



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

Appeal Numbers: PA/09837/2019
PA/09841/2019

THE IMMIGRATION ACTS

**Heard Remotely at Field House
On 30 November 2020**

**Decision & Reasons Promulgated
On 27 May 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

M T

First Appellant

M M

Second Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Nadeem, a legal representative from Piper May Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellants or either of them. Breach of this order can be punished as a contempt of court. I make this order because the appellants are asylum seekers and are entitled to privacy.

2. The appellants are citizens of Pakistan. They claim to be gay and in a gay relationship. They appeal against the decision of the First-tier Tribunal dismissing their appeals against decisions of the respondent on 30 September 2019 refusing them international protection.
3. In simple terms, on the facts of this case, if they are believed then they are refugees but they were not believed and the grounds of appeal allege that the First-tier Tribunal erred in law in reaching the adverse credibility findings that it did.
4. It is helpful to summarise their cases.
5. The first appellant, MT, was born on 21 November 1988. He said that he is from a Pakistani Muslim family. He went to school in Lahore and became friends with a person identified as "Norman". When he was about 14 or 15 years old he had a sexual encounter with Norman and this helped him realise that he was gay although he never disclosed his sexual orientation to anyone in Pakistan. Nevertheless he believed his mother at least doubted his heterosexuality.
6. He said he was bullied at college and so that he was unable to complete his college course.
7. He entered the United Kingdom with permission as a student in March 2011 and that leave was extended until April 2015.
8. He met the second appellant in November 2012 in Bradford. They formed a friendship. According to MT they spent New Year's Eve together in 2013 and had breakfast together on 1 January 2014. According to his witness statement he believed they both had feelings towards each other but MM was then married and they did not discuss how they felt.
9. Again according to MT, the appellants stayed together for a short time in December 2013 in Bradford and that was where they exchanged their first kiss. MT then advised MM to leave his wife and when MT returned from a planned visit to Pakistan in about April 2014 they could start living together.
10. MT said that at some time during his visit to Pakistan he intended to tell his family that he was gay but he could not bring himself to tell them when they were together and he told them by telephone on his return. The First-tier Tribunal said that this news "was not received well by the family" and MTT was threatened.
11. In May 2014 MM did leave his wife and after the appellant MT returned from Pakistan MM and MT started to cohabit in May 2014 and have continued to cohabit.
12. On 21 February 2015 MT applied for leave to remain as a dependant in a private and family life application. When the application was refused on 10 November 2017 the appellant MT applied for asylum on 1 December 2017.
13. The second appellant, MM, said that he too was born into a Muslim family in Pakistan. He was educated in Pakistan and came to realise his sexual orientation in his school years and he confirmed that he was gay in a relationship with a friend identified as Shafiq. The relationship was conducted

secretly and lasted for about seven months until Shafiq removed to a different part of Pakistan.

14. The appellant MM started to work in Lahore. In September 2010, when he was 27 years old, he was “forced” by his family to marry a Ms RA who is a British citizen then visiting Pakistan. After the marriage she returned to the United Kingdom.
15. The appellant remained in Pakistan and then entered the United Kingdom in March 2011 as a student with valid leave until July 2013.
16. He said that in 2012 he met the other appellant in Bradford whilst visiting friends and they formed a friendship. MM said that in October 2012 he visited Pakistan for about three weeks for the very sad reason that his sister had died suddenly. During that visit members of his family encouraged him strongly to re-establish a marital relationship with RA which the appellant had stopped on entering the United Kingdom.
17. He succumbed to family pressure and started to live with his wife and in July 2013 applied for leave to remain as her spouse. He complained that his wife relied on and unexpectedly excessive levels of support from him.
18. The application for further leave was refused and he appealed and the appeal was dismissed.
19. It is his case that while the application and appeal were underway the two appellants spent a week together in Bradford and formed a close relationship with each other. According to MM, MT visited MM in London for a week in December 2013 before going to Pakistan in April 2014.
20. In May 2014 MM divorced his wife and started living with friends in Bradford and then found love and affection with the other appellant and they started to live together, according to MM, in July 2014.
21. From July 2014 to February 2015 MM made further applications to remain on account of being gay and in a relationship with the other appellant but the applications were refused in October 2014 and again in November 2015.
22. On 1 December 2017 he applied for asylum claiming that he would be persecuted in Pakistan for being gay especially as he was in a gay relationship with the other appellant.
23. As indicated, the First-tier Tribunal Judge did not believe either of them.
24. The appellant MT did not give evidence before the First-tier Tribunal. He was at the hearing but was not called. The Presenting Officer made it plain that she would like to have cross-examined the first appellant.
25. Paragraph 46 of the Decision and Reasons is particularly important. It states:
“As stated above, the [first] appellant attended the hearing but chose not to give oral evidence. [The Presenting Officer] submitted I find, with some force that the medical evidence before the Tribunal falls far short of any diagnosis to suggest that the [first appellant] lacks capacity or is incapable of giving oral evidence, the medical evidence being limited to the [first appellant] being forgetful and showing signs of mental health issues without any conclusive diagnoses. Further, there is no evidence on the medication the [first appellant] is receiving, the [first

appellant] was initially prescribed Olanzapine in 2018 before it was changed to Risperidone. [The Presenting Officer] also very clearly indicated that the respondent does not accept the [first appellant's] evidence to be credible and had every intention to cross-examine the [first appellant]."

