



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2022-001239**
First-tier Tribunal No: PA/04579/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 April 2023

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MD TANVIR HOSSAIN
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Reza

For the Respondent: Mr Tufan, Senior Presenting Officer

Heard at Field House on 7 February 2023

DECISION AND REASONS

1. The appellant is a male citizen of Bangladesh born on 21 December 1997. His claim for international protection is summarised by the First-tier Tribunal at [2-6] as follows:
 2. On 9 August 2019 the Appellant applied for a Tier 5 (Creative and Sporting) visa. His application was granted and he was issued with a visa valid until September 14 2019. He subsequently arrived in the United Kingdom at Stansted Airport on 30 August 2019. In his asylum interview he said he had been a keyboard player in a music group (The Belal Khan Group) in Bangladesh and that he had come to the United Kingdom with the group to play at an event in London. He said he played at the event for "a short time" and then the keyboard was given to someone else (AS.Q.191).
 3. He subsequently claimed asylum on 12 August 2019 two days before his visa expired on 14 September. In his screening interview on

21 September 2019, he said that he could not return to Bangladesh because he was gay. He said he was afraid that his father (who lived in Saudi Arabia) would kill him. He also said he was afraid that the general public and Jamaate-E-Islami would also kill him if he was returned.

4. The Appellant's substantive asylum interview took place on 17 January 2020. After that interview the Appellant provided the Respondent with a statement also dated 28 January 2020 together with other documents listed in his letter of the same date. In that interview he gave details of his gay relationships and repeated his explanation as to why he could not return either to Saudi Arabia (where his family lived) or Bangladesh.

5. The Respondent refused the Appellant's application on 7 October 2020. He rejected the Appellant's claim to be gay or that he had ever experienced any problems because of his sexuality. He also rejected the Appellant's claim to have turned away from Islam. He considered that there were no exceptional circumstances entitling the Appellant to discretionary leave or leave under Article 8 of the European Convention of Human Rights.

6. The Appellant was entitled to appeal this decision to the First Tier Tribunal. A notice of appeal dated 21 October 2020 was filed on his behalf by Heans Solicitors of London, E1 1JE accompanied by detailed grounds of appeal in which was asserted that the Appellant qualified for asylum as a homosexual. It was said that the Respondent had "notably discarded" the evidence provided "highlighting his attendance to gay clubs and supporting documents clearly indicating his sexuality".

2. The appellant's appeal to the First-tier Tribunal was dismissed by a decision promulgated on 29 November 2021. The appellant now appeals, with permission, to the Upper Tribunal.

Ground 1: failure to assess the evidence of the witnesses and to give reasons for rejecting witnesses' evidence or failure to give adequate reasons.

3. On first reading, the judge's assessment of the evidence of the two witnesses, Maskur Kawsar and Mohammad Rafi, appears problematic. Mohammad Rafi claimed to have had sex with the appellant whilst Maskur Kawsar had witnessed the appellant going into a room at a club to have sex with a man. At [91], the judge writes: 'Simply because Ms Kawsar and Ms Rafi or others such as Mr Khan who provided a letter of support have come to the conclusion that the Appellant is gay does not necessarily mean that he is even if they base their conclusion on what they claim to have seen and witnessed. To that extent I do not find their evidence to be reliable.' With respect to the judge, that is nothing more than a statement of the obvious: the evidence of a witness has no intrinsic probative value until it is given such value by the judge whose task is to weight each item of evidence according to the appropriate standard of proof. The judge did not examine in any detail the claims made by the witnesses but instead moved from accepting that the witnesses may genuinely believe their evidence to be truthful ('... even if they base their conclusion on what they claim to have seen and witnessed') to a dismissal of that evidence ('To that extent I do not find their evidence to be reliable'). Prima facie, it seems that the judge has not engaged

properly with the evidence and may have given inadequate reasons for giving it no weight.

