



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003594

First-tier Tribunal No: PA/51651/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

MH (Bangladesh)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H. Malik, counsel, instructed by City Heights Solicitors
For the Respondent: Mr E. Terrell, Senior Home Office Presenting Officer

Heard at Field House on 5 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant is a national of Bangladesh who claims to be at risk of persecution on account of his claimed homosexuality. His claim for asylum and humanitarian protection was refused by the Respondent by a decision dated 26 March 2021. The Appellant appealed that decision to the First-tier Tribunal and, by

a decision dated 17 June 2022 (“the Decision”) First-tier Tribunal Judge Ruth (“the Judge”) dismissed his appeal on the basis that the Appellant was found not to be credible and had not proved that he was in fact gay. On 25 July 2022 the Appellant was granted permission to appeal to this Tribunal by First-tier Tribunal Judge Landes.

2. The Judge did not make an anonymity direction. No reasons were for that decision, but it may have been that the Judge considered that, as decisions of the First-tier Tribunal are not routinely published on the Tribunal’s website, absent an unlikely application to the Tribunal for a copy of the Decision, the only persons who would have access to it would be the parties, who would be unlikely to provide it to anyone who might put MH at risk. Given that this (and all Upper Tribunal decisions) are automatically published on the Tribunal’s website, I take a different view. Given the nature of his claim (and the fact that making the claim to be gay could itself give rise to a perception of his being so, even if false), I consider that it is necessary and proportionate to anonymise the Appellant’s identity, notwithstanding the importance of open justice.

The Decision

3. The first observation to be made about the Decision is that it is very unusually formatted. It is mostly, but not consistently, aligned on the right, paragraph numbers are also on the right. However, the first line of each paragraph juts out to the righthand side of the paragraph and the full stop at the end of each paragraph appears on the left of the last line (i.e. not after the final word of the sentence). Other punctuation marks appears in odd places for reasons which are entirely unclear to me. None of this aids ease of comprehension. It does not however amount to an error of law and so no more needs to be said about it.
4. At the outset of his findings, the Judge reminded himself of the low standard of proof, and of the difficulties in assessing a person’s sexuality. He then also expressed the conclusion that he had reached: *“I am sorry to have to say that I have concluded this appellant is not a credible witness. I have no doubt at all that both the appellant and the second witness gave false evidence to the Tribunal, which was expressly designed to mislead. I have no doubt whatsoever that the account given is an invention to which no credence whatever can be attached.”*
5. The Judge’s reasoning which then follows can be summarised as follows:
 - a. The Appellant’s account given both in interview and in evidence before the Tribunal was *“singularly poor, superficial, incoherent on material points and not at all the credible or even minimally convincing evidence of a person who has genuinely experienced an awareness of a sexual orientation not part of the mainstream”* and *“did not have the ring of truth and came across as a learnt account and not one describing real life lived on the ground”* (paras.44-48);
 - b. In that context, the lack of supporting documents which would be readily available was striking (para.49);
 - c. His account of being unable to contact his claimed ex-partner was contradicted by that of the third witness (paras.50);
 - d. The evidence of that third witness (“SB”) was that she had seen them holding hands and displaying affection and believed them to be a gay couple, but, while not disbelieving that she genuinely believes what she says, little weight can be placed on her evidence (para.51);
 - e. The ex-partner’s absence as a witness was also striking (para.52);

- f. The most seriously damaging aspect of the evidence given by the appellant was its incoherence on material and fundamental issues with the evidence of his alleged current partner and the vagueness of their accounts (para.53-58);
 - g. There was no evidence of contact between the couple, such as calls, WhatsApp messages or the like (para.59).
6. The Judge further rejected the Appellant's Article 8 ECHR claim. As no appeal is brought against that conclusion, I need say no more about it.

