



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08247/2017

THE IMMIGRATION ACTS

Heard at Field House
On 22 February 2018

Oral Decision & Reasons
Promulgated On 23 May 2018

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

MR WASIF [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P. Heidar, Solicitor instructed by AA Immigration Lawyers
For the Respondent: Ms P. Hastings, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on [] 1986. He appeals against the determination of First-tier Tribunal Judge Widdup following a hearing at Hatton Cross on 26 September 2017. The determination was promulgated on 11 October

2017. The judge had before him an appeal in which the appellant alleged that he was gay. The judge having heard the evidence dismissed the appeal. The allegation contained in the grounds of appeal to the Upper Tribunal is that there was procedural unfairness in the way the First-tier Tribunal Judge dealt with the fact that the appellant's partner did not give evidence.

2. The background to this is that an application was made to adjourn the hearing by letter dated 5 September 2017 which was received at Hatton Cross on 7 September 2017. The application was in this form:

"We have indicated that our client requires further time for his appeal hearing and also his witness, namely his partner, cannot attend the hearing at the set date. Given the appellant's claim of his sexuality is not accepted, the evidence of his partner is crucial evidence in support of his claim. In light of the same we would be obliged if an alternative date for his appeal hearing is given."

3. There is of course no reason given as to why the partner could not attend the hearing at the set date. In due course the application went before the First-tier Tribunal and it appears to have been noted in the asylum appeal prehearing review form. That form is dated 12 September 2017 and alongside the indication that the adjournment was refused, the reasons given were:

"Request to adjourn refused. There is no explanation as to what further evidence the appellant wishes to obtain or why this was crucial to the determination of their appeal. It is considered that the appellant's witness is not required to attend when they can provide a witness statement."

4. The application, as I have said, did not provide any details as to why the partner could not attend the hearing at the set date. There was no supporting, say medical, evidence or explanation as to why it was particularly impossible. For that reason it was inevitable that the application for an adjournment on that basis would be refused.

5. Some days later, on 19 September 2017, and that was some five days before the hearing which took place on 26 September 2017, a witness statement was provided by Mr [MA]. He gave his address and said that he was a citizen of Pakistan. He confirmed that the appellant was his partner and that they met in July 2017. He made in the course of what were 8 short paragraphs a simple averment,

"I confirm Wasif is a homosexual and we are in a relationship with each other."

6. That was the sum total of the evidence that was provided by Mr [MA] and it was, I think, on any view unsatisfactory to establish the fact of the appellant being a gay man if that individual did not give evidence. The outcome was entirely foreseeable. It must have been known and should have been known that this type of case cannot succeed realistically unless there is some evidence of an active social and domestic life between male partners where those partners are present in the United Kingdom.

7. The argument that is put forward is that the reason for refusing the adjournment, (namely that it is considered that the appellant's witness is not required to attend when he can provide a witness statement) was misleading. It meant (or represented) that a witness statement, if provided, was going to be accepted as truthful. That cannot possibly be the correct interpretation of that statement in the refusal decision. First of all there was no copy of the witness statement before the Tribunal member who decided the application for an adjournment. Secondly, the witness statement was prepared on 21 September 2017. Merely making a witness statement and the maker not being subject to cross-examination cannot, as a matter of law, oblige the court to accept its contents as authentic and genuine. Otherwise there would be no purpose in anybody calling live witnesses and a mere statement would establish the case even though the individual maker does not attend.
8. The true position must be that, where it is intended to establish a relationship, a relationship which is a homosexual relationship in the United Kingdom, both parties are clearly required to attend to give evidence, not as a requirement in law but as a simple matter of evidence. The failure to do so is likely to be fatal unless a very good explanation is given for the non-appearance.
9. At the hearing itself no application to renew the adjournment application was made. Judge Widdup therefore was in the position where there was on file and in writing an earlier refusal. Unless the application was renewed before him, it was not for him to re-open it. Apparently it was drawn to the attention of the judge that the reason for the witness's non-attendance was because he either had to sign on or he had a medical appointment. That was dealt with by the judge in paragraph 23. It was said there he, Mr [MA], could not come to the Tribunal because he had a doctor's appointment and needed to sign on. They had asked for an adjournment and he had asked Mr [MA] if he could rearrange his appointment but he could not do so.
10. As I said there was no further application to adjourn but, had there been one, I am certain that on this material, no adjournment would have been granted.
11. It is simply not good enough for an individual to say that he has a doctor's appointment and that prevents him from attending unless there is some form of medical evidence to suggest that this doctor's appointment was particularly crucial. It may have been that it was merely an appointment to see a GP and that it could be rearranged at a future date. There is nothing therefore to suggest that a doctor's appointment and no more was sufficient for Mr [MA] not to attend.
12. Furthermore, it said that Mr [MA] needed to sign on. There again, my understanding is that if an individual is to be relieved of the requirement to sign on, he has to provide a reason for doing so and it would have been possible for the appellant and his solicitors to have written to the authorities and to have said that he needed to attend a hearing. If that had not been accepted then it would have been open to the solicitors to ask the court to indicate that he was required to be at court for the purposes of the hearing. I therefore do not accept that the fact that an individual says he needs to sign on is a sufficient reason for not attending. There

would of course have been a notice of hearing and that notice of hearing would have been served some time in advance when these matters could have been resolved. As it was, a written statement was provided very late in the day and which was inadequate to deal with the issue of sexuality which the appellant himself raised.

13. The appellant's own evidence was dealt with. It was considered by the judge. The judge was able to take into account the fact that the appellant had not called witnesses who would or could have supported his claim. His reasons for not doing so were not, in my judgment, satisfactory. That goes back to what is said in paragraph 23 as to Mr [MA]'s need to attend a doctor's appointment and/or to sign on. So there was no error made giving rise to procedural unfairness.
14. It may have been the case that there was not a sufficient realisation that the absence of the witness was going to be relied upon by the judge in reaching his conclusion. However, where relationships are concerned, it is unlikely that weight will be attached to the individual's own evidence about his sexuality unless additional material is supplied.
15. There is also a somewhat brief challenge to the findings of fact and it centres on paragraph 69. Paragraph 69 is in these terms:

"I have considered all the evidence in the round. I accept that the Appellant was in a brief relationship in 2003 with his teacher. It was abusive because of the Appellant's age and vulnerability and lack of consent when it started. He cannot fairly be criticised for concealing what happened at that time or later. I note that the decision letter attached little weight to that relationship because it was one-sided and not indicative of sexuality. I agree with that comment."
16. In my judgment the First-tier Tribunal Judge was entitled to approach that evidence in exactly that way. The claim was that the appellant whilst a minor and at school had been assaulted by a teacher in 2003. That was something which shed no light on the appellant's sexuality. It was merely the abusive conduct of a teacher and did not take the matter further.
17. It said that the appellant himself at first objected to his teacher's conduct but then he realised that he did not object. In paragraph 41, the judge records:

"He was 17 when he was with the teacher. He had never said no to him and it was something he wanted later."
18. That does not materially add to his claim. It is merely another example of his saying that he was gay. That alone was not going to establish his case or did not do so in the circumstances of this particular case.
19. For these reasons, I do not consider that there was a procedural error on the part of the judge. He had before him the very limited witness evidence of Mr [MA] and the evidence which he did not consider entirely satisfactory from the appellant. He reached a conclusion that was properly open to him.

DECISION

The determination of the First-tier Tribunal Judge discloses no error of law and his determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL

16 May 2018