



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/03251/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London

On 24 September 2014

Determination

Promulgated

On 30 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**SAR
(ANONYMITY ORDER CONTINUED)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Waithe, instructed by Farani Javid Taylor Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision made by the respondent to refuse his application for asylum and to remove him from the UK. Judge of the First-tier Tribunal Beg dismissed the appeal and the appellant now appeals with leave to this Tribunal.

2. The appellant claims that he and MAK, who is also a citizen of Pakistan and who is his dependant for the purposes of this appeal, are at risk of persecution in Pakistan because of their sexuality. They claim have met in a nightclub in the UK in December 2012 and to have begun a relationship in January 2013. They entered into a civil partnership on 11 September 2013.
3. The Judge heard evidence from the appellant, MAK and a man who lives at the same address as the appellant. The Judge found that the appellant and MAK were not credible and did not accept their account that they are in a genuine relationship. She considered the case of HJ (Iran) [2010] UKSC 31 and went on to find that, even if they are in a genuine relationship, they would be able to live discreetly in Pakistan. She found that there was no evidence that they would live discreetly only for fear of persecution, they would do so because of fear of causing distress to their families and that they could relocate to another part of Pakistan away from their immediate families.
4. There are five grounds of appeal. At the hearing Mr Waithe submitted that these grounds of appeal can be summarised as challenging the credibility findings and the Judge's application of the background evidence.
5. Mr Waithe submitted that the civil partnership certificate creates a legal presumption that the civil partnership is valid and that it is for the respondent to produce evidence to rebut that presumption. However Ms Everett submitted that the marriage is at the heart of the asylum claim and that the Judge made extensive credibility findings in relation to that marriage and that she was entitled to do so. She submitted that the law as it applies to sham marriages under EEA law is completely different. I agree with this submission. The appellant claims that he is at risk in Pakistan because he is in a gay relationship. The Judge considered the appellant's evidence along with that of MAK and concluded that they were not credible and did not accept their account that they are in a genuine relationship. This is not a case in which there is a shift in the burden of proof. It is for the appellant to establish that he is at risk of persecution. The Judge was entitled to make findings on the basis of the evidence before her that the appellant is not at risk of persecution as his relationship is not genuine.
6. In granting permission to appeal First-tier Tribunal Judge Andrew suggested that the Judge may have erred in failing to consider whether the mere fact that a person has entered into a civil partnership will lead to persecution in Pakistan. However the Judge rejected all of the evidence from the appellant and MAK as to their dealings with their families in Pakistan. The Judge rejected their claims to have told their families about the relationship or the civil partnership. There was no evidence before the Judge that anyone in Pakistan would know about the civil partnership and nothing before the Judge to justify a finding that the fact of the civil partnership alone, in the context of the credibility findings, would be enough to indicate a real risk of persecution in Pakistan.

7. Mr Waithe submitted that the Judge erred in making findings based on her view as to the plausibility of the appellant's account. Ms Everett accepted that some of the Judge's findings were based on plausibility but submitted that the Judge gave cogent reasons for these findings and also made extensive findings on credibility based on discrepancies in the account.
8. The Judge did make some findings based on her views as to plausibility. If such findings are not reasoned they could amount to an error of law. However I am satisfied that the Judge did properly reason these findings. For example, the Judge gave reasons for finding it implausible that Shoaib, a man who was said to be 'narrow minded', would go to a gay nightclub with the appellant, who Shoaib did not believe to be gay [25][26]. The Judge considered the claim that the appellant and MAK slept in the same bed and kissed whilst Shoaib slept on the floor in the same room to be implausible. However she also based this adverse credibility finding on a significant discrepancy in the evidence; MAK said that Shoaib was in the same room but the appellant, in cross-examination, said that he was in a different room [27]. The Judge also gave reasons for not accepting as credible the claim that MAK proposed to the appellant after meeting twice.
9. Mr Waithe also submitted that the Judge erred in finding the appellant's account as to the actions of his parents implausible. He submitted that the Judge could not put herself in the place of the appellant's parents. The appellant submitted a newspaper article said to have been placed by his parents which said that they disowned and disinherited him because of his 'disobedience'. The Judge found that this was a 'cynical attempt by the appellant and his family to provide contrived evidence to bolster his application for asylum' [35]. The Judge gave two reasons for this finding. Firstly that there was a discrepancy between the evidence of the appellant and MAK as to the reaction of the appellant's family to the news of the civil partnership. Secondly the Judge did not find it plausible that the appellant's family would have drawn attention to the appellant's 'disobedience' and raise questions about his homosexuality. I am satisfied that this was a properly reasoned finding open to the Judge based on the evidence before her.
10. The Judge made many other findings as to credibility. For example the Judge, as she was entitled to do so, took account of the immigration status of the appellant and MAK when they entered into the civil partnership and claimed asylum [38]. She found that the appellant's credibility was damaged by his failure to claim asylum in the UK before MAK's visit to Pakistan in September 2013. She took account, as she was entitled to do so, of the fact that the appellant and MAK had temporary leave to remain in the UK, as students, when they entered into the civil partnership. She further took account of the fact that by then the appellant had dropped out of university. The Judge also took account of the discrepancy between the evidence of the appellant and that of MAK in relation to their contact with the appellant's family in Pakistan [34]. There was a further significant discrepancy in that the hospital letter from Pakistan, produced to support the appellant's claim

that MAK was beaten by his father and brother when he told them that he was gay and in a civil partnership, actually says that the appellant was injured as a result of being captured by terrorists and attacked.

11. Mr Waithe submitted that the Judge erred in making findings about the issue of the appellant's landlord. I do not agree. The appellant produced a witness who said that he shared a house with the appellant and MAK who shared a room and the Judge was entitled to find as she did that the witness gave contradictory evidence and that his evidence was damaged as a result.
12. Mr Waithe submitted that the Judge erred in relying on only one part of the background evidence. The Judge referred to the Country of Origin Report (COIR) of 9 August 2013 where she said it states that, although consensual same sex conduct is a criminal offence in Pakistan, in practice the government rarely prosecutes cases and that the state's wilful blindness has provided enough space for gays and lesbians to socialize and even live together discreetly as couples [39]. The Judge has accurately summarised the COIR report and Mr Waithe did not rely on any particular part of the COIR report which does not reflect what the Judge said.
13. Ms Everett accepted that the Judge did not make any discrete finding as to whether the appellant is gay. However she submitted that the Judge did not need to as she considered the case in the alternative at paragraph 41. Further she submitted that even if the Judge erred in not making a clear finding that the appellant is gay it is not material. I agree with these submissions.
14. The Judge found at paragraph 41 that, even if the appellant and MAK are in a relationship they could live discreetly or relocate. In making this finding the Judge took account of the background evidence and the fact that neither the appellant nor MAK had ever lived openly as gay men in Pakistan. The Judge found that they would live discreetly because of social pressures and not to avoid persecution. I am satisfied that this finding was open to the Judge on the evidence. Applying HJ (Iran) this finding is sufficient to show that the appellant has not established a well-founded fear of persecution.
15. In summary I am satisfied that the Judge did not err in her approach to the evidence or the application of the background evidence and HJ (Iran) and that she made a decision which was open to her on all of the evidence before her.

Conclusion:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

Signed
29 October 2014

Date:

A Grimes
Deputy Judge of the Upper Tribunal

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).