



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

Appeal Number: PA/12809/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 21st February 2018**

**Decision & Reasons
Promulgated
On 15th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR NAVEED [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown, Counsel

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 5th August 1977. The Appellant has an extensive immigration history having first applied for a Tier 4 (General) Student visa on 3rd March 2010. This was eventually granted on 9th December 2011 valid until 30th January 2014. The Appellant prior to that date had applied for an EEA residence card with his partner and this had been refused. On expiry of the Appellant's leave he did not seek to regularise his stay before the expiry date and was served with overstayer papers on 10th May 2016. At that time he claimed asylum. His claim for asylum was based on a claim that he had a well-founded fear of

persecution in Pakistan on the basis of his membership of a particular social group namely that he was a gay man from Pakistan. That application was refused by Notice of Refusal dated 3rd November 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Knowles sitting at Manchester on 2nd June 2017. In a decision and reasons promulgated on 13th June 2017 the Appellant's appeal was dismissed.
3. On 23rd June 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 25th September 2017 First-tier Tribunal Judge Scott-Baker granted permission to appeal. Judge Scott-Baker noted that the Appellant was claiming to be gay and at the hearing there was evidence before the judge from his partner and two further witnesses. Judge Scott-Baker considered that the judgment was arguably deficient in that there were no findings concerning the evidence of the Appellant's partner and two other witnesses and that that could well be material as it was evidence of the Appellant's partner that he was currently in a relationship with the Appellant.
4. On 18th October 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. That response opposes the Appellant's appeal and contends that at paragraph 30 of the judge's findings he had stated that he had considered the witness evidence and had gone on to comprehensively give cogent reasons why the Appellant was not credible.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Brown. Mr Brown is extremely familiar with this matter. He appeared before the First-tier Tribunal and he is also the author of the Grounds of Appeal. The Respondent appears by her Home Office Presenting Officer Mr Bates.

Submissions/Discussion

6. Mr Brown relies on the Grounds of Appeal pointing out that the Appellant relied on oral testimony from his partner and two witnesses. He refers to those two witnesses [ZA] and [AY]. Mr Brown submits that these witnesses gave oral testimony at the hearing before the First-tier Tribunal Judge and that there has been no real assessment of their evidence within the decision particularly at paragraph 30 when the judge makes his findings. He submits it is inadequate for the judge merely to state that he has considered witness evidence and that in the absence of reasons there must be a material error of law as the First-tier Tribunal Judge's conclusions are undermined.
7. Mr Bates in brief response submits that the issue is a narrow one and accepts that there is only a general reference to witness evidence but that the particularisation of evidence is set out at paragraphs 12 to 14 and that

the judge did consider the evidence in the round pointing out that he had concerns over the credibility of the Appellant's testimony. He submits that the judge has done sufficient in paragraph 30 to show that he has considered all the evidence and that whilst he may have been capable of going into greater detail it has not been shown that the error is material.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

10. It is incumbent upon a judge to give full consideration to all evidence that is produced before him particularly oral testimony and to make findings on that evidence. Having said that there are two general principles of law which also need to be considered. Firstly, it is not incumbent upon a judge to recite every single piece of evidence that comes before him only those that are material and secondly, a judge is entitled to make conclusions having considered the evidence in the round.
11. The relevant paragraph here is paragraph 30 of the judge's decision. Therein the judge states:

"I have considered the evidence given by the Appellant and the Respondent, in his witness statement, in his evidence and the documentation provided in his bundle of documents and the submissions of both parties. I have also considered supporting witness evidence."

Thereinafter the judge has considered in some detail the factual matrix of this appeal, stated that he has considered the Appellant's evidence in the round and explanations for inconsistencies where they have been given and made a finding taking everything into account that the Appellant has not provided a credible account and it is not reasonably likely that his situation account is true.

12. The difficulty that such an approach shows is that the judge has failed to do any more than merely say that he has considered the supporting evidence. In this case both the above witnesses have given not just written but oral testimony. It is incumbent upon a judge in such circumstances to at least make findings on such testimony. If the judge had made clear findings and had still reached his ultimate conclusions then it would be difficult to criticise the decision. However interests of fairness require that an analysis is given of the testimony and that appropriate findings are made. To that extent there is an error of law and to that extent it is material because had the judge considered the evidence that was provided by these two witnesses, both of which appear to be of some importance, then it is possible he might have come to a different conclusion.
13. Consequently in such circumstances I set aside the decision and remit the matter back to the First-tier Tribunal for rehearing with none of the findings of fact to stand. As a caveat, and as I indicated to Mr Brown it is of course possible that a subsequent judge might come to exactly the same conclusion as Judge Knowles but what is important is that there is a fully reasoned explanation as to how that decision is made. However that is a matter for further consideration before a new judge on a new appeal.

Notice of Decision

The decision of the First-tier Tribunal discloses a material error of law and is set aside. Directions are set out hereinafter for the rehearing of this matter.

- (1) That on finding there is a material error of law in the decision of the First-tier Tribunal Judge the decision is set aside with none of the findings of fact to stand.
- (2) The matter is remitted to the First-tier Tribunal to be heard at Manchester on the first available date 28 days hence with an ELH of three hours.
- (3) That the remitted hearing is to be heard before any judge of the First-tier Tribunal other than Immigration Judge Knowles.
- (4) That there be leave to either party to file and serve a bundle of up-to-date objective and/or subjective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (5) That an Urdu interpreter do attend the restored hearing.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris