



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

Appeal Number: PA/01343/2020 (V)

THE IMMIGRATION ACTS

**Heard at: Field House
On: 9 November 2020**

**Decision & Reasons Promulgated
On 12 November 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SS
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, instructed by Law Lane Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 31 January 2020 refusing his asylum and human rights claim.

3. The appellant is a citizen of Pakistan, born on 10 June 1987. He entered the UK on 7 October 2010 with leave to enter as a Tier 4 student valid until 11 February 2012. He overstayed and was eventually served with a removal notice when arrested on 22 March 2016 for immigration offences. Removal directions were set for his return to Pakistan on 26 April 2016, but were cancelled when he claimed asylum on 20 April 2016. He was interviewed about his claim in December 2019 and his claim was refused on 31 January 2020.

4. The basis of the appellant's claim was that he feared return to Pakistan as he was gay. He claimed to have been abused by his uncle when aged 10 years and to have realised that he was gay when he was 17 years old after having sex with a male friend, U. The relationship with U continued for 2 and a half years, in secret, and ended when they were caught by his father and brother. He moved class at school and told his father that it was a one-off occasion. Following that incident, he tried to be attracted to girls, due to the pressure from his family, but was sure that he was gay. He decided to come to the UK to study as he would have more freedom here. However after arriving here his father discovered that he was gay when his brother's friend spotted him coming out of a gay club with a man, his friend E, and informed on him to his family. He feared being killed if he returned to Pakistan.

5. The respondent did not accept the appellant's account of being gay and concluded that he would be at no risk on return to Pakistan. It was not accepted that there would be a breach of Article 3 or 8 if he was removed from the UK.

6. The appellant appealed against the respondent's decision and his appeal was heard in the First-tier Tribunal on 12 March 2020 by First-tier Tribunal Judge Oliver. The appellant's evidence before the judge was that he had been introduced to gay nightclubs in the UK by D, with whom he was no longer in contact, that he had first gone to gay clubs at the beginning of 2011 and that he had had a relationship with E, the friend with whom he had been spotted when coming out of a gay nightclub. The judge heard from a further witness, a friend A who had known the appellant since 2014, and had two letters before him from long-standing friends, all confirming the appellant's sexual orientation, and a letter from his GP confirming that they had spoken about his sexuality.

7. Judge Oliver did not accept the appellant's claim to be homosexual, rejecting his explanation for the delay in his claim, noting the lack of supporting evidence and having regard to contradictory evidence in the appellant's account of his father's ongoing need to keep an eye on him in the UK. He considered that the appellant was at no risk on return to Pakistan and that his removal would not breach his human rights. He accordingly dismissed the appeal.

8. The appellant sought permission to appeal Judge Oliver's decision to the Upper Tribunal on the following grounds: that the judge had accorded undue weight to his delay in claiming asylum; that the judge had reached an irrational conclusion about him giving contradictory evidence in relation to his father

keeping an eye on him; that the judge had unlawfully required corroboration of his family's hostility towards him; and that the judge had failed to consider material evidence such as his claim to have been abused by his uncle as a child and his visits to gay clubs.

9. Permission to appeal was refused by the First-tier Tribunal but was granted by the Upper Tribunal on 30 July 2020. The respondent provided a Rule 24 response, submitting that the judge had not materially erred in law.

10. The matter came before me and both parties made submissions.

11. Mr Gajjar expanded upon the grounds of appeal, relying in particular on the first two grounds.

12. Ms Everett, in her submissions, accepted that the Rule 24 response had rejected all the grounds of appeal, but found that she was unable to defend the judge's decision in relation to the first two grounds. She acknowledged that the judge had found the appellant's claim to be a weak one. However she accepted that she could not defend the judge's reasoning at [36] in relation to the appellant's delay in making his claim, whereby he linked the appellant's awareness of claiming asylum to his visits to gay clubs, and neither could she defend his finding at [34] that the appellant's account about his father keeping an eye on him was contradictory.

13. In light of Ms Everett's concession, which I find to be properly made, I agree that Judge Oliver's findings and conclusions, as referred to in grounds 1 and 2, are unsustainable and that his decision contains material errors of law.

14. Both parties agreed that the matter had to go back to the First-tier Tribunal for a complete rehearing.

15. Accordingly, I set aside Judge Oliver's decision in its entirety, with no findings preserved and remit the case to the First-tier Tribunal to be heard *de novo* before a different judge.

DECISION

16. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Oliver.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 9 November 2020