



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

Appeal Number: PA/10471/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> February 2019**

**Decision & Reasons  
Promulgated  
On 21<sup>st</sup> March 2019**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**S A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Ahmed, instructed by 12 Bridge Solicitors  
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan born in June 1990. He appeals against the decision of First-tier Tribunal Judge Boyes, dated 4 October 2018, dismissing his appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.
2. The Appellant appealed on the grounds that the decision was procedurally unfair in that the judge cross-examined the Appellant and asked for information which the Respondent did not seek to challenge, the judge failed to take into account material evidence and his findings were not

open to him on the evidence before him. Further, the judge failed to make a finding on the Appellant's marriage notwithstanding the marriage certificate and photographs.

3. Permission was granted by First-tier Tribunal Judge Lambert on 24 October 2018 on the ground that it was arguable the judge's conduct of the proceedings and recording of the evidence were capable of being perceived as unfair treatment amounting to an arguable error of law.

### **Submissions**

4. Mr Ahmed submitted that there was a lack of engagement with the evidence and the judge's failure to make a finding on whether the Appellant was married was crucial to the assessment of credibility because it was an important aspect of the Appellant's realisation that he was gay and it supported his account of entry into the UK. The judge's conclusions on other aspects of the Appellant's claim were contaminated by this error. The only finding open to the judge on the evidence was that the Appellant was married.
5. Mr Ahmed submitted that the judge wrongly required corroboration and his criticism that the Appellant's evidence was lacking in detail was not open to him because the judge failed to put these matters to the Appellant. The Appellant had given a full explanation in his substantive interview about his visit to a gay club in Portugal and the judge had misunderstood the Appellant's claim.
6. The judge had incorrectly recorded the Appellant's evidence about his wife leaving him in the UK and none of the points upon which the judge relied were put to the Appellant. The judge failed to consider the evidence in the round and give a balanced judgment. The Appellant's witness, Mr A, gave oral evidence that he had spoken to A's parents. The judge found that the Appellant was not homosexual and then rejected Mr A's evidence. The judge's approach to the evidence was fundamentally flawed.
7. Mr Ahmed concluded his submissions without dealing with allegation of procedural unfairness made in the grounds and upon which permission was granted. I asked if he was relying on this point and he stated that he would submit a witness statement in due course if he did not succeed on the points he had just made, set out above.
8. Mr Lindsay submitted that the Appellant had failed to substantiate his allegation of bias. There was no note of the record of proceedings from Mr Ahmed who had given evidence in his submissions. Procedural impropriety was not made out.
9. Mr Lindsay submitted that there was no reference to Tanveer Ahmed in the grounds and the Appellant had failed to submit his original marriage

certificate. The Appellant entered the UK two weeks before his ID card expired and made a false asylum claim. Whether the Appellant was married was not material, but the judge assessed the Appellant's credibility on the basis he was married in any event. The judge's finding that the Appellant was not a credible witness was open to him on the evidence before him and he gave adequate reasons for coming to this conclusion.

10. Mr Ahmed submitted that the judge made adverse credibility findings without balancing the Appellant's account. He sought to rely on the judge's record of proceedings in relation to the allegation of unfairness. The Appellant was married and had the judge accepted this he would have found the Appellant to be a credible witness. The judge assessed credibility on a false premise. There was ample detail in the Appellant's asylum interview and the judge's conclusion that the Appellant's claim was vague indicated that the judge had failed to consider the content of the interview. The decision was unsafe. Mr Ahmed applied for an adjournment to submit a witness statement to deal with the bias/procedural impropriety/unfairness point.

### **The Appellant's claim**

11. The Appellant arrived in the UK on 8 October 2017 and claimed asylum on 21 February 2018, after his arrest on 13 January 2018. It is the Appellant's case that on 27 October 2016 he travelled to Cyprus to study and met his wife, a Portuguese national. They married on 4 August 2017, five months after they met. The Appellant realised he was gay because he felt awkward having sex with his wife and knew he was different. He had sex with a man called Billy in Portugal whom he met at a night club.
12. The Appellant went to Portugal with his wife to visit her parents. His return flight was via London Gatwick, but he missed his connection because his wife left him at the home of his friend Mr A and took the flight herself. His wife had a heart condition and had become unwell on the journey back so they had left the airport and gone to Mr A's house. His wife went to bed and the Appellant stayed downstairs watching homosexual pornography on his laptop. During the night, his wife came downstairs and saw him watching homosexual pornography and became very angry. There was an argument and she went to back to bed. He did not see her leave at 4am to take the connecting flight. She took his passport and ticket and he has not seen or heard from her since. A few days later he received telephone calls from his parents threatening to kill him. Mr A had travelled to Pakistan and spoken with the Appellant's father who made it clear that he wanted nothing to do with him.

### **Discussion and Conclusions**

13. I refused Mr Ahmed's application for an adjournment because having made an allegation of procedural impropriety in the grounds, he failed to substantiate it. He had ample notice of the issue upon which permission was granted in October 2018. Mr Ahmed failed to act with the guidance given in BW (witness statements by advocates) Afghanistan [2014] UKUT 00568.
14. In any event, the judge's record of proceedings did not demonstrate any improper conduct on the part of the judge. The judge asked questions to clarify the Appellant's account and accurately recorded the evidence in his decision. There was no note from Mr Ahmed which was relied on at paragraphs 2d and 2f of the grounds. There was insufficient evidence before me to show that the Appellant had been deprived of a fair hearing.
15. The judge did not find the Appellant's account to be credible and he gave adequate reasons for coming to that conclusion. The judge took into account all relevant matters and his findings were open to him on the evidence before him. The burden was on the Appellant and he was represented by Mr Ahmed before the First-tier Tribunal. The judge did not require corroboration of the Appellant's account and was not obliged to put points to him.
16. The judge's conclusions on the Appellant's marriage were not material to the decision to dismiss the appeal because the judge assessed the evidence on the assumption the Appellant was married and concluded that his account was incredible. The judge considered the evidence of Mr Ali and assessed the evidence in the round.
17. I find that there was no error of law in the decision dated 4 October 2018 and I dismiss the Appellant's appeal.

## **Notice of Decision**

### **The appeal is dismissed**

### **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 her or any member of her 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.**

**J Frances**

Signed

Date: 15 March 2019

Upper Tribunal Judge Frances

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

**J Frances**

Signed

Date: 15 March 2019

Upper Tribunal Judge Frances