



IAC-AH-DP-V2

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/07435/2015
AA/07437/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26th February 2016**

**Decision & Reasons Promulgated
On 19th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR U W (FIRST APPELLANT)
MR A R L (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms J Fisher, Counsel
For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan. The first Appellant was born on [] 1991. The second Appellant was born on [] 1988. The Appellants applied for asylum on

the basis that they claimed to have a well-founded fear of persecution on the basis of their membership of a particular social group due to their sexuality. The Appellants met in the UK in August 2013. The Appellants' application for asylum was refused by the Secretary of State in a Notice of Refusal dated 21st April 2015.

2. The Appellants appealed and the appeal came before Judge of the First-tier Tribunal Lawrence sitting at Harmondsworth on 21st September 2015. In a decision and reasons promulgated on 1st October 2015 the Appellants' appeals were dismissed on all grounds. However an anonymity direction was made and that remains in place.
3. The Appellants lodged Grounds of Appeal to the Upper Tribunal on 14th October 2015. That application was refused by Judge of the First-tier Tribunal Grimmett on 9th November 2015. Renewed Grounds of Appeal were lodged on 27th November 2015.
4. On 4th January 2016 Upper Tribunal Judge Coker granted permission to appeal. She found that it was arguable that the First-tier Tribunal Judge's assessment of whether or not the Appellants are gay were significantly tainted by his own preconceptions of how a gay man behaves. She considered the use of the words "incredible", but a failure to form other homosexual relationships "does not make sense", that a failure to keep initial love messages "was not credible", and indicated an arguable failure to adequately engage with the evidence before him. Further she considered that the implication that the Appellant should have given evidence of their intimacy was arguably unacceptable.
5. On 20th January 2016 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Secretary of State opposes the Appellants' appeal and the Rule 24 states that the judge gave adequate reasons for his findings as set out at paragraphs 14 to 28 and that there was nothing perverse or irrational about the decision. It notes that the judge found that there was insufficient evidence both documentary and oral to show that the Appellants were in a relationship.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. The Appellants are represented by Ms Fisher. Ms Fisher is extremely familiar with this matter. She appeared before the First-tier Tribunal and the author of the grounds and renewed Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Staunton.
7. There is one preliminary issue that I needed to address. The first Appellant Mr UW appears in person. The second Appellant does not appear. I am advised by Ms Fisher that she has no instruction from him. I am further advised that the Appellants are no longer in a relationship and that they do not know where Mr L is. Ms Fisher acknowledges that it could not be construed that Mr L is therefore dependent upon Mr W but that as he was at the time of decision he remains as at the date of this hearing conjoined to the appeal.

Submissions/Discussions

8. Ms Fisher relies on the Grounds of Appeal submitting that there are inaccurate and speculative comments made by the Immigration Judge and that if an analysis is made to break down the determination regarding the findings on credibility then the findings made at paragraphs 19 to 27 could not be considered to be reasoned. She submits that there are a number of factual errors which are set out at some length in the Grounds of Appeal, for example where the parties met, but that the judge has applied the wrong level of weight to his assessment of the evidence and has given far too much weight to the fact that the Appellants chose not to tell their family.
9. She points out that the judge thereafter fails to give any consideration as to how he has rejected the evidence of witnesses and has made no clear findings on witness evidence. She strongly criticises his analysis and suggestion that effectively scenes of public affection have been staged as set out at paragraph 24 and that the standard of proof required is a low one and that the judge has actually ignored the evidence of witnesses. Consequently she submits that the finding on witness evidence is inadequate and must constitute a material error of law particularly as it goes to the issue of the Appellants' credibility.
10. As for the second Ground of Appeal she submits that there is considerable and extensive use of terms within the decision which it is inappropriate for a judge to use and that his assessment of the behaviour of homosexual couples is a subjective one and not one that can be applied and looked at against the evidence in the round. For example she points out that the First-tier Tribunal criticised the Appellants for not having other relationships and his assessment of the evidence at paragraphs 15 and 16 appeared to be nothing more than an attempt to justify what is a bald assertion and pure speculation as to how someone gay ought to behave. She submits that there appears to be little empathy or understanding of how someone might struggle with their sexuality and even in a society such as the UK may still have difficulties in with this sexuality.
11. Furthermore she submits that the comments made by the First-tier Tribunal Judge seemed to be that unless one is promiscuous and has had many relationships they cannot be homosexual. She queries whether the same criticism would be levelled at a heterosexual couple and that the First-tier Tribunal Judge seems to be asserting that now that they are in a liberal society the Appellant and his partner should be out partying, dancing and drinking and entertaining into a number of casual same sex relationships and therefore in failing to do so means that they are not gay. She submits that these and other examples set out in the Grounds of Appeal show a complete failure by the judge to engage with the evidence and to make prejudged and inappropriate assessments as to how the Appellants should behave and that therefore the decision is unsafe and should be set aside.
12. In response Mr Staunton relies on the Rule 24 response. As to the intention that there has been a lack of anxious scrutiny based on the fact that there is an error as to where the parties met he submits that is merely a simple mistake and one that I should not

