



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10089/2016

THE IMMIGRATION ACTS

Heard at Field House
On 6 April 2017

Decision & Reasons Promulgated
On 18 June 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

F. E
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A. Basharat of counsel

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

DECISION AND REASONS

1. The Appellant, who was born on 6 October 1983, is a national of Pakistan. He entered the United Kingdom on 11 December 2010 with leave to remain until 13 May 2012. His leave was then extended until 5 September 2014. He was then refused leave to remain on 3 November 2014 and his subsequent appeal was dismissed on 12 May 2015. He was refused leave to remain on 1 February 2016 and claimed asylum on 15 March 2016.
2. It was his case that he had had three relationships with men whilst living in Pakistan but that he then met his wife in 2010 and they married on 19 January 2014. His wife's

family subsequently found out about his earlier relationships and he claimed asylum on the basis that he feared persecution in Pakistan as a member of a particular social group, namely as a bisexual man.

3. His application was refused on 7 September 2016 and he appealed against this decision on 21 September 2016. His appeal was heard by First-tier Tribunal Judge Watt on 21 October 2016 and he dismissed his appeal in a decision and reasons promulgated on 7 November 2016. First-tier Tribunal Judge Parkes refused him permission to appeal on 30 November 2016 but Upper Tribunal Judge Allen granted him permission to appeal on 17 February 2017.

ORAL HEARING

4. Counsel for the Appellant said that she relied on her grounds of appeal and submitted that the Appellant's solicitors had sent in a number of amendments to his substantive asylum interview within a week of that interview in accordance with the timescale provided to them. However, First-tier Tribunal Judge Watt had failed to take these amendments into account when reaching his decision. In particular, she noted that the First-tier Tribunal Judge had failed to take into account the amendments made to the question of what information was given to the Imam by one of his ex-boyfriends. She added that the First-tier Tribunal Judge had failed to give any, or any adequate, reasons for not taking into account the amendments submitted on behalf of the Appellant and merely repeating the reasons given by the Respondent for refusing the Appellant asylum.
5. Mr. Melvin then replied. He accepted that the substantive asylum interview would not have been read over to the Appellant and that at question 138 he would have been told to submit any further representations by 24 August 2016. He relied on the findings made by the First-tier Tribunal Judge at paragraph 34 of his decision and reasons. But he also submitted that this was not the only reason why the First-tier Tribunal Judge had dismissed the Appellant's appeal. He had also relied on the two contradictory letters, dated 13 October 2016, and the fact that no amendment had been made to the answer recorded for question 5.3 in the Appellant's screening interview. In addition, he had relied on the timing of the Appellant's application for asylum. Mr. Melvin also submitted that in any event, even if the Appellant's account was to be found credible, he would not be entitled to international protection as he could relocate internally in Pakistan with his wife. Therefore, any error of law was immaterial. In reply, counsel for the Appellant stressed that the Appellant believed that the question he was actually asked at 5.3 of the screening interview was whether he had committed any crime in any country and not whether he had been accused of any crime in any country.

THE DECISION

6. Upper Tribunal Judge Allen found that it was arguable that First-tier Tribunal Judge Watt failed to take into account the contents of the Appellant's statement in which he addressed the findings made by the Respondent in her refusal letter. He also found

that this failure meant that the First-tier Tribunal Judge had not looked at the totality of the evidence in the round when he made his decision.

7. At the end of the Appellant's substantive interview, which took place on 17 August 2016, he was given a copy of the record of his interview and told to sign to confirm receipt of this record but not to verify its contents. Mr. Melvin accepted that this was common practice. He also accepted that at question 138 of the substantive asylum interview the Appellant was informed that his claim may be certified as clearly unfounded and that he should make further representations by 17.00 on 24 August 2016. The Appellant's solicitors faxed a letter containing 15 amendments to the record of his substantive interview on 24 August 2016. (The letter also contained serious allegations about the alleged impartiality of the interviewing officer and the interpreter at the substantive hearing but Mr. Melvin was not able to tell me what had happened to these complaints.)
8. The basis of the Appellant's appeal is largely that when the First-tier Tribunal Judge was reviewing the evidence, he did not adopt the approach approved in *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11 and consider the totality of the evidence in the round having given appropriate weight to individual items of evidence. Instead, it is said that he largely relied on the reasons given by the Respondent for refusing the Appellant's claim.
9. One example, is the content of paragraph 34 of the decision and reasons where the First-tier Tribunal Judge found that he had grave doubts about the veracity of the Appellant's evidence regarding one of his former partners, Zaid. In particular, he noted that Zaid had taken photographs to an Imam showing the appellant and himself in compromising position. This mirrors what was said in paragraph 19 of the refusal letter where the Respondent recorded that the Appellant had stated that Zaid had taken photographs of himself and the Appellant and the Appellant and another partner to an Imam and told him what had occurred between you. This is taken from the answer to question 81 of the substantive interview where it was recorded that the Appellant said that Zaid had shown photographs of himself with the Appellant and the Appellant with another partner to an Imam. In the letter sent just after the interview, the Appellant clarified that what he actually said was that Zaid showed pictures of himself and another boyfriend and messages sent by the Appellant to Zaid. He implicitly denied that the Imam was shown photographs of himself with Zaid.
10. This alternative version of events was not taken into account by the First-tier Tribunal Judge. In addition, he did not take into account that the Appellant's version was also mirrored by the content of the FIR which was also before the Tribunal. The First-tier Tribunal Judge did refer to the receipt of the FIR in paragraphs 35 – 38 but only to consider its provenance. No attention was paid to its content and no conclusion was reached as to the weight which could be attached to it.
11. The failure to take into account the version of events put forward by the Appellant and confirmed in the FIR is significant as it led to the First-tier Tribunal Judge to reach

adverse credibility findings about the Appellant's account, as if paragraph 34 is read with paragraph 26 it appears that the First-tier Tribunal Judge was adopting the adverse finding previously made by the Respondent that it was improbable that Zaid would have implicated himself in an unlawful sexual relationship.

12. Mr. Melvin relied on the fact that there were other features of the Appellant's account which the First-tier Tribunal Judge found to be incredible. But this does not detract from the main basis for the appeal which was that the First-tier Tribunal Judge had failed to adopt a holistic approach to the evidence before him.
13. Mr. Melvin also submitted that any error of this kind by the First-tier Tribunal Judge was immaterial as the Appellant would not be able to show that he could not relocate within Pakistan with his wife. However, until a First-tier Tribunal Judge reaches a lawful decision on the totality of the evidence as to whether there is a serious risk of persecution for a Convention reason in Pakistan, no cogent decision can be reached on the question of internal flight.
14. For these reasons I find that First-tier Tribunal Judge Watt made material errors of law in his decision and reasons.

DECISION

15. The appeal is allowed.
16. First-tier Tribunal Judge Watt's decision and reasons are set aside.
17. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge, other than First-tier Tribunal Judge Watt.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 6 April 2017