



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

Appeal Number: PA/03733/2017

THE IMMIGRATION ACTS

**Heard at Liverpool
On 31 August 2017**

**Decision & Reasons Promulgated
On 6 September 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

[A S]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, [AS], was born on [] 1992 and is a male citizen of Pakistan. The appellant appealed against the decision of the Secretary of State dated 8 August 2013 to remove him from the United Kingdom following refusal of his claim for asylum and human rights claim. The appeal was heard in the First-tier Tribunal (Judge Robinson) and was dismissed by a

decision promulgated on 6 June 2017. The appellant appealed to the Upper Tribunal and permission was granted by First-tier Tribunal Judge Keane on 3 July 2017.

2. At the hearing at the Upper Tribunal sitting in Liverpool on 31 August 2017, Mr Harrison, a Senior Home Office Presenting Officer, appeared for the respondent. The appellant was not present at court nor was he represented. I am satisfied that a notice of the hearing was served on the appellant at his last known address in Liverpool by second class post on 13 July 2017. There is nothing on the court file to indicate that the notice of hearing failed to reach the appellant. The appellant has provided no/no satisfactory reason for failing to attend. In the circumstances, I proceeded with the hearing in the absence of the appellant. Having reviewed the file carefully and having regard for the matters detailed above, I consider that it is in the interests of justice to proceed with the hearing (see Tribunal Procedure (Upper Tribunal) Rules 2008, paragraph 38).
3. Granting permission, Judge Keane had found that there was no merit in the grounds as drafted by the appellant himself. However, Judge Keane noted that at [37], Judge Robinson had made reference to earlier proceedings before a differently constituted Tribunal involving the same appellant. In July 2015, the appellant had appealed against a refusal to grant him a residence card and had attended a hearing with his wife. Judge Robinson noted that, “he was found to be an unreliable and untruthful witness of fact. The Tribunal found that his marriage was a marriage of convenience. Nevertheless, the appellant still asserts that it was a genuine relationship”. Judge Keane found that it was arguable that Judge Robinson had relied upon an immaterial matter. Judge Keane stated that it was “arguable that the judge in the instant appeal should have confined his consideration to the evidence presented and it was arguably irrelevant that the appellant had not been believed at an earlier hearing”.
4. I have to say I do not agree with Judge Keane. I find there is nothing inappropriate whatever regarding the reference made by Judge Robinson at [37] to the previous proceedings. Indeed, Judge Robinson is doing no more than stating a fact; the appellant had been found by a previous Tribunal to be an unreliable and truthful witness and a party to a marriage of convenience. Within the instant proceedings, the same appellant had asserted that the marriage previously found to be one of convenience was genuine; the findings of fact of the previous Tribunal which had considered the same matter of the appellant’s marriage were manifestly relevant to Judge Robinson’s deliberations. Moreover, it is clear, even if Judge Robinson should not have considered those previous appeal, it played little, if any, role in his determination of the appellant’s credibility in the instant proceedings. At [46], Judge Robinson wrote:

“In light of all the evidence before me, in particular the inconsistencies in the appellant’s account of his relationships with other men highlighted in the refusal letter, the lack of reliable evidence about his sexual orientation, the timing of his partner’s decision to leave the UK and return to Romania

and the general lack of any coherent reason for not applying for asylum at an earlier opportunity, I conclude that the appellant has not demonstrated that his account is reliable and can be believed. I find that his core story about his claimed sexual orientation, the nature of the relationship with [CP], his relationship with other men in Pakistan and the UK, his claim to have been in a genuine relationship with a Romanian woman is unreliable. I take the view that he has fabricated an account in order to support a false asylum claim. I do not accept that he has shown he has a genuine fear of persecution on the grounds that he is bisexual or gay.”

5. The judge was entitled to find that the appellant’s claim to have been in a genuine relationship with a Romanian woman was false and he was entitled to consider, in reaching that finding, that a previous Tribunal had found the appellant to be an unreliable witness. In any event, it is clear from the first part of the paragraph which I have just quoted above, that the reasons given by Judge Robinson for finding that the appellant was not credible, whilst numerous, are not primarily founded upon the findings of the previous Tribunal. The judge’s decision is legally sound and is supported by cogent and reasoning. In the circumstances, the appeal is dismissed.

Notice of Decision

6. This appeal is dismissed.
7. No anonymity direction is made.

Signed

Date 5 September 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 5 September 2017

Upper Tribunal Judge Clive Lane