consider even if it is an error to be a material error. He submits that at paragraphs 22 to 27 reasons have been given as to why the Appellants are not credible and that to find the decision perverse is a high hurdle and that the grounds he submit do not reach that level. He points out that the judge has made lengthy findings.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

15. I start by reminding myself that I am not re-hearing this matter, I am merely determining whether there is a material error of law in the decision of the First-tier Tribunal Judge. It is the contention of Mr Staunton on behalf of the Secretary of State that the judge has given adequate reasons. However there is a real conflict in the evidence particularly at paragraphs 15 and 16 of the decision which however they are looked at are extremely difficult to reconcile. Findings made by a judge must make sense and that lack of sense shows in this decision a lack of anxious scrutiny.
16. It is always necessary for a judge to adopt a proper approach to credibility and that requires an assessment of the evidence and the general claim. In asylum claims relevant factors will consist of the internal consistency of the claim, the inherent plausibility of it and the consistency of the claim with external factors of the sort typically found in country guidance. The Appellants have set out their evidence in an attempt to show their claim is consistent. Whilst acknowledging that there are some errors in the parties' version of events these do not, I am satisfied justify what can only be described between paragraphs 19 and 27 as speculative assumptions as made by the judge and that the weight that he has given to certain amounts of

evidence may well have been given too much. What is however perhaps more important is the fact that there is witness evidence and that the judge's findings with regard to that witness evidence is inadequate.

17. Consequently when looked at in the round all these factors show that there are material errors of law which may well have affected the outcome of the judge's analysis and the decision is consequently unsafe and is therefore set aside.
18. The correct approach is therefore to remit the matter back to the First-tier Tribunal for re-hearing. However it has to be borne in mind that there has been a substantial change in the parties' relationship. In such circumstances whilst remitting the matter back to the First-tier Tribunal I determine that the appeal should be split and be heard as two separate appeals, this being something with which both Mr Staunton on behalf of the Secretary of State and Ms Fisher concur.

Notice of Decision

- (1) The decision of the First-tier Tribunal contains material errors of law and is set aside.
- (2) None of the findings of fact are to stand and the appeals are remitted to the First-tier Tribunal for re-hearing.
- (3) The appeals are to be separated and to be heard as two separate appeals. The appeals be listed at either Taylor House or Hatton Cross on the first available date 28 days hence to be heard before any Immigration Judge other than Immigration Judge Lawrence. Estimated length of hearing 3 hours for each appeal.
- (4) That there be leave to either party to lodge an up-to-date bundle including witness statements upon which they intend to rely at least seven days pre-hearing.
- (5) That Milestone Solicitors do advise the Tribunal within seven days of receipt of this error of law as to whether their instructions are to act for Mr W alone or for both Appellants.
- (6) Urdu interpreters required for the appeals.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the

Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris