



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

Appeal Number: PA/12723/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 23 May 2017**

**Decision & Reasons Promulgated
On 07 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**FA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Turnbull, of Counsel, instructed by Charles Simmons
Solicitors

For the Respondent: Mr N Brambles, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant is a citizen of Bangladesh born on [] 1993. He appeals, with permission granted on 11 April 2017 (by First-tier Tribunal Judge Grant-Hutchinson) against a decision of First-tier Tribunal Judge Callender-Smith (hereafter “the judge”) who, in a decision promulgated on 22 December 2016, dismissed his appeal against a decision of the Secretary of State

following the refusal of his claim for international protection on 9 December 2015.

2. Essentially, the Appellant's case is that he is gay. He claims to have been disowned by his family in Bangladesh on account of his sexuality and claims that he has engaged in homosexual activity in the UK which he could not replicate in Bangladesh without fear of persecution and/or serious harm. The Secretary of State did not accept the Appellant's account.
3. The judge in dismissing the Appellant's appeal took several points against him. The judge noted the Appellant claimed asylum after all other routes of remaining in the UK had been exhausted. The judge observed that there was no evidence from his friend and uncle who were capable of corroborating his claim. The judge also noted there were two significant omissions from the Appellant's witness statement signed two weeks prior to the date of hearing. The first being that he told his sister-in-law that he is gay and the second being his failure to mention a recent sexual relationship. The judge thus rejected the Appellant's claim that he is gay and the protection claim accordingly failed.
4. The Grounds of Appeal to the Upper Tribunal take issue with the judge's decision in several respects. First, it is argued that the judge failed to fully determine that the Appellant is a practising homosexual and by living openly he will be at risk on return to Bangladesh, and erred by unduly focussing on immaterial matters and failed to consider adequately the central elements of the Appellant's claim. Second, it was argued the judge erred in failing to consider the Appellant's Article 8 claim. The permission granting judge considered that only the second ground was arguable.
5. At the hearing Ms Turnbull sought to argue the grounds in respect of which the permission granting judge considered were unarguable. She submitted that there were two letters from the Appellant's friend before the judge which he failed to take into account, and that the Appellant did mention in his witness statement that he told his sister-in-law that he is gay. Ms Turnbull acknowledged that the Appellant may not have mentioned his recent relationship in his witness statement, but he had mentioned his past relationship with another man in the Statement of Evidence Form (SEF). She thus submitted that the judge did not properly consider the evidence; had made errors in relation to the facts and gave inadequate reasons for dismissing the appeal. Finally, Ms Turnbull submitted that the judge failed to address Article 8 of the ECHR and that there ought to have been consideration of the Appellant's private life.

6. On behalf of the Respondent, Mr Bramble submitted that the grant of permission was limited to the judge's failure to consider Article 8, and that it was not open to the Appellant to reargue the grounds given his failure to comply with the Tribunal's Procedure Rules. Notwithstanding, Mr Bramble addressed the grounds and noted the letters from the Appellant's friend were silent on the issue of sexuality and that the omission the judge referred to related to the Appellant's sister-in-law and not his sister. Mr Bramble properly acknowledged that there was no consideration of Article 8, but he submitted that the error was not material. A private life claim was not put before the judge and the supporting letters relied upon were considerably out of date.
7. In reply, Ms Turnbull (who did not represent the Appellant before the judge) submitted that detailed submissions were made at the hearing. She referred to letters from the Appellant's sister-in-law which the judge failed to consider. She submitted that the failure was material.

Discussion

8. The Grounds of Appeal seeking to challenge the judge's decision dismissing the protection claim do not identify an error of law and are couched in terms of disagreement with the judge's findings. It is of no surprise therefore, in respect of those grounds, that the permission granting judge stated as follows: *"the Judge has considered all the evidence and has made appropriate findings which were open to him to make, including having also having had the benefit of all oral evidence on the day of the hearing. It was open for the Judge to consider what weight he felt it appropriate to place on all the evidence before him. The Judge has given adequate reasons for his decision."*
9. In my judgement, that view is unassailable. Before me, Ms Turnbull sought to reargue these grounds without any formal application being made, and the submissions that she advanced transformed into grounds none of which are particularised in the Grounds of Appeal. The application to reargue these grounds, such as it is, is refused. Firstly, as Mr Bramble (rightly) noted the Appellant has not complied with rule 21 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and, even there had been compliance, the grounds advanced are without merit. Central to Ms Turnbull's complaint is the judge's conclusions at paragraph 27(3) and (5) - (13) respectively. Therein the judge stated thus:

"(3) I note that because there are two individuals who could have assisted in some way - even if it had just been by way of letters of support - and they have remained silent.

- *The first is his brother's (and now his) friend [] who lives down in Bristol. He states that it is [] who took him to a pub/club in Bristol where he met a man called Charlie after he had explained to [] about his sexual orientation and with whom he had a homosexual experience.*
- *The second is a man he describes as his uncle, [], who lives up in Birmingham and who the Appellant states had learned from the Appellant's parents in 2011/2012 that the Appellant was not interested in girls. He stated in his oral evidence that he had told his uncle about his sexual orientation. Given the circumstances of this appeal, and the fact that he is a relative if not an immediate family member, I would have expected to see some corroboration about this from him.*

(4) There is an additional problem and that is in the sequencing of things that he now states in his oral evidence that are not reflected in his written witness statement dated 6 December 2016.

