



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/08854/2017

THE IMMIGRATION ACTS

**Heard at: Columbus House,
Newport
On: 17 September 2018**

**Determination Promulgated
On 26 September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

SA
(anonymity direction made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms C Grubb, Counsel instructed by Qualified
Legal Solicitors

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in order to protect the anonymity of the Appellant who claims asylum. This direction prohibits the disclosure directly or indirectly (including by the

parties) of the identity of the Appellant. Any disclosure and breach of this direction may amount to a contempt of court. This direction shall remain in force unless revoked or varied by a Tribunal or Court.

2. This is an appeal against the decision of First-tier Tribunal Judge Trevaskis in which he dismissed the appeal of the Appellant, a citizen of Pakistan, against the Secretary of State's decision to refuse asylum and issue removal directions.
3. The application under appeal was refused on 29 August 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. The appeal came before Judge Trevaskis on 11 October 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was refused by First-tier Tribunal Judge Froom but on renewal was granted by Upper Tribunal Judge Grubb on 29 November 2017 in the following terms

The First-tier Tribunal (Judge Trevaskis) dismissed the appellant's appeal against a decision to refuse his international protection, humanitarian protection and human rights claims. The Judge rejected the appellant's account and evidence that he is gay and would, as a result, be at risk on return to Pakistan. The grounds raise four points.

Grounds (2), (3) and (4) are arguable. In particular the Judge arguably failed adequately to identify the reasons