



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/08639/2016

THE IMMIGRATION ACTS

Heard at Manchester, Piccadilly

Decision & Reasons Promulgated

On 14<sup>th</sup> September 2017

On 19<sup>th</sup>

September 2017

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR MUHAMMAD [A]

(Anonymity Direction not made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Mair (Counsel)

For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

DECISION & REASONS

1. This is the Appellant' appeal against the decision of First-tier Tribunal Judge Lawrence promulgated on the 13<sup>th</sup> March 2017, in which he dismissed the Appellant's asylum appeal.

2. It was the Appellant's case before the First-tier Tribunal Judge that he was entitled to asylum on the basis of him being a member of a particular social group, being a gay man in Pakistan, who would be at risk of persecution upon return. It is his case that he had engaged in homosexual activities whilst in Pakistan and on one occasion been discovered whilst having homosexual sex by his father, and on another occasion whilst at college between 2007 and 2008, when he said that someone had climbed a wall and videoed him, having gay sex. It is his case that although he had married a woman Mrs Akhtar in the UK, he had had a male homosexual relationship with Mr Nawaz and had been caught having sex with Mr Nawaz by his wife.
3. Within the Grounds of Appeal it is argued in the first ground that the Judge failed to take account of material evidence in respect of text messages between the Appellant and his partner Mr Nawaz which were said to be of a sexual nature, photographs of the Appellant at LGBT events, a letter from Adrian Palmers the convenor of the Rochdale Gay and Bisexual Asian Men's Support Group, and a letter from Mohammad Siddique the Appellant's brother-in-law who was said to attest to the breakup of the Appellant's marriage and his homosexuality, together with a letter from Peter Cardew, a psychosexual therapist confirming the Appellant had sought help for erectile dysfunction which was situational in that it only occurred with a female partner whereas the Appellant could engage in anal intercourse with men. It was further argued the judge had not properly taken account of the witness evidence of 3 witnesses who attended the Tribunal and gave evidence as to the Appellant's homosexuality.
4. Within the second ground of appeal it was argued that the judge erred in finding that it was implausible that someone would climb up a wall to video record a sexual act, take photographs, develop it and then put them into the community, whilst the Appellant was in the act of sex and that the judge failed to take account of the fact that if a mobile phone was used to produce the videos and photographs, the digital images could be shown instantaneously and would not need to be "developed".

5. Within the third ground it is argued that the judge erred in finding the Appellant's ignorance as to the criminal status in homosexuality detracted from his credibility and that his knowledge of the law in Pakistan should be distinct from an assessment of the homosexual encounters.
6. Permission to appeal was granted by First-tier Tribunal Judge Gillespie on the 4<sup>th</sup> April 2017, who found that the Grounds of Appeal were arguable.
7. In the appeal hearing before me in the Upper Tribunal, Mr McVeety on behalf of the Respondent conceded that the decision of First-tier Tribunal Judge Lawrence did contain material errors of law. He conceded that the judge at [9] when finding that it was implausible that someone would climb a wall to video record a sexual act, take photographs, develop them and put them into the community whilst the Appellant was in the act of sex, appears to have misinterpreted the Appellant's account and found that the photographs and videos would need to be developed, and that in the modern age, cameras can produce videos and photographs instantaneously on a digital mobile phone. Miss McVeety conceded that the judge's misinterpretation as to the basis of the case did amount to a material error of law. He also conceded that the judge had not taken into account the evidence summarised within the Grounds of Appeal prepared by Miss Mair. This again he conceded was a material error of law.

#### My Findings on Error of Law and Materiality

8. In light of the concessions made by Mr McVeety on behalf of the Respondent, I do find that the First-tier Tribunal Judge's decision does contain material errors of law, both at [9] when the judge seems to assumed that photographs or videos would need to be developed, before being shown to the community, whereas in fact through the use of a digital device such as a mobile phone, videos and photographs can be taken and shown instantaneously.
9. I further find that as conceded by Mr McVeety, that the Learned First-tier Tribunal Judge has not specifically mentioned within his decision the phone

messages between the Appellant and Mr Nawaz who was said to be his partner in the UK with whom he lived, the letter for Mr Palmers the Convenor of the Rochdale Gay and Bisexual Asian Men's Support Group, the letter from Mohammad Siddique the Appellant's brother-in-law, the letter from Peter Cardew, a psychosexual therapist, when making his findings. Further, although at [23] the judge found that "*The other 2 witnesses gave evidence to the effect that in their opinion the Appellant is gay. Shahzad has dropped him off at gay clubs. Attendance at gay clubs or being members of LGBT groups or photographs taken with other men does not make that man gay.*" However I do find that the judge has not fully or adequately engaged with the actual evidence given by those witnesses.

10. The decision of First-tier Tribunal Judge Lawrence, as considered by Mr McVeety, does contain material errors of law and is therefore set aside.
11. Given the amount of fact finding that will need to be made given that in my judgement the decision needs to be made again in its entirety, as agreed by both legal representatives, it is appropriate that the case be remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Lawrence.

#### Notice of Decision

The decision of First-tier Tribunal Judge Lawrence does contain material errors of law and is set aside.

The matter is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Lawrence.

I make no order in respect of anonymity, no such order having been sought before me.

Signed



Deputy Upper Tribunal Judge McGinty Dated 14<sup>th</sup> September 2017