4. However, in our opinion, the judge has avoided falling into legal error such that his decision cannot stand. We have reached that view for the following reasons.
5. First, the judge has given multiple reasons, which do not touch at all on the evidence of the two witnesses, for rejecting entirely the appellant's claim to be homosexual. The judge refers to the many failures of the appellant to remain consistent in the evidence he gave at the various stages of his asylum claim [75] [77] [78] [81] [82] [83] [87]. The judge records [88] that 'the Appellant has even been inconsistent as to what his intentions were in coming to the United Kingdom. In evidence, he told me that initially he intended to return to Bangladesh yet in his asylum interview he made it clear he had come to this country in order to save his life.' The judge considered that it 'made no sense for the Appellant's father to fund the Appellant's studies in Bahrain (and later India) if he was so concerned about the Appellant's behaviour and in particular, his relationship with [another man]'. In short, the judge did not find the appellant to be a witness of truth. In reaching that conclusion, the judge was aware of the evidence of the two witnesses. However, their evidence did nothing to persuade the judge that the appellant is homosexual.
6. Secondly, we are satisfied that the judge has adopted the correct methodology in assessing the evidence. He has considered each item of evidence and has assessed the evidence as a totality before reaching his findings of fact. For instance, at [90], the judge states 'When I look at all the evidence, I cannot be satisfied that it is reasonably likely that any of the events described by the Appellant in Saudi Arabia, Bahrain or Bangladesh actually occurred' [our emphasis]. The judge considered that the appellant's account of past events before he reached the United Kingdom was wholly unreliable. Given that his credibility assessment had to start somewhere, the judge did not fall into error examining (and rejecting) the evidence of the United Kingdom witnesses in the context of the appellant's own evidence. We are satisfied that the judge has considered the evidence as a whole before rejecting the particular evidence of the two witnesses.
7. Thirdly, we have considered the challenge in Ground 1 in the terms in which it is advanced. Ground 1 does not complain that the judge failed to assess the witnesses' evidence at all or inadequately. Rather, the challenge is made on the basis that the judge should have accepted the evidence of the two witnesses because they were not cross examined 'which means their evidence ... has been accepted by the respondent.' We disagree. There was no express or implied concession by the respondent that she accepted the evidence of the witnesses as reliable; the judge records [37-39] the submissions of the Presenting Officer urging the Tribunal to find that the application was not homosexual and to dismiss the appeal. It was not necessary for the respondent to identify each and every piece of evidence which she did not accept as reliable; it is manifestly obvious that the respondent did not accept any of the appellant's evidence. Contrary to what is asserted in the grounds, the judge has given reasons for rejecting all the evidence adduced by the appellant (including that of the witnesses) as unreliable.
8. Ground 1, therefore, discloses no error on the part of the judge. The evidence of the two witnesses was (i) not accepted by the respondent (ii) consequently weighed by the judge with all the other evidence and (iii) found to be unreliable.

Ground Two: Failure to Apply the Principles of HJ (Iran) correctly

9. Given that we find that the judge's credibility analysis is sound in law and that his finding that the appellant is not a homosexual should stand, any error into which the judge may have fallen in examining, in the alternative, the risk to the appellant on return to Bangladesh as a homosexual is immaterial.

Ground Three: Attaching excessive importance to the delay factor.

10. At [68] of the refusal letter, the Secretary of State writes:

You arrived in the United Kingdom at Stanstead airport on 30 August 2019 (AIR Q47, SCR 3.3). Home Office records show that you claimed asylum on 12 September 2019. Although you have claimed that you travelled with the intention of escaping your problems in Bangladesh, you did not claim asylum at Stanstead because you claim that you came here to play the keyboard and later found out that it is a safe country for gay people (AIR Q189). However, this is not considered as a reasonable explanation for why you did not claim asylum on arrival as you later claim that you came to this country to save your life (AIR Q189). It is therefore not accepted that you did not know on arrival that you were not returning to Bangladesh. It is therefore concluded that your behaviour is one to which section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 applies.

11. At [92] of his decision, the judge writes:

I simply do not find the Appellant to be in any way credible. In reaching that assessment I have not taken into account what is said by the Respondent about the application of s8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004 although I have no reason to disagree with the Respondent's assessment at paragraph 67 and 68 of his refusal letter. In conclusion I do not consider it reasonably likely that the Appellant is a gay man or would be perceived as such on return to Bangladesh [our emphasis]

12. By asserting that the judge 'gave too much weight' to the appellant's late claim, Ground 3 seriously misrepresents the judge's decision. In his assessment of the evidence, the judge did not attach *any* weight to the section 8 delay cited by the respondent. Ground 3 is without merit.

Ground Four: making unreasonable demands for evidence which are not easy for the Appellant to provide

13. Ground 4 states that 'the Judge materially erred by drawing adverse credibility finding because the Appellant was not able to provide written evidence of complaints made against him by his School in Saudi Arabia or by the hostel in India. It is unreasonable to expect that the Appellant will have copies of these complaints or that his parents will write confirming their existence.'
14. At [90], the judge wrote, 'there is no written evidence of any of the complaints made against him by anyone either at his school in Saudi Arabia or in his university in India.' This does not, in our opinion, constitute 'drawing [an] adverse credibility finding because the Appellant was not able to provide written evidence of complaints made against him.' Rather, it is simply an observation made in the context of the previous sentence: '[the appellant's] evidence had been vague,

imprecise and riddled with inconsistencies.’ There is no suggestion that the judge dismissed the appeal because the appellant had not provided corroborative evidence. The judge considered that, in the absence of any evidence to the contrary, the appellant’s vague, imprecise and inconsistency-riddled evidence indicates that he is not a witness of truth. That was a finding patently available to the judge.

Ground Five: failure to appreciate the true nature of the appellant’s case.

15. At [93], the judge writes that ‘there is no evidence that [the appellant] was open about his sexuality during his time in Bangladesh or that he took any steps to actively promote it.’ The appellant asserts that the judge fails to understand that that it was not possible to express gay sexuality in Saudi Arabia or Bangladesh. Given that the appellant is not gay, the ground is without merit.
16. In the circumstances, this appeal is dismissed.

Notice of Decision

This appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 10 February 2023