



IAC-FH-NL-V1

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

Appeal Number: PA/10267/2016

THE IMMIGRATION ACTS

Heard at Field House

On 20 June 2017

**Decision & Reasons
Promulgated
On 23 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**M S K
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant
Respondent

**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.

Representation:

For the Appellant: Mr S Karim, Counsel, instructed by SG Law

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Sethi (the judge), promulgated on 24 November 2016, in which she dismissed the Appellant's appeal on all grounds.
2. The Appellant, a national of Bangladesh claims to be gay, and that this would place him at risk on return to his home country. His claim was refused by the Respondent on 9 September 2016.

The judge's decision

3. The judge heard evidence from the Appellant and two witnesses, Mr M and Mr R. Between paragraphs 31 and 37 the judge makes numerous adverse credibility findings in respect of claimed past events whilst the Appellant was in Bangladesh. Between paragraphs 39 and 44 the judge makes her findings in respect of the claimed events occurring in the United Kingdom. In summary, the judge did not accept any of the material events claimed to have occurred in Bangladesh and finds that the Appellant's evidence of matters in the United Kingdom was also unreliable in significant respects. As a result the judge finds that he had failed to show that he was in fact gay.

The grounds of appeal and grant of permission

4. The grounds of appeal are succinct. In paragraph 2 it is said that the judge failed to make adequate and properly reasoned credibility findings in respect of the Appellant, but also Mr M and Mr R. These errors are particularised in paragraphs 3 and 4. In paragraph 3 of the grounds it is said that despite a finding that the evidence of the Appellant and Mr R was generally consistent about the nature of the claimed relationship, the discrepancy relied upon by the judge was in fact immaterial. At paragraph 4 the grounds assert that there is a contradiction between what the judge says in paragraph 39 and what she then says in paragraph 41. Paragraphs 5 and 6 refer to supporting photographic and other documentary evidence which it is said the judge failed to deal with, with the effect that her conclusion that the Appellant was not gay is one to which she was simply not entitled to come to. In this regard there is a clear perversity challenge.
5. Permission to appeal was granted by Upper Tribunal Judge Gleeson on 10 May 2017. She considered that it was arguable that the judge's findings were perverse and contrary to the weight of the evidence.

The hearing before me

6. Mr Karim relied on the grounds of appeal. Initially he sought to argue that paragraph 2 of the grounds was a general catch-all attack on the judge's fact-finding and reasoning. However when it was pointed out that generalised grounds of appeal were inappropriate, and that paragraphs 3 and 4 appeared in reality to be a particularisation of the general assertion made in paragraph 2, Mr Karim focused his attention on the specific errors referred to in the latter two paragraphs. He submitted that the judge had not rejected Mr R's own evidence about his relationship with the Appellant but had simply found that the Appellant's evidence about who lived in Mr R's house was unreliable. Mr Karim submitted that the reason relied upon by the judge would have gone as much to their social friendship as to their claimed intimate relationship. Therefore the reason provided was immaterial.
7. In respect of Mr M's evidence Mr Karim submitted that there was an illogical approach by the judge: on the one hand she was appearing to say that his evidence was correct (paragraph 39) whilst on the other she was appearing to find that it was incredible (paragraph 41). In addition, Mr Karim submitted that there were no findings on Mr M's specific evidence relating to the Appellant's interaction with other men. Mr Karim did seek to maintain the perversity challenge, although he accepted that a higher threshold applied. He submitted that if all of the evidence was taken as a whole, there was only one conclusion open to the judge, namely that the Appellant was in fact gay.
8. Mr Whitwell relied on the Rule 24 response. He submitted that it was difficult to see what else the judge could have said. She had covered all relevant aspects of the Appellant's evidence and that of his witnesses. In respect of paragraph 42 there was a clear inconsistency in the evidence and this went to the whole nature of the claimed relationship between the Appellant and Mr R. Mr R's credibility had to be seen in the round. The judge was entitled to place little weight upon Mr M's evidence. I should look at the decision as a whole. It was submitted that I should look at the judge's decision as a whole. It was also noted that a number of adverse credibility findings had not been challenged and this was significant. There was no perversity here whatsoever.
9. In response Mr Karim submitted that whilst little weight had been placed on M's evidence it was not the case that the judge had placed no weight upon it. If this were the case, what evidence was she in fact rejecting and what was she accepting? When this point was added to the nature of R's evidence there was, submitted Mr Karim, a material error by the judge.
10. I reserved my decision on error of law.

