



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

Appeal Number: PA/05394/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 22 January 2020**

**Decision & Reasons
Promulgated
On 31 January 2020**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**D S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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.

Representation:

For the Appellant: Ms S Akinbolu, Counsel, instructed by Elaahi & Co Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

This is the Appellant's appeal against the decision of First-tier Tribunal Judge Housego ("the judge"), promulgated on 24 September 2019, by which he dismissed the Appellant's appeal against the Respondent's refusal of his protection and human rights claims. Both claims had in effect been based upon the Appellant's assertion that he was bisexual, was in fear of family members in Pakistan as a result of this, and could not live elsewhere in that country.

The Appellant's appeal was first heard by the First-tier Tribunal in 2018. That appeal was dismissed but later set aside by the Upper Tribunal and remitted for a complete rehearing.

The decision of the First-tier Tribunal

The remitted appeal came before the judge on 28 August 2019. At [50]-[57] the judge made the following relevant findings of fact:

- (i) the Appellant was not bisexual;
- (ii) he had never had a relationship with another man;
- (iii) that the Appellant was in fact heterosexual;
- (iv) that he suffered from mental health problems as set out in a report by Dr Rachel Thomas, Consultant Psychologist;
- (v) that the Appellant had no partner or other family members in the United Kingdom;
- (vi) that even if the Appellant was bisexual, he had lived his life both in Pakistan and the United Kingdom on an entirely discreet basis and that his sexuality was what is described as an "internal thought process, rather than a part of his lifestyle";
- (vii) the Appellant was not at risk of committing suicide.

The reasons in support of the findings of fact are then set out at [58]-[77]. The judge treated the Appellant as a vulnerable witness but concluded that the vulnerability had not materially prejudiced his ability to present his evidence at the hearing. The judge accepted the diagnosis of Dr Thomas (her report had gone unchallenged) that the Appellant suffered from a mental health condition (a moderate depressive episode). For reasons set out at [65]-[68] and [74], the judge found there to be a number of shortcomings in Dr Thomas's report and in all the circumstances, he placed limited weight upon that evidence. The judge noted the absence of any supporting evidence. He considered the contents of GP patient records and the Appellant's screening interview.

At [75] and [77] the judge reached an alternative conclusion to the effect that even if the Appellant was bisexual, his evidence indicated that he had lived his life on an entirely private (or discreet) basis and would continue to do so if returned to Pakistan. On this basis, the Appellant could not satisfy the third question in the structured approach set out in HJ (Iran) [2010] 3 WLR 386 and his protection claim would fail in any event. Finally, the judge considered Article 8 but concluded that removal would be proportionate in all the circumstances.

The grounds of appeal

The grounds of appeal are twofold. First, in light of the judgment of the CJEU in A, B and, C C-148/13 - C-150/13 it is said that the judge erred by requiring corroborative evidence of the Appellant and by holding the delay in making the protection claim against him. Second, it is said that the judge erred in his treatment of the medical report. The judge was wrong to have placed any weight on the fact that the author was a psychologist rather than a psychiatrist and that he should not have made reference to any matters apparently provided during “judicial training”.

There has been no application to vary the grounds of appeal.

The hearing

At the hearing Ms Akinbolu relied on the grounds. She submitted that the judge had failed to adequately address the Appellant’s own evidence as contained in the witness statement, the asylum interview, and that given orally at the hearing. She submitted that whilst this point had not been expressly articulated in the grounds, it flowed from the errors set out therein. In respect of ground 2, Ms Akinbolu submitted that the judge had failed to address the relevance of the medical report to the assessment of the Appellant’s credibility as to traumatic past events. The Appellant’s claim was that the past events related to his family’s discovery of his bisexuality and then their threats made against him.

Mr Bramble submitted that the first ground of appeal was narrowly drawn and did not encompass an assertion that the judge had failed to consider other aspects of the Appellant’s evidence. He submitted that the judge did not take the timing of the protection claim against the Appellant, nor had he held the lack of corroborative evidence against his overall credibility. It was submitted that the judge had in fact considered other aspects of the evidence beyond that contained in Dr Thomas’s report, with reference to [69]-[70] and [76]. In respect of the second ground of appeal he accepted that the judge should not have apparently drawn a distinction between evidence from a psychologist and that from a psychiatrist. The judge was also wrong to have taken any information acquired through judicial training into account. However, he

submitted that these were not material because the other findings were all open to the judge. Mr Bramble noted that the alternative finding on the discretion issue had not been challenged.

In reply, Ms Akinbolu referred me to the Country Policy Information Note on Pakistan (contained in the Appellant's consolidated bundle) and submitted that it might not be safe for the Appellant, as a bisexual man, to live anywhere in Pakistan. She emphasised the failure of the judge to have considered all aspects of the Appellant's own evidence.

Decision on Error of Law

Having considered the judge's decision as a whole, I conclude that there are no material errors of law such that the decision should be set aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

I agree with Mr Bramble that ground 1 has been drawn narrowly and only asserts that the judge has erred in respect of the corroboration and delay issues. The ground does not encompass the wider assertion that the judge failed to consider other aspects of the Appellant's evidence. Therefore, in the absence of any variation, it was not open to the Appellant to contend for any alleged errors going beyond the proper ambit of the grounds.

