



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/10615/2015

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 4 September 2017**

**Decision & Reasons
Promulgated
On 19 September 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**A I
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Asigo of R O C K Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Bangladeshi national born on [] 1991 who seeks asylum on the grounds of his sexuality. He arrived here as a Tier 4 Migrant on 13 November 2009 and subsequently obtained further leave but a subsequent application was refused due to irregularities with his language test. He was asked to take another but does not appear to have done so. On 19 December 2014, he

was notified that the licence of his sponsor had been revoked and he no longer had a valid CAS. On 13 February 2015, the appellant claimed asylum.

Procedural background

2. There is a long procedural history to the case which I shall summarize. After the asylum claim was rejected by the respondent, the appeal came before First-tier Tribunal Judge Isaacs at Hatton Cross on 28 April 2016. She heard evidence from the appellant and another witness and then dismissed the appeal in a determination promulgated on 10 May 2016. The decision was challenged. Judge Pooler refused permission to appeal but this was granted on renewal by Upper Tribunal Judge Rintoul on the basis that the judge had commenced her assessment of the claim with findings on s.8 of the 2004 Act. Deputy Upper Tribunal Judge Hill then heard the legal arguments on 31 August 2016 and by way of a determination dated 5 September 2016 set aside the decision. The matter was then re-heard by First-tier Tribunal Judge Kimnell on 13 March 2017. He heard evidence from the appellant and four witnesses but did not find them credible and dismissed the appeal. Permission to appeal was granted by Upper Tribunal Judge Deans sitting as a First-tier Tribunal judge on 22 May 2017 and on 29 June 2017 the appeal came before Upper Tribunal Judge O'Connor who set aside Judge Kimnell's decision on 6 July 2017 on the basis that he had not given adequate reasons for his adverse conclusions. The appeal then came before me for a fresh hearing on 4 September 2017.

The hearing

3. The appellant and three witnesses gave evidence before me. All were assisted by the use of a Bengali interpreter.

4. The appellant began by confirming his current address as [] Springfield Road. He said he had lived there since June 2016. When asked for his previous address, he stated it was [] Govier Close but he then said that was where he had lived from 2011-2015. He claimed to have forgotten the address he lived at prior to Springfield Road. After some thought, he gave it as Plashet Road. It was put to him that [] Griville Lodge was given in his statement. He then agreed that was where he had lived. He now lived with his boyfriend, KM at the Springfield Road address.

5. The appellant was referred to his statement (in Bundle 2). He confirmed he had signed it. When asked to adopt the statement, he said he would like to read it again as he could not recall the contents. He stated that he had last been to see his solicitors two weeks ago, when he signed a new statement but on being told no new statement had been submitted, he said it was his friend's statement and not his. He had not been read his witness statement

in preparation for the hearing and could not recall its contents. I, therefore, took an early lunch break so that the appellant and his witnesses could be reminded of the contents of their respective statements with the assistance of the interpreter if required.

6. On resuming the hearing, the appellant adopted his two statements. He repeated that he lived at [] Springfield Road with his boyfriend and had been there since June 2016. He was then tendered for cross examination.

7. The appellant confirmed he lived with KM. Sometime in May 2016, they had jointly made the decision to move in together. They had the use of two rooms in a house as well as a kitchen and toilet. Other people lived upstairs. There was a common entrance.

8. The appellant stated he met KM at the Way Out Club in Aldgate in September 2012. They exchanged telephone numbers and then started a relationship.

9. The appellant confirmed that his family was aware of his sexuality. A friend called T travelled to Bangladesh and notified his family. When his family confronted him, he denied it because he knew they would disown him. Then in November 2013 another friend, SR, showed the family some photographs he had of the appellant at the club and they told him not to return. The appellant said his uncle was the imam at the local mosque. The appellant had known T in Bangladesh. He came here in 2009/2010. He had known SR in Bangladesh too. The photographs showed the appellant and KM hugging. They were "those type of photographs". He said that SR had somehow transferred the photographs from the appellant's laptop or mobile phone. SR had not known that he was gay before he saw the photographs. He then said that he was not sure if SR had known or suspected but he had not told him. SR returned to Bangladesh in 2013. When asked how SR had reacted to seeing the photographs, the appellant said SR had not "disclosed anything".