Decision on error of law

11. I conclude that there are no material errors of law in the judge's decision. I now give my reasons for this conclusion.
12. First, it is uncontroversial that I must view the judge's decision as a whole and read it in a sensible manner, having regard to the need to provide adequate reasons.
13. Second, it is of course the case that a large number of material adverse credibility findings are unchallenged by the Appellant. These are set out in paragraphs 31 to 37. I appreciate that if there are significant material errors in relation to the aspect of the Appellant's case relating to his time in the United Kingdom, this would have a bearing on the findings made in relation to his time in Bangladesh. However, the converse is also true. The absence of any challenge to the first tranche of findings is in my view significant and it forms part of the assessment of what the judge says in relation to the second part of her findings.
14. I also note that what is said in paragraph 40 has not been challenged. This relates to another material aspect of the Appellant's case, namely the timing of his protection claim. This too has a material impact on my consideration of the particular points challenged by the Appellant before me.
15. Third, I turn to Mr M's evidence as dealt with in paragraphs 39 and 41 of the judge's decision. In my view, when the relevant passages in these two paragraphs are read not only together but in the context of the decision as a whole (as they must be), the reality is that they simply represent examples of the judge's overall dissatisfaction with the evidence before her. There were clearly aspects of the Appellant's own evidence and that of Mr M which the judge found (for reasons that were entirely open to her) unreliable for various reasons. The specific points raised in the grounds and relied on by Mr Karim cannot be seen in isolation from everything else that surrounds them, and having looked at the surrounding passages in the judge's decision the overall dissatisfaction with the evidence that I have just referred to becomes all the more apparent.
16. The point taken against the Appellant at the end of paragraph 39 relates to his delay in seeking protection. This point is dealt with in greater detail in the next paragraph wherein the judge sets out a number of matters, all of which she was fully entitled to take into account, and concludes that there was no credible reason for the delay in seeking protection in the United Kingdom. The judge quite rightly states that this was a relevant but not a conclusive factor in reaching her overall findings.
17. In respect of Mr M's evidence, the second part of paragraph 41 must be read in light of what the judge says in the first part of that paragraph. M provided what on the face of it was clearly untrue evidence about what he had purported to have witnessed himself in respect of the Appellant when he was in Bangladesh. There was then reference to evasiveness during the course of oral evidence. The judge was fully entitled to take these

matters into account when assessing the overall credibility of Mr M. In light of the above I see no error in what the judge says in paragraphs 39 and 41. If there was an error it was not material given the references to other passages in her decision I have stated previously.

18. Fourth, Mr Karim has taken issue with the judge's use of the term "little weight" at the end of paragraph 41. It is true that the judge could have stated that she placed "no weight" upon his evidence. However, her use of this particular terminology does not indicate any material error of law on her part. In my view it is simply an indication that in light of her findings on Mr M's evidence any weight she did place on it had no material bearing in respect of the Appellant's ability to prove his case on the lower standard of proof. In this regard I note that the judge has made repeated references to the need to consider all aspects of the evidence in the round and to apply the lower standard of proof.
19. Fifth, following on from the previous point, it is quite clear to me that the judge was placing little weight (in other words no material weight) on *all* of Mr M's evidence. She was entitled to conclude that the adverse points she has stated in her decision were, taking the evidence as a whole, sufficient to attach the epithet of little weight to his evidence as a whole.
20. Sixth, I turn to the evidence of Mr R. The judge was in my view entitled to reach the finding she did in respect of the clear inconsistency as to who lived with Mr R. There was a very clear inconsistency in the evidence and the judge took the view that this went to a core issue, namely the nature of the Appellant's ability to have conducted an intimate relationship with Mr R at his house. The judge's view of this has to be seen in the context of the decision as a whole (as do all other elements of her findings and reasons). In my view the reason provided in paragraph 42 was material to the core issue of the claimed intimate relationship. As the judge herself says at the end of that paragraph, the question of whether Mr R lived alone or with a number of other people went to the ability of the Appellant to, as she put it, be together privately at the house.
21. Seventh, it is true that the judge has not in terms rejected the rest of Mr R's evidence and that she found that in general terms his evidence was consistent with that of the Appellant in relation to the claimed open relationship. However, general consistency is not necessarily sufficient to establish credibility. Again, I come back to the importance of viewing the decision as a whole. Numerous material aspects of the Appellant's case have been rejected by the judge for reasons that were perfectly open to her. It is quite clear that she was rejecting the core elements of the Appellant's case, and this of course would have included the evidence of the witnesses. There is no error in relation to her failure to specifically state that she was rejecting all aspects of Mr R's own evidence.
22. Eighth, I conclude that the perversity challenge fails by some distance. In paragraph 43 the judge deals with all the relevant evidence and provides sustainable reasons as to why this did not significantly advance the

Appellant's case. She correctly directed herself to the need to view all of the supporting evidence in the round. She explains that the photographs did not even of themselves show that the Appellant was gay and gives a perfectly adequate reason for why the Bart's NHS letter was also of no particular significance. Whether in respect of this documentary evidence or in relation to the evidence as a whole, it simply cannot be said that the judge's findings, reasons and conclusions were perverse, having regard to the elevated threshold that applies to such challenges.

23. Ninth, in my view the summary of findings and conclusions set out in paragraph 44 were all open to the judge. This paragraph shows that she had directed herself correctly in law and had made findings on the relevant core aspects of the Appellant's case.

24. The decision of the First-tier Tribunal therefore stands.

Notice of Decision

The decision of the First-tier Tribunal does not contain any material errors of law.

The decision of the First-tier Tribunal shall stand.

The Appellant's appeal to the Upper Tribunal is therefore dismissed.

Signed

Date: 22 June 2017

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 22 June 2017

Deputy Upper Tribunal Judge Norton-Taylor