



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

Appeal Number: PA/00009/2017

THE IMMIGRATION ACTS

Heard at Rolls Building, London

**Decision & Reasons
Promulgated**

On 13 February 2018

On 27 February 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

**MJA
(ANONYMITY CONTINUED)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jaquiss, instructed by Bespoke Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on [] 1985 and is a citizen of Bangladesh.
2. On 26 May 2017, First-tier Tribunal Judge M A Khan dismissed the appellant's appeal against the respondent's refusal of his protection and human rights claim, dated 19 December 2016. The judge did not believe the appellant's claim to be gay and therefore did not find him to have a well-founded fear of persecution if returned to Bangladesh. For similar reasons, the judge did not find the appellant benefited from humanitarian

protection or from the human rights convention (articles 2, 3 and 8 considered). The appellant challenged Judge Khan's decision.

3. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 25 October 2017 because it was arguable Judge Khan's findings on credibility were not sound.
4. After hearing from Ms Jaquiss and Mr Melvin, and having considered the papers submitted regarding the appeal, I conclude there is no legal error in Judge Khan's decision and reasons statement. My reasons will be apparent from what follows.
5. I begin by discussing an issue that is not in the grounds of appeal; Judge Khan gives no explanation why he permitted the respondent to rely on a bundle of unrelated First-tier Tribunal decisions. Mr Melvin provided evidence that Ms Leyshon, who represented the respondent before Judge Khan, had applied for the decisions to be admitted even though they are not reported decisions.
6. After examining the appeal file, I retrieved the relevant application; it was made under article 11(4) of the Senior President's Practice Directions 2014. It was not a clear application from the papers, having been prepared in relation to a different case and having handwritten annotations. On examination, and after hearing Mr Melvin's submissions, I was satisfied the document represented an application made to Judge Khan.
7. The decisions from other First-tier Tribunal judges were submitted to show that Mr Rashid, one of the appellant's witnesses, had been a witness in several similar appeals. This was a factor on which the respondent wished to rely because it was argued Mr Rashid was a "hired witness" rather than a witness of truth. The only comment I make is that it would have assisted me if Judge Khan had addressed the application in his decision and reasons statement so that it was clear to everyone why the decisions of other judges had been admitted in evidence.
8. I add one additional comment; I am satisfied that in admitting the decisions of other judges, Judge Khan implicitly waived the anonymity directions contained therein for the purposes of this appeal. In case there is any doubt, those anonymity directions were waived only for this purpose, and for all other purposes remain in force.
9. I move on to record the one issue that was conceded by the appellant. At paragraph 4 of the grounds of application, the appellant alleged that Judge Khan was unclear whether he accepted the appellant is homosexual. Ms Jaquiss conceded at the outset that this was not the case because Judge Khan makes a clear finding at paragraph 45 that the appellant is not homosexual.

10. The grounds that were pursued relate to the credibility findings made by Judge Khan. The grounds allege that Judge Khan erred in several interconnected ways, which when considered as a whole undermine the finding that the appellant is not gay. Ms Jaquiss provided me with the UNHCR Guidelines No 9 (Refugee Status bases on Sexual Orientation and/or Gender Identity), the Home Office API (Sexual Orientation in Asylum Claims) and the CJEU's judgment in *A, B, C v Staatsecretaris van Veiligheid en Justitie (Netherlands) (Case No C-148/13 and others, 2 December 2014)*. As these documents are well known, there was no objection to their admission.
11. In summary, the grounds and Ms Jaquiss's submissions, argue the following points.
 - (i) Judge Khan did not give satisfactory reasons for rejecting the appellant's evidence regarding the delay in claiming asylum. The appellant had consistently stated he did not know he could claim asylum based on his sexual orientation.
 - (ii) Judge Khan did not have proper regard to the appellant's vulnerabilities when assessing the veracity of his statements, including his reluctance to answer some questions. Judge Khan failed to have regard to the appellant's psychological history.
 - (iii) Judge Khan failed to appreciate that the appellant had been confused by the questions put to him about whether his family were aware of his sexuality. The appellant's answers indicated that whilst he thought his family knew about his sexual orientation when he was still living in Bangladesh, he did not tell them until after he had come to the UK. There was nothing inconsistent in these accounts.
 - (iv) Judge Khan failed to give sufficient reasons for finding that the appellant's evidence was extremely vague and evasive. The mention at several junctures in parenthesis of "vague and evasive" was not a clear finding.
 - (v) Judge Khan equates living an openly gay life with having gay relationships, which shows a misunderstanding of what gay living and lifestyle involves. In relation to this ground, Ms Jaquiss identified that Judge Khan had erred in any event by suggesting the appellant claimed only to have had one sexual partner.
 - (vi) Judge Khan dismisses the evidence of Mr Rashid and Mr Chaudri based on negative findings made by another First-tier Tribunal Judge (Designated Judge Manuell). The mere fact that a person is an experienced witness is not sufficient to justify discrediting that person. It was incumbent on Judge Khan to make findings of fact on the evidence provided by Mr Rashid and Mr Chaudri.
12. In response, Mr Melvin relied on the following points.
 - (i) Judge Khan had taken into consideration that fact the appellant had delayed his claim for asylum for seven years, during which time he had made other applications to the respondent, none based on a gay

relationship. One application had been based on a heterosexual relationship. Although the appellant said he had made that application on the advice of a lawyer, he had not provided any evidence of such collusion, and therefore such an allegation could not be allowed to stand (see *SV (Alleging misconduct and suppressing evidence) Iran* [2005] UKAIT 00160).

