



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

Appeal Number: PA/04537/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 27th September 2018**

**Decision & Reasons
Promulgated
On 29th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**[R M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hussain (Solicitor)
For the Respondent: Ms K Pal (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge MMK Lawrence, promulgated on 12th July 2018, following a hearing at Harmondsworth on 8th June 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, and he was born on 1st August 1983. He appealed against the decision of the Respondent dated 22nd September 2017, refusing his application for asylum and humanitarian protection under paragraph 339C of HC 395, on the basis that he is a homosexual from Bangladesh.

The Judge's Determination

3. In a detailed and extensive determination, the judge recounted how the Appellant initially had in place a witness by the name of [MR], who claimed to have been granted refugee status as a homosexual from Bangladesh, but who then chose not to attend the hearing. This was at the time when the hearing had been set down for 8 June 2018. Instead, a person by the name of [SA] attended. Also in attendance was a person by the name [JS].
4. The general view of the judge was that the witnesses had been primed to give evidence with respect to what was a bogus claim for asylum by this Appellant. For example, the Appellant claimed that he was a "secretive homosexual in Bangladesh" but failed to explain what he meant by this, (paragraph 12). The Appellant also claimed that his uncle had been informed about his sexuality in Bangladesh (paragraph 13). The judge was not satisfied that the Appellant would have been reluctant to confess his sexuality to [JS], if it was [JS] who had informed the uncle of the Appellant's homosexuality (paragraph 14). A number of witnesses with witness statements, did not attend the hearing, as avoiding having their evidence tested in cross-examination (paragraph 16).
5. At the hearing, the Appellant himself gave evidence, where he was shown standing with other people, but the judge stated that photographs in themselves, in the company of other male members of society, did not suggest that he was in a homosexual relationship. When the Appellant was cross-examined, he said that he did not claim asylum earlier because "he did not know how". The judge held that this was contrary to what Mr [K] had said in his written evidence (paragraph 18).
6. Moreover, the Appellant said in his oral evidence that he attended LGBT clubs but did not "come out" as gay until 2016 (see question 14 of the asylum interview). The judge held that this evidence was contradicted by Mr [K] himself who said the Appellant was living "openly" as a gay person in 2015. But most importantly, the judge observed how in cross-examination, the Appellant said that he did not tell the LGBT people that he was gay "because he thought they might be disgusted with him", and this was contrary "to the ethos of LGBT organisation to its core".
7. The judge found that the Appellant had not attended any of these meetings because if he had done he would know the views of the LGBT people in terms of their ethos (paragraph 21). Insofar as this appeal is concerned, in terms of the evidence of [SA], who, when asked as to where

the Appellant lived, said that he believed he lived in “Portsmouth”. The judge held that this “is clearly not the case” and that this “was pointed out to him”, to which [SA] said that “he does not have the Appellant’s address and “but only has his telephone number, from that he deduced he lived in Portsmouth” (paragraph 22).

8. The judge then went on to consider whether the Appellant and [SA] had been in touch by telephone looking at the telephone codes for Portsmouth and for Southampton, as well as for Christchurch in Dorset. He observed that “the witnesses never used the Appellant’s telephone ever to call him” (paragraph 24).
9. Against this background, the judge went on to look at what the essence of the claim to homosexuality was between [SA] and the Appellant. He observed that [SA] lived in Ilford and the Appellant himself lived in Dorset. He went on to conclude that “it is far-fetched to claim that they both incurred the expense of travelling from Essex and Dorset to have a casual tryst in a sauna in Vauxhall, London. This is not for real” (paragraph 26). The judge then proceeded to say that, “there is no reference in the Appellant’s witness statement, dated 10th May 2018, meeting anyone in a sauna in London for sex”. It did not end there.
10. This is because the evidence before the judge was that

“The Appellant claims he is not in a relationship with anyone now. However, he brought [SA] to give evidence on his behalf. His evidence is that they meet in a sauna in Vauxhall for sex. This is relationship. Casual. But a relationship. The Appellant makes no reference to it in his witness statement or in his oral evidence” (paragraph 28).
11. Thereafter, the judge cited relevant case law (paragraphs 29 to 37) before dismissing the appeal, on human rights grounds, as well as on asylum grounds.

Grounds of Application

12. The grounds of application state that the judge misconstrued the evidence. This was particularly the case in terms of what was said by Mr [K] and by the Appellant in relation to each other. It was also said that the judge misheard the Appellant’s witness, [SA], as having said that the Appellant lived in Portsmouth, when in fact the Appellant lived in Bournemouth.

Grant of Permission

13. In the grant of permission, that is particularly helpful and significant, the judge stated that there was nothing to the argument that the judge misunderstood the evidence in relation to the Appellant and Mr [K], and their relationship, but they may be a “potential materiality to refer” insofar as the judge got the name of Bournemouth mixed with Portsmouth, as the place where [SA] was alleged to have said that the Appellant lived. In fact,

as the judge granting permission it is clear, “the ROP does record the witnesses having referred to the dialling code for Bournemouth” (see paragraph 4). Moreover, the grant of permission also makes the point that “the judge found additional reasons for finding the witness not credible” but for the avoidance of doubt there may be a “potential materiality to refer” insofar as there was a reference to Portsmouth at all (at paragraphs 22 to 24).

