



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08353/2018

THE IMMIGRATION ACTS

Heard at Field House
On 16 November 2018

Decision & Reasons Promulgated
On 26 November 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

G. A. S.

(Anonymity order previously made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr. A. Pipe of counsel instructed by Baileys Solicitors

For the Respondent: Mr. D. Clarke, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Pakistan. He arrived in the United Kingdom on 24 February 2012 as a Tier 4 (General) Student and his leave was subsequently extended in this capacity until 17 October 2014. However, his leave was curtailed on 29 January 2014, so as to expire

on 30 March 2014. He applied for further leave to remain as a Tier 4 (General) Student on 7 May 2014 but his application was refused on 19 June 2014 and he did not have a right to appeal this decision.

2. On 18 November 2015, he was served with notice that he was an overstayer and from 4 February 2016 he was treated as an absconder. He then applied for asylum on 13 December 2017, on the basis that he feared persecution in Pakistan as a gay man.
3. His application was refused on 21 June 2018 and he appealed. First-tier Tribunal Judge Graham dismissed his appeal in a decision promulgated on 4 September 2018. The Appellant sought permission to appeal and First-tier Tribunal Judge Haria granted him permission to appeal on 25 September 2018.

ERROR OF LAW HEARING

4. Counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have taken these into account when reaching my decision below. At the hearing counsel decided not to rely on the fifth ground of appeal on the basis that the statement made in paragraph 49 of the decision could be read two ways.

ERROR OF LAW DECISION

5. Section 82(1) of the Nationality, Immigration and Asylum Act 2002 states that:

“A person (“P”) may appeal to the Tribunal where-

(a) the Secretary of State has decided to refuse a protection claim made by P”.

6. The Respondent accepts that LGBT persons in Pakistan do form a particular social group for the purposes of the Refugee Convention and that, if the Appellant is found to be a gay man, he would be at risk of death or serious harm if he were to be removed to Pakistan.
7. The case of *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11 confirmed that, when determining the credibility of an account provided by an asylum

seeker, the correct approach was to consider all the evidence in the round, according it appropriate weight, before reaching a holistic decision on the totality of that evidence. In paragraph 32 of his decision, the First-tier Tribunal Judge stated that she had looked at the matter in the round. However, when considering individual pieces of evidence, she did not remind herself that asylum-seekers faced a considerable evidential burden when trying to establish their cases.

8. Her approach to some individual pieces of evidence was also flawed. For example, in paragraph 34 of her decision, she found that James Barrett was not an expert witness. However, Dr Barrett is a consultant psychiatrist employed at a prominent mental health facility. The first two pages of his report, at page 41 of the Appellant's Bundle, provided all of the information to be expected from an expert witness. The Respondent submitted that the report provided by Dr. Barrett did not depend on his professional expertise. However, at page 47 of the Appellant's Bundle, he explained that "distinguishing gender dysphoria from homosexuality is part and parcel of my job and something I have been undertaking for around thirty years".
9. On page 46 of the Appellant's Bundle Dr Barrett also described the information he had obtained from contacting Mr. Palmer, the co-ordinator of the LGBT Group in Manchester and the fact that he did so indicated that he had not merely listened to the account given by the Appellant before reaching a final decision as to his sexual orientation. (See *JL (medical reports-credibility) China* [2013] UKUT 00145 (IAC))
10. The Respondent submitted that Dr Barrett's opinion was also undermined by the fact that he had not read the refusal letter or considered the possibility that the Appellant's account of his relationship with Bilal might have been fabricated after meeting gay men at the Voices for All meetings. However, at page 47 of the Appellant's Bundle, Dr Barrett explained that he had experience of people trying to feign homosexuality for immigration purposes and gave examples of how they usually tried to prove that they were gay. He then contrasted this with the descriptions given by the Appellant of his relationships, which led him to believe that he was not just pretending to be a gay man
11. In paragraph 37 of her decision, the First-tier Tribunal Judge also found that the delay by the Appellant in claiming asylum damaged his credibility. In my view, the fact that the Supreme

Court recognised that a person's homosexuality may mean he was a member of a particular social group in 2010 was not necessarily a factor known or understood outside legal circles. Therefore, the First-tier Tribunal Judge should have considered whether it was plausible that the Appellant only became aware of this once he was in touch with a group which was aware of the right to asylum that had been recognised in courts and tribunals. As a consequence, the reasoning given by the Judge was inadequate.

12. In paragraph 46 of her decision the First-tier Tribunal Judge also found that the legal notice said to show that his father had formally disowned him was unreliable. She based this on the fact that she had already found the Appellant's account to be unreliable. In the light of *Karanakaran* the Judge should have considered what weight to give the notice before reaching a holistic decision in relation to the Appellant's credibility.
13. Finally, the Judge gave little or no weight to the letter from Voices for All, dated 11 June 2018, and a significant number of emails which indicated that the Appellant was playing an active role in this group. She erred by not doing so as it was all evidence that should have been part of a holistic assessment of the Appellant's credibility.
14. For these reasons I find that the decision made by First-tier Tribunal Judge Graham contained errors of law and must be set aside.

Decision

- (1) The appeal is allowed.
- (2) The decision of First-tier Tribunal Judge Graham is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Graham or First-tier Tribunal Judge Haria.

Nadine Finch

Signed

Date 19 November 2018

Upper Tribunal Judge Finch