10. The appellant said he had no family in the UK. He had not had contact with his family in Bangladesh since 2013.

11. When asked why he delayed claiming asylum, the appellant said he had been studying and his life had been flowing smoothly. He had no idea about the asylum process. After his family stopped contact with him, he spoke to some friends and some of them who had applied for asylum themselves advised him. This was 7-8 months before he made his application.

12. The appellant said that KM moved to the UK in 2011.

13. There was no re-examination.

14. The next witness was MRH. He adopted his statement and confirmed he lived at [] Plashet Grove. After providing a post code, he said that was wrong and gave another one. He produced ID. In cross-examination, the witness stated that he met the appellant at Disco Rani, a gay club. The appellant now lived with KM. They had been together since June 2016. He visited them. They occupied a one bedroom unit on the ground floor but he did not know who lived upstairs. There was no re-examination.

15. In response to my questions, the witness confirmed that he had obtained asylum on the grounds of his sexuality. He did not have an appeal himself. He had given evidence at the appeals of three others excluding the appellant. There were no questions arising from mine.

16. I then heard evidence from KM. He gave his address as [] Springfield Road. He adopted three statements and showed his ID. He said he had been a classical dancer for 16 years in Bangladesh and seven years in the UK.

17. The witness was cross-examined. He stated that he and the appellant started to live together from 1 June 2016 so that he could help him financially and because he felt love and affection for him. They decided to live together about a month earlier. They occupied a bedroom and a sitting room. The appellant had told him about the problems he had with his family. They knew about his sexuality because two friends had gone to Bangladesh, told them and shown them photographs. The appellant was no longer in contact with his family. There was no re-examination.

18. The last witness was MR. He gave his address as [] Middle Road. He adopted three statements and produced his ID. In cross-examination, he stated that the appellant had told him that a friend had gone to Bangladesh and shown photographs to his family that revealed he was gay. There was no re-examination. That completed the oral evidence.

19. I then heard brief submissions. Mr Wilding relied on the refusal letter. He confirmed that if the appellant were found to be gay, then the respondent conceded that there would be a real risk of persecution on return to Bangladesh.

20. Ms Asigo submitted that although the previous judges had doubted the appellant's credibility, he and his witnesses had been consistent. There were no inconsistencies in the oral evidence and he had not been questioned as to how he knew he was gay. It was clear he was homosexual and the appeal should be allowed.

Discussion and Findings

21. I have considered all the evidence before me as a whole. I have three bundles from the appellant, the respondent's bundle, the oral testimony before me as well as that recorded in the previous determinations of the First-tier Tribunal and the submissions made. I apply the lower standard of proof in assessing the evidence and bearing in mind that the burden is on the appellant to make out his case.

22. Whilst the respondent, in her decision letter, considered that the appellant would be able to relocate or seek protection from the authorities if he was found to be gay but removed, it was conceded at the hearing before Judge Kinnell that if the claim of sexuality was made out, the respondent would accept that he had established a real risk of serious harm. That concession was confirmed by Mr Wilding. The crux of the case is, therefore, whether the appellant has demonstrated to the lower standard that he is gay. I now assess the evidence and set out my findings in no particular order of priority.

23. I would state at the outset that the preparation for this appeal hearing was disappointing. There has been no compliance with Judge O'Connor's direction for a consolidated bundle to be filed and served by the appellant with the result that the documentary evidence was poorly presented over three bundles with much duplication. No explanation was offered for this failure to comply. Furthermore, it was plain that no attempt had been made to re-familiarise the appellant and his witnesses with their statement which resulted in wasted court time. The photographs relied on as part of the evidence were presented in as photocopies in the bundles. They were unclear and no attempt was made to clarify the people in the pictures, the dates they were taken or where they were taken. The originals were not made available.

