Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07184/2013

THE IMMIGRATION ACTS

Heard at Manchester **Determination Sent**
on 4th June 2014

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUHAMMAD AMIR HUSSAIN
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Sadiq of Adam Solicitors.
For the Respondent: Mr Harrison – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Gladstone, promulgated following a hearing at Manchester on 12th March 2014, in which he dismissed the appeal on all grounds against the removal direction to Pakistan which was made following the rejection of the Appellants claim for asylum or any other form of international protection.

2. The Appellant is a national of Pakistan born on 15th March 1967. Having considered the oral and documentary evidence, which is set out in some detail in the determination, the Judge sets out his findings from paragraph 129 of the determination. The Judge considered section 8 of the 2004 Act and found the Appellant had had a reasonable opportunity to claim asylum before being arrested under

immigration provisions and that the claim did not rely wholly on matters arising after the arrest [133]. In relation to the core of the claim to be at risk on return, the Judge found there were inconsistencies, some of which were dealt with in the refusal letter but which had not been dealt with satisfactorily in the evidence. Others arose during the course of the evidence given before the First-tier Tribunal and it was found there are clear contradictions throughout the various forms of evidence. The Judge therefore doubted the Appellant's credibility in relation to the whole of his account for the reasons given in the determination [para 135 to 162]. As a result of such discrepancy the Judge states in paragraph 163:

"For all the above reasons, I find that the appellant's credibility has been fatally damaged. I do not accept any part of his claim, which I consider has been fabricated in an effort to establish an asylum claim after arrest for overstaying and working".

3. No reference was made to Article 8 in the Appellant's skeleton argument or in submissions and on that basis it was accepted as being conceded that the Appellant could not meet the requirements of the Rules relating to Article 8.

4. The application for permission to appeal is commendably brief and focuses on the issues the Appellant seeks to rely upon. It acknowledges there are various credibility findings but submits that while some are made against the Appellant by reference to inconsistencies a significant majority relate to the plausibility of the account. It is also asserted there is a key omission in relation to the consideration of credibility by reference to the evidence of the Appellant's witness recounted by the Judge at paragraphs 133 to 136 of the determination. The Judge is criticised for making only what is described as an 'exceptionally brief comment' at paragraph 158 in relation to this witnesses evidence, whereas it is claimed this person has first-hand knowledge of certain important aspects of the Appellant's experiences. The grounds assert such evidence was highly pertinent to the issue of credibility and the failure to take such evidence into account or to consider it appropriately must amount arguable legal error.

Error of law

5. The Appellant seeks to classify certain adverse findings made by the Judge as relating to "plausibility type concerns" as if this somehow devalues the value of such an analysis. It is not a legal error to find an account implausible. In MM (DRC) [2005] UKIAT 00019 (Ouseley) the Tribunal said that the assessment of credibility may involve an assessment of the plausibility, or apparent reasonableness or truthfulness of what was being said. This could involve a judgment on the likelihood of something having happened, based on evidence or

inferences. Background evidence could assist with that process, revealing the likelihood of what was said having occurred. Background evidence could reveal that adverse inferences which were apparently reasonable when based on an understanding of life in this country, were less reasonable when the circumstances of life in the country of origin were exposed. Plausibility was an aspect in the process of arriving at a decision, which might vary from case to case, and not a separate stage in it. A story could be implausible yet credible, or plausible yet properly not believed. Plausibility is not a term of art. It is simply that the inherent likelihood or apparent reasonableness of a claim is an aspect of its credibility and an aspect which may well be related to background material which may assist when judging it. The Tribunal went on to say that "the more improbable the story, the more cogent the evidence necessary to support it, even to the lower standard of proof." In relation to the contention that there was an alternative satisfactory explanation for matters found to be implausible by the Adjudicator, the Tribunal said that it was for the claimant to put forward all relevant evidence and to recognise and explain any inconsistencies and improbabilities and a conclusion was not necessarily erroneous because it did not contemplate possibilities that were not raised for the Adjudicator's consideration.

6. In Gulnaz Esen v SSHD [2006] CSIH 23 the Court of Sessions said that Adjudicators are entitled to draw inferences of implausibility when assessing credibility and to draw on their common sense and ability to identify what was or was not plausible, as long as it was based on hard evidence.

7. This is an appeal in which the Judge considered the evidence with the required degree of anxious scrutiny and gave detailed reasons for the findings that were made. As such the weight to be given to that evidence was a matter for the Judge. The finding in relation to the evidence of the witness referred to in paragraph 4 of the grounds has not been shown to be one outside the range of findings available to the Judge or to be in any way perverse or irrational. In paragraph 158 the Judge finds:

158. I have noted the witness's evidence, but this was limited, given that he did not know about the alleged situation in Pakistan, and he did not know about the appellant's claimed relationship the UK.

8. The fact the witness may have taken the Appellant to the gay areas of Manchester does not necessarily establish that the Appellant is a gay man. Indeed that area is one that many pass through on their way to and from the city centre for work on a daily basis without any connotation relevant to their sexuality.

9. I find no material legal error proved in relation to the manner in which the Judge considered the evidence or the weight given to that evidence.

10. There is also no challenge in the grounds seeking permission to appeal to the findings regarding events in Pakistan.

11. As the evidence has been considered properly and adequate reasons given for findings made, the only remaining avenue of challenge is if those findings can be said to be perverse or irrational. Mr Sadiq in his final submission did state that the findings are not rational in the context of the evidence of Mr Waheed, but I find nothing wrong with the Judge's treatment of that evidence. In R and Others v SSHD [2005] EWCA Civ 982 Lord Justice Brooke noted that perversity represented a very high hurdle. It embraced decisions which were irrational or unreasonable in the Wednesbury sense. In the case before this Tribunal I do not find such a hurdle reached, let alone breached.

12. Mere disagreement with the conclusions reached or a desire for a different outcome does not establish arguable legal error. As stated, weight is a matter for the Judge who considered the evidence adequately. No legal error material to the decision to dismiss the appeal has been made out.

Decision

13. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 1st August 2014