appellant's claim was found to be consistent with objective evidence as to the country conditions in Albania. However, the First-tier Tribunal made adverse credibility findings on other issues not attributed all to the Appellant's age, including first, inconsistency about the Appellant's relationship with K; secondly, inconsistency about the Appellant's account of an incident in a Park; thirdly, confusion in the Appellant's account about the need for secrecy; and finally, the implausibility of the Appellant's claim to have been imprisoned and threatened by his father for almost a year but supported by his family, financially and organisationally to send him to the United Kingdom for a better life. Overall the Appellant's claim was not considered to be reasonably likely and dismissed on credibility grounds.

The appeal

4. The Appellant appeals on three grounds. First, that the First-tier Tribunal materially erred in law in determining the Appellant's sexuality by reference to sexual acts rather than identification as a homosexual. Secondly, that there was procedural unfairness in the appeal in the way that questions were put to the Appellant about whether he 'liked' another boy, with reliance on references to friendship without recognition that friendship is not necessarily only platonic. Thirdly, that the First-tier Tribunal erred in failing to acknowledge that the country evidence in relation to Albania with consistent with the Appellant's claim of ill-treatment by family members, including hiding a person away, beatings and ultimately, banishment.
5. At the oral hearing, Mr Gilbert on behalf of the Appellant relied on the written grounds of appeal and made detailed oral submissions by

reference to the evidence before the First-tier Tribunal. In relation to the first and second grounds of appeal, Mr Gilbert emphasised the context of the Appellant's claim and repeated statements in written and oral evidence that he was gay, describing his relationship in Albania as something other than platonic. The Appellant in evidence used broad terms of friendship and 'liking' another person, not in a purely platonic way but in the context of his developing gay identity. It was submitted that it was procedurally unfair for the First-tier Tribunal to interpret the Appellant's evidence in a purely platonic way without any notice or clarification as to the terms used.

6. As to the findings in paragraphs 15 and 16 of the decision, dealing with reasons for the adverse credibility finding about consistency of the evidence about the incident in the park and about how this led to discovery of the Appellant's sexuality, Mr Gilbert submitted that taking into account the Appellant is a minor and gave evidence through an interpreter, there was no material inconsistency between his reference to kind of embracing a person in the park and his oral evidence that he was holding hands with that person whilst walking in the park. Mr Gilbert referred to the Appellant's chronology, that he claimed events were building from 2016, from when he was seen as different by other people and being bullied in the run-up to the incident in the park, leading to gossip and his father finding out about his sexuality.
7. In relation to the third ground of appeal, it was submitted that the Appellant's account to have been hidden away, subjected to violence and then being ejected from the family home, was consistent with background evidence available to the First-tier Tribunal and that removal from Albania was wholly consistent with the level of family shame of the Appellant's sexuality in the context of an extremely homophobic attitude in Albanian society and that ultimately this could only be avoided by the Appellant leaving Albania. It was however accepted that there was nothing in the expert report about parents facilitating or paying for child to go to another country, only that they would be abandoned or banished from the family.
8. On behalf of the Respondent, Mr Kotas submitted that the adverse credibility findings made in relation to the incident in the park were entirely open to the First-tier Tribunal on the evidence before it, in particular that the Appellant had clearly put this incident as the point in time and which is problem started and that he had no profile and no identification in relation to his sexuality prior to that. The Appellant's evidence was inconsistent about the event between his written statement, his oral evidence and his initial interview.
9. Further, there was no procedural unfairness, in particular given that the Appellant was legally represented, he was not re-examined or questioned on the terms used and no submissions were made on this point to the First-tier Tribunal. This could have been explored by Counsel and in any event the Appellant's age was expressly taken into account by the First-tier Tribunal.

10. On the third ground of appeal, it was submitted that the Appellant's submissions on the facilitation of his travel out of Albania required speculation on the family motives which was not in evidence before the First-tier Tribunal. The decision expressly records that the background evidence has been taken into account in the decision and in circumstances where the Appellant did not say he was being punished or sent away from Albania, but being taken away for a better life, it was open to the First-tier Tribunal to find on the evidence that his claim was not consistent. Overall it was submitted that the adverse credibility findings made against the Appellant were open to the First-tier Tribunal on the evidence and the grounds of appeal essentially amounted to disagreement with the findings made rather than identifying any legal error.

Findings and reasons

11. In order to assess whether there is an error of law on the first and second grounds relied upon by the Appellant, it is necessary to consider more specifically the nature of the findings made by the First-tier Tribunal and the evidence that was before it relevant to these matters. The key findings in paragraphs 14 to 16 as follows:

"14. There are however key credibility issues which I do not assess to be attributed to the Appellant's age, and which I consider to be central to the Appellant's case. First, the Appellant indicated in his asylum interview that both K and himself disclosed their feelings for each other and were in a relationship together [A1 Q76-78]. The Appellant stated that they kept their relationship a secret [A1 Q81-82]. However, in the Appellant's oral evidence, when pressed about the nature of the relationship he re-characterised the relationship with K, describing K as 'his closest friend'. When asked what he did with K that was different to any other friendship with another male he stated that they would hang around together all the time. When I asked the Appellant if he and K ever had a sexual relationship, the Appellant denied this. Thus there is a key inconsistency between the type of relationship the Appellant described an interview, a 'relationship' that he felt had to be kept secret; and the 'closest friendship' that the Appellant described in oral evidence that was not in fact sexual. This inconsistency clearly goes to the heart of this asylum claim, namely the Appellant's sexuality which he claims was evidenced in his relationship with K.