24. There were also shortcomings in the presentation. Whilst several credibility issues are raised in the respondent's decision letter, and whilst this decision letter was relied on by Mr Wilding in his submissions, no attempt was made by Ms Asigo to address these in oral evidence or in her submissions before me. I did not consider that I was required to put all these matters to the appellant as they were part of the evidence and the appellant and his representatives have known about them for a number of years. They are, however, matters that I am obliged to consider, particularly as they were still relied on by the respondent. In assessing the issues highlighted, I have had regard to the oral evidence, to the evidence previously given to Judges Isaacs and Kinnell as recorded in their determinations and to the witness statements of the appellant where he has made some attempt to offer explanations for the problems set out by the respondent.

25. At his asylum interview the appellant gave contradictory and incoherent answers in response to questions asked about when and how he had discovered he was gay. He initially stated he realised he was gay when he came to the UK. Although he knew about homosexuality from magazines/newspapers whilst in Bangladesh, he had not considered himself as gay. He then gave an account of having had sexual relations with a male neighbour and with 3-4 other men on many occasions in Bangladesh from the age of 12. He has given different ages elsewhere which vary from 10 to 15 (in oral evidence to Judge Isaacs, at interview and in his statement). He also claimed at interview to have had a sexual and emotional relationship with his male cousin, MJ. When this matter was pursued, he somewhat confusingly stated that he realised he was gay once in the UK but that he knew he liked men whilst still in Bangladesh. These inconsistencies were highlighted in the decision letter and the appellant tried to resolve it in his statement. I do not consider the attempt at resolution to be satisfactory and indeed, the statements further confuse the issue. The appellant denied providing an incoherent account and maintained that "there are things we do not know" in Bangladesh although this is then contradicted by his claim in the same document that he was aware he was into gay relationships in Bangladesh as he had heard about them in the mosque. He has also explained that he knew he was gay before arriving in the UK but that he had been unable to express his sexuality in Bangladesh. Elsewhere, he stated that he realised he was gay in the UK at the end of 2010. There is a difference between knowing one's sexuality and publicly expressing it. The fact that the appellant maintains that he had to be circumspect in Bangladesh does not explain the inconsistent answers given about where he discovered his sexual inclinations. Whilst I accept that the appellant cannot be precise about the discovery, it is reasonable to expect him to be able to say with some certainty whether he was in Bangladesh or in the UK when it was made. It cannot be said that he did not understand homosexuality in Bangladesh because his evidence was that he was aware of it, had seen gay magazines and heard sermons about it at the mosque. I accept there would have been confusion perhaps when the appellant was a child engaging in sexual relations but I would have expected that confusion or ignorance to pass as he grew older. I would also have expected him to be more certain about whether he commenced his sexual life at the age of 10 or at 15. There is a big difference between the two.

26. The appellant also gave contradictory evidence with respect to his relationship with MJ, when it came to an end and when MJ developed mental health problems. At interview the appellant stated that MJ had been forced to marry in 2008 but had divorced later that year or in 2009. The relationship came to an end when the appellant travelled to the UK because his cousin then became

“mental” and did not have a telephone. He then said that they had continued to speak for a year but that his cousin had subsequently developed a mental illness and so no longer had a mobile phone. In his January 2015 statement, the appellant said the relationship continued until December 2010 via the phone but that MJ became a drug addict, an alcoholic and mentally ill *before* he left Bangladesh; indeed, he stated that he decided to leave because of that. A statement from another cousin, MA, dated 28 January 2015, confirmed the latter claim, maintained that MJ had become mentally ill before the appellant left Bangladesh and it was that which prompted his departure. There is therefore an unresolved discrepancy over whether MJ fell ill whilst the appellant was still in Bangladesh or whether that occurred when the appellant was in the UK. Given that the appellant claimed MJ was his first love, I would have expected him to be clearer about MJ's unfortunate fate.

27. There were also inconsistencies between the appellant's accounts of how his family discovered he was gay. The appellant's evidence to me and at his interview was that two friends had betrayed him. One, T, had told the appellant's family he was gay but as there had been no evidence the appellant was able to deny it. Another friend, SR, had however somehow managed to transfer photographs from the appellant's phone or laptop and showed them to the appellant's relatives in Bangladesh. The evidence to Judge Kimnell, as recorded in his determination, was, however, that it was T who had shown the family the photographs; there is no reference at all to SR. This is repeated in the representations from the appellant's solicitors of 22 June 2015 (in Bundle 2). Prepared on the appellant's instructions, it is claimed that T showed the photographs to the appellant's family. In cross-examination, before me the appellant stated that SR did not know the appellant was gay before he came across the photographs but elsewhere he stated that SR had discovered his sexuality when he saw the appellant on the street with KM. The appellant has been unable to explain how his friend obtained access to his device (whether the phone or the laptop), why he accessed it in the first place without the appellant's knowledge or the circumstances in which this occurred.

