



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

Appeal Number: AA/09746/2015

THE IMMIGRATION ACTS

**Heard at Field House
On May 28, 2019**

**Decision & Reasons Promulgated
On June 12, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR M A I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hyder, Legal Representative

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

The appellant is a Pakistani national and is now thirty-six years of age. On 23 July 2011 he entered the United Kingdom, as a Tier 4 (General) Student, with leave to remain here until 30 April 2014. His visa was curtailed on 20 June 2012 as the college's licence was revoked. On 16 May 2014 he applied for a Tier 4 (General) Student visa, but this was refused by the respondent on 30 June 2014 and his subsequent appeal was dismissed in December 2015 with the Judge noting he had lodged an asylum claim on the grounds of his sexuality on 12 February 2015 which had been refused by the respondent on 20 June 2015.

The appellant appealed this decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Chana who, in a decision promulgated on 5 August 2016, dismissed the appeals both of the appellant and his partner. They appealed those decisions and the Upper Tribunal found there had been an error in law and remitted both appeals back to the First-tier Tribunal for de novo hearings. The appellant's partner subsequently withdrew his appeal.

The appellant's appeal came before Judge of the First-tier Tribunal Dineen (hereinafter called the Judge) who in a decision promulgated on 13 February 2019 dismissed the appellant's appeal. The appellant has appealed this decision and Upper Tribunal Judge McGeachy granted permission to appeal on 3 May 2019 finding it arguable the Judge had failed to make any findings about the events in Pakistan.

The respondent filed a Rule 24 response dated 15 May 2019 opposing the application.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

SUBMISSIONS ON MATERIAL ERROR

Mr Hyder adopted the grounds of appeal and submitted permission had been granted on the basis the Judge had failed to make findings on the events that were said to have occurred in Pakistan and this amounted to an error in law because the Respondent did not accept the appellant's account of events in Pakistan or how the appellant discovered he was homosexual. The Judge had set out the appellant's account of events and the respondent's response to the events both here and in Pakistan but when making his findings between paragraphs 48 and 63 of his decision, he failed to make any substantive findings about his claim in Pakistan save by dealing with the FIRs. Mr Hyder submitted the events in Pakistan were key to whether he did behave as claimed before he came here and would impact on the Judge's assessment of how he would behave were he returned.

Mr Hyder further submitted that the Judge erred by attaching too much weight to the failure of the appellant's former partner to attend the original hearing. The Judge overlooked the fact the appellant and his former partner were no longer together and that attempts by the appellant's solicitors to contact had failed when letters sent to the former partner were returned unopened.

The Judge's approach to the witness evidence of Mr J L was flawed as he was able to provide a view on the whether he felt the appellant was genuinely a

homosexual especially as photographs of the appellant attending meetings had been adduced in evidence.

Finally, the Judge failed to attach any weight to the evidence obtained in relation to the FIRs. The Judge did not properly consider the evidence the appellant's solicitors obtained from the original police officer who confirmed the document was genuine. If no weight was to be attached to such evidence then following the Court of Appeal decision of PJ (Sri Lanka) and SSHD [2014] EWCA Civ 1011 the Judge should have made findings on the letters from solicitor advocate and police officer.

Mr Tarlow opposed the application and adopted the content of the Rule 24 letter. The Judge had to decide whether the appellant was homosexual, and he submitted the findings he has made were open to him. At paragraph 54 the Judge dealt with the evidence of previous boyfriend and then noted there was no evidence from his close circle of friends. This undermined his claim to be homosexual. His findings are paragraphs 56-57 of his decision evidence identified the only other live evidence was hearsay and the Judge chose to reject the arguments advanced. His conclusions at paragraph 53 were entirely open to him on the evidence.

With regard to the FIRs, the Judge may not have dealt with them perfectly, but he did make important findings and any error on them was not material and therefore did not amount to an error in law.

FINDINGS

The permission to appeal was not restricted by Upper Tribunal Judge McGeachy but identified an area that potentially disclosed an error in law.