(5) That witness statement was signed only two weeks before this oral hearing and yet it contains two significant omissions.

(6) The first of these is that he said that he had told his sister-in-law either directly or in terms that he was gay shortly after he received the most recent refusal letter.

(7) His written witness statement makes no mention of this and it is a significant omission because he says that part of the reason that he has failed to reveal his sexuality in the past has been because he is scared thrown out of the house by his sister-in-law. (sic)

(8) I would have expected such a significant piece of information to be properly recorded in the written witness statement and I am not satisfied that I had been given the good or adequate reason why that has not happened.

...

(12) The second of these is that he has said in his oral evidence that he had a further recent, sexual relationship recently with a man called [] who lives in Bristol.

(13) That relationship is not recorded in his witness statement - he only refers to an earlier male relationship with Charlie - and the Appellant described the relationship as having lasted for about two weeks which is much more than a one night stand."(sic)

10. Ms Turnbull criticises the judge for his failure to take into account two letters from the friend in question referred to at [27(3)]. While I acknowledge that the judge does not specifically refer to this evidence, the difficulty with this submission is that the letters from the Appellant's friend make no reference whatsoever to the Appellant's sexuality. This evidence therefore would have been of no assistance to the judge in determining the Appellant's claim that he is gay. No material error of law is thereby made out.
11. Next Ms Turnbull referred to the Appellant's witness statement (paragraph 7) and substantive asylum interview record, wherein she stated that he told his sister-in-law that he is gay, in support of her contention that there was no omission as identified by the judge at paragraph [27(6)]. However, a closer examination of the Appellant's witness statement reveals that he states that he told his sister that he had no "*interest in girls*"; there is no mention that he made the same or similar revelation to his sister-in-law. The judge's identification of the omission was thus correct, an omission he was entitled to place weight upon.
12. Further, there is no merit in Ms Turnbull's challenge to paragraph [27(12)] where the judge identified the Appellant's failure to mention his recent relationship in his witness statement. The omission is apparent and is not negated by the Appellant's reference to an earlier relationship with a different man. The judge was thus entitled to place weight on this omission also.
13. Overall, in my judgement, the judge gave adequate reasons for rejecting the Appellant's claim that he is gay. The pleaded grounds and, those advanced by Ms Turnbull, fail to identify any discernible error of law on the part of the judge who reached a sustainable decision on the evidence and facts as found that are not perverse or irrational.
14. There is however an apparent failure on the judge's part to consider the Appellant's Article 8 claim. There is a passing reference to Article 8 in the Grounds of Appeal. It is said that the Appellant's removal would amount to a disproportionate interference with his family and private life established with his niece and other relatives in the UK, albeit, Ms Turnbull submitted that it was essentially a private life claim. While the judge's failure to consider the Article 8 claim is an obvious error, the difficulty for the Appellant is that Counsel representing him before the judge did not put the Article 8 claim on that footing. In his skeleton argument Counsel put the Article 8 claims as follows: "*It is also submitted that to remove him would constitute a disproportionate interference with his private life in light of his claim for asylum.*" The

Article 8 claim was thus dependent on the judge's findings in relation to the asylum claim. Given that the judge's decision in respect of the asylum claim is unimpeachable, it was inevitable that had the judge gone on to consider the Article 8 claim, he would have concluded that the Respondent's decision was proportionate.

15. While Ms Turnbull submits, on instructions, that detailed submissions were made at the hearing in respect of an Article 8 claim and she referred to letters from the Appellant's sister-in-law and friend, she frankly acknowledged that as she was not Counsel at the hearing, she was unable to confirm whether the judge was in fact referred to such evidence. The judge's record of proceedings does not indicate that detailed submissions were received and no oral submissions appear to have been made by Counsel in support of an Article 8 claim. None of the evidence highlighted by Ms Turnbull appears to have been drawn to the judge's attention as being significant, and I also note that no family member or friend was forthcoming before the judge to attest to the claim.
16. In the circumstances, I am satisfied that the Article 8 claim was not put before the judge as a separate private life claim, and given its limited utility as identified by Counsel before the judge, it is not now open to the Appellant to complain that the judge erred in failing to consider an Article 8 claim on private life grounds.
17. In any event, on the evidence drawn to my attention, which Mr Bramble correctly noted was out of date, the evidence does not establish that the Appellant's private life was of such significance that it could be said that there were compelling circumstances to warrant a grant of leave outside of the Immigration Rules on human rights grounds. I see no basis upon which this appeal could have succeeded before the judge on private life grounds.
18. Taking these matters together, I am not satisfied that the judge's decision is vitiated by a material error of law.

Decision

19. The Appellant's appeal is dismissed. The First-tier Tribunal's decision to dismiss the appeal did not involve the making of a material error of law and shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court

directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Dated: 25 July 2017

Deputy Upper Tribunal Judge Bagral