



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

Appeal Number: AA/07021/2014

THE IMMIGRATION ACTS

Heard at Field House

On 15 April 2015

**Decision sent to parties
on:**

On 28 April 2015

Before

**LORD BANNATYNE
UPPER TRIBUNAL JUDGE GLEESON**

Between

**RIZWAN ALI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Jones, instructed by Waterstone Solicitors

For the Respondent: Mr C Avery, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, appeals with permission against the decision of the First-tier Tribunal (First-tier Tribunal Judge Adio) dismissing his appeal against respondent's decision to set removal directions to Pakistan after refusing him refugee status, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.
2. Before the First-tier Tribunal, Miss Jones for the appellant accepted that the appellant's case would stand or fall under the Refugee Convention.

She did not seek to argue Articles 2, 3 or 8 of the ECHR or that, on these facts, humanitarian protection was available if the refugee claim failed.

Background

3. The appellant came to the United Kingdom on 17 May 2011 with entry clearance as a student, on a Tier 4 visa, valid until 30 October 2014. However, the College he came to attend closed down in 2011. The appellant did not notify the Home Office: he just continued to make use of the visa he had been granted and remained in the United Kingdom. Before coming to the United Kingdom, the appellant had not had any homosexual or heterosexual relationship in Pakistan: he kept his homosexual feelings private there.
4. In September or October 2011, the appellant began a relationship with his room mate in London. They both had visas expiring in 2014, the appellant's on 30 October 2014 and his partner's in May of that year. They continued to live together in the same accommodation. They stayed home together, but occasionally went out for meals. On the appellant's evidence, in January and February 2013 they went to two gay clubs in London.
5. The couple told few people of their relationship: a total of five friends, two of whom attended their civil partnership ceremony in March 2014. From the middle of November 2014, the relationship deteriorated, with 'continuous fighting' and, despite a lull over Christmas 2014.
6. On New Year's Eve 2014, the appellant cooked for his partner, but he did not come home: the appellant telephoned him repeatedly, and eventually got through to someone who also claimed to be in a relationship with his partner, then hung up.
7. On New Year's Day 2015, the appellant's partner returned to their home, and there was a row between them in which the appellant accused his partner of cheating on him. They had 'a severe fight' and stopped speaking to each other.
8. On 5 January 2015, while the appellant was out shopping for groceries, his partner packed up all his possessions and left their home. He has not responded to telephone calls subsequently and the appellant has no contact with him. The appellant accepts that the relationship has ended, but asserts that any future relationship will not be heterosexual. It is not suggested that there has been any subsequent relationship.
9. The appellant has not told any of his family members in Pakistan of his homosexual orientation or about his relationship. If returned now, he will be returned as a single man.

First-tier Tribunal Judge's decision

10. First-tier Tribunal Judge Adio accepted in his decision that the appellant was indeed a person of homosexual orientation but considered that he

was a very private person, who had lived discreetly and conducted his only gay relationship in secret while in the United Kingdom, his country of refuge. He would be likely to continue to do so in Pakistan if he returned there. He considered the country evidence and concluded that there was no well-founded fear of persecution for this appellant, on those facts. His family members were unaware of his orientation and the appellant would not have to return and live with his family: Pakistan is a large and populous country where any risk, if it existed, could be met by internal relocation.

Basis of appeal

11. The appellant appealed to the Upper Tribunal. He contended that the First-tier Tribunal Judge had failed to take into account relevant evidence, in particular the couple's activity in attending gay bars (see questions 21, 29, and 74-76 of the asylum interview). He argued that, applying the observations in questions 21 and 54 of the interview, he should be taken to have told friends who disapproved of homosexuality, as well as those who were sympathetic. He relied on the civil partnership into which he had entered, arguing that if asked about his marital status in Pakistan, he would have to either lie or admit to a marital status which put him at risk of persecution or treatment contrary to Article 3 ECHR.
12. Permission to appeal was granted by First-tier Tribunal Judge Landes on the basis that there was arguable merit in the relevant evidence challenge, but less to the second ground, as the appellant was not in fact 'married' and would not be lying if he said that he was unmarried.
13. That was the basis on which the appeal came before us.

The hearing

14. In her submissions today, Miss Jones continued to argue that the interview evidence had been overlooked. She accepted that she had not re-examined on the point. She contended that the judge's decision lacked anxious scrutiny, but could not explain why the judge was not entitled to rely on the oral evidence which the appellant gave at the hearing.
15. For the respondent, Mr Avery relied on the overall tenor of the evidence, set out at paragraphs 14 and 16 of the decision. He argued that the judge had been entitled to make those findings, and to draw the conclusions at paragraphs 27-28 of his decision. The appellant was indeed a private person: the couple had only invited two witnesses to the civil ceremony and there was no evidence to support a public profile for this appellant as a gay man. The judge's analysis was adequate and contained no error of law, material or otherwise.

Discussion

16. The appellant's challenge concerns the judge's finding of fact that he was a private person whose homosexual orientation had not been expressed at

all while he was in Pakistan, and while in the United Kingdom had been kept very private. The Upper Tribunal may only interfere with a finding of fact where it is erroneous at a level capable of being an error of law, as set out in the decision of the Court of Appeal in *R (Iran) and others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at sub-paragraph 90 (2):

“90. (2) A finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence.”

17. That is not the case in this decision. The First-tier Tribunal judge had ample oral and written evidence before him of the private approach taken by this appellant in his life as a gay man in the United Kingdom, and before that in Pakistan. He considered that the appellant fell into the ‘naturally discreet’ category who would not herefore be at risk of persecution, as set out in the judgment of Lord Rodger in the Supreme Court in *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 at paragraph 80 thereof. After directing Tribunals to consider first whether a person was gay, then whether openly gay persons are persecuted in his country of origin, Lord Rodger’s guidance continued as follows:

“80. ...If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country. If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".

If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself *why* he would do so.

If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e g, not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.”

18. The judge found that this applicant chooses to live discreetly, even in the United Kingdom where he is not at risks of persecution, and that he would do the same on return to Pakistan. On the evidence, there was no perversity or *Wednesbury* unreasonableness in that finding. There was evidence to support it, both in the oral and written versions of the appellant’s account.
19. It is right that the appellant did say at interview that he had attended some gay clubs and had entered into a civil partnership with his former partner, but his oral evidence was plain: the parties stayed at home and occasionally went out for a meal. They did not tell many people, mainly

because the appellant felt very private about his sexuality, and in relation to the civil partnership ceremony, they only had two witnesses.

20. We are not satisfied, taking the determination as a whole, that the judge overlooked any material evidence or that there is any error of law in his approach to this appeal and we decline to reopen the First-tier Tribunal determination, which therefore stands.

Conclusions

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

Date: **28 April 2015**

Signed
Upper Tribunal Judge Gleeson