



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: AA/02881/2015**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 19 November 2015**

**Determination & Reasons
Promulgated
On 22 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE H J E LATTER

Between

**GT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Querton, instructed by Ennon & Co, Solicitors
For the Respondent: Mr K Norton, Home Office Presenting Officer

I make an order under rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Failure to comply with this direction may amount to a contempt of court.

DETERMINATION AND REASONS

1. The appellant is a citizen of Singapore born in 1976. He appeals against a decision of the First-tier Tribunal (Judge Oakley) dismissing his appeal

against the respondent's decision made on 16 February 2015 refusing his claim for asylum and proposing to give directions for his removal.

Background

2. In brief outline the background to this appeal is as follows. The appellant entered the UK lawfully in 2012 with entry clearance as a spouse until 2014. In June 2014 he left the UK and travelled to Sweden where he subsequently claimed asylum. His application was rejected on third country grounds and following a request under the Dublin Convention from Sweden, the UK authorities undertook to examine the claim for asylum and he was duly returned to the UK on 5 February 2015.
3. His claim was based on a fear of persecution from the authorities in Singapore and in particular the Criminal Narcotics Bureau (CNB) who on his account had interrogated him in the past and subjected him to harassment. His problems began in 2005 when he was arrested by the Singapore police for possession and consumption of a class C controlled drug and sentenced to six months imprisonment. He had been active in the gay scene in Singapore. He claimed he was then forced to become an informant for the CNB to help them entrap suspected drug abusers and traffickers and that subsequently there were a number of deaths linked to these activities.
4. At the hearing the appellant relied on medical evidence showing that he suffered from bipolar disorder with borderline personality traits, chronic anxiety, insomnia and was HIV positive. It was argued at the hearing that the appellant experienced constant harassment from the CNB and was exposed within the gay community as a purported informant. It was argued that the appellant was a vulnerable adult with a long history of mental illness, was HIV positive and would be returning to Singapore in a vulnerable state to the place where he had experienced long-term harassment and harm. It was submitted that his account was credible and in view of his mental health and history it was of no importance that there were discrepancies in his account. In the skeleton argument dated 11 August 2015 prepared for the First-tier Tribunal his claim is put in the following way:

“His claim for asylum arises not from treatment meted out to homosexuals per se but because of his background including the criminal conviction and his perceived proximity to the criminal world (it must be realised that male to male sexual activity is a crime in Singapore and the appellant has come out as gay). It was further argued that the Convention reason was membership of a particular social group, gay men in Singapore and that when considering whether there was sufficient protection there were two factors of particular significance, the fact that the fear experienced derived from a state agency, the duration of the harassment in the past indicating that it was not the action of a lone rogue officer and secondly that the state had in place laws that punished gay men for being gay”.

The Findings of the First-tier Tribunal

5. Having reviewed the evidence and the submissions, the judge set out his findings and conclusions in [38]-[51]. He was not satisfied that there was a Convention reason as the basis of the appellant's claim that he was being harassed by the CNB and this did not amount to a fear of persecution for a Convention reason [38]. He went on to consider the claims the appellant had made about being active in the gay scene in Singapore and the problems that he would face as a result of being homosexual and coming to the adverse attention of the CNB. The judge noted that the appellant in his oral evidence had said that he was in fact bisexual [16] and that the appellant had been married but found that there was no evidence to suggest that he would be targeted on return to Singapore [39]. He commented that the appellant had provided some evidence about his drug conviction and contact with the NCB but had provided no evidence of their interest in him noting in this context that if he had been under pressure from the authorities he had not made a claim for protection at the time when he came to the UK in 2012 or during visits made in most years from 2005 to 2012.
6. He described the appellant's account on these issues as "entirely speculation on his part that the authorities in Singapore are interested in him at all or that the events alleged to have occurred in the UK had anything whatsoever to do with his drug conviction or dealings with the NCB." He found that there was no evidence of the deaths he alleged had taken place were linked to him in any way and that this was pure speculation. He referred to the appellant's evidence that he had sent a letter to the Chief Justice of the Supreme Court in Singapore in 2007 and that he had received a reply, commenting that it was unfortunate that the appellant had failed to produce a copy.
7. The judge took into account the medical evidence at [42]-[43] and reached the following conclusion in [44]:

"I have concluded from these medical reports that go back over ten years that the appellant does have a mental condition that affects his recall of events and in particular he may well imagine some of the events that have occurred to him as a result of imaginary events that he relates and that these go back to the claimed problems with the CNB."
8. The judge went on to refer to s.377A of the Penal Code in Singapore which criminalised and punished male to male sexual relations but he accepted evidence that in 2007 the Prime Minister had stated that the authorities would not actively enforce the Statute and that a subsequent constitutional challenge had led to the section as being upheld as constitutional but on the basis that because the law was not in force there was no need to overturn it [47]. The judge then considered the appellant's sexual orientation and the fact that he had confirmed clearly that he was bisexual, he had been in a heterosexual relationship for a period of time but claimed that he had now homosexual relationships [48]. He considered the authority of HJ (Iran) and HT (Cameroon) [2010] UKSC 31 and the need to consider whether the appellant was gay or whether he

would be treated as gay by potential persecutors in his country of nationality. He answered that question in the negative saying that as the appellant claimed that he was bisexual, he could therefore not conclude that he was gay or would be treated as gay by the authorities in Singapore [50]. The appeal was dismissed on asylum grounds and also under articles 3 and 8.