28. The contradictory account of the appellant's family discovering he was gay only when shown photographs by a friend, whether it be T or SR, is further undermined by the appellant's evidence that he had been beaten up on two occasions in his village for being gay. It is simply not credible that such incidents would not have come to the attention of his family or to his imam uncle.

29. Further difficulties arose over the claimed relationship with KM with whom the appellant is said to live. In response to my query, Ms Asigo confirmed that no documentary evidence relating to cohabitation had been adduced. I was not given any explanation for

this deficiency in the evidence. The appellant's evidence at interview in respect to KM, described as his best gay friend and regular sexual partner, is unimpressive. The appellant claimed to have met KM in September 2012, nearly three years prior to the interview (on 12 June 2015), but was unable to provide any details about where he lived, where he worked, whether he had completed his studies or was still a student, what he studied or where. He did not know for certain what family he had. He thought KM had come to the UK in 2012 but was not sure. He did not know KM had obtained asylum two years prior to the interview. In his witness statement the appellant seeks to put the blame on the interpreter for the shortcomings in his evidence but at no point during the interview did he raise any complaints about the interpretation; he stated that he understood the interpreter both at the start and the conclusion of the interview. Moreover, as a student who presumably therefore was reasonably fluent in English, he would have been able to spot any errors and bring them to the attention of the interviewing officer. More importantly, his representatives, when making written representations following the interview, made no complaint at all about interpretation. Finally, on this point even if the interpreter had failed to explain that the appellant knew where the house was even if he did not know the address, this does not explain his lack of knowledge about other basic facts about KM. KM, in his statements, confirms that he obtained refugee status in January 2014 and has leave until 9 May 2018. He also refers in two statements (22 January 2015 and 14 April 2016) to the appellant's family forcing him into marriage but this is not a claim the appellant has made himself.

30. There are several inconsistencies over when the appellant began to lead an openly gay life in the UK. He has stated that he began to do so (1) from the time of his arrival, (2) from the end of 2010 (over a year after arrival) and (3) since the end of 2012. No reasons are offered for these contradictory statements. According to a friend's statement, the appellant led an openly gay life from 2009 (the year of his arrival). The appellant's representatives in their representations of June 2015 maintained the second option and explained it was when he attended a gay club. The NAZ letter confirms option 1. Other than the letters and evidence from his friends, I have seen no evidence that the appellant frequents any clubs. Moreover, I note that whereas the appellant claimed that the Aldgate club was right by his college, he studied at Blackhall College in Surrey Quays which is not in the Aldgate area.

31. The supporting letters adduced are all from fellow Bangladeshis who claim to be gay. Some have been recognised as refugees. Three, including KM, attended the hearing. The letters contain substantial similarities even to the point of the same grammatical errors. The appellant is described as "seeking for asylum as a gay"

and "one of the best gay friend". Some letters are unsigned. All recount the story of friends telling tales on the appellant but none of the individuals have first hand knowledge of this and they reiterate only what the appellant has told them. They do not appear to have ever met the treacherous friends and indeed some only met the appellant well after he had been 'outed' by T. Only three attended the hearing. Whilst they were consistent in what little they said, their testimony does not address the numerous problems with the appellant's evidence.

32. The appellant relies on a letter dated 5 January 2014 from a gay organisation by the name of NAZ. The difficulty with this letter is that the writer refers to an event the appellant is said to have attended in August 2014, a date which post dates the letter. This problem was identified by Judge Kimnell. Had it been a typographical error, I would have expected the appellant to obtain an amended letter from the writer in support of his appeal but he has not done so. I am unable therefore to place any weight on this plainly bogus letter. It does not assist the appellant that he continues to rely on it.

33. The asylum claim was made on 13 February 2015 over five years after the appellant's arrival, seven months after he was notified of irregularities in his English language test and of the cancellation of his scores, two months after he was informed he had no valid CAS following the revocation of his sponsor's licence and just before the expiry of the extra 60 days he was given to obtain a fresh CAS.

34. The appellant gave various explanations for the lengthy delay in the making of his claim in his statements, interview and oral evidence. He stated: (1) he was not aware of the asylum procedure until 7-8 month before he made his claim; (2) he had no need to claim asylum because he had a student visa, which implies he was aware of the process but felt it did not apply to him at that stage; (3) that he did not need to seek asylum because his family did not know about his sexuality and that the need arose only when they found out in November/December 2014 and (4) that he no longer had permission to work and needed to be able to support himself. The appellant does not explain why so many different explanations have been put forward. I do not accept the first explanation because it is the appellant's own evidence that he has many gay friends, it would appear all exclusively Bangladeshis, who have been through the asylum process themselves. Given that he allegedly told them he feared death on return, and indeed that he had such a fear even at the time he left Bangladesh in 2009, it is not credible that they would have failed to discuss the asylum process with him at an earlier stage. Nor is it credible that fearing return as he claims, he would not have sought legal advice. The appellant does not explain

how he believed he would return to Bangladesh after his studies had been completed if he was already aware at the point of his arrival of Bangladeshi society's homophobic attitude. This undermines the second and third explanations. The fourth suggests that the timing of his asylum claim was economically motivated. I note in his witness statement (at paragraph 13) he refers to problems for gays in Pakistan but as return to Bangladesh is proposed that is of course immaterial.

35. Although the appellant claimed to have been a genuine student prior to the making of his claim, and although he claimed he had retaken the English language test and had not cheated, he could not recall the test centre where he had taken the disputed test and he has failed to provide any evidence of the new certificate or of any qualifications he has obtained. He also failed to explain why he never obtained a fresh CAS as he was advised to do. His reliance upon an irregular certificate further undermines his integrity.

36. For all the reasons set out above, having assessed all the evidence in the round and bearing in mind the lower standard of proof, I conclude that the appellant has not established that he is gay. I cannot say whether his witnesses are genuinely gay but even if they are, their brief supporting testimony does not overcome the difficulties with the appellant's evidence that have been highlighted. I accept they want to assist the appellant but as I have found he has been untruthful about his sexuality, their integrity is clearly undermined by their claims of intimacy with him. Ms Asigo submitted that the appellant is "clearly homosexual" but she did not clarify the basis for that assertion and the claim has not been demonstrated. Wearing a necklace and an earring does not mean a man is gay and there are too many deficiencies in the evidence for a finding that the claim has been made out. The appellant has had several opportunities to make out his case but has still failed to do so.

37. The appellant was inconsistent about the age when he commenced sexual relations with males, whether he was in Bangladesh or in the UK when he realised he was gay, when his relationship with MJ terminated, when MJ became mentally ill, how his family discovered he was gay, when he began to lead an openly gay life and why he did not make an earlier asylum claim. These problems go to the heart of the claim.

38. The claim is not assisted by the production of a wholly unreliable letter from NAZ and the absence of any independent documentary evidence of cohabitation or of the appellant's involvement with the gay scene. I do not accept that the appellant is gay. I do not accept that he engaged in any same sex activities in Bangladesh or in the UK. I do not accept that he was beaten up in Bangladesh. I do not

accept that his family have threatened him. I do not accept that he leads an openly gay life in the UK. Whilst he may share accommodation with KM, I do not accept they are sexual partners. I find that the appellant has manufactured his claim in an attempt to remain after he was found to have used a false language test certificate and not granted a student extension. He has brought along friends who are no strangers to giving evidence in asylum courts and who have tried to assist him to present his bogus claim. I do not accept that he would have any difficulties on return to Bangladesh and I conclude it would be safe for him to return there.

39. No article 8 claim was pursued.

Decision

40. The appeal is dismissed.

Anonymity

41. I continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' with a small dot at the end.

Upper Tribunal Judge

Date: 19 September 2017