



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/13287/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent
On 4th April 2017

Decision & Reasons Promulgated
On 5th May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR SAIF JAHANGIR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Faryl (Counsel)

For the Respondent: Mr C Bates (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Colyer, promulgated on 15th August 2016, following a hearing at Nottingham Justice Centre on 11th July 2016. In the determination, the judge dismissed the appeal of Mr Saif Jahangir, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 12th December 1981. He appealed against the decision of the Respondent to refuse him leave to remain in the UK in a decision dated 20th March 2015 on the basis of his marriage to a same sex person, namely, Mr Mohammed Naqeeb Ali. The relevant facts and documentary material are set out in the determination under appeal.

The Judge's Findings

3. The judge heard evidence from the Appellant, and his partner, Mr Mohammed Naqeeb Ali, and heard about the expressed fears in relation to the backlash in Pakistan because both of them had married against their religion. They said they feared the local community, the majority of whom are Muslim (see paragraph 7). The witness also confirmed that there are threats from his father who has disowned him and his life would be at risk (paragraph 8).
4. The judge went on to say that he found the Appellant "to be a very credible witness" and accepted his evidence (see paragraph 18). This was that the Appellant was a wholesaler of LPG gas in Pakistan and supplied oil products and lubricants for all types of engines. He was also a partner in a gym which was run by his sister. In Pakistan he lived with his parents and brother in the family home. (See paragraph 19). The Appellant then came to the UK in August 2014 with his sister, to promote the sister's beauty products and to research the gym market in the UK. It was then that he was introduced to Naqeeb, who was a close friend and a colleague of the Appellant's brother, Awais, who worked at Kerry Foods (see paragraph 20). The judge accepted that subsequently the Appellant and his partner lived together and married on 23rd December 2014 (see paragraphs 22 to 24).
5. There was evidence before the judge in the form of the "Country Information and Guidance Pakistan: Sexual Orientation and Gender Identity", which confirmed that "same sex sexual acts are illegal in Pakistan" (see paragraph 2.3.3) and the judge set this provision out in full (see paragraph 41). He went on to conclude that "in view of the significant restrictions and persecution of homosexuals in Pakistan there are insurmountable obstacles to the Appellant and his husband enjoying married life in Pakistan" such that it would be most unreasonable to expect the Appellant's husband to relocate to Pakistan to live with him there (see paragraph 42).
6. Nevertheless, the judge went on to say that "there is an alternative and that is for the Appellant to return to Pakistan alone and to apply for entry from his country of nationality and origin" (paragraph 43). Since the Appellant's husband did not wish to relocate to Pakistan it was open to him to remain in the UK from where he can support his application to rejoin him.
7. In considering Article 8, the judge concluded that because the Appellant had spent his formative years outside the UK in Pakistan it was not unreasonable to expect him to be able to readjust to life in Pakistan. In particular, "as it is the intention of the Appellant to apply for re-entry to the UK there relocation to Pakistan may only be for a relatively short period" (paragraph 59).

8. Finally, regard was had to the public interest considerations and the judge held that these ultimately fell against the Appellant because his status in the UK was “always precarious” (paragraph 69).
9. The appeal was dismissed.

Grounds of Application

10. The grounds of application state that the judge failed properly to apply the guidance in **Chikwamba** [2008] UKHL 40 and **LM** [2010] UKUT 379 and **EB Kosovo** [2008] UKHL 41 and **VW Uganda** [2009] EWCA Civ 9. The grounds state that in concluding that it would be proportionate under Article 8 for the Appellant to return and apply for entry clearance, the judge did not take into account evidence that the Appellant would incriminate himself in a criminal offence and would be at risk from his family and wider community on account of his sexuality.
11. On 8th February 2017, permission to appeal was granted on the basis that the judge failed to take into account the evidence mentioned in paragraphs 45 to 74 of the witness statements which went directly to the issue of proportionality.

Submissions

12. At the hearing before me on 14th April 2017, Miss Faryl, appearing on behalf of the Appellant, relied upon the grounds of application dated 30th August 2016. These ran into nineteen paragraphs. She also relied upon the grant of permission dated 8th February 2017. She emphasised that the Appellant and his partner both were strongly of the view that they could not live in Pakistan because of fears. The judge found the Appellant “to be a very credible witness” (paragraph 59). The judge took the view that requiring the Appellant to return to Pakistan to make an application to enter as a spouse would be “only for a relatively short period” but this failed to take into account the jurisprudence in **Chikwamba** (at paragraph 61). Furthermore, the Appellant would be committing a criminal offence if he were to return back as a gay person who had married.
13. For his part, Mr Bates opposed the appeal. He submitted that in **Chikwamba** children were involved and that was a very different case. Moreover, the only reason why switching from one category to the other was not allowed was because people were able to return back to their country and reapply and he referred to the case of **R v Chen**. Mr Bates submitted that in any case involving spouses, one has to comply with the Immigration Rules. The Appellant is not at risk of returning. He has not been gay in Pakistan before. There was absolutely no reason why he would tell the authorities there what he was going to tell the Entry Clearance Officer in a private interview when making an application to return back to the UK as the spouse of a person settled in the UK.
14. In reply Miss Faryl submitted that the Appellant’s sexuality had to be considered in any event. It was not relevant to the matter of his return. He was, after all, breaking the law in Pakistan as a married gay person. Moreover, he also fears his family. She submitted that there would be no new evidence and that if this Tribunal were to make a finding of an error of law it could proceed to remake the decision. On the

other hand, Mr Bates submitted that if there was a finding of an error of law the Respondent would need new evidence to consider as to why the Appellant's return to Pakistan was impractical.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
16. This is a case where the judge, notwithstanding the fact that there was no evidence before the Tribunal below of the Appellant having been gay in Pakistan, or of ever having "come out" in any manner in Pakistan, concluded that the Appellant had offered very credible evidence about his gay relationship with Mr Mohammed Naqeeb Ali. The judge also went on to find that the Appellant had not satisfied the specific requirement of Immigration Rules at the date of application relating to the English language test (paragraph 25). Nevertheless, the Appellant did not make a protection application.
17. What he made was a spouse's application to remain here. In that regard, the judge was quite clear that although there would be "significant restrictions" on homosexuals in Pakistan (see paragraph 42) the Appellant and his partner were not together required to return back as practising gay homosexuals. It was open to the Appellant to return back to Pakistan and make an application himself which, in a matter of weeks, would be resolved through an interview with the Entry Clearance Officer (see paragraph 43).
18. That, concluded the judge, did not amount to the imposition of insurmountable obstacles upon the Appellant's right to Article 8 rights, and nor did it infringe his Article 8 rights in general.
19. That was the conclusion which was entirely open to the judge. Mr Bates is wholly right in submitting that spousal appeals must comply with the Immigration Rules. If what the Appellant claims is correct, namely, that because of his gay relationship in the UK, he cannot return back to his own country to make a visa application, then every such case would be able to undermine the Immigration Rules, and there would be need to comply with the spouse's requirements under the Rules. That cannot be right. Accordingly, there is no error of law.
20. No anonymity direction is made.
21. This appeal is dismissed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

3rd May 2017