



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

Appeal Number: PA/06073/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 25 April 2018**

**Decision & Reasons
Promulgated
On 21 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**AHMED [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M West of Counsel, instructed by Duncan Lewis & Co.
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Colvin promulgated on 15 January 2018 dismissing the Appellant's protection appeal against a decision of the Respondent dated 8 June 2017.
2. The Appellant is a citizen of Egypt whose date of birth is given as 1 January 1984. He last entered the UK on 20 March 2014 pursuant to a visit visa, having previously been a visitor here from 10 November 2013 until

16 March 2014. The Appellant overstayed his visit visa. He made an application for asylum on 12 December 2016 (on which state a screening interview was conducted); a substantive asylum interview was conducted on 21 April 2017. The Appellant sought to rely on 'Refugee Convention reasons' in relation to membership of a particular social group with reference to his claimed homosexuality.

3. The Respondent refused the Appellant's application for protection for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 8 June 2017. The Respondent did not accept that the Appellant was homosexual.
4. The Appellant appealed to the IAC.
5. The First-tier Tribunal dismissed the appeal following a hearing on 20 December 2017 for reasons set out in the Decision of Judge Colvin promulgated on 15 January 2018.
6. The First-tier Tribunal Judge concluded that the Appellant was not homosexual. The Judge's conclusions are summarised at paragraph 38 of the Decision under the heading 'Overall assessment' in the following terms:

"I am aware of the need to assess all the evidence as a whole when assessing the issue of credibility. I am also aware of the need to be cautious before reaching an adverse credibility finding in an asylum appeal. However, on all the evidence before me, I have reached the conclusion even on the lower standard of proof that the appellant's claim is wholly without merit. I consider that the medical evidence shows that when asked about his sexual orientation by his GP in February 2016 he said that he is heterosexual and that therefore his claim to be homosexual is a complete fabrication solely for the purpose of seeking asylum some months later. This is corroborated by the fact that there were significant inconsistencies in his and his partner's evidence and that the partner himself has not been believed in his asylum claim to be a gay man. It is also corroborated by the appellant's immigration history including the fact that he returned to Egypt for 3 days despite saying he was in fear and delayed claiming asylum for some 2 years and 8 months without providing a reasonable explanation - as his explanation of possible anal testing in the UK was, in my view, correctly rejected by the respondent for the reasons given."

7. The Judge also found that the Appellant could not succeed by reference to Article 8 private life established in the UK.

8. The Appellant sought permission to appeal to the Upper Tribunal.
9. Permission to appeal was refused in the first instance by First-tier Tribunal Judge Farrelly on 8 February 2018, but subsequently granted by Upper Tribunal Judge Rintoul on 12 March 2018. In material part of the grant of permission to appeal is in these terms:

"It is arguable that First-tier Tribunal Judge Colvin erred in failing to make findings in respect of the second witness, Mr [C]."

Judge Rintoul observed whilst there was "less merit" in the other grounds pleaded, permission to appeal was not restricted.

10. In support of his appeal the appellant relied upon his own testimony and the live testimony of two witnesses, in addition to various items of documentary evidence including an expert report. The two witnesses were the Appellant's supposed partner, Mr [MM], and Mr [MC].
11. Mr [C] provided a witness statement signed on 10 December 2017, and attended the hearing to give oral evidence in support of the appeal. The Judge summarises this evidence at paragraph 20:

"The witness [MC] gave oral evidence. He adopted his letter dated 10 December 2017 as his evidence. This states that he met the appellant and [M] in May 2017 in a club called Blush when he helped them sort out a bill. They sat together, talked and became friends. He knows about the appellant's problems in Egypt and why he left. In oral evidence-in-chief he said that the appellant told him in August 2017 that he was gay and started to trust him. He has been in Egypt and knows the situation there. The appellant and [M] love each other and are trying to be together but there are financial reasons against this. In cross-examination he said that he meets the appellant once or twice a week and sometimes they are both together. The appellant has been to his house twice but he's not been to his home."

12. Mr McVeety acknowledges on behalf of the Respondent that the Judge makes no further reference to the evidence of Mr [C]. However, he submits that Mr [C]'s testimony added little to the overall case, and reminded the Tribunal that it was not incumbent upon a First-tier Tribunal Judge to give reasons in respect of every single aspect of evidence in an appeal. He submits that the Judge's overall conclusions were clear and transparent and adequately reasoned, informed in particular by the comments and observations in respect of the evidence of the Appellant and his supposed

partner at paragraphs 36 and 37. Nonetheless Mr McCready accepted it “would have been better” if the Judge had stated in terms that the evidence of Mr [C] took the Appellant’s case no further.

13. I accept that the Judge’s reasons are for the main part clear and understandable. Absent the concern in respect of the testimony of Mr [C] they appear adequately sustainable.
14. However, whilst I acknowledge that it is not incumbent upon a judge to deal with every aspect of sometimes extensive materials filed in support of an appeal, I do not think that such a principle operates to obviate the need to address in terms a corroborating witness statement backed by attendance and oral evidence if that evidence is relied upon as establishing the core element of the claim. Mr [C]’s evidence was called to corroborate the Appellant’s sexuality and that he was in a relationship with another man. Even if that evidence relied upon what the Appellant had reported to the witness, it was still of potential significance – if accepted – that the Appellant had discussed his sexuality with somebody. The ‘in the round’ evaluation necessary in a protection appeal required the judge not only to take into account the evidence of Mr [C], but to make it apparent to the parties what the Judge thought of such evidence, and if it were rejected to explain why it was rejected.
15. In such circumstances, and notwithstanding the apparent cogency of the rest of the Judge’s reasoning, I am satisfied that this was a material error of law that necessarily impacted upon the overall assessment of credibility. In light of this conclusion it is not necessary for me to give consideration to the other grounds of appeal.
16. It was common ground between the parties that if I were persuaded of this point the decision in the appeal would need to be remade pursuant to a further hearing before the First-tier Tribunal with all issues at large. I agree. It will be a matter for the Appellant as to what if any further evidence he might now wish to file and to this extent standard directions will suffice.

Notice of Decision

17. The decision of the First-tier Tribunal contained a material error of law and is set aside.
18. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than first-tier Tribunal Judge Colvin with all issues at large.

Signed:

Date: **14 November 2018**

Deputy Upper Tribunal Judge I A Lewis