



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003439

First-tier Tribunal No: PA/00922/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

S.W.
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Miah (Counsel)

For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 15 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Shepherd, promulgated on 13th April 2022, following a hearing at Birmingham CJC on 18th March 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, and was born on 28th August 1992. He appealed against the decision of the Respondent dated 7th April 2021 refusing his application for asylum and for humanitarian protection, on the grounds that he was a member of a particular social group, in that he was gay by way of his sexual orientation.

The Appellant's Claim

3. The Appellant alleges that if he is returned back to Bangladesh as a homosexual male, due to his relationship with his partner, this would put the UK in breach of his Article 2 and Article 3 ECHR obligations. He would be killed or forced to marry a woman by his family, or imprisoned or executed by the authorities. Such a risk extends to the whole of Bangladesh and he cannot find internal relocation in that country. It would also be a disproportionate breach of his family and private life under Article 8 of the ECHR if he were to be removed from the UK now. The Respondent, however, argues that the Appellant has not been able to demonstrate that he is in a genuine relationship with MDSH.

The Judge's Findings

4. The evidence before the Tribunal consisted of photographs and a statement to show that the Appellant was in a same sex relationship and had participated in LGBT activities in the UK. There were letters of support from MAJ, MDSH, and GMT, purporting to confirm the Appellant's sexuality and to state that he had been to LGBT clubs and events and had been seen kissing other men (paragraph 11). The judge also noted the contention that the Appellant's alleged partner was not an official partner who was British, settled or in the UK with refugee or HP leave, and that the relationship was not recognised as genuine and subsisting (paragraph 14).
5. Judge Shepherd heard evidence in person from the Appellant, and from a number of witnesses. These included MI, SR, and MDSH. The judge then had regard to the well-known decision in **HJ (Iran) [2010] UKSC 311** and to the later Court of Appeal decision of **LC (Albania) [2017] EWCA Civ 351**. Judge Shepherd then proceeded to state that she accepted that the claim has to be decided on the basis of the Appellant's current sexuality, but that in turn depends on the credibility of his account and the evidence he has adduced. She further said that it is not a case of simply providing a narrative which is then automatically accepted "just because it may follow the DSSH model referred to in the skeleton argument" (paragraph 114). It was further noted by the judge that she was "conscious that in asylum claims there is often little or no documentary evidence to support an appellant's testimony ..." (at paragraph 115).
6. Importantly, consideration was then given by the judge to the Appellant's answers during his screening interview and his asylum interview. During his

screening interview on 18th April 2016, there are a number of statements to the effect “not asked” next to all of the pertinent questions. Yet, in his asylum interview on 8th July 2016, the Appellant confirms “that the information provided in his screening interview is correct and he has nothing to add”, which the judge found to be “odd” because,

“This was not an interview conducted as soon as the Appellant had arrived in the country such that he may have been disorientated which would explain this; rather this is a process which he instigated so it is reasonable to expect him to have ensured his case was understood at the outset” (paragraph 116)

7. The judge observed that, “the number of vague answers and inconsistencies is considerable and I do not accept they can all have been caused by nerves (paragraph 116). As to his asylum interview of 8th July 2016, the judge again observed that the Appellant’s answers from Questions 22 to 31 “do undermine his credibility as to the real reason for his making an asylum claim”. This was because “He was asked several times why he did not return to Bangladesh when his initial visa expired, if only to return and re-apply again, and none of the answers he gave related to a fear of return due to being gay”. In fact, what the Appellant said was that he had come to the UK to study, being funded by his uncle, and he could not return because he had not completed his course, and his visa had expired, so that “it would be costly for his family to fund his return and they would have expected him to finish his education before returning and he would not be able to get a job” (at paragraph 117).
8. It was further observed by the judge that in his asylum interview, when it was put to the Appellant that wanting to stay in the UK to study did not give him a reason to apply for asylum (at question 31), the Appellant stated that, “*First of all my visa expired and secondly my FLR is not successful and the third thing is if I want to complete my course - if I apply for asylum then I can complete my course and study*” (at paragraph 119). The judge did not consider these accounts to be at all credible. Indeed, “The Appellant clearly says at Q67-68 that whilst in Bangladesh, he was aware that homosexuals were not part of society and were often killed” so that “If he truly was afraid of returning due to his sexuality, it is reasonable to expect this to be the primary reason for his not wanting to return, but he does not even mention it initially despite repeated questioning”. Indeed, “he also does not say he wishes to stay to be able to have a relationship with his partner” (at paragraph 120). In fact, what the judge noted was that when, in his asylum interview (see Q.36) it is put to him that his screening interview he had not even mentioned his sexuality, he states, “*You know initially I just tried to choose the normal route to become or get legal status and continue my study however it was not successful and I thought if I apply for asylum on this ground I can stay and complete my study*” (at paragraph 120). The judge rejected the Appellant’s claim, including his claim that back in Bangladesh as a schoolchild he was in a relations with a person by the name of Fahim (at paragraph 128). The appeal was dismissed.

Grounds of Application

9. There are five Grounds of Appeal. These range from the Appellant’s own evidence regarding his “emotional journey” as a gay man in accordance with the DSSH model to the Appellant having adopted a flawed approach to the

documentary evidence, which suggested that the Appellant was in a genuine and subsisting relationship with his partner, MI.

10. On 29th June 2022, permission to appeal was granted by the First-tier Tribunal. It was noted that the judge's surprise – at several people being of Bangladeshi origin, and all living in Derby, and all being gay, and all of whom had sought asylum on the same basis – was irrational and inadequately reasoned. To make such an assertion there had to be some reliable evidence as to the extent of the Bangladeshi population in Derby (see the judge's reasoning at paragraph 132 and 144). One witness had said that the Bangladeshi community was "very small" in Derby (at paragraph 132) but this in itself was not sufficient. Something more certain was needed and more authoritative. That was the only way in which more reliable inferences could be drawn on the plausibility of either:
 - (a) that there were as many as four or five Bangladeshi gay men living in Derby; or
 - (b) four or five such men would have made each other's acquaintance, given that people who share certain characteristics might be more likely to become known to each other.
11. Furthermore, it was arguable that the judge acted irrationally or gave insufficient reasons when concluding that there was an absence of documentation which was addressed jointly to the Appellant and his alleged partner, MI, because the judge had not explained what documentation she would have expected to have seen. Separately, the judge also placed some reliance on the lack of detail about the household finances and arrangements of the two of them but arguably did so irrationally without explaining what ought to have prompted more detail on such matters. The grant of permission did not regard the other grounds to be of substance but permission was given on all grounds in any event.

Submissions

12. At the hearing before me on 15th April 2024, Mr Miah began by taking me to the grant of permission by the First-tier Tribunal and submitted that this effectively highlights what was arguable in this appeal. He submitted that:

"The judge's surprise at several people being Bangladeshi men living in Derby and being gay is, perhaps irrational and inadequately reasoned, and what would we say is that this sheds light on the kind of prejudice, or the kind of departure from the usual standard of proof when assessing credibility".
13. He went on to say that the judge did not have statistics of the population in Derby or the number of gay men, or the Bangladeshi community. Mr Miah went on to say that the judge could be criticised for taking the view that, "the Appellant's partner, the first partner, and his current partner are all from Bangladesh and they all have been recognised as in need of protection from Bangladesh based on their sexual orientation", given that "they also live in Derby which, the judge says, is a small city". Mr Miah then went on to repeat the same point again and again pointing out that the judge did not have the statistics available to be able to make such an observation. He did, however, explain that this should not be considered to be implausible because, "if for example

someone identifies with someone else and they have a common connection and they find themselves in association”, but this should not imply that there is a lack of credibility in there so doing. He submitted “there can be no basis for suggesting that that is a surprise”. He went on to say that what the judge appears to be suggesting is that:

“There is a coincidence here and what we are saying is that it is not a case of coincidence because if somebody sees someone else who is a homosexual just like them then it is not unusual for them to have a connection or association or friendship and it is the terms that the judge uses here which are unfortunate”.

14. I put it to Mr Miah that there were a whole host of other reasons that the judge had also given and that he had to be sure that he was not simply disagreeing with the judge’s decision, to which Mr Miah replied that this was not the case. What he was complaining about was that “the way the judge has approached it is wrong, and it is erroneous, and is not the way that the judge can base a finding of credibility on a prejudice”. He went on to say that, “there must be something that would suggest there is a lack of credibility” and it not enough for the judge to say that it is “surprising”. I asked Mr Miah to draw my attention to the specific paragraphs that he is referring to and Mr Miah was not able to do so but to only add that,

“I am just trying to refer you to that paragraph, this is where the judge effectively says that the Appellant could have claimed asylum previously, and for him to say that he did not know that he could claim asylum and that he did not have enough money to do so at the time was not credible”.

15. Mr Miah then moved on to the documentation and submitted that the documents have been addressed to the Appellant and MI individually but not jointly, but this did not mean that there was no corroboration of their essential relationship.
16. For his part, Mr Tan submitted that he would rely upon the Rule 24 response of 1st September 2022. He was at pains to emphasise that the determination by Judge Shepherd was a very detailed and comprehensive determination. It ought to be read sensibly and it ought to be read as a whole. None of the five grounds submitted were of substance, according to Mr Tan. First, if one looked at Ground 4, the judge was entitled to express the surprise (at paragraph 132) that, “as regards the other witnesses, I note that AB (his first partner), MI (his current partner), MAJ and SR are all from Bangladesh and all have asylum based on their sexuality”. Whereas the use of the expression “surprising” (at paragraph 132) is unhelpful, he submitted, if one read the determination as a whole, it was clear that what Judge Shepherd was asserting was that against this background the weight to be attached to the witness’s evidence (see especially paragraph 144) was influenced by the fact that they all had similar claims. Indeed, the judge makes clear the importance of this observation (at paragraph 144) when the position of the Appellant and MI, and MAJ and SR, is contrasted with that of GMT, where it is stated “the one witness who is not part of the Appellant’s immediate circle and therefore starts from a position of more independence ...” is GMT.
17. Second, the criticism of the judge (at paragraph 143) arises because Mr Miah has cherry-picked one sentence. A wider reading of that paragraph makes it clear

that the judge considered the documentation (e.g. the tenancy agreements and bank statements in sole names) and these in themselves did not show the Appellant and MI were in a relationship. Such a proposition was surely uncontroversial. This was the reason why the judge was struck by the absence of any joint commitments. The Appellant states (at paragraph 40 of his Grounds of Appeal) that the judge was not saying that the parties are required to provide corroboration of correspondence, and indeed the judge is not. The judge bookends his consideration of the issues by applying the lower standard (at paragraph 146). Furthermore, what the judge stated had to be read against the background of what is said at paragraph 142 because here the judge explains how the Appellant did not know the terms of the tenancy agreement in accommodation meant to be shared with his alleged partner, and there was also a discrepancy as to the number of times that the Appellant met MI's landlord (at paragraph 141), and the judge was correct to point out that MI's witness statement "gives very little detail as to what they like doing together". The extent to which the Appellant goes on to advance theories of historical patriarchal models and the mapping of cultural, religious and social norms ignores the inconsistency which the judge found (at paragraph 142) in the Appellant's evidence.

18. Third, if one looks at Ground 1, it is clear that the appeal ultimately turned on the Appellant's credibility. Whilst it was accepted that the Respondent's policy is to adopt the DSSH model when assessing credibility, it is a step too far to suggest that an independent judicial body is susceptible to challenge simply for not following such a model. Insofar as there is another case that is more favourably decided, it has no bearing in terms of its wider import on the Appellant's case. Ultimately the judge found (at paragraph 146) that the Appellant was not gay and this was a finding open to the judge on the basis of the copious reasons that the judge had already given.
19. Fourth, if one looks at the Respondent's Country Policy and Information Note Bangladesh: Sexual Orientation and Gender Identity and Expression, dated April 2020, it is clear there that in Bangladesh men who have sex with other men, are tolerated if they marry and bear children. The age of the man and when he may come under pressure to marry is irrelevant and Judge Shepherd made it clear (at paragraph 146) that, "I have found nothing in the 'Country Policy and Information Note Bangladesh: Sexual orientation and gender identity and expression April 2020 which would indicate this is the case".
20. Finally, in relation to the Appellant's previous relationship with MDSH, it was significant that MDSH did not state who his partner was or when the partnership began. The Appellant himself could not state the identity of the partner or how long it had endured (see paragraphs 137 to 138). There were no details as to what MDSH understood to be the Appellant's background and there was an inconsistency as to the nature of their relationship such that, the judge was entitled to take the view that MDSH was not a credible witness.
21. In his reply, Mr Miah submitted that a lay person would not be in a position to know that he could claim asylum based on his or her homosexuality, and so the judge was wrong to be sceptical about the Appellant's position earlier on.

No error of law.

22. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law. The decision of Judge Shepherd is clear, comprehensive, and impressively well-reasoned. What Mr Miah has to show is that there is a material error in the judge's decision. This is not the case for the following reasons.
23. First, when the judge first starts giving reasons, her focus is on the unreliability of the Appellant's claim which lacks all credibility. The judge directs herself appropriately (at paragraph 114 to 115). The judge considers the Appellant's answers in the screening interview and in the asylum interview (paragraphs 116 to 117). The Appellant is very early on found to have been lacking in credibility, especially when he states (at question 2.31) that, *"if I want to complete my course - if I apply for asylum then I can complete my course and study"* which betrays a complete understanding of what asylum law is for, and why the Appellant would be using this course of action, if he feared persecution on account of being a homosexual. As the judge made it only too clear, *"If he were truly homosexual, whether he had a partner or not would not be the be all and end all"* (paragraph 119). In fact, the Appellant's desire to use the asylum route as a ruse in order to remain here becomes clear early on in his asylum interview when he states (at question Q.36) that, *"You know initially I just tried to choose the normal route to become or get legal status and continue my study however it was not successful and I thought if I apply for asylum on this ground I can stay and complete my study"* (at paragraph 120). The judge also found huge inconsistencies in the Appellant's account in any event. For example (at Q.126) the Appellant in his asylum interview had said that he knew before he came to the UK that, *"The LGBT people can have relationship and be free and openly. I knew this"*. Yet, at the hearing he said he did not do any research *"and did not know what it was like for gay people in the UK"* (paragraph 124).
24. Second, it is against this background that the judge expressed subsequently the view that the other witnesses appearing for the Appellant at the hearing were not credible. It is entirely relevant for the judge to point out that AB, the Appellant's first partner, and LI, the Appellant's current partner, as well as MAJ and SR *"are all from Bangladesh and all have asylum based on their sexuality"*. Indeed, *"AB, MAJ and AR all appear to have attended the same college in Derby, which is a small city"*. The judge herself makes it clear that she does not *"have any statistics available"* but in any event, *"I find this surprising"*, this is *"given that LGBT people are a minority group to start with ..."* (at paragraph 132). That was an observation that the judge was entitled to make on the basis of one's common experience. It brings to mind the aphorism of the American judge, Jerome Frank, when he drew attention to *"cocktail hour knowledge"*, rather disparagingly, to suggest that judges do not live in ivory towers devoid of the world around them, but are cognisant of it. In any event, the observation complained of was not material to the ultimate decision of the judge which was based upon the Appellant's own lack of credibility arising from what he had said both in his screening interview and in his asylum interview. I reject the suggestion by Mr Miah that the judge making *"a finding of credibility on a prejudice."* I reject the suggestion that this was *"kind of departure from the usual standard of proof when assessing credibility"*. More importantly, I reject the contention that for the judge to be able to refer to the fact that several people being of Bangladeshi origin, all living in Derby, all being gay, and all of whom had made asylum claims based on sexual orientation grounds, required some reliable evidence as to the extent of the Bangladeshi population in Derby. It must not be forgotten that the

judge herself was fully cognizant of the fact that she had no statistical evidence before her. As Mr Tan made clear before me if one looks at Ground 1, it is clear that the appeal ultimately turned on the Appellant's credibility. The plain fact is that the appeal was dismissed because the judge did not find the witnesses to be credible (see paragraphs 133 to 141). More than that the judge did not find the appellant to be credible in the making of his asylum claim which was entirely misconstrued betraying a completely misunderstanding of what that legal institution stands for.

25. Finally, there is the issue of documentation. Equally germane to the Appellant's own claim that he was in a relationship with MI, was the lack of joint documentation in their joint-names and the different reasons given for this were not credible as the judge found. For example, the Appellant stated with regard to the absence of joint-names documentation that "sometimes if you put too many names, the council charges more money", but MI gave a different reason stating that, *"not really because in our relationship, I am the man actually, I manage all those things, at that time he had no status, not a big deal, not necessary, we're living together"* (paragraph 142). Then there was the question of why the Appellant did not know how long the current tenancy was for. The Appellant first said he had not met the landlord and then said he had met him once when they completed the agreement. MI also gave vague answers at the hearing as to when he knew about the Appellant having made his asylum claim and what he knew about the Appellant's family (see paragraph 142). The judge was concerned that the documents in relation to the address both of the Appellant and of MI "are addressed to them as individuals rather than being in joint names so whilst they prove they each lived at the same address at the same time, they do not necessarily confirm they lived 'together' or go towards the relationship per se". This was particularly important because "no detail has been provided, for example, as to what overall expenditure they incur each month and who pays for what, who cleans and so on", which were critically important aspects of a life lived together with somebody else (at paragraph 143).
26. All in all, therefore, it was unsurprising that the judge came to the conclusion that, "overall, I do not find the Appellant or any of the other witnesses to be credible because their evidence is vague, lacking in detail and is inconsistent in several respects". With the exception of two witnesses, they are all gay Bangladeshi asylum seekers from Derby which the judge found in itself to be surprising. But more than that, in relation to MDSH, who had been allegedly the Appellant's previous partner, he was found "not to be credible due to the lack of detail and contradictory answers" (paragraph 144). The judge covered herself by reminding herself that, "I bear in mind that just because one part of an Appellant's account has been found to be false does not mean that the entire account is untrue", but that in this case "I find all of the Appellant's account to be questionable given its lack of detail and inconsistencies and unsatisfactory explanations, and due to my finding above that, had his claim been genuine, he could reasonably be expected to have claimed asylum earlier" (paragraph 145).

Notice of Decision

27. There is no material error of law in the judge's decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26th April 2024