



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14190/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 19th July 2017

Decision & Reasons Promulgated
On 20th July 2017

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR Z B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Danji (instructed by AH Solicitors)

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

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant against the Decision of First-tier Tribunal Judge Devittie. Following a hearing at Taylor House on 27th January 2017, in a Decision and Reasons promulgated on 14th February 2017 Judge Devittie dismissed the appeal on all grounds.

2. The Appellant's asylum claim is on the basis that he is a gay man from Pakistan. He had come to the UK aged 14 in 2003. He claimed asylum based on his religion in 2003. That application was refused and his appeal against the decision dismissed in 2004.
3. He next made further representations in November 2011 which were rejected in March 2014. He then made an application based on his sexuality in June 2016. It was the refusal of that application which came before Judge Devittie.
4. The Judge accepted at paragraph 6 of his Decision and Reasons that, if he was to find the Appellant to be gay, there would be a reasonable degree of likelihood he would face persecution if he was inclined to openly express his sexuality in Pakistan.
5. The Judge had before him the oral evidence of the Appellant and of a witness, Farook and he had witness statements from two friends of the Appellant's, Naveed Ahmed and Malik.
6. In his Decision and Reasons the Judge set out the witness statements. Naveed Ahmed said that he had known the Appellant since 2011 when he shared an apartment with him in Brixton. The Appellant not disclose his sexuality to him until the end of 2015 when his relationship with his boyfriend ended and he was very distressed. He said that he was aware of the difficulties the Appellant had with his parents who were pressurising him to return to Pakistan and marry a cousin and it was only because of that that he divulged his sexuality to them. Since then they have ostracised him and threatened him. He also said the Appellant had attended the gay parade in London in July 2016 and was due to attend the next one in 2017. He also said that he had acquired membership of gay bars and organisations.
7. The Judge set out the evidence contained in the statement of Malik. He had been granted refugee status as a dependent of his partner with whom he has been in a civil partnership since August 2014. He describes having met the appellant in August 2016 and of then becoming close friends with him.
8. The Judge set out the oral evidence Farook who had known the Appellant since 2003, shortly after he had arrived and who had offered considerable support over the years to the Appellant. He said that he become aware of the Appellant's sexuality in October 2008. He described the Appellant's distress at the end of relationships and confirmed the difficulties that he has had with his parents as a result of his disclosure of his sexuality to them.
9. The Judge commenced his credibility findings at paragraph 8 of his Decision and Reasons. The first adverse finding he makes is on the basis of the very significant delay in claiming asylum based on sexuality. The Judge was entitled, even required, to make an adverse credibility findings based on delay in accordance with section 8 of the Immigration and Asylum (Treatment of Claimants, etc.) Act 2004. However, the Judge has noted that when the Appellant arrived in the UK the age of 14 he had already had a gay relationship in Pakistan and would have known about his sexuality, if not immediately, shortly after arriving in the UK. That finding is

speculative and does not take account of the Appellant's extreme youth and indeed his extreme youth when he had his gay relationship in Pakistan; he was then only 13.

10. The Judge also found against the Appellant on the basis that his various gay friends who have been granted refugee status on the grounds of their sexuality would have been able to advise him that he could do the same. The Judge made an error of fact in that finding because the evidence was that he had only met them after he claimed asylum.
11. The second adverse finding is based on the same mistake as to the facts.
12. The third adverse finding is not reasoned and based on the fact that the Judge did not accept that his parents, would after several years of inactivity, suddenly exert pressure on him to return to Pakistan and marry. That is speculative and it does offer an explanation as to what prompted the Appellant to claim asylum when he did.
13. The fourth adverse finding is based on the fact that the Appellant had not been particularly active in the gay scene prior to 2016. That was an adverse finding open to the Judge on the evidence.
14. The next adverse finding incorrectly identified as (iv) was based on the Appellant's immigration history which weighed against him. This again relates to the delay in claiming.
15. It is apparent that what weighed most heavily with the Judge was the Appellant's delay in claiming asylum based on his sexuality. Whilst delay has to be taken against an Appellant when assessing credibility the main issue in this case, as identified by the Judge, was whether the Appellant was in truth gay and if so whether he had delayed in claiming asylum or not, he was entitled to be recognised as a refugee. The Judge has not assessed in any of the findings described so far whether or not the Appellant is in truth a gay man.
16. At paragraph 9 the Judge rejected the evidence of all three witnesses without giving any reason why he has done so.
17. For all of the above reasons I find that the Judge has made a material error of law; he has not given an adequate assessment of the Appellant's sexuality and the Decision and Reasons must be set aside in its entirety.
18. The Appellant not having brought his witnesses to court and the fact that the appeal needs to be heard de novo it was inappropriate for me to redecide the appeal and both representatives agreed it was appropriate to remit it for hearing in the First-tier Tribunal.

Notice of Decision

The appeal to the Upper Tribunal is allowed to the extent that the First-tier Tribunal's decision is set aside and the appeal is remitted for a full de novo hearing in the First-tier Tribunal.

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 their family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 19th July 2017

Upper Tribunal Judge Martin