



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-
001767
First-tier Tribunal No:
HU/05823/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

22nd November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MD JAHANGIR ALAM
(Anonymity order not made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Halim
For the Respondent: Mr S Walker

Heard at Field House on 15 September 2023

DECISION AND REASONS

1. This is the appeal of Md Jahangir Alam, a citizen of Bangladesh, against the decision of the First-tier Tribunal of January 2022 dismissing his appeal against a May 2020 refusal of his human rights claim. The Appellant arrived in the UK on 22 October 2009 as a Tier 4 Student with leave to enter until 28 October 2012, extended until 28 July 2014, although curtailed to end on 27 August 2013; he was granted leave on 23 September 2014 until 30 October 2014, on which day he applied for leave to remain on compassionate grounds, requesting time to complete his studies (the immigration history supplied by the

Respondent originally suggested this application was made a day out-of-time though that was accepted as incorrect at his June 2016 hearing).

2. That October 2014 application was refused on 28 January 2015, and an appeal dismissed on 15 June 2016 because Judge Watt noted that the application's stated purpose of permitting the Appellant to complete his studies at Anglia Ruskin University had now been realised by the course's completion in January 2016. On 16 December 2016 an EEA application as an extended family member wholly dependent on his Irish uncle was made, and refused on 6 June 2017.
3. The Appellant claimed asylum on 27 June 2017, based on his same-sex gender preference, that application being refused on 15 December 2017, and his ensuing appeal was dismissed by Judge Seifert on 19 February 2018, in the Appellant's absence, an adjournment application having been refused as the supporting medical evidence did not establish his inability to attend the hearing. Judge Seifert did not accept that the Appellant was a gay man as that claim was predicated on a relationship with one Mr Periera based on a history of cohabitation and financial support that was inconsistent with that advanced with the EEA application. Additionally his asylum claim had been made seven years after his arrival in the UK, inconsistently with holding a genuine fear of persecution. He would face no very significant obstacles to integration to life in Bangladesh.
4. On 16 December 2019 the Appellant applied for leave to remain arguing he had completed 10 years of lawful residence and alternatively that he would face very significant obstacles to integration to life in Bangladesh on a return there. The application was refused on 15 May 2020 because on any analysis he had not held valid leave from December 2016, less than a decade after his arrival in October 2010, and the evidence of facing difficulties in Bangladesh was thought unpersuasive. On 24 June 2021 further representations (advanced on 11 March 2020) raising concerns as the stigma he would face in Bangladesh due to his mental health problems and threats he had received via text messages were refused, on the basis that no new material evidence than that previously considered was available. On 20 January 2022 Judge Nightingale dismissed the appeal resulting from that application's refusal which leads to the present proceedings. Before her the Respondent was unrepresented; the Appellant's case was supported by a March 2020 report from Dr Vohra diagnosing him with serious depressive illness, and his own witness statement, maintaining his asserted gender preference.
5. Judge Nightingale observed that the application had been made on the basis of the Appellant's private life in the UK and had no protection dimension; hence asylum grounds were not available on the appeal. She considered Dr Vohra's report should receive limited weight because the author appeared to be a GP now practising occupational medicine, which one would expect provided expertise in workplace medicine

rather than in psychiatry; it did not seem that he had had the advantage of the Appellant's medical notes nor that he had read Judge Seifert's findings as to the Appellant's sexuality, which was important given Dr Vohra stated he was unable to verify the truth of what he had been told in that regard. Furthermore as of January 2022 that report was nearly two years old. A GP's letter of June 2021 indicated a depression diagnosis but there was nothing therein that required revisiting previous Tribunal findings: depression was a foreseeable result of uncertain immigration status and the associated inability to work; there was nothing to link that diagnosis with his alleged problems due to his gender preference.

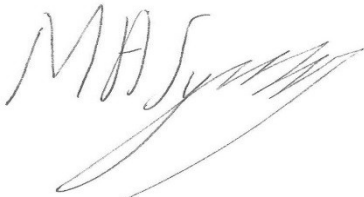
6. Judge Nightingale went on to observe that the Appellant had not raised any difficulties with return to Bangladesh during the appeal which was dismissed by Judge Watt in June 2016. The Appellant's residence had been lawful from October 2009 until 5 December 2016 when his appeal rights against the October 2014 were exhausted. On balance of probabilities the Appellant had not established himself as a gay man given the *Devaseelan* principle and the lack of cogent justification for revisiting Judge Seifert's findings: the screenshots now provided allegedly showing threats to him could easily have been contrived. There was no evidence that his medication would not be available to him in Bangladesh or that family support would be unavailable to him, and so he faced no very significant obstacles to integration there. His lengthy UK residence had consistently been precarious and whilst he had presumably established connections here, he could make a new life for himself in Bangladesh and any interference with his private life was proportionate.
7. Grounds of appeal contended that the medical evidence had been rejected unfairly when its contents had not been known to be in issue, and relevant fresh evidence in the Appellant's witness statement relevant to his sexuality had been overlooked. Finally, if either of those grounds were thought persuasive, any question of serious harm that he might face on a return to Bangladesh required determination notwithstanding the absence of an asylum claim or refusal on asylum grounds, as per *JA Nigeria* [2021] UKUT 97 (IAC). The Upper Tribunal granted permission to appeal on 19 August 2022 on the basis that the grounds were arguable.
8. Before me proceedings were relatively brief. Mr Halim submitted that Judge Nightingale had materially erred in law by failing to make findings on the further evidence (going beyond that previously available) which was before her, including the Appellant's latest witness statement, which was particularly important in the broader context that the Appellant had been absent from the hearing before Judge Seifert. Mr Walker accepted, having heard those submissions, that there was indeed a material error of law here extant for the reasons identified by Mr Halim; so, notwithstanding the stance taken in the rule 24 response, he agreed the matter should be reheard.

Decision and reasons

9. In these circumstances I consider it appropriate to allow the appeal for the reasons summarised above in Mr Halim's submissions. There is no mention of the latest witness statement in Judge Nightingale's decision in which the Appellant sets out having been disowned by his father and the threats he has received. Nor is there mention of the photographs said to show the Appellant expressing his support for the LGBT cause. The Judge's consideration of the fresh evidence which might justify departure from the previous appellate findings is limited to a review of the medical evidence.
10. Whilst the overlooked materials could hardly be said to be the most weighty imaginable, they nevertheless demanded attention in the context of the fact-finding exercise prior to assessing the difficulties the Appellant might face on a return to Bangladesh. Given that findings of fact will have to be made on all material issues, the most appropriate course of action is remittal to the First-tier Tribunal. The Appellant will doubtless now be aware that the medical evidence as currently presented is not necessarily to be treated as beyond challenge, though the weight to be afforded it will be a matter for the judge who next hears the appeal.

Decision:

The decision of the First-tier Tribunal contained a material error of law. The appeal is remitted for hearing afresh before the First-tier Tribunal.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

14 November 2023