



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

Appeal Number: PA/01179/2019

THE IMMIGRATION ACTS

**Heard at Birmingham
On 22 August 2019**

**Decision & Reasons Promulgated
On 30 August 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**SF
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Dixon, Counsel

For the respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

Introduction

1. I have anonymised the appellant's name because this decision refers to his asylum claim and medical evidence of a confidential nature.
2. The appellant, a citizen of Pakistan, has appealed against a decision made by First-tier Tribunal ('FTT') Judge Swinnerton, sent on 24 April 2019, in which his appeal was dismissed on protection and human rights grounds. Judge Swinnerton did not accept the appellant's claim to be gay or his account as to how what happened in Pakistan to support his fear of returning there.

Appeal to the Upper Tribunal ('UT')

3. The appellant was granted permission to appeal on all of the seven grounds relied upon, in a decision dated 28 May 2019.
4. At the hearing before me, Mr Dixon relied upon each ground of appeal and I deal with his submissions in more detail below. I indicated to Mrs Aboni that I only wished to hear from her regarding the submission that the FTT failed to apply the Joint Presidential Guidance Note No 2 of 2010 ('the Guidance') to this appellant's accepted vulnerability, when making findings of fact. She invited me to find that the grounds of appeal do not identify in what manner the FTT failed to apply the Guidance and the extent to which this prejudiced the appellant. I then heard briefly from Mr Dixon in reply, before reserving my decision.

Error of law discussion

5. I shall deal with each of the appellant's seven grounds of appeal in turn.

Ground 1

6. I entirely accept that [2] read in isolation describes the applicable standard of proof incorrectly. However, when the decision is read as a whole I am satisfied that the FTT applied the correct standard of proof. The FTT made it clear at [28] that, "*applying the low standard of proof applicable*" the appellant would not be at "*real risk*" if returned to Pakistan. There is no indication from the actual findings of fact that a higher standard of proof was applied. When the decision is read as a whole, the summary of the position at [2] is careless, but does not constitute a material error of law.

Grounds 2 and 4

7. Mr Dixon made submissions on these two grounds together and it is convenient for me to do the same.
8. The appellant relied upon a psychiatric report prepared by Dr Eldred dated 1 April 2019 in support of his evidence that he suffered from depression and should be treated as a vulnerable witness. Contrary to the assertion at [8] of the grounds, the FTT made it clear at [10] of its decision that it accepted the application for the appellant to be treated as a vulnerable witness. The FTT was clearly aware of and took into account Dr Eldred's report and referred to it at [19] and [20]. The FTT quoted in full from the extract of the report diagnosing the appellant as having "*symptoms of a depressive episode of a mild to moderate severity*".
9. The FTT did not expressly refer to the appellant's depression when making its findings. However this must be viewed in context. The FTT clearly recorded that it accepted the application made on the appellant's behalf that he was a vulnerable witness. There is no reason to believe that this was not done in all material respects. The FTT was aware of and took into account Dr Eldred's report. This was the source material for the appellant's vulnerability. In these circumstances there is no proper basis in support of the submission that the FTT ignored the appellant's depression, when making its findings of fact. In addition, although Dr Eldred notes at [2.1 4)] of his report that he was asked to address how the appellant's mental health might affect his ability to provide "*credible complete consistent testimony*", this was not directly addressed beyond a reference to his concentration being adversely impacted at 6.5. Indeed, Dr Eldred recorded at [7.2] that the appellant gave "*a clear consistent and corroborated history*" and was fit to provide oral evidence in court [7.14].
10. In AM (Afghanistan) v SSHD [2017] EWCA Civ 1123, Sir Ernest Ryder, the Senior President of Tribunals, considered an appeal involving a young man from Afghanistan with a claimed traumatic history. In AM's case the psychologist offered advice as to how AM could obtain effective access to justice given his psychological difficulties. It was agreed before the Court of Appeal that insufficient steps had been taken to ensure that the proceedings were fair. There has been no such criticism in this case. Mr Dixon confirmed that in this case the FTT only failed to take the Guidance into account when making its findings. Mr Dixon did not take me to the Guidance or make any specific submission on which aspect of the Guidance was not taken into account. As noted in AM the Guidance contains five key features:

"a. the early identification of issues of vulnerability is encouraged, if at all possible, before any substantive hearing through the use of a CMRH or pre-hearing review (Guidance [4] and [5]);

- b. a person who is incapacitated or vulnerable will only need to attend as a witness to give oral evidence where the tribunal determines that "the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so" (PD [2] and Guidance [8] and [9]);
- c. where an incapacitated or vulnerable person does give oral evidence, detailed provision is to be made to ensure their welfare is protected before and during the hearing (PD [6] and [7] and Guidance [10]);
- d. it is necessary to give special consideration to all of the personal circumstances of an incapacitated or vulnerable person in assessing their evidence (Guidance [10.2] to [15]); and
- e. relevant additional sources of guidance are identified in the Guidance including from international bodies (Guidance Annex A [22] to [27])."