The Grounds of Appeal

9. In the grounds of appeal it is confirmed that the appellant's case was put on the basis of his patent vulnerability including his paranoia and that this would lead to serious harm on return to Singapore. The grounds assert at [5] that:

“The appellant did not put the case that because he was gay he would suffer persecution. Rather, it was an important part of the context for his past involvement with the CNB and his vulnerability to pressure from them.”

It is argued that the judge concluded that the appellant on his own evidence was not gay and so the matter ended there. It was perverse to find that the appellant was not gay because he was bisexual. Further, the fact that the appellant had had some heterosexual relationships did not mean that he was not gay or would not be perceived as gay.

Submissions

10. Ms Querton's primary submission was that the judge had made a perverse finding of fact on the issue of whether the appellant was gay and that this undermined his subsequent assessment of the evidence and his conclusions. The fact that the appellant described himself as bisexual did not justify the judge failing to consider all the issues set out in HJ and HT [2010] UKSC 31 and that he had been wrong simply to proceed no further than the first question where, in any event, he had reached a conclusion not properly open to him. The appellant's claim was based on his personal circumstances: the fact that he was targeted by the CNB to become an informant because of his sexuality and access to the gay scene, he was linked to the drugs scene due to his previous conviction and was a vulnerable person due to his mental health conditions. He feared return to Singapore where he was pressured and threatened by the CNB and where it was known by the gay community that he was an informant. The analysis carried out by the judge failed to engage, so it is argued, with this underlying claim. Ms Querton further argued that the judge had been wrong at [44] to find that the appellant may well have imagined some of the events, which had occurred to him.
11. Mr Norton submitted that even if the judge had erred in his assessment at [48]-[50] of whether the appellant was gay that did not have any material bearing on the outcome of the appeal. The judge had found not only that there was no Convention reason but also that the appellant had failed to establish that the authorities in Singapore had any adverse interest in him: [40]-[41]. The judge had been entitled to conclude that the appellant's

mental condition was such that the events he described were speculative or imaginary. It has not been argued on the appellant's behalf that he was at risk simply by reason of his sexual orientation.

Assessment of Whether there is an Error of Law

12. I am not satisfied that the judge erred in law such that his decision should be set aside. The appellant's claim was not put on the basis that he would be at risk of persecution simply by reason of his sexual orientation whether as gay or bisexual. It is clear from the skeleton arguments and from the submissions that the appellant's case was put as depending on his own personal circumstances as someone who had been targeted by the CNB to become an informant because of his sexuality and access to the gay scene, was linked to the drugs scene due to his previous conviction and was a vulnerable person due to his mental health conditions.
13. However, the judge was not satisfied that the appellant had provided sufficient evidence to show the NCB had any interest in him describing it as entirely speculative that the authorities in Singapore were interested in him or that events subsequently taking place in the UK had anything to do with the drug conviction or his dealings with the NCB. The appellant had given evidence about writing a letter to the Chief Justice of the Supreme Court in Singapore but having failed to produce a copy of the reply the judge was entitled to comment that it was suggestive of the fact that the appellant had not been harassed as he claimed by the CNB although he may have had some contact with them around the time of his drug conviction [41].
14. When assessing what facts had been established to the lower standard of proof the judge took into account the medical evidence. It was for the judge to assess what weight to give to the medical evidence and in any event Dr Bashir in his report of June 2015 commented at 13.1.2 that a number of the appellant's claims about events of the past and his treatment by NCB "may be based on reality however the explanation of many other experiences are product of a suspicious mind and paranoia." There is no substance in the argument that the judge's finding on whether the appellant's account was reliable or credible was not open to him.
15. The main challenge to the judge's findings is based on the way he dealt with the questions set out by the Supreme Court in HJ and HT. The judge rightly identified as the first question, the need to consider whether the appellant was gay and whether he would therefore be treated as gay by potential persecutors in his country of nationality. He said that as the appellant claimed he was bisexual, he could not therefore conclude that he was gay or would be treated as such by potential discriminators in Singapore. There is some force in the argument that this was not in itself an adequate treatment of the issue of whether the appellant would be

regarded as gay or bisexual on return to Singapore. However, in the context of the present case, this has no material bearing on the outcome of the appeal. The judge had already dealt with the issue of whether the appellant in the light of his own personal circumstances would be at real risk of serious harm on return and then went on to consider whether there would be a real risk arising from the appellant being gay as he had described himself until the hearing before the judge when he gave evidence that he was bisexual. However, it had not been the appellant's case that he would be at risk simply as a gay or bisexual man in Singapore. There was no adequate evidence to support a claim that activities as gay man would lead to a real risk of serious harm any more than activities as a bisexual man. For these reasons any error by the judge in his analysis of the first question in HJ and HT has no material bearing on the outcome of this appeal.

16. In summary, I am satisfied that the judge's findings and conclusions were properly open to him for the reasons he gave and the grounds and submissions do not satisfy me that he has erred in law in any way requiring his determination to be set aside.

Decision

17. The First-tier did not err in law such that the decision should be set aside and this appeal is dismissed.

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. 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

Date: 17 December 2015

H J E Latter
Judge of the Upper Tribunal