As to the corroboration point, it is not sufficiently clear to me that the judge did in fact hold the absence of supporting evidence against the Appellant, having regard to what is said in [73] of his decision. On a reasonable reading of the paragraph, the judge is simply stating a fact, namely that there was no such evidence despite what would appear to have been the reasonable availability of such. Alternatively, the judge was entitled, in all the circumstances, to take account of the fact that evidence that was, on the face of it, readily available had not been adduced and without any explanation for this. As the judge made clear, the absence of any supporting evidence left him with only the Appellant's evidence, and that had been found wanting in material respects.

As to the issue of delay, [71] is in my view of neutral effect. Although the judge states that the delay was "relevant", he then immediately goes on to suggest that there was an explanation for that delay. On balance, I conclude that the delay was not materially held against the Appellant. Even if it had been, the judge was entitled to have done so, providing that it did not constitute the decisive factor against the Appellant's credibility (which it did not).

For the sake of completeness, even if it could be said that ground 1 did properly encompass a wider challenge to the judge's consideration of the evidence, there are no material errors on his part. Whilst there is a focus upon the report of Dr Thomas, it is clear that the judge took account of other sources of evidence, including what the Appellant had said in oral evidence (with reference to [73]), what had been stated in writing (with reference to [76]-[77]), what had been said to the Respondent (with reference to [70]), and

information contained within the GP patient records (with reference to [69]). The findings made in respect of those other sources were open to the judge.

I turn to ground 2. Mr Bramble was right to accept that the judge has erred in two respects. He was wrong to have apparently drawn a relevant distinction between evidence emanating from a psychologist and that from a psychiatrist, at least in the circumstances of this case. Dr Thomas was quite clearly suitably qualified to express the opinions that she did. The judge was also wrong to have apparently taken account of what might have been said during “judicial training” to the effect that “the more trusting a profession the more likely that profession is to find someone credible.” Whatever that quite means, it was irrelevant. However, in my judgment, these errors, when the judge’s decision is considered holistically, are not material.

The essential criticism made by the Appellant of the judge’s consideration of Dr Thomas’s report is that he failed to take it into account when assessing the credibility of what the Appellant had said had caused his current mental health problems, namely his family finding out about his sexuality and then making threats against him. For the reasons set out below, this argument is misconceived.

The judge accepted the diagnosis made by Dr Thomas, as he was probably bound to do, given that it had gone unchallenged. That diagnosis could not of course have inevitably led to the conclusion that the Appellant had given a truthful account of events. The judge was correct to say that Dr Thomas’s report was based almost entirely on what had been said to her by the Appellant. That in and of itself is not a reason to reject the overall analysis and conclusions reached by a suitably qualified expert. Having said that, and as the judge rightly stated, the ultimate assessment of an appellant’s credibility is for the fact-finding tribunal based upon the evidence as a whole. The judge did not reject the report out of hand and place no weight upon it. Rather, he found it to be of “limited probative value” (see [68]). Weight was, first and foremost, a matter for the judge. It was open to him to find that the report contained a number of shortcomings, irrelevances and/or matters that did not necessarily support the Appellant’s account (these are set out in [65]-[67] of his decision). The judge specifically considered other aspects of the evidence which indicated that the Appellant had suffered from at least stress on account of other reasons which predated the claimed discovery by his family of his claimed sexuality: those other potential causes being immigration detention and the breakdown of a relationship (with reference to [64] and [69]-[70]). Thus, there was an evidential basis for causes of the Appellant’s health problems other than that put forward by him. Finally, the judge was considering the evidence in the round. As part of this he also took into account aspects of the Appellant’s own evidence which he found to be inherently unlikely (see for example at [76]).

In light of the above, the two irrelevant matters referred to by the judge in respect of the medical report do not materially undermine his otherwise sustainable treatment of that evidence.

Even if the judge had materially erred in respect of his treatment of the Appellant's own evidence and/or that of Dr Thomas, the alternative conclusion reached by the judge in [75] and [77] has simply not been challenged in any way. This presents an insuperable obstacle in the path of the Appellant's appeal.

Adopting a belt and braces approach, I will nonetheless consider the substance of judge's alternative conclusion. I approach conclusions of this type with caution. A judge purporting to take this step must be careful. Having said that, in the present case the judge was entitled to conclude that the Appellant had lived his life as a bisexual man (assuming that this fact had been accepted) on an entirely private basis, both whilst he was in Pakistan and during his eight-year residence in the United Kingdom. I have not been directed to any evidence to indicate that he wished to live openly as a bisexual man in this country or if he were returned to Pakistan. The Country Policy Information Note to which I have been referred does not, on a proper reading, indicate that bisexual people will *necessarily* be at risk *anywhere* in Pakistan if they are not living an "open" lifestyle. As the judge was entitled to conclude that the Appellant would not wish to be open and that this decision was not based in any material way upon a fear of the consequences from the general population and/or the authorities (at least in any area away from his immediate family), he was also entitled to conclude that the third question in the HJ (Iran) approach was not satisfied. There has never been any suggestion that the Appellant could not have internally relocated for any other reasons. Therefore, the protection claim would have failed in any event.

The judge's conclusions on Articles 3 and 8 have not been challenged.

It follows from the above that the Appellant's appeal to the Upper Tribunal must be dismissed as there are no material errors in the judge's decision.

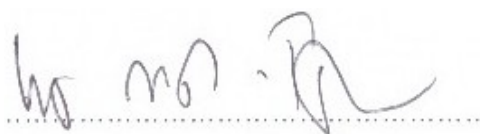
Notice of Decision

The decision of the First-tier Tribunal does not contain material errors of law.

The Appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal shall stand.

Signed



Date: 28 January 2020

Upper Tribunal Judge Norton-Taylor