11. This is not a case in which clear discrepancies emerged at the hearing. Rather, the FTT had concerns about the evidence as a whole and particularised these. As I have already indicated it should not be assumed that the FTT left out of account the appellant's depression, when it clearly referred to it and clearly accepted that he is a vulnerable witness.
12. The grounds also suggest at [9] that the FTT was wrong to impugn the medical report at [25] on the basis that it is "*clearly predicated upon the basis that [the] Appellant's account is genuine*". However the FTT did not impugn the entirety of the report. Rather, the FTT's observations as quoted are limited to the appellant's suicide risk. The FTT was entirely entitled to assess the appellant's suicide risk in this way. The appellant's claimed suicidal ideation was inextricably linked to his fear that he was at risk in Pakistan as a gay man. Dr Eldred understandably accepted the appellant's claim to be gay, but the FTT was entitled to reject it, for the reasons it provided.

Ground 3

13. Mr Dixon accepted that if the FTT was entitled to approach the claimed suicide risk in the manner it did (as I have found above), the contention that the FTT failed to address the country background material relevant to those presenting with a high risk of suicide in Pakistan was immaterial. I need say no more about Ground 3 in these circumstances.

Ground 5

14. Mr Dixon drew my attention to evidence supporting the appellant's claim that, to use Mr Dixon's words, he had 'significant interactions' with gay men. The FTT was clearly aware of and took into account the evidence of social media interactions and referred to these expressly at [24]. There was no error of law in noting that despite living in the UK since 2012 the appellant did not provide details of

any specific relationship. This is distinct from the interactions contained in the social media / applications.

15. The criticism in the second half of [27] of the grounds of appeal that the FTT failed to take into account the appellant's depression when making findings on the absence of relationships is not well-founded. As set out above, the FTT was aware of the contents of Dr Eldred's report. It is noteworthy that the appellant's depression did not prevent him from forging friendships.

Ground 6

16. Ground 6 criticises the FTT's approach to the witnesses supporting the appellant's claim to be gay. It is suggested at [21] that it is implicit that the FTT regarded the witnesses to have fabricated evidence. Mr Dixon agreed with me that this was not implicit from the decision at all. Rather, the FTT has explained at [26] why it did not regard the witnesses' evidence to be helpful or credible. Having heard from the witnesses, this was a matter for the FTT and there is no error of law in the approach to the live witnesses.

Ground 7

17. Mr Dixon relied upon the two limbs to ground 7, which I now address in turn.
18. The submission that the FTT failed to take into account the material change in circumstances between the appellant's claim that when he left Pakistan his family did not really know for certain that he was gay and they only gained this knowledge when he told them when he was already in the UK was addressed by the FTT in considerable detail at [20]. The grounds of appeal do not more than disagree with these findings of fact.
19. Ground 7 also submits that the FTT failed to take relevant matters into account when drawing adverse inferences from the appellant's delay in claiming asylum in the UK. The appellant claimed asylum in France in 2014 and shortly after this returned to the UK in December 2014, but did not claim asylum until 2017. Mr Dixon submitted that the FTT failed to address the possible explanations for this in the evidence, such as the appellant's depression and reluctance to disclose his sexuality. In this regard Mr Dixon drew my attention to the supporting letters from gay support / advocacy groups in Birmingham. This ground is not made out. When pressed, Mr Dixon acknowledged that the medical report and the supporting letters do not date the commencement of the appellant's depressive symptoms. Whilst it might be implicit that these were present for a period before 2017, there was no credible, independent evidence

dating them back to 2014. In any event, the appellant's own articulated reason for the delay did not rely upon depression or any reluctance to disclose his sexuality to the authorities in the UK. His own witness statement dated 25 March 2019 explains the delay by saying at [13] that he was afraid he would be deported. In these circumstances, the FTT was entitled to find, for the reasons provided at [21] and [22], that the appellant did not provide a credible explanation for the substantial delay in claiming asylum.

20. There is a suggestion in [27] of the grounds that the FTT failed to take into account supporting letters, in particular a letter from Mr Hillier of 'BGLAD'. There is no cogent reason to find that this letter was left out of account when it was specifically referred to by the FTT at [19].

Conclusion

21. It follows that the grounds of appeal have not been made out and there is no material error of law in the decision of the FTT.

Decision

22. The decision of the FTT did not involve the making of a material error of law.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date: 22 August 2019