15. Secondly, the Appellant indicated in his asylum interview that he and K were seen embracing in the park. This is maintained at [10] of his witness statement dated 24 June 2019. However, in oral evidence the Appellant states that he and K were simply seen walking in the park and holding hands. Strangely, the incident in the park is not mentioned at all in the Appellant's statement of 13 September 2018. At [9] of that statement the Appellant states his problem started when he was 12 and people realised he was gay. The Appellant goes on to state he did not behave like other male friends, making no

mention of the park incident. However, the Appellant stated in oral evidence that the park incident was the sole key event from which others discerned the Appellant's sexuality. Thus, I would expect, notwithstanding the Appellant's age, that he would be consistent about the park incident, and their activity in the park.

16. Thirdly, there is resulting in confusion in the Appellant's account for the need for secrecy. In interview at Q81-82 the Appellant is clear that he and K had to keep their relationship a secret. Whatever the feelings were as disclosed between Appellant and K, given the Appellant in oral evidence confirmed that this friendship was nonsexual, there is no reason why the Appellant would need to keep it secret as claimed in his interview. Furthermore, at [41] of the Appellant's statement of 24 June 2019 the Appellant states that his embrace of K in the park was nothing unusual. As indicated previously, the Appellant changed his evidence stating that he and K were holding hands rather than embracing. In any event, this begs the question as to how such an incident immediately led to the Appellant's sexuality being discovered."

12. The evidence before the First-tier Tribunal from the Appellant was, in summary, as follows.
13. In his asylum interview, the Appellant was asked a series of questions about when he realised that he was gay and whether he was identified by others as such or treated differently. He stated that he realised when he was 12 years old *'because I had a close male friend ... and he was living there next to my house ... we were kind of related together, and this is how it started kind of neutral liking, he said to me I like you'* [AI Q40]. The Appellant stated that he felt different to other boys because he didn't like having arguments with them or getting into fights, but others noticed that he was different, hitting him and swearing at him from around the middle of 2016. [AI Q45-51]. The Appellant was asked whether he openly expressed his sexuality, which he denied and was further asked about why he was beaten up if his sexuality was not known. His answer to this at question 55 was *'because they saw me and my close friend, in a park and we were kind of embracing each other and other people saw us and then after they started telling everyone in the school and everyone on the street and after a while everyone knew about this'*. Later in his asylum interview, the Appellant stated that he was in a relationship with K, having been drawn to him because they were so close to each other and knew each other very well. The relationship was kept secret and they didn't tell anyone about it before the incident in the park, following which schoolchildren and teachers treated him differently, as did his family who then kept him locked in at home.
14. In his written statement dated 13 September 2018, Appellant describes problems starting when he was 12 years old when people told him he was not normal and not like his other male friends, following which he realised he was attracted to boys. He said at school that he would get pushed

around and beaten up and he had no support or protection from staff at the school. In paragraph 12 the Appellant stated that his problems further escalated because his father found out from rumours that were spread by villagers and that day (without specifying or describing events of a particular day) when he came home, he was beaten by his father. In relation to K the Appellant stated *"I had a close friend, K from my area. We grew up together and he was very close to me. He was the only person who believed in me and trusted me. I knew that he liked me and I liked him back. We were able to be open with one another, we were very happy with one another. Even during our problems at school, we faced them together knew that at the end of the day we could confide in each other and understand each other. However when our families found out we were not allowed to see one another and this made the situation even more difficult."*

15. In his written statement for the appeal before the First-tier Tribunal, the Appellant addressed matters raised in the Respondent's reasons for refusal letter, including the Appellant's trust of K, who he told the liked after K had told him that he was gay and that he liked the Appellant. In relation to the incident in the park, the Appellant confirmed that he and K embraced one another in public but stated that there was nothing wrong with that as everyone hugged each other, including family members, friends and people who see each other to say hello. He stated that people started to speak and gossip about him and K, with word getting round and his family hearing rumours from other people.
16. Whilst there is not a transcript as such available of the Appellant's oral evidence before the First-tier Tribunal, there is a typed record of proceedings on file from the Judge and a handwritten record from the Appellant's Counsel. There is no suggestion by the Appellant that the oral evidence given by him has been mis-recorded by the First-tier Tribunal or misrepresented in the decision, nor is there any dispute as to the records which are available; the ground of appeal turns on the interpretation given by the Judge to the evidence. Throughout the Appellant's oral evidence, the term predominantly used both in questions and answers about the Appellant's feelings for others was 'like' or 'liking'. The term was not expressly defined or explained either in questions or answers, but was clearly in the context of feelings rather than purely platonic friendship.
17. The Appellant was separately asked how his relationship with K was different from that with his other male friends, which the Appellant responded that he didn't understand the question. He was then asked whether he did the same things with his other male friends as he did with K, to which he said no. The Appellant was asked what was different, he said, we hung around together and went to places together and we stayed a lot together as for the other male friends they were different. It was put to the Appellant that what he described was just a friendship, to which he responded 'he was my closest friend'.

