



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00535/2020 (V)

THE IMMIGRATION ACTS

Heard at Field House
On 4 March 2021

Decision & Reasons Promulgated
On 20 April 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

WU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

Direction Regarding Anonymity

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's 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: Mr Fazli, Counsel instructed by Sohaib Fatimi Solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. At the outset of the hearing Mr Fazli sought permission to rely on a bundle of evidence submitted on 23 February 2021. I refused to admit the bundle because the new evidence, which was not before the First-tier Tribunal, is irrelevant to the question of whether the decision of the First-tier Tribunal is undermined by an error of law.
2. The appellant is a citizen of Afghanistan, born in April 1991, who entered the UK on 28 February 2017. He applied for asylum, claiming to be at risk in Afghanistan because he is gay. His application was refused on 9 October 2018.
3. The appellant appealed to the First-tier Tribunal, where his case came before Judge of the First-tier Tribunal Bowler. In a decision promulgated on 7 December 2018 (that was upheld on appeal to the Upper Tribunal) Judge Bowler found that the appellant had fabricated his claim to be gay and dismissed the appeal.
4. In July 2019 the appellant made further submissions to the respondent, which were rejected. The appellant exercised his right of appeal, and appealed to the First-tier Tribunal. In a decision promulgated on 26 March 2020, Judge of the First-tier Tribunal Buttar (“the judge”) dismissed the appeal. The appellant is now appealing against this decision.
5. A central part of the appellant’s case is his claim that, whilst in Afghanistan, he was caught engaging in sexual relations with a man called Ajmal by Ajmal’s brother and cousin. The appellant claims that Ajmal’s family killed Ajmal and that they are determined to kill him as well. To support/corroborate this claim the appellant submitted several documents and reports. These include two petitions by Ajmal’s brother for his arrest and letters from the elders of Sangar village and the headmen of Baro village confirming his account of what occurred.
6. In addition, the appellant submitted a “verification report” by Dr Giustozzi. The purpose of this report was to confirm whether the two arrest petitions are genuine. Dr Giustozzi described in the report how he engaged a researcher, Mr Samim, who he considers reliable, to visit the appellant’s village and make investigations. He stated that Mr Samim visited the appellant’s village where he gathered together five members of the village council. One of the elders (who is described in the report as the head of the village development council) is said to have confirmed the incident occurred as claimed by the appellant. It is apparent from the report that Mr Samim was the second researcher sent by Dr Giustozzi to the village, as the report describes how Mr Samim met with a different elder who had previously confused the appellant with another person with the same name. The five elders signed a statement stating that the appellant and Ajmal were caught in a homosexual act, and that Ajmal’s family killed Ajmal and are seeking the appellant in order to kill him as well. The elders express support for Ajmal’s family and state that the appellant must be executed in the same way as Ajmal.
7. In the respondent’s refusal letter dated 24 December 2019, it is stated that the verification report adds little weight to the asylum case. The reasons given for this

are that: (a) the report fails to state that the photocopies of the petitions are genuine; (b) it is not possible to determine the integrity of the photocopied documents; and (c) there is no evidence to demonstrate that Mr Samim is an expert or that he visited the village.

8. Dr Giustozzi submitted an addendum report in order to address the points raised in the respondent's refusal letter. Amongst other things, he stated that the respondent's criticism is based on a false premise, as if a source indicates that the content of a letter is correct that should be more important than whether the letter is genuine or not.
9. In a comprehensive and thorough decision, the judge found that the evidence adduced by the appellant (including Dr Giustozzi's verification report) did not justify a departure from the findings of Judge Bowler. The judge found, inter alia, that the evidence did not demonstrate that there are petitions for the appellant's arrest in Afghanistan or that the incident with Ajmal occurred.
10. The grounds raise a range of issues, all but one of which I consider to lack merit. However, the ground that does have merit (which is the first ground of appeal) identifies an error that, in my view, undermines the decision to such an extent that it will need to be re-made afresh. The error relates to the judge's approach to Dr Giustozzi's verification report.
11. The judge's assessment of the verification report is in paragraphs 42 and 43 of the decision. In paragraph 42 the judge stated that although he found Dr Giustozzi to be a credible witness, various shortcomings in the verification report meant that he could place only little weight on the statement from the elders obtained by Mr Samim. The shortcomings identified by the judge were: (a) the letter/statement by the elders was undated; (b) he did not know how Mr Samim asked the elders to verify before they signed the letter; (c) he did not know whether the elders were told the brief facts to be verified which they simply replicated in the letter; (d) he did not know how the individuals who signed the letter proved they were the heads of the village; (e) he did not know whether Mr Samim gave the elders details about the appellant; and (f) he did not know whether the elders have a connection to the appellant or how they came to know the facts stated in the letter.
12. In paragraph 43 the judge stated that Dr Giustozzi and Mr Samim were unable to verify whether the arrest petitions were genuine. The judge stated that the petitions do not have the name of the person they were issued against at the top and are not dated at the bottom. He also noted that the two petitions are identical despite being issued by separate departments. The judge concluded that they were not genuine petitions.
13. The error of law is that the judge did not engage with the fact that an experienced expert who understood his duty to the Tribunal (see the declaration and statement of truth in the report), and who he found to be credible after giving oral evidence, was able (via a trusted colleague) to corroborate the substance of a core part of the appellant's account. Whether or not the arrest petitions adduced by the appellant are genuine documents is beside the point if village elders in the appellant's

village have actually corroborated the appellant's account directly to a person acting on the instruction of a competent and credible expert. The judge in paragraph 42 described various shortcomings in Dr Giustozzi's report but if Dr Giustozzi is a truthful witness (which the judge found him to be – stating that he was “a credible witness”), it follows that what Dr Giustozzi wrote in his report is reasonably likely to be an accurate record of what the village elders told Mr Samim.

14. Ms Everett, when this was put to her, argued that it is not necessary to impugn Dr Giustozzi in order to not attach weight to the verification report. She stated that the process described in the report is vague and that there is not a clear chain of custody. She also maintained that the judge was entitled to have reservations about how the information was obtained. I do not agree that the process was vague or involved an unclear chain of custody. The process undertaken by Dr Giustozzi, as described in his report, is straightforward and clear: he sent a researcher he has worked with previously (and who he has confidence in) to the appellant's village to make enquiries and then set out in his report the outcome of those enquiries; ie what the researcher was told. Having found Dr Giustozzi to be credible there was not, in my view, a legitimate basis to find that the content of the verification report, which merely recorded what Dr Giustozzi's researcher was told, was not reasonably likely to be an accurate record of what the village elders said about the appellant.
15. This error is material because it concerns a central aspect of the appellant's account. I have carefully considered whether any findings of fact should be preserved. As it is difficult to say whether the error has infected the conclusions reached by the First-tier Tribunal regarding the appellant's credibility in other aspects of his case, I have decided that no findings should be preserved and the appeal should be determined afresh. Given the extent of fact finding necessary for the decision to be re-made, I have decided to remit the matter to the First-tier Tribunal.

Decision

16. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
17. The appeal is remitted to the First-tier Tribunal to be made afresh by a different judge with no findings preserved.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 9 April 2021