



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

Appeal Number: PA/03564/2017

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre

**Decision & Reasons
Promulgated**

On 2nd March 2018

On 19th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR SYED KAZIM HUSSAIN SHAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Garbett, sitting at Bennett House on 9th May 2017, and promulgated on 16th May 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 30th January 1989. He appealed against the decision of the Respondent dated 4th April 2017, refusing his refugee claim and his claim for humanitarian protection under paragraph 339C of HC 395. The essence of the Appellant's claim is that he would face mistreatment due to his membership of a particular social group, namely, that he is a gay man from Pakistan.

Salient Facts

3. The salient facts of the claim are set out in the determination of Judge Garbett (at paragraph 11) as well as paragraph 4 of the refusal letter. The Appellant entered the UK on a Tier 4 Student visa on 25th September 2012. When his application for further leave to remain was refused on 6th July 2016, on 4th October 2016 he claimed asylum. This claim is based upon his arrival in the UK where he acquired residential accommodation through a friend called Baqar, whom he had known in Pakistan. The Appellant then shared property with three other individuals, one of whom was a transgender woman called Claire. He became close to her and started a physical relationship towards the end of 2015. In January 2015 Baqar visited the Appellant and accused him of being gay. He said this would bring shame upon his family in Pakistan. The Appellant then confirmed he was gay and stated he was free to live his sexuality as he wanted. The day after his confrontation with Baqar, the Appellant began to receive threatening telephone calls from his family in Pakistan. The Appellant moved out of the house at the end of January 2015 and has not seen Claire since then. However, although he has had no other long term relationships since then, he has had only one night stands and he goes to gay clubs and meets gay people and does not hide his sexuality. The Appellant confirmed the nature of his relationship during cross-examination before Judge Garbett (at paragraph 12). He also confirmed that he had telephone calls from his mother, brother, cousins, aunts and uncles with respect to this (paragraph 12).

The Judge's Findings

4. The judge had regard to the Appellant's evidence, as well as the evidence of a Mr [K], who confirmed that he had known the Appellant for approximately four years, and had met at his sister's wedding in Birmingham, although he could not confirm that he had ever met Claire "and the Appellant has not told him much about her, only that they were in a relationship for about two years" (paragraph 15). Consideration was given by the judge to the closing submissions of the Presenting Officer that the Appellant had not been in touch with his family since 2015, although he maintained that he had received threats from them and that, "no further evidence has been received from any LGBT organisation in respect of the Appellant" (paragraph 17).

5. The judge concluded that the “key issue is credibility” (paragraph 21) and in this respect the Appellant lacked all credibility because he was asked on three occasions during his asylum interview “to describe his emotional reaction to his first experience with Claire, his first with a transgender woman” and the Appellant was unable to do so because his responses were “entirely focused on his physical, sexual acts” (paragraph 24(i)).
6. The appeal was dismissed.
7. In his grounds of application, the Appellant states that his lifestyle now clearly shows that he lives openly as a gay man, that there are emails, that he has joined LGBT organisations and other gay clubs, and that he falls squarely under the leading authority of **HJ (Iran) [2010] UKSC 31**. On 14th September 2017 permission to appeal was granted by the Upper Tribunal on the basis that the Tribunal may have erred in expecting the Appellant to be able to clearly describe in detail an emotional and religious response to his sexuality, when he explained that his focus was on the physical. On 4th October 2017 a Rule 24 response was entered to the effect that, “It is clear from paragraph 24(ii) that the judge finds the appellant’s evidence to be vague and lacks detail.” The judge is entitled to reject submissions made on the Appellant’s behalf.

The Hearing

8. At the hearing before me on 2nd March 2018, the Appellant did not attend. Nor, did a legal representative appear on his behalf. Nor indeed, was there any explanation for non-attendance, for what was listed as an oral hearing. Mr Mills, appearing as Senior Home Office Presenting Officer on behalf of the Respondent, relied upon the Rule 24 response, emphasising that the judge was entitled to give reasons that he did at paragraph 24 of the determination and to find the Appellant to be wholly lacking in credibility, and that there was no error of law.

No Error of Law

9. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
10. In what is a clear, comprehensive, and closely reasoned determination, Judge Garbett has provided ample good reason for why the claim put forward by the Appellant was unsustainable and cannot succeed. Any suggestion that the judge’s emphasis on the Appellant’s emotional and religious response, to what the Appellant described as a focus on physical activity, as being misguided, is wholly insupportable and illogical. The judge was entitled to give the reasons that he did.
11. First, this is a case where the Appellant claimed to have had a strict religious upbringing as a Shia Muslim in Pakistan. He claimed that he did not, as a result, have the opportunity to explore his sexual identity. Nor,

did he have any sexual relationships while in Pakistan. Against this background, the judge was entitled, in a fact-finding exercise, to observe that, “His sexual encounter with Claire was counter to all religious principles he had been brought up with. The Appellant, despite being given three opportunities, did not provide even a basic account of his emotional response to this event”. It is by no means unreasonable for the judge to expect there to have been a “basic account of his emotional response” to the event of the Appellant having had a sexual encounter with a transgender person.

12. After all, the judge has to make a finding on whether the Appellant actually is gay in the manner that he suggests, or whether this is simply an account that is made up, by a person who had unlawfully entered as a student in the first place, subsequently attempted to remain here by making an asylum claim, on the one ground that he thought would be available to him, as a person who had come from a religiously strict country such as Pakistan.
13. Not only this, when the judge compared the Appellant’s lack of an adequate response to this enquiry, with what the Appellant had been able to say in relation to other matters, this only deepened the sense that the judge had of the claim being lacking in credibility. Thus, in the next breath, the judge explains that, “I also do not accept that he is not equipped to do so as a he gave perfectly cogent and eloquent responses in other parts of the asylum interview. I find that the Appellant’s responses to this area of questioning do damage his credibility” (paragraph 24(i)). It is quite difficult to see what is wrong with such a carefully analysed evaluation of the evidence given before the judge.
14. Second, and in the same way, the judge was entitled, faced with a claim that the Appellant was a gay person frequenting gay clubs in the UK and having one night stands, but never having had any sexual encounter or inkling of his sexuality in Pakistan, to say that,

“The Appellant could not provide a detailed account of his transition from a strict Shia Muslim living in a homophobic society to being an openly gay man in the UK. And again when this was put to the Appellant in interview his response was a purely physical one” (see paragraph 24(ii)).
15. Third, equally relevant was the fact, as the judge found, that “The Appellant has not put forward any explanation of how he reconciled his strict religious upbringing with his newly discovered sexual identity” (see paragraph 24(ii)).
16. Finally, what was perhaps most telling, as the judge found in his analysis, to the Appellant’s complete lack of credibility in the claim that he was putting forward, was, a total absence of any understanding of what it means to be gay.
17. As the judge explained,

“The Appellant left Pakistan when he was 23 years old. On his evidence he had no sexual experiences prior to leaving that country. In his asylum interview he stated that he had ‘no feelings at all’ about his sexuality (AIR 51). He also stated that he did not feel different to other people growing up in Pakistan” (see paragraph 24(iii)).

18. This sort of thing, I am bound to say, does a complete disservice to the claims of those genuinely gay people, who do have a fear of persecution, in countries where sexual orientation rights are not fully recognised.
19. The judge in this case was perfectly entitled to make a finding that an explanation that a person who claimed to be gay had “no feelings at all” when it came to his sexuality and that he did “not feel different to other people growing up in Pakistan”, was bound to be untenable.
20. On the other hand, the judge is perfectly mindful of the standard jurisprudence in this area. A proper account was taken of the Rule in **Tanveer Ahmed (2002) UKIAT 00439** (at paragraph 26 of the determination). In the same way, a very detailed consideration was given to the Supreme Court judgment in **HJ (Iran) [2010] UKSC 31**, where the judge cited at length the relevant parts from the judgment of Lord Rodgers (at paragraph 32) and also took into account Lord Hope’s analysis (paragraph 33).
21. In the same way, regard was given to the Appellant’s Article 8 rights (at paragraph 35) and once again there are no criticisms to be made of the judge’s findings in this respect.
22. The Appellant did not attend and did not have legal representation present to take matters any further and I accordingly dismiss this appeal.

Notice of Decision

23. There is no material error of law in the original judge’s decision. The determination shall stand.
24. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

16th March 2018