18. Taking into account all the evidence that was before the First-tier Tribunal, the terminology used in evidence and the context, including the Appellant's age and the nature of his asylum claim that he was at risk of persecution on return to Albania because of his sexuality, I do not find any procedural unfairness nor any error of law in the adverse credibility findings reached, which were open to the First-tier Tribunal on the basis of what was before them.
19. It is not in dispute that a person's sexuality is not defined by sexual acts, but I do not find that this was the approach taken by the First-tier Tribunal, which at its highest simply recorded that the relationship between the Appellant and K was not a sexual one, nor had the Appellant ever suggested that it was. There was instead a separate consideration of the nature of the relationship, based on the evidence available and whether that supported the credibility of the Appellant's claim. The First-tier Tribunal did not make adverse credibility findings on the basis that the Appellant's claimed relationship with K was not sexual, but on the basis that it simply didn't go beyond a friendship nor was it different to any other friendships that the Appellant had. In particular it is notable that when specifically asked what was different, the Appellant could not explain any specific differences or different things that he did with K compared to other male friends and when challenged as to whether it was just a friendship he simply stated that K was his closest friend. That is consistent with the way he initially described his relationship with K in a statement in 2018, which was in terms of friendship and supporting each other. On this evidence, it was open to the First-tier Tribunal to find that there was only a close friendship between the Appellant and K, not a relationship or anything more and that in these circumstances; this did not support the Appellant's claim to be homosexual.
20. Those findings are similarly not on the basis that the First-tier Tribunal attached any specific or purely platonic definition on the use of the term 'like' which was predominantly used on all sides by the parties as shorthand for the Appellant's feelings for other boys and there is nothing in the decision of the First-tier Tribunal to suggest that it was taken in anything other than this context. The reasons given by the First-tier Tribunal do not draw any adverse inferences from the particular language used in evidence and as such there is no procedural unfairness in the hearing or decision which could amount to an error of law.
21. Finally, in relation to the adverse credibility findings, the findings in relation in particular to the claimed incident in the park were properly open to the First-tier Tribunal on the evidence before it. There was an inconsistency in the Appellant's claim as to what precisely happened, why it would happen at all if the relationship was being kept a secret, whether if, as claimed, it was normal behaviour for family and friends to embrace in public, why this would identify the Appellant as gay and as to the chronology on whether the Appellant's problems first started before or after this incident. These inconsistencies are indisputable on the evidence and could not be explained by the Appellant's age or that his evidence

was given through an interpreter. For these reasons I find no material error of law in the First-tier Tribunal's decision on either the first or second ground of appeal.

22. As to the final ground of appeal, this relates to the findings in paragraph 17 of the decision which were as follows:

"Finally the Appellant's account of his father imprisoning him in a room for almost a year and threatening to kill him, and also taking the decision to send him to the United Kingdom is simply not credible. The Appellant states in oral evidence that he was beaten regularly and at [12] of his witness statement dated 24 June 2019 he stated his father did not care about the Appellant or his feelings. This is at odds with the Appellant's account in interview at Q28 and 116 where the Appellant states that his family also sent him away for a better life. The Appellant's account that he had shamed his family, and that was why his family wanted to send him away for a better life is not credible. If the Appellant's family felt so deeply shamed by him that they would imprison him almost a year and would kill the Appellant upon return to Albania, then I would not expect them to have extended the finances or organisation required to send the Appellant to the United Kingdom, or to wish him to have a better life."

23. The Appellant relies upon the country expert report of Vebi Kosumi, which was before the First-tier Tribunal, itself quoting a UN report in 2017 and further relies on the Respondent's CPIN; which refers to parents keeping their children's sexuality secret, forcing them to suppress that identity, breaking off relations or forcing them to move away from home; with domestic violence being a common occurrence. However, the main point relied upon by the First-tier Tribunal in paragraph 17, is not that the Appellant's claim of treatment in Albania by his family was implausible or inconsistent with any background evidence, but that their positive support for him to have a better life in the United Kingdom (which was the Appellant's own evidence as to why they sent him away) was inconsistent with the claims of ill-treatment. Although the country evidence refers to individuals ultimately being banished from the family home, there is no suggestion that individuals were in any way supported to leave the family home, nor that they were positively supported by family members when this occurred. I do not therefore find any failure by the First-tier Tribunal to consider relevant country expert evidence, nor any failure to give adequate reasons for its rejection, given that the evidence itself does not support a key part of the Appellant's claim, nor does it address the key issue upon which the First-tier Tribunal made an adverse credibility finding. There is no material error of law on the third ground.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

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 
2019

Date 18th November

Upper Tribunal Judge Jackson