The appellant's claim was that he first became aware of his sexuality when he lived in Pakistan and the First-tier Judge recorded his account between paragraphs 15 to 19 of his decision.

Mr Hyder's submission, put simply, is that the Judge failed to engage with this account or make any findings about this aspect of the claim and Mr Tarlow's response was the Judge rejected his whole claim of being homosexual in the United Kingdom and the authenticity of the FIRs and by implication he rejected the account of events in Pakistan. In considering this issue, I have also considered the additional argument that the Judge's assessment of the FIRs was flawed.

In considering whether the Judge has erred, I find that his approach in paragraph 51 of the decision was correct. The Judge correctly reminded himself that he was considering the case as a whole and in the round.

In assessing credibility, the Judge was entitled to consider the delayed nature of the claim given the fact it was the appellant's case that he was living with a person who had lodged a similar claim for asylum. The Judge was entitled to reject his explanation for the delay.

The Judge's conclusions at paragraph 54 of the decision, on the witness evidence of the appellant's former partner, were open to him.

Mr Hyder had submitted that the Judge failed to consider they were no longer together and that the witness had not responded to letters sent by the legal representatives but neither of those factors undermined the Judge's findings in paragraph 54. A letter/statement, unless agreed, cannot carry the same weight as someone giving live evidence and the criticism of the Judge on this issue is misplaced.

Between paragraphs 55 and 57 of his decision, the Judge considered the appellant's current circumstances. The Judge placed significant weight on the appellant's failure to produce any live evidence of his LGBT lifestyle except for the oral/written evidence of Mr Lloyd.

Mr Hyder argued that the Judge should have attached further weight to this evidence as he had seen the appellant at first hand, but the Judge has addressed this issue in both paragraphs 56 and 57 of his decision. The Judge noted the involvement Mr Lloyd had in the appellant's life and concluded that his evidence only amounted to what he had been told rather than first-hand experience. Mere observance of the appellant at meetings can provide support for the appellant's claim but as the Judge found in paragraph 57 these on their own did not prove the appellant was a homosexual. The Judge was aware of what Mr Lloyd had to say but concluded that as he had no personal relationship with the appellant his evidence needed to be considered in that light.

The Judge looked for further evidence such as evidence from his social group or partners but there was no such evidence submitted. The Judge made an adverse finding about the appellant's claim to be homosexual noting that none of his "evidence" predated the date of his application which undermined his claim to have been homosexual since 2009 especially as he entered the country in 2011.

The final evidence considered by the Judge concerned the FIR's submitted. Mr Hyder argued the Judge should have attached more weight to the evidence provided by the legal representatives about the authenticity of the said documents. The Judge made clear at paragraph 59 that he did consider the evidence submitted albeit

Mr Hyder argued that this did not include the evidence from the original police officer. Whilst the Judge does not set out each piece of evidence considered by him, he was aware of the claim and gave reasons for rejecting the representative's evidence. The Judge placed weight on the documents attached to the verification report and preferred that evidence to that adduced by the appellant.

Mr Hyder referred me to the decision of PJ (Sri Lanka) and SSH D and argued the Judge's approach to the lawyer's evidence was flawed. That case was concerned with court documents as against FIR's. The evidence adduced by the lawyers should be attributed, in this appeal, no more weight than the evidence

provided by the respondent bearing in mind there was no actual examination of the records by the lawyers (see paragraph 59). The Judge's finding was one that was open to him.

The Judge, by rejecting the FIRs, rejected the appellant's account of events in Pakistan. Whilst it may have been neater for the Judge to consider the events individually, I find there was no error in view of the adverse findings made.

I conclude the Judge did not err by failing to specifically deal with those matters because the remainder of his findings, including those about the FIRs, were all negative.


Decision

I find no error in law and I uphold the original decision of Judge of the First-tier Tribunal Dineen.

Signed

Date

6 June 2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT **FEE AWARD**

No fee award is made as the appeal was dismissed.

Signed

Date

6 June 2019



Deputy Upper Tribunal Judge Alis