



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

Appeal Number: PA/03609/2018

THE IMMIGRATION ACTS

Heard at Field House

On 26 November 2018

**Decision & Reasons
Promulgated**

On 11 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**R A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

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 M Hussain, Legal Representative from Raiyad Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge R Chowdhury (the judge), promulgated on 11 June 2018, in which she dismissed his appeal against the Respondent's refusal of his protection and human rights claims dated 4 March 2018.
2. The most important aspect of the Appellant's account, at least on appeal to the First-tier Tribunal, was that he was gay and would be at risk of persecution if returned to Bangladesh. The Respondent had rejected all aspects of his claim including that relating to his claimed sexuality.
3. In considering the evidence, the judge made reference to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and set out a self-direction in paragraph 48 of her decision. Thereafter she notes a number of evidential issues in respect of the failure of the Appellant to make his protection claim until May 2017, notwithstanding his entry into this country in 2010. In addition to the delay issue the judge makes findings in respect of the absence of corroborative evidence by way of witnesses or other relevant sources. The judge addresses the evidence that the Appellant had in fact engaged in intimate relations with men but found that this of itself did not permit the Appellant to make out his claim even on the lower standard of proof. In light of the findings the appeal was duly dismissed.

The grounds of appeal and grant of permission

4. The grounds of appeal, which were apparently drafted whilst the Appellant was no longer represented, are brief and refer to what are described as perverse findings in respect of paragraphs 50 and 56 of the judge's decision.
5. Permission to appeal was refused by the First-tier Tribunal but subsequently granted by Upper Tribunal Judge Gill on 18 October 2018.

The hearing before me

6. At the hearing before me Mr Hussain, who was once again representing the Appellant as he done before the judge, relied on the grounds of appeal. He made reference to paragraph 52 of the judge's decision which he submitted had been based upon a false factual premise, namely that the Appellant had not actually gone to gay establishments as often as the judge had thought. The judge had failed to consider the particular circumstances of the Appellant's sexuality and lifestyle in the United Kingdom when addressing the issue of delay. Mr Hussain submitted that the Appellant had in fact made his protection claim, at least that aspect of

it relating to the claimed sexuality, as soon as he was aware that he could do so, namely in May 2017.

7. Ms Everett submitted that there were no errors of law and certainly nothing perverse in the judge's decision. The judge had indeed considered the explanations put forward by the Appellant and had rejected them for reasons which were open to her. She submitted that the judge had not placed too much emphasis on the delay issue but had considered this as part and parcel of the evidence as a whole. Within the delay issue there were differing strands, all of which were adverse to the Appellant's credibility. In addition, she pointed out that other reasons for rejecting the Appellant's account had been relied on by the judge. The section 8 issue had not been determinative.
8. In reply, Mr Hussain reiterated the point made in respect of paragraph 52. He submitted also that the judge had effectively ignored the contents of paragraph 12 of the Appellant's witness statement.

Decision on Error of Law

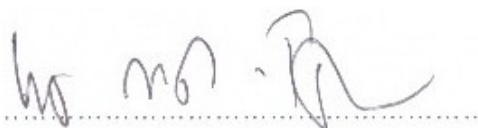
9. I conclude that there are no errors of law in the judge's decision.
10. I have read this decision sensibly and as a whole. In my view there is a correct self-direction in respect of the section 8/delay issue, contained in paragraph 48. Indeed the wording used therein is in similar terms to that set out in SM (Section 8: Judge's process) Iran [2005] UKAIT 00116 and JT (Cameroon) [2008] EWCA Civ 878. It is clear that the judge was decidedly unimpressed by the Appellant's explanations as to why he had failed to put forward a protection claim based on sexuality until May 2017. In my view the judge was entitled to have found that the Appellant had frequented gay establishments over the course of time: there was nothing inconsistent between this and the contents of paragraph 12 of the witness statement wherein the Appellant had stated that he attended bars several times a month initially but this then decreased to several times a year thereafter. Notwithstanding a decrease in attendance, the judge was fully entitled to conclude that he had been to a number of establishments on numerous occasions over the course of the relevant period with which she was concerned.
11. The judge of course was also entitled to have taken into account the level of education and general background circumstances of the Appellant and the two Article 8 applications made previously in which the Appellant had made no reference whatsoever to being gay. The judge was also entitled to take into account the factors set out in paragraph 56 as being relevant to her assessment of the credibility of the explanations put forward for what, was in any view, a significant delay.

12. I am satisfied that the judge did not treat the delay issue as determinative of the Appellant's claim. I agree with Ms Everett's submissions that a number of strands relating to that delay issue were considered and properly set out with supporting reasons. In addition, and importantly, the judge considered other aspects of the evidential picture including that relating to the witnesses (and lack thereof) and the absence of other potentially corroborative evidence. Whilst corroboration is never a requirement in protection claims, its absence may well prove problematic to an Appellant where there are other significant concerns relating to the reliability of their own evidence.
13. In short, I find that whilst the Appellant had purported to put forward explanations for the delay, the judge had considered these and had rejected them for reasons which were not only perfectly rational but to which she was fully entitled to reach.
14. In light of this the decision of the First-tier Tribunal shall stand and the Appellant's appeal to the Upper Tribunal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal does not contain errors of law and it shall stand.

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



Signed

Date: 6 December 2018

Deputy Upper Tribunal Judge Norton-Taylor