- (ii) The appellant had not provided any medical evidence to support his own claimed psychological history or the suicide attempt of Mr Rashid. In relation to the latter, Mr Melvin submitted that there would have been time to obtain some paperwork from the hospital treating Mr Rashid over the weekend, the appeal having been heard on the Tuesday following the claimed suicide attempt. In the absence of evidence, and given the immigration and appeal history, it was unsurprising that Judge Khan decided to proceed rather than to adjourn. It was also unsurprising, given the documentary evidence about the lack of Mr Rashid's reliability as a witness, that Judge Khan rejected his evidence about the appellant's sexuality.
 - (iii) As to Mr Chaudri's evidence, Judge Khan recorded that he admitted to having supported at least another ten Bangladeshi asylum-seekers in relation to appeals based on their sexual orientation. That admission meant no evidence of the same had to be obtained; Judge Khan was right to question the reliability of the witness and find his evidence did not stand up to scrutiny.
 - (iv) Overall, bearing in mind all the factors before Judge Khan, Mr Melvin implied that the outcome was inevitable because there were numerous issues which undermined the credibility of the appellant's account.
13. Although I have sympathy with some of the appellant's arguments, I am not persuaded that they identify legal error. It was open to Judge Khan to draw an adverse inference about the appellant's credibility because of the delay in claiming asylum. It is clear from his decision and reasons statement that he was aware of the appellant's explanation and that he rejected it. It was open to the judge to identify that the appellant was sufficiently familiar with UK immigration processes that his explanation was not credible. The only criticism I see is that Judge Khan could have been more precise in his reasoning and could have given many more reasons for rejecting the appellant's explanation for the delay. However, those criticisms are merely pointing to perfecting a decision; there is nothing wrong in law with the decision made or the reasons given.
14. It is unclear what was expected from Judge Khan in relation to the appellant's claimed vulnerabilities. The First-tier Tribunal procedures including Presidential guidance ensure the vulnerabilities of asylum seeking appellants are addressed to ensure such appellants can give their best evidence. I find there is nothing in the grounds of appeal to indicate that Judge Khan failed to follow expected procedures. It is trite law that even though the standard of proof is lower than a balance of probabilities

in an appeal dealing with a protection claim, the burden still lies on the appellant to prove his case. It was open to Judge Khan to find that the appellant had not discharged that burden because the evidence was vague and evasive at many junctures. I recall that the appellant had not provided any medical or other evidence to indicate any vulnerabilities that had to be addressed by special adaptations or procedures.

15. I have some sympathy for the appellant's allegation that he was confused by some of the questions put to him in cross-examination. However, it would be usual practice for his counsel to deal with those points in re-examination. The appellant was represented by counsel and there is nothing from Mr Slatter to indicate that he was prevented from dealing with such confusion. I find the time for raising concern about confusion has passed. I cannot find Judge Khan erred in law by dealing with the evidence and submissions presented.
16. I have some sympathy with the appellant's concern about Judge Khan's apparent identification of openly gay life with gay relationships. The third sentence of paragraph 42 can be read in several ways if taken out of context. But in context it can only mean that the appellant had been unable to give sufficient evidence of living an openly gay life. Judge Khan takes one specific issue, that the appellant claimed to have had gay relationships but in fact the evidence did not support that claim, as an example of why the appellant's claim was not made out. In context, there is no legal error.
17. It was open to Judge Khan to reject the evidence of Mr Rashid and Mr Chaudri as being unreliable because they had been prepared to give evidence in several similar cases. Mr Rashid did not attend the hearing for reasons which were not substantiated. His evidence was a seven-line letter. In the circumstances, this was particularly weak evidence and fell below the low standard of proof that applied. Mr Chaudri admitted to giving evidence in at least ten similar appeals. His evidence was found to be unreliable because it was not consistent with the appellant's account.
18. Overall, although it may be possible to criticise Judge Khan's decision and reasons because of typographical and linguistic errors, when read as a whole it clearly draws carefully from the evidence provided and is sound. There were many reasons to find the appellant's account not credible, even taking into consideration the supporting evidence provided. Judge Khan did not resort to stereotyping and did not rely on any prejudicial matters; he examined the evidence fairly and openly and came to a reasoned decision.

Notice of Decision

The appeal is dismissed because there is no legal error in the decision and reasons statement of Judge Khan. His decision is upheld.

Signed

Date 21 February 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal

Order regarding anonymity

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as “MJA”.

Signed

Date

21 February 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal