



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02823/2018

THE IMMIGRATION ACTS

Heard at Field House
On 21st August 2018

Decision & Reasons Promulgated
On 5th September 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MD NAZMUL HAQUE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Judge, Counsel instructed by Cranbrook Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh who on 27th April 2017 sought asylum on the basis of his sexual orientation and in particular his recent relationship with Mr [JS]. The application was refused on 30th January 2018.
2. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Hussain on 3rd April 2018. In a determination promulgated on 23rd May 2018 that appeal was dismissed in all respects.

3. Challenge is now made to that decision on the basis that the Judge had failed to consider material evidence as to the relationship; that generally the adverse credibility findings were not fairly or properly made on the basis of the evidence presented and the explanations given. Thus the matter comes before me to determine the issues.
4. The context in which the claim came to be made is a material consideration in the reasoning of the First-tier Tribunal Judge.
5. The Immigration history of the appellant has relevance in the overall assessment made as to credibility.
6. The appellant arrived in the United Kingdom on 10th September 2009 as a student. Leave was curtailed on 3rd October 2015. Further application for leave to remain on the basis of being a student was refused.
7. On 15th April 2016 the appellant was notified by letter that he must leave the United Kingdom unless he had any reason to stay. There was no response from him. He failed to report as required. He was not present at his home when enforcement was instituted. He applied for asylum on 27th April 2017 but failed to attend his interview. The interview was rescheduled and again he failed to attend that but eventually attending an interview on 23rd October 2017.
8. The account which he gave generally as to his fear to return was that in May 2008 he was involved in a homosexual relationship with one Aziz. A friend came into the room of Aziz and found displayed on the computer pictures of the appellant and Aziz naked. These were taken to the appellant's brother and cousin who attacked him because of his homosexuality. Thus he came to the United Kingdom.
9. Since being in the United Kingdom, until the relationship with Mr [S], the appellant had not engaged in any homosexual activities. The relationship with Mr [S] commenced in April 2017 at the time that the appellant made the claim for asylum. Mr [S] was also making a claim for asylum on his own behalf on a similar basis of homosexuality.
10. In the reasons for refusal the nature of the claim was considered in some detail and reasons given for not accepting it as being a credible one. Such was considered particularly in the light of the interview that was conducted with the appellant. It was noted that the appellant had a relationship with his girlfriend from 2000 until 2007. Although the appellant had throughout this time been friendly with Aziz it is his claim that his relationship with Aziz only changed after that period of time.
11. It was noted that the appellant had no relationships in the United Kingdom. He claimed that he had not found anyone that spoke his language notwithstanding the significant Bangladeshi community in East London. The appellant claimed that he went to gay clubs in 2011. He was not able to recall the names of any of them.

12. He claimed to have met Mr [S] in April 2017.
13. The Judge in the determination notes a number of factors which led to the conclusion that the appellant was not credible as to the circumstances of his claim. The Judge found that the circumstances of the original discovery lacked credibility and set out reasons for that conclusion at paragraph 24 of the determination.
14. If, as claimed the appellant had fled Bangladesh to escape such events, the Judge held his delay in making such a claim to his detriment. The explanation for the delay was that he was concentrating on his studies the Judge found to lack that credibility.
15. The Judge noted that the appellant had been in the country since 2009 and did not accept the explanations offered by the appellant as to why he was unable to form any relationships of a homosexual nature during that period.
16. Coincidentally it is a fact that when the appellant seeks to claim asylum to resist removal, he does so precisely at the same time as he claims to be in a new relationship with his partner. Whilst having had many years of abstinence and no homosexual relationship, it is at the very point when he is claiming asylum that he claims the relationship with Mr [S] started. The Judge notes that his partner is also an asylum seeker seeking to remain on the grounds of homosexuality and it is the finding of the Judge that that evidence has been contrived for the purposes of creating an appeal by both.
17. It is contended before me by Mr Judge that the Judge failed to take into account material evidence which was supportive of the relationship.
18. In particular the many phone calls made between the two men as evidence of the relationship. Those phone calls are numerous and date from September 2017 through to March 2018. The evidence sets out the length of those telephone calls but not the nature of the conversation.
19. There is a booking at a hotel on 14th February 2018 of a double room. There are a number of photographs taken seemingly of the appellant and Mr [S] in an iconic gay nightclub. There is no indication as to when the photographs were taken or who by or indeed for what purpose. There is a restaurant bill for Nandos. These matters are said to be affirming of the relationship as claimed between the appellant and Mr [S] and the Judge was wrong not to take account of them.
20. The Judge had had the advantage of hearing both the appellant and Mr [S] and noted specifically in the determination the text messages and the conversations which they have had. Mr [S] stated that he was an asylum seeker and his application is pending. The Judge, however, found that the evidence which he gave was contrived. The Judge had the advantage of hearing both men give evidence and was in the best position to judge the weight to be given to that evidence in all the circumstances. The Judge clearly had in mind the telephone calls, since there were no text messages as such. If

the claim was contrived then the photograph taken in an iconic nightclub could be posed. In the absence of clear evidence as to when and why it was taken it is difficult without more to conclude that it was a photograph taken in genuine circumstances. Without more it is difficult to understand how matters could be progressed further by those photographs. The restaurant bill and the hotel booking by themselves serve to prove very little.

21. It is also clear from paragraph 28 of the determination that the Judge had regard to the decision letter and the concerns raised therein.
22. Thus the Judge has considered the context in which the appeal was made; the credibility of the original account; the undue delay in presenting the claim; the circumstances in which the claim eventually came to be presented; the absence of any indication of homosexual conduct prior to April 2017; the coincidence of making such a claim at the time of claiming his asylum and the nature of the relationship with Mr [S] as claimed.
23. An assessment of credibility should be on a holistic basis. I can find nothing to indicate that was not applied in this particular case. Although it may be unfortunate that the Judge did not make specific reference to the photographs or the documentation, it is difficult to understand how such, would in reality have materially changed the assessment arrived at reasonable grounds that the asylum claim was contrived and the relationship presented essentially to deceive.
24. In the circumstances I find no error of law.

Notice of Decision

The appeal of the appellant to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand namely that the appeal for asylum is dismissed as is that for humanitarian protection and human rights.

No anonymity direction is made.

Signed 

Date 30 August 2018

Upper Tribunal Judge King TD