



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

Appeal Number: DA/01309/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 21 January 2015**

**Determination  
Promulgated  
On 11 February 2015**

**Before**

**UPPER TRIBUNAL JUDGE DEANS**

**Between**

**MR AQIB HUSSAIN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Bali, DRB Solicitors

For the Respondent: Mr M Matthews, Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal Clough dismissing an appeal on asylum and human rights grounds. The appeal was made to the First-tier Tribunal against a decision dated 3 July 2014 by the respondent to the effect that the appellant would be subject to deportation as a foreign criminal under section 32(5) of the UK Borders Act 2007.

- 2) The appellant was born on 7 January 1988 and is a national of Pakistan. He arrived in the UK in August 2012 as a student. In October 2013 he was sentenced to imprisonment for a period of 12 months for possession of criminal property. This conviction led the respondent to institute proceedings for the appellant's deportation.
- 3) In December 2013 in response to the prospect of deportation the appellant stated that he was in "a civil partnership" with a Mr Ghulam Farid. He claimed that he would face a real risk of persecution or serious harm in Pakistan as a homosexual and thereby a member of a particular social group. He also feared harm at the hands of his brother and at the hands of the Taliban.
- 4) It is clear from the determination of the Judge of the First-tier Tribunal that the appellant has never been in a civil partnership in the UK. He claims to have had homosexual relationships with two men in the UK - the first was Mr Ghulam Farid and the second was Mr Alexander Greensmith. According to the evidence the appellant gave before the First-tier Tribunal, he did not tell Mr Greensmith of his sentencing and subsequent detention. The appellant had a brother in Manchester and he told his brother not to tell Mr Greensmith where he was. Eventually his brother did tell Mr Greensmith what had befallen the appellant.
- 5) The judge heard oral evidence both from the appellant and from Mr Greensmith. The judge found neither the appellant nor Mr Greensmith to be credible witnesses. The judge was not satisfied that the appellant is homosexual and would be at risk in Pakistan on this account.
- 6) The appellant applied for permission to appeal on the basis that the Judge of the First-tier Tribunal had applied an incomplete test in terms of HJ (Iran) [2010] UKSC 31. In the leading judgment of Lord Rodger, at paragraph 82, the first question for the Tribunal to ask itself when a person applies for asylum on the ground of a fear of persecution because he is gay, is "whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality." The application for permission to appeal contended that the judge had asked herself whether the appellant was gay but had not asked herself whether the appellant was someone who would be treated as gay by potential persecutors in Pakistan. The appellant's argument seemed to be that as he had declared himself gay, whether he was or not, he would be treated as gay in Pakistan and he had thus put himself at risk.
- 7) Permission was granted on this basis.
- 8) A rule 24 notice dated 17 October 2014 was submitted on behalf of the respondent. This contended that the appellant had failed to establish a credible claim for asylum and the second part of the test in HJ (Iran) disclosed no arguable error of law that would have had a material impact upon the outcome of the appeal.

- 9) I was address by Mr Bali on behalf of the appellant. He said that the appellant had pronounced himself in open court “loud and proud”. He would be treated as gay on his return to Pakistan in terms of the second branch of the test in HJ (Iran).
- 10) For the respondent, Mr Matthews acknowledged that the test set by the Supreme Court in HJ (Iran), at paragraph 82, envisaged two different classes of case. The first was where the appellant was gay. The other was where the appellant was perceived as gay even if not gay. In this appeal the appellant had tried to show that he was gay but he was not found to be gay by the Tribunal and there was an absence of evidence to show that he was. The Supreme Court referred to whether the Tribunal was “satisfied on the evidence” that a particular person would be treated as gay. Mr Matthews continued that in this appeal there was an absence of evidence that showed a reasonable likelihood that the appellant would be treated as gay. Because of this it was not incumbent on the Tribunal to answer the second part of the question. There was no evidence whatsoever which would require the Tribunal to answer this question. The appellant had claimed to be gay and he had been found after a fair hearing not to be gay. His evidence was rejected. This was the end of the case on asylum grounds.
- 11) Reference was made to an affidavit before the First-tier Tribunal. This purported to have been sworn by the appellant’s older brother in Pakistan. This affidavit was found by the judge not to be a reliable document. In the view of Mr Matthews the judge had not even accepted that the appellant had told his own family he was gay.
- 12) For the appellant Mr Bali sought at this point to question the reasons given by the Judge of the First-tier Tribunal for not accepting this affidavit as reliable. It was pointed out, however, that the judge had comprehensively rejected the evidence adduced on behalf of the appellant.
- 13) Mr Bali then submitted that the case for the appellant was that either he was gay or, even if he was not, he had said he was gay and had had two sexual partners. Mr Bali described the appellant as being “between a rock and a hard place” and submitted that if people saw the affidavit the appellant would be at risk.
- 14) Mr Bali was asked if there was any evidence to show that the authorities in Pakistan or the intelligence agencies of that country had any involvement in the appellant’s case. Mr Bali’s response was that there was no evidence that they did not.

## **Discussion**

- 15) The finding of the Judge of the First-tier Tribunal was in effect that the appellant had falsely claimed to be gay in order to avoid deportation to

Pakistan. The judge heard evidence from Mr Greensmith, with whom the appellant had claimed to be in a relationship, but did not believe that the appellant and Mr Greensmith had been involved in a relationship in the manner which was alleged. This was primarily because of disparities found by the judge in the evidence of the appellant and Mr Greensmith. The appellant claimed to have had a relationship with another man, Mr Ghulam Farid, but this relationship had ended prior to the hearing of the appeal.

- 16) Essentially Mr Bali's argument before me was that as the appellant had declared himself to be gay at the hearing before the First-tier Tribunal, this would come to the attention of people in Pakistan and the appellant would be perceived by the authorities in Pakistan as gay. Mr Bali's secondary argument, which he had some difficulty pursuing, was that the judge was wrong to reject the affidavit purportedly from the appellant's brother in Pakistan. The difficulty Mr Bali had in relation to this was that the judge's credibility findings were not being challenged directly in this appeal.
- 17) Mr Bali had little to say as to how the authorities in Pakistan would become aware of the basis of the appellant's claim for asylum in the UK. It seems that Mr Bali assumed that the appellant's brother in the UK was aware from contact with Mr Greensmith that the appellant claimed to be gay; that the brother had, or would have, told the family in Pakistan; that as a result the appellant had been ostracised by his family in Pakistan and his position would have been reported to the authorities. The facts as found by the First-tier Tribunal, however, do not support these suppositions. The judge did not accept that the appellant and Mr Greensmith had been in a homosexual relationship. Part of their evidence was that the appellant's brother in Manchester would either have deduced the nature of their relationship or been told of it, but there was no evidence before the First-tier Tribunal from the appellant's brother in the UK (or from his sister whom he also claimed was living in the UK) stating that the appellant had told either of them that he was gay. The only evidence from the appellant's family was the purported affidavit from the appellant's older brother in Pakistan, which the judge rejected.
- 18) It is significant that there was no evidence before the First-tier Tribunal from either of the appellant's family members said to be residing in the UK stating that their brother was gay. Putting on one side the affidavit, which the judge did not accept as reliable, there was no evidence that the appellant's family in Pakistan knew of his claim that he was gay.
- 19) Mr Bali appeared to suggest that the authorities in Pakistan would be aware from the appellant's evidence at the hearing before the First-tier Tribunal of his claim to be gay. When asked for evidence suggesting to support this assertion, Mr Bali's response was that there was no evidence that the authorities did not know of the appellant's claim. Such an explanation will hardly assist the appellant, on whom rests the burden of proof. Furthermore, even were I to suppose that the authorities in

Pakistan knew that the appellant's asylum claim was based on an attempt to show he was gay, this attempt failed. The judge did not believe the appellant is gay. Were the authorities in Pakistan aware of the asylum claim, therefore, why would they see it as anything other than a fabricated attempt by the appellant to avoid deportation? They would have no reason to suppose that the appellant was in fact gay, even though he had pretended to be before the Tribunal.

- 20) I accept the submission on behalf of the respondent that, even though the judge did not consider the second limb of the first question to be addressed in terms of HJ (Iran), as there was no evidence to show that the authorities in Pakistan were aware of the appellant's claim that he was gay or, indeed, would have any reason to believe his claim, then the judge's failure to address this question had no bearing on the outcome of the appeal. As Mr Matthews pointed out, in terms of paragraph 82 of HJ (Iran) it was for the Tribunal to be "satisfied on the evidence" that the appellant would be perceived as gay. There was no credible evidence on which the appellant would have been able to show to the satisfaction of the Judge of the First-tier Tribunal that he would be perceived by the authorities in Pakistan as a homosexual. There was a lack of evidence in this appeal to show any reasonable likelihood that he would be treated as gay and accordingly it was not incumbent upon the Tribunal to address this question. On this basis, the decision of the judge shall stand.

## **Conclusions**

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

## **Anonymity**

- 23) The First-tier Tribunal did not make an order for anonymity. I have not been asked to make such an order and I do not consider that there is any material reason for doing so.

Signed

Date

Judge of the Upper Tribunal