The Submissions

14. On 27th September 2018, the Appellant’s representative, Mr Hussain, was late in attendance at court, and had not been able to inform the Tribunal authorities of his late arrival, although he does appear to have told the Appellant himself, who had arrived early. When the hearing began, I read out the grant of permission to Mr Hussain and reminded him that his time will be better spent by highlighting the “potential materiality” of the error of fact, insofar as the judge had referred to Portsmouth, when considering the Appellant’s residence at Bournemouth.
15. Notwithstanding my having done so, Mr Hussain launched into a detailed attack on the determination of the judge, stating that the judge had made factual errors in every fundamental respect. For example, he maintained that the judge was wrong in concluding that the Appellant had attended LGBT clubs, but did not come out as gay until 2016. This, however, can simply not have been the case because the judge is expressly referring to the asylum interview at question 14 of the Appellant. He is also referring to what Mr [K] said in his evidence. Mr Hussain also submitted that the judge was fundamentally wrong to have said that he did not tell the LGBT people that he was gay “because he thought they might be disgusted with him” (paragraph 21). He then submitted that the error of fact in relation to Portsmouth when the judge meant to refer to Bournemouth, plainly tarnished the credibility of the witness, in a way that the judge fell into error.
16. For her part, Ms Pal submitted that Mr [K] was a person who had expressly written to the Respondent Home Secretary in support of the Appellant, so the judge could not have been in error in saying that Mr [K] was known to the Secretary of State, such that he would have been able to tell the Appellant that he was eligible to apply for asylum as a gay person. Secondly, even if there was an error of law, one had to look at the entirety of the findings in relation to [SA], and in this respect one should not confine oneself to paragraphs 22 to 24 only, but go further and look at the paragraphs thereafter, up to paragraph 28, where the judge had found the Appellant not to be credible at all in terms of his relationship with [SA].
17. In reply, Mr Hussain went on to repeat himself extensively in terms of submissions that he had already made, pointing out that the judge made a mistake in relation to the place where [SA] claimed that the Appellant lived, and this tarnished his image. It was also not correct to say that the Appellant only came out in 2016. The fact was that some people knew

about the Appellant's sexuality but others did not. The judge was simply wrong also to have said that the Appellant did not tell the LGBT people that he was gay because he thought they might have been disgusted with him.

No Error of Law

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law. My reasons are as follows.
19. First, permission to appeal was granted on the basis that there might be a potential materiality to refer" insofar as the judge refers to Portsmouth, when he ought to have been referring to Bournemouth. It is clear, as the grant of permission states, that the judge's own ROP does contain notes that refer to Bournemouth. Plainly he had not misheard the evidence, and had recognised the Appellant's witness, [SA], as referring to the Appellant as living in Bournemouth, but failed to so say in the determination (at paragraphs 22 to 24), referring instead to 'Portsmouth'. Even so, a losing party is entitled to know why they have lost their appeal and it may be that upon closer analysis the reference to Portsmouth could be damaging to the credibility in the way that would not otherwise have been the case. I have for this reason, therefore, considered this matter carefully. I am in no doubt that this is not so at all.
20. This is because the issue here at hand was not whether [SA] claimed the Appellant to be living in 'Portsmouth' or 'Bournemouth.' The question here was whether they were in a relationship. That question completely fell to be decided against the Appellant for the following two reasons.
21. First, the Appellant himself claimed that he was "not in a relationship with anyone now" (paragraph 28). Mr Hussain's attempt, in his reply, to seek to persuade me that there are various grounds of relationships, is a sterile argument, given that the Appellant's case is not that he is persecuted because he is in any kind of relationship, but because he was in a *gay* relationship. The judge, in the face of that explicit claim, came to the firm view that this would not be the case because "*his evidence is that they meet in a sauna in Vauxhall for sex*", but the fact remained that "the Appellant makes no reference to it in his witness statement or in his oral evidence" (paragraph 28). What this means is that even if one leaves aside any confusion about whether the Appellant lived in Portsmouth or in Bournemouth, the Appellant himself had been quite clear that he was not in a relationship, and he had made no reference to it either in his witness statement or in his oral evidence. Yet, against all of this, [SA] had turned up to give evidence, on the basis that he was in a gay relationship with the Appellant.
22. Second, insofar as there was a claim that they were in a relationship, the judge was interested to know how they kept in touch. Assuming that there was a confusion that [SA] had said that the Appellant had lived in Bournemouth (and not Portsmouth) the judge recorded that it was clearly

pointed out to [SA] that this was not the case, and [SA] had said that “he does not have the Appellant’s address”, but only had “his telephone number and from that he deduced that he lived in Portsmouth” (paragraph 22). Yet, upon an analysis of whether, not knowing the Appellant’s precise place of abode, [SA] made contact with the Appellant, the judge was clear that “*the witness has never used the Appellant’s telephone ever to call him*” (paragraph 24), and no evidence was produced before the Tribunal below that they were in telephone contact at all. As against this, the judge was entitled to come to the view that the explanation that they met in a sauna in Vauxhall in London for a “casual tryst” (paragraph 26) was simply untenable.

23. Finally, and in any event, what is entirely overlooked in the claim, as put before this Tribunal, is that under **HJ (Iran) [2010] UKSC 31** which the judge refers to (at paragraph 31) the Appellant can only succeed if he is determined to have an “open relationship” upon return to Bangladesh. However, his evidence was that he was “*a secretive homosexual in Bangladesh*” (paragraph 12). The claim, even if it was taken at its highest as being credible on the part of the Appellant, simply would not have got off the ground. There is absolutely no error of law in the determination of the judge below.

Notice of Decision

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

20th October 2018