



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02330/2017

THE IMMIGRATION ACTS

Heard at Field House
On 27 October 2017

Decision & Reasons Promulgated
On 31 October 2017

Before

UPPER TRIBUNAL JUDGE FINCH

Between

MD F H

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Hussain of counsel, instructed by Raiyad Solicitors

For the Respondent: Mr. P. Hastings, Home Office Presenting Officer

ANONYMITY ORDER.

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 or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant, who was born on 15 December 1989, is a national of Bangladesh. He arrived in the United Kingdom on 13 April 2014 as a Tier 4 (General) Student Migrant and his leave was extended in this capacity until 17 April 2016, when it was curtailed because his college had lost its licence. He had previously returned to Bangladesh between 13 August 2015 and 25 September 2015 in order to visit his family. Whilst there, he had refused to enter into a marriage arranged by his parents. He did so as he had recognised that he had been attracted to men, and not women, since the age of 14.
2. Whilst in the United Kingdom the Appellant started to attend gay groups and clubs and entered into a relationship with a male partner between November 2014 and July 2016.
3. The Appellant applied for asylum on 23 August 2016 on the basis of his sexual orientation. The Respondent refused his application on 17 February 2017 and the Appellant appealed against this decision.
4. First-tier Tribunal Judge Oliver dismissed his appeal in a decision, promulgated on 25 April 2017. The Appellant sought permission to appeal to the Upper Tribunal and permission was granted by First-tier Tribunal Judge Baker on 31 August 2017.

THE HEARING

5. I heard submissions from counsel for the Appellant and the Home Office Presenting Officer and I have referred to these submissions, where relevant, in my findings below.

MERITS OF THE APPEAL

6. In paragraph 25 of his decision First-tier Tribunal Judge Oliver accepted that the Appellant is gay and the Respondent has not cross-appealed to challenge this finding.
7. However, in the same paragraph the First-tier Tribunal Judge went on to state that he did not accept that the Appellant had shown that he would face persecution on return at the hands of his family or state actors. He did not give any specific reasons for these findings.
8. Instead her relied on a general adverse credibility finding. He gave two reasons for this finding. The first one was that the Appellant had said that he had not known that he could apply for asylum until shortly before he did so. The First-tier Tribunal Judge doubted that this was the case as one of the Appellant's friends, whom he had known since the Summer of 2015, had been granted asylum on the basis of his own sexual orientation. However, in oral evidence this friend said that the Appellant had not told him he had issues about his immigration status until around October 2016. The Appellant also said that when he first met this friend he had a valid visa and, therefore, the issue was not discussed.
9. The First-tier Tribunal Judge also noted that *HJ (Iran) v Secretary of State for the Home Department*, *HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 had been decided in the middle of 2010 and would "clearly have been well known in the cosmopolitan gay circles of London". I looked at the First-tier Tribunal Judge's record of proceedings and also checked with both representatives and find that no question relating to any such knowledge was put to the witnesses or could be inferred from any evidence before the Judge.
10. Furthermore, when considering the credibility of the Appellant's fear of persecution in Bangladesh, the First-tier Tribunal Judge found that the delay in claiming asylum counted powerfully against him. In the case of *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11 the Court of Appeal held that the proper approach to a

consideration of credibility was to consider all the evidence provided in an appeal, give appropriate weight to each item of evidence and then reach a decision in the light of the totality of this evidence.

11. One element of this overall assessment was a consideration of any relevant factors referred to in section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. But it was not the only element.
12. In paragraph 23 of the decision, the First-tier Tribunal Judge Oliver, referred to the Respondent's Country Policy and Information document on *Bangladesh: Sexual orientation and gender identity*, December 2016. The Home Office Presenting Officer submitted that this was a balanced document and that there was an LGBT community in Dhaka. She also submitted that the First-tier Tribunal Judge was not obliged to refer to every piece of evidence.
13. However, the First-tier Tribunal Judge was obliged to adopt the approach advocated in *Karanakaran* and to consider the objective sources referred to by the Appellant in his witness statement, dated 4 April 2017. His failure to do so meant that he had not applied sufficient judicial scrutiny.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Oliver.

Nadine Finch

Signed

Date 27 October 2017

Upper Tribunal Judge Finch