



IAC-FH-AR-V1

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

Appeal Number: PA/00900/2015

THE IMMIGRATION ACTS

Heard at Field House

On 28th April 2016

**Decision & Reasons
Promulgated**

On 09th May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**YOUNG YOON CHONG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a determination promulgated on 28 October 2015 by First-tier Tribunal Judge Chana. The appellant claims to be a

citizen of Malaysia born on 9 December 1966 who pursued an appeal following the Secretary of State's refusal to grant asylum and humanitarian protection, that decision being communicated on 9 June 2015.

2. The thrust of the appellant's claim for asylum and humanitarian protection was put on the basis that he is a practising homosexual and has a well-founded fear of persecution were he to be returned to Malaysia. This matter had been preceded by an earlier application for asylum and humanitarian protection based upon a positive case advanced by the appellant, then using another name, that he was a Chinese national and a practising Christian and that he had a well-founded fear of persecution were he to be returned to China.
3. In a thorough determination, the judge reviewed the evidence placed before her, comprising a lengthy witness statement from the appellant and his oral testimony given through a translator which was tested in cross-examination. The judge came to the conclusion that the appellant was not a credible witness; that she was not satisfied that he was a homosexual; and therefore there was no need to examine in any detail whether there was a well-founded fear of prosecution on return.
4. There are two written grounds of appeal: one prepared for when permission was sought from the First-tier Tribunal and the second, in a revised form, filed when the application for permission was renewed in the Upper Tribunal. Mr Bellara, who appears for the appellant today, has advanced this appeal on more focused grounds and I am grateful to him for the clarity and economy of his well crafted submissions.
5. He rightly draws attention to two areas where the drafting of the determination is infelicitous. The first is in relation to terminology: the judge states at paragraph 51 that the appellant's long and detailed witness statement "reads like a novel" and in paragraph 54 that "the appellant's story reads much like a farce". I agree with Mr Bellara that these terms are not the most appropriate way of referring to the appellant's case or his evidence. However those two expressions need to be read in the context of a thorough and detailed consideration. As Mr Bellara properly conceded in the course of his submissions, whilst this represents an inelegant and inappropriate use of vocabulary, it does not demonstrate an error of law sufficient to found an appeal.
6. The second drafting matter is that on two occasions the judge refers not to Malaysia as the country of return, but to Pakistan (once in paragraph 48) to Bangladesh (once in paragraph 51). It is poor practice to make errors such as these in a determination where something as serious as asylum is at stake, but they must similarly be read in context. I am satisfied as Mr Tarlow submits on the Secretary of State's behalf that those are merely typographical errors, the judge putting the wrong country into her determination. It is plain from the determination as a wholly that she had

fully in mind that Malaysia was the country of return. Although they are regrettable slips, neither individually nor cumulatively do they amount to an error of law.

7. Turning to be substantive grounds advanced by Mr Bellara, he submits that the judge did not give sufficient reasons for her credibility findings. He states that she took an adverse view of the appellant's credibility because, as is recorded in paragraph 55 of the determination, he did not give an explanation as to why he and his alleged male partner chose to have sexual intercourse one Valentine's Day in an unlocked bedroom in the partner's matrimonial home (where they were disturbed).
8. It is submitted that judge did not put that lack of explanation to the appellant and therefore did not afford him the opportunity of furnishing an explanation. As a consequence of what is said to be procedural unfairness, it is submitted that he was disadvantaged. Mr Bellara very fairly conceded that he had no instructions as to the positive case which might have advanced had the appellant been questioned, although I am not sure much turns on this.
9. Mr Bellara did not advance the ground which was contained in the written application to the effect that no finding had been made by the judge that the appellant was a homosexual. That would have been insupportable in the light of paragraph 56. He emphasised that this is an asylum appeal where careful consideration and anxious scrutiny must be given .
10. In my judgment, paragraph 56 of the determination properly sets out the findings to which the judge came and to which he was entitled to come. It reads as follows:

“Apart from the appellant's own evidence, no credible evidence has been provided. I place no reliance on the appellant's evidence that he is a homosexual. I find that the appellant's evidence is not credible, consistent and reliable. Considering all of the evidence in the case as a whole, in the round, I do not find the appellant's evidence to be credible in view of the matters to which I have referred. I find that the appellant's evidence about a police report filed against him in Malaysia by his father-in-law is an invention by the appellant. I am not satisfied, even to the lower burden of proof that applies in asylum cases, that the appellant is a homosexual, or that he fears persecution for this reason. I find that the appellant is an economic migrant and a man of no credibility whatsoever.”

11. These are more than adequate reasons to come to the conclusion which she did. Matters of weight are entirely for First-tier Tribunal Judges to decide, being the primary fact finders. It is suggested that in this instance the judge may have given undue weight to the previous asylum claim based on a very different factual case, as I have already summarised. She was perfectly entitled to place that in the balance and to give it whatever

level of weight she saw fit. It was a prior claim for asylum that was roundly rejected on the basis that the appellant could not be believed. It was undoubtedly relevant to the issue of credibility and the judge was entitled to have regard to it.

12. I do not consider in the circumstances of this case that it was incumbent upon the judge to make express enquiry of the appellant as to why there was no explanation for the Valentine's Day incident. It was for appellant to advance his case in whatever way he saw fit and to place whatever relevant evidence he wished before the judge. That he chose within the context of a lengthy narrative to say nothing on the particular was his choice. Even if, contrary to the view I have expressed, there was an error of law in not giving him the opportunity of addressing that matter, I do not consider it to be material because the other factors which weighed heavily in the judge's mind were more than sufficient to enable her to come to the conclusion which she did.
13. Criticism is also made of the judge for not considering the degree to which there may have been a well-founded fear of persecution. I regard such criticism as misplaced. The judge had made an express finding that she had not been satisfied that the appellant was a homosexual. In those circumstances it was unnecessary to explore the hypothetical question of whether there would be a well-founded fear of persecution were he to return. I note, however, that even though such enquiry was unnecessary, the judge nonetheless did turn her mind to it and in a brief comment at paragraph 57 observed from the background evidence that there is a flourishing homosexual community in Malaysia.
14. For all of those reasons I am satisfied that there are no errors of law apparent on the face of this determination. The judge turned her mind to the evidence and given full consideration to the appellant's case. Whilst it was unfortunate she styled his written statement as reading like a novel or being akin to a farce, and that she twice misstated the correct country of return, it is clear that she took the totality of the appellant's evidence fully and carefully into account in reaching conclusions which were open to her on the evidence.

Notice of Decision

This appeal is dismissed.

Signed *Mark Hill*

Date

4 May 2016

Deputy Upper Tribunal Judge Hill QC