Appeal to the Upper Tribunal

7. The Grounds are prolix. They are not a model of clear drafting. I will deal with them in more detail below, but in large part they challenge the rationality of various findings made by the Judge and the weight given to different bits of evidence.
8. One significant point worth making at this juncture is that a number of the grounds rely on things said to have been said or not said at the hearing before the Judge. As is well established, without evidence of what took place below, there is no evidential basis on which to make submissions in relation thereto: see e.g. Singh v SSHD [2016] EWCA Civ 492; [2016] 4 WLR 183 at [40]-[48]; Ortega (remittal; bias; parental relationship) [2018] UKUT 298 (IAC); [2019] Imm AR 126 at [45]-[49]; Wagner (advocates' conduct - fair hearing) [2015] UKUT 655 (IAC). Sometimes matters will either not be in dispute or will be recorded in the Tribunal's decision, but absent that, it is necessary to adduce evidence. That can be in the form of a witness statement from the advocate who appeared before the Tribunal (though this means that they cannot also appear as advocate before the Upper Tribunal): BW (witness statements by advocates) Afghanistan [2014] UKUT 00568 (IAC)). It is trite, but worth reiterating that grounds of appeal do not prove themselves and are not evidence of their contents.
9. The fact that many of the grounds were unevicenced was commented on Judge Landes in her grant of permission in July 2022. The Appellant has accordingly been on notice (if such notice were required) of the need to evidence the grounds where there were allegations made in the grounds of what was alleged to have been said (or not said) below.
10. At the hearing before me, I took the parties through those aspects of the Grounds which seemed at first blush to me (and subject to hearing submissions to the contrary) to rely on what had occurred before the Judge but which were unevicenced. Mr Malik, for the Appellant (who did not appear below and did not draft the grounds), was plainly alive to the issues and to the difficulties this caused him in respect of several of the grounds. I offered him, and he took, the opportunity to take instructions on whether to seek an adjournment so that evidence of what occurred before the Judge could be obtained. He told me that his instructions were to proceed with the remaining grounds and he accepted that he could not advance grounds by reference to unevicenced allegations in the grounds of what had happened before the Judge, to the extent that they were not agreed or recorded in the Decision. Neither party took issue with my identification of those aspects of the grounds which had no proper evidential basis.
11. The grounds which do not depend on proving what was said below are in my judgment the following:

- a. Ground 1: The Judge failed to give reasons for rejecting the evidence of SB, the third witness;
- b. Ground 3: The Judge committed a *Mibanga* error in respect of SB's evidence;
- c. Ground 4: The Judge erred in concluding that the Appellant was not gay, by virtue of his lies about his gay relationship;
- d. Ground 5: The Respondent submitted [27] that two witnesses were inconsistent, which submission was adopted by the Judge at [45], but which witnesses gave evidence about different matters altogether;
- e. Ground 6: The Judge failed to make a finding as to the Appellant's partner's unchallenged homosexuality;
- f. Ground 7: The finding that nobody knows the Appellant is gay in the UK is irrational;
- g. Ground 9: The Judge wrongly required corroboration of the Appellant's evidence.

12. The remainder of Ground 1 depends on the unevidenced assertion as to what SB and the Appellant said in evidence. Ground 2 depends on the unevidenced assertion that matters were not put by the Secretary of State's counsel (whose note of the evidence appears also not to have been sought for the purpose of the appeal). The remainder of Ground 5 relies on unevidenced aspects of the evidence of the Appellant and his partner. Ground 8 depends on unevidenced assertions as to what the Judge asked the witnesses. The remainder of Ground 9 relies on what the Judge is said not to have asked a witness. Ground 10 depends on evidence said to have been given by the Appellant. Given the lack of evidential basis for these grounds, I reject them.

13. Before turning to the grounds which remain, I note that there was no rule 24 response from the Respondent, who was accordingly limited to arguing that the Judge had reached the correct result for correct reasons.

Ground 1: The Judge failed to give reasons for rejecting the evidence of SB

14. The Judge recorded that SB's evidence was that she had known the appellant and his ex-partner, of whom she is the current landlord, when they were together. She had, she said, seen them holding hands and displaying affection on occasions when she visited them and believed them to be a gay couple. The Judge considered that very little weight could be attached to this evidence. His reasons follow in para.52. He noted that, despite the alleged ex-partner living in the UK and with this very witness, there is no statement from the ex. Rather, he has evidence from a person who is not a friend, but a landlord, relating to events years in the past. His evidence, the Judge noted, was very limited. Further, the Appellant and his ex-partner, having both made claims to the Respondent to be gay, would have a strong motivation to persuade someone such as SB that this was the case. If the Appellant had been able otherwise to give good evidence, the Judge might, he said, have been able to attach more weight to this albeit limited evidence. In the circumstances, however, he concluded that he could not do so.

15. I remind myself that a reasons challenge is not a challenge to the rationality of the conclusion and that reasons need not be extensive. The reasons given by the Judge in respect are in my judgment more than sufficient for giving SB's evidence little weight.

Ground 3: The Judge committed a *Mibanga* error in respect of SB's evidence

16. It is an error for a judge to reject evidence which is potentially corroborative of an appellant's account because, without considering that evidence, he or she has already rejected the appellant's credibility. That is not however in my judgment what occurred here. The Judge did not reject SB's evidence. Rather he gave it little weight. He noted that (a) the evidence which SB gave was limited; and (b) there was reason for her to be deceived by the Appellant and his claimed ex-partner, such that (I paraphrase) there was reason to treat this evidence with caution. The fact that the Appellant's evidence was so poor then meant that very little weight could be given to it. In assessing the Appellant's evidence, the Judge had noted at para.50 that SB's evidence was supportive of him being in a relation with his ex-partner. It is not therefore a case of having rejected the Appellant's credibility without having taken into account SB's evidence. The Judge was well aware of it when considering the Appellant's credibility. The fact that the conclusion as to the Appellant's credibility came earlier in the judgment than the conclusions as to the weight to be given to SB's evidence is nothing to the point - one has to start somewhere.

Ground 4: Lying about one thing does not mean you are lying about everything

17. It is well established that the fact a witness has been found not to be truthful in respect of one aspect of his or her evidence does not mean that they cannot be believed in relation to another aspect of their evidence. In particular, lying about peripheral aspects of a case does not mean that the centre-piece of the story does not stand: Chiver [1997] INLR 212.
18. The Grounds assert that the Judge "directed himself that because he could not accept the evidence of one part of the appellant's claim, that is the gay relationship with his partner, he must therefore reject other parts of the appellant's claim, that being the Appellant's relationship with Sadik." That is not what the Judge did. The Judge did not accept that there was any reasonable possibility that the Appellant may be gave because he took the view that there was no reasonable likelihood anything he had said could be given any credence whatsoever. That view was reason "looking at all of these matters together and in the round". See para.62. "All of these matters" is a reference to everything that has preceded, which includes all aspects of the Appellant's claim, not just the claimed relationship he had assessed immediately prior to this paragraph.

Ground 5: The Respondent submitted at para. 27 that two witnesses were inconsistent, which submission was adopted by the Judge at para.45, but which witnesses gave evidence about different matters altogether

19. This ground is misconceived. The Judge did not accept the Respondent's submission recorded in para.27 at para.45 of the Decision in so far as it related to the consistency of the witnesses.
20. Para.27 records that:
"In submissions for the respondent I was asked to conclude the evidence of both the appellant and his alleged partner and the other witness was manifestly incoherent and lacking in credibility. They had been unable to give a consistent account of central aspects of the alleged relationship, how they met, how the relationship developed and how it is carried on now. I was asked to note there was almost no evidence the appellant had ever been in any kind of gay relationship with anybody, or that he had any gay

friends, had been to any gay venues, events or places or that anybody thought or knew him to be a gay man anywhere in the world."

21. Para.45 provides:

"In the context of the asylum interview itself and taking into account the respondent's guidance to her own caseworkers, it seems to me that the questions asked by the interviewing officer, while not a perfect approach in the light of that guidance, were a reasonable attempt to follow the guidance and to elicit from the appellant responses indicative of a developing self-awareness. In that context I found the appellant's responses during the interview to be, as the respondent suggests, vague, stereotypical and unconvincing. His account was also given in a materially incoherent manner, as set out in the refusal letter, and, regardless of whether or not it was plausible, the account of the incident at the wedding in Bangladesh was flat, colourless and vague."

22. These findings have nothing to do with the consistency of the accounts given by the two witnesses.

Ground 6: The Judge failed to make a finding as to the Appellant's partner's unchallenged homosexuality

23. Mr Terrell accepted that the Appellant's partner had been granted asylum on the basis of his sexuality, so the fact that this was not in dispute before the Judge was not in issue.

24. It is somewhat difficult to see what relevance the Appellant's partner's homosexuality has in relation to the fact that he and the Appellant claim to be in a relationship. The fact that someone is heterosexual, does not, of itself, give credence to an allegation that they are in a claimed opposite-sex relationship, and I cannot see, with respect, why it should be different for a gay couple. Obviously if the Appellant's claimed partner were found *not* to be gay, that would be relevant, but the fact that someone has a relationship consistent with the relationship they claim to be in seems to me rationally only capable to being a neutral factor.

25. In any event the Judge was plainly aware that Mr Forhad was in the UK having been granted asylum as a gay man. He records as much in para.11 of the Decision. It was, in my view, not necessary for him to make a finding in that respect. He plainly accepted it. That did not however stop the Appellant's claimed partner from giving evidence of their relationship which was "*incoherent, self-contradictory, garbled and...plainly not...truthful evidence*" (para.55).

Ground 7: The finding that nobody knows the Appellant is gay in the UK is irrational

26. The grounds plead that whereas at para.49 the Judge directed himself that the Appellant's evidence was that in the UK "nobody knows" that the Appellant is a gay man, the two witnesses came to give evidence as to their knowledge of the Appellant's sexuality and that therefore this finding is irrational.

27. In my judgment this ground rips this 'finding' out of context. In para. 48 the Judge considered that, in the context of the appellant giving very vague, superficial and unconvincing oral evidence himself, which did not have the ring of truth and came across as a learnt account and not one describing real life lived

on the ground, it was striking that there was a lack of supporting evidence on absolutely fundamental and key issues, which would have been easily obtainable. The Judge at para.49 then states, *“For example, the appellant says that he is now living as an out gay man, regularly going to gay venues and using mental and medical support from LGBT support organisations. There is not a single piece of evidence from any person, organisation, LGBT support body or otherwise to support this. It appears that in the UK nobody knows the appellant is a gay man, he has no friends, he goes to no clubs, he uses no services of support, he belongs to no organisations. If he does, it is very surprising indeed that he has not found it necessary to provide any evidence of the fact.”*

28. In the context where the evidence of the witnesses as to the Appellant’s claimed sexuality has either been rejected or no real weight been given to it, and no other evidence of any other person knowing of the Appellant’s claimed sexuality, the Judge’s remark is far from irrational. I would also add that this seems to me to be something of a rhetorical flourish about the lack of evidence put before the Tribunal.

Ground 9: The Judge wrongly required corroboration of the Appellant’s evidence

29. While it is well established that in asylum claims, it may be less likely that an appellant will be able to adduce corroborative evidence because, for example, they have fled a war zone without their documents, it does not follow that it is an error of law for a Judge to take into account the lack of corroborative evidence where such evidence would be readily obtainable. Indeed, *“the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case”* was cited by Green LJ in SB (Sri Lanka) v SSHD [2019] EWCA Civ 160 at [46] with approval as one of the techniques that Judge regularly use to determine an asylum seeker’s credibility.
30. The Judge accordingly did not err, as suggested by the Appellant, in considering in para.57 that, despite the Appellant claiming to be known as the partner of the second witness, it was a negative indicator of credibility that none of the partner’s friend who would have that knowledge were called as witnesses.
31. For the above reasons, this appeal fails.

Notice of Decision

The decision of First-tier Tribunal Judge Ruth dated 17 June 2022 does not involve the making of an error of law. The appeal accordingly stands dismissed.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 September 2023