



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12539/2017

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre
On: 25th May 2018

Decision & Reasons Promulgated
On: 30th May 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mottershaw, Counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan who was born in 1981. He appeals with permission¹ the decision of the First-tier Tribunal (Judge NMK Lawrence) to dismiss his protection appeal.

¹ Permission was granted on the 18th January 2018 by Designated Judge Shaerf

2. The basis of the Appellant's claim for asylum was that he had a well-founded fear of persecution in Pakistan for reasons of his membership of a particular social group, viz homosexual or bisexual men. He avers that since he came to the UK as a student in 2011 he has come to the realisation that he is attracted to men as well as women. He has attended gay social events and clubs, has had multiple sexual partners and has joined a gay dating internet site. He further claims that in June 2017 he disclosed to his brother [U] in Pakistan that he is bisexual. His other brother [Y] overheard the conversation and has threatened to kill the Appellant.
3. The Respondent refused protection. The Appellant's claim to be gay was found to be vague, overly simplistic, contradictory and undermined by the fact that the Appellant did not disclose his claimed sexual orientation at an earlier opportunity, namely when he was judicially reviewing the Home Office in October 2015. He did not make his claim until August 2017.
4. When the matter came before the First-tier Tribunal the Appellant gave live evidence, as did two witnesses. He further produced an original newspaper from Pakistan containing what he claimed to be a public notice placed in the 'classified' section by his mother, in which she denounced him as her son.
5. The Tribunal rejected the Appellant's claimed sexual orientation. The Tribunal did not find it to be credible that the Appellant would not be able to give any details about the sexual partners that he claimed to have had in the UK, for instance their addresses or surnames. This lacuna in the evidence is found to be a material failing in the Appellant's case. The fact that the Appellant demonstrated that he had joined a gay dating site took the case no further; you can be a member of a gym but never actually go. The appeal was dismissed.
6. The Appellant now appeals on the following grounds:

- i) Failure to consider material evidence:

The Appellant had produced an original Pakistani newspaper containing a public notice of disinheritance which stated that his formally disowned him for "disobedience and characterless deeds". The document had not been challenged by the Presenting Office who appeared for the Respondent and so was important corroborative evidence. It has not been addressed in the determination.

- ii) Factual error:

The determination draws, at several points, adverse inference from the Appellant's inability to name the men he claims to have had sex with. In fact he has provided such names, in both his

asylum interview and his witness statement, as well as their place of residence when it was known to him.

iii) Failure to consider submissions and make material findings:

The Tribunal made no findings on whether the claimed telephone call with the Appellant's brothers had ever taken place. It had failed to consider whether there was a real risk that the Appellant would be perceived to be gay in Pakistan, even if he was in fact not.

7. Before me Mr Diwnycz conceded that grounds (i) and (ii) were made out. The Appellant had produced the newspaper with certified translation and it was at least capable of providing corroborative evidence of the Appellant's claim to have been disowned by his family. Whilst it would have been open to the Tribunal, in the context of a *Tanveer Ahmed* appraisal, to reject that document, it was not apparent from the determination that this is what had happened. The document is not mentioned at all.
8. In respect of the details provided by the Appellant about his claimed sexual partners, the grounds had identified several examples where the Appellant had given names of partners and the location of their homes in the greater Manchester region. For instance, the Appellant was able to name the estate that one man lived on in Failsworth, and say that another had lived in Cheetham Hill. Given the significance attached to this issue by the First-tier Tribunal (it featured heavily in its reasoning) it was important that there was a balanced reading of the evidence. Mr Diwnycz also very fairly expressed some unease about the Judge's assumption that if you meet a man at G-A-Y and go home with him you are going to ask his full name and postcode.
9. In view of those concessions, which on the evidence before me were properly made, I need not address the third ground save to say this. If the claim that the Appellant is gay is ultimately rejected as fiction I find it difficult to see how there would be any utility in an argument that people in Pakistan might *perceive* him to be gay, since there is no indication on the evidence that this has ever been the case.
10. In light of the extensive fact finding that is required to remake this appeal I consider that it is appropriate that the matter be remitted for hearing *de novo* in the First-tier Tribunal, and that is the order I make, with the agreement of the parties.

Decisions and Anonymity Order

11. The decision of the First-tier Tribunal contains a material error of law and is set aside.
12. The matter is to be heard *de novo* in the First-tier Tribunal
13. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”.

Upper Tribunal Judge Bruce
25th May 2018