26. The First-tier Tribunal Judge said that he was referred to the Practice Direction "First-tier and Upper Tribunal - child, vulnerable adult and sensitive witnesses" and the "Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive Appellant guidance" and Mr Nadeem applied for the appellant to be treated as a vulnerable witness.
27. The judge found the absence of any medical evidence to confirm the first appellant's incapacity to give oral evidence or to cope with cross-examination to limit the weight that could be attached to any statement that he may have made. This point was enhanced because the Tribunal had directed that such evidence was to be provided if it was to be said that the appellant did not wish to give oral evidence.
28. However the judge then directed himself at paragraph 49 that he would treat the evidence with "due care".
29. The judge said at paragraph 50 that the first appellant MT claimed to have had his first sexual encounter of any kind with his friend Norman when he was approximately 14 or 15 years old. The judge said:

"I do not find the undisclosed sexual conduct with Norman to be sufficient to discharge the burden on the first appellant of establishing the [first appellant's] sexual orientation."
30. The judge then noted that the first appellant's claim to have been bullied due to his sexual orientation was not established. It was the first appellant's case that he had not disclosed his orientation and the fact he was bullied "is not indicative of the [first appellant's] sexual orientation being gay or bisexual."
31. The judge noted inconsistencies between the accounts of the appellants. According to the first appellant in his statement the first appellant moved to Bristol after he had come back from Pakistan in April 2014 and the second appellant left his wife in April 2014 and moved to Croydon and at the end of May 2014 the first appellant moved in with the second appellant. That clearly means "in Croydon".
32. However, the second appellant said that he had a "fight" with his wife in around April/May 2014 and left her and started living with friends in Bradford. That was about the time the first appellant returned from Pakistan and that is when they started to reshape their lives. He divorced and started living with the first appellant in July 2014.
33. May is not July.
34. The first appellant said they had spent a few days together in December 2013 in Bradford. The second appellant said they had spent time together in December 2013 in London.
35. The judge found it also "more than a coincidence". The second appellant claimed to have started living with the first appellant from July 2014 which was a few days after receiving the Upper Tribunal's refusal for permission to appeal.

36. The judge said at paragraph 55:

“In my view, this particular time together was significant in their relationship as it was during these days that the appellants are said to have shared their first kiss and the inconsistency in their evidence, I find, undermines their credibility and the fact of the relationship being genuine.”

37. The judge then referred to other evidence. He had seen supporting evidence from witnesses a Mr ST and a Mr HU. Both witnesses said they had known the second appellant since 2013 and they had known the appellants to have been in a relationship since 2012. It was pointed out fairly, if rather obviously, that they could not know the appellants to have been in a relationship since 2012 if they did not know the appellants until 2013. The judge found their evidence generally unpersuasive. There is documentary evidence which the judge considered but he did not find that particularly helpful.
38. The nub of the grounds which were relied on heavily by Mr Nadeem in the case of the first appellant is that the judge was wrong not to factor into his analysis the health problems faced by the first appellant. This is potentially a very powerful point and may well be the main reason for permission to appeal being given. The problem is that the evidential foundation has not been laid to make it good.
39. The grounds assert that the caseworker dealing with the matter had decided that because the first appellant had a blood clot on his brain he would deal with the matter by way of a statement which was served on the respondent. The solicitors objected to the respondent wanting to interview the claimant. The caseworker dealing with the matter had decided that because the first appellant had a blood clot on his brain he would deal with the matter by way of a statement which was served on the respondent. The solicitors objected to the respondent wanting to interview the claimant. The grounds assert that the judge failed to note the medical evidence (see pages 246 - 290 of appellants' bundle) referring to issues with memory recall as a result of a blood clot on his brain and also to his “hearing voices”.
40. I consider that evidence now. Page 246 in the bundle is a letter from a consultant psychiatrist a Dr Serena Lai. Dr Lai referred to an examination of MT on 1 May 2019. There is reference to “things with his partner going well and he has a good relationship with his two flatmates” but the partner is not identified.
41. Dr Lai recorded that the appellant had said he could hear voices in the back of his head and gave details of the complaint. Dr Lai identified the drugs that were prescribed and noted that no side effects were reported. Dr Lai suggested that the symptoms did not suggest a psychotic disorder but rather anxiety and emotional dysregulation. Dr Lai suggested some medication and a further appointment. At page 248 and 249 are letters from the South London and Maudsley NHS Foundation Trust dealing with the appointment with Dr Lai. A letter at page 250 similarly concerns the meeting with Dr Lai.
42. At page 251 there is a letter from Dr Lai dated 28 February 2019. Again it refers to a meeting with the first appellant and his “partner” who again is not identified. The letter is dated 28 February 2019. It refers to the appellant feeling “much better”.

43. He again reported frequent visits to the mosque and to hearing the Muslim call to prayer in his head.
44. There is a letter dated 28 January 2019 from a Dr Chivers who is a trainee doctor in psychiatry.
45. This refers to the appellant with his still unidentified partner attending for a meeting. It indicates the medication received and then says how "his partner describes concerns that he feels [the first appellant] has been forgetful for the last two months. He also described several occasions where his responses in conversations were not relevant or did not make sense."
46. The doctor noted that the appellant attended on time and was dressed appropriately and exhibited no abnormal behaviours. He took details of the first appellant's complaints about receiving the call to prayer in his head. The doctor said:

"There was subtle thought disorder in the form of circumstantiality. He sometimes feels that people may be looking at him or talking about him but these ideas were not of a delusional intensity. Nil Passivity. There were no thoughts of suicide, harm to self or others."
47. At page 255 is a letter from the Croydon Health Service which refers to an appointment being made for the appellant and how he should prepare for it. Next is a letter from the South London and Maudsley NHS dated 3 May 2018. This refers to the appellant being present with MM who is described in the following terms: "Partner, joined later in the meeting as per patient wishes." It was said that he had signs and symptoms suggested of a mental illness and on assessment he "appeared to be thought disordered" and holds delusional beliefs and reported auditory hallucinations".
48. The assessment history included noting that he had arrived punctually and claimed the symptoms started roughly two years ago and started with a decline in memory and was illustrated by repeatedly forgetting to lock and secure a cabinet at work so that he lost his job. The doctor noted that although the appellant had described auditory hallucinations he was not noted to be responding to external stimuli on that occasion. I do not understand the point has been made there.
49. The first appellant medical problems were formulated in the following terms:

"A 29 year old gentleman presenting with probably first episode psychosis, has been symptomatic since two years ago. Significant problems with memory prompting importance of brain imaging. Lupus antibody +ve and GPs following up on this. Has taken Clanzapine 5 milligrams for two weeks but does not tolerate due to side effect profile. It would be important to investigate physical illness and to switch to another antipsychotic for tolerability".
50. There was also further information I think in the same report but the photocopy is such that I cannot read it competently. There is confirmation of medications and confirmation of an appointment.
51. It follows that on close examination of the evidence I have found nothing which supports the assertion that the first appellant was incapable of giving evidence or that his memory was so unreliable that no notice would be taken of anything

he might say. There is some, not very much, evidence of his being forgetful but no medical evidence that provides an excuse or explanation for that.

52. I do note that there is evidence that the first appellant introduced the second appellant to his medical advisors as his partner and it is a matter of surprise that this has not been subject to comment as far as I can see anywhere in the Decision and Reasons but no point was taken of this.
53. The appellants claim to be in a gay relationship. They could not agree when the relationship started and they could not agree about when intimacy started. The contention that the judge overlooked evidence from medical sources that provided an explanation for inconsistency or hesitancy is not made out. Clearly it is in the mind of the appellants' representatives but not in evidence before the Tribunal. I do not know what mild depressive episodes might do to memory and I do not see any evidence confirming the symptoms complained of by the first appellant. There was nothing clear for the First-tier Tribunal Judge to factor in.
54. The second appellant's case is much harder to sustain. The problem he faced is that on own version of events he is a person entirely willing to lie to the Tribunal to achieve an end. I am very aware that he claims to have been under enormous pressure from his family to establish a marriage although that was contrary to his inclinations and it was necessary for family reasons to try and win an appeal. This is an obvious point and it was disbelieved as a proper explanation by the judge. Even if it is a complete explanation it does not undermine the finding that the second appellant is willing to tell lies to achieve an end. His credibility is very seriously damaged. The judge looked at all the evidence and decided not to believe either of them.
55. I assume that the Direction that concerned the judge was the general direction issued from Taylor House on 29 October 2019 that the appellant "produce all medical evidence to be relied on for any aspect of the case".
56. This does not add much to the obvious point that the medical evidence was necessary to support a conclusion that the first appellant was either unfit to give evidence or incapable of giving reliable evidence.
57. I look again at the medical report at page 261 in the bundle because Mr Nadeem expressly referred me to it. It is a report on the second appellant. It says there are no abnormalities seen in the brain. Although it is very badly reproduced so I cannot read it properly it does seem to be some fault identified as a "thrombosis" but again there is nothing that links that with an inability to recall accurately or express himself clearly.
58. In short, although I appreciate the point being made in the grounds and have considered the documents with all the care I can, I have to conclude that the judge's decision is permissible and is not wrong in law for the reasons identified or as far as I can see at all and I dismiss the appeal.

Notice of Decision

59. These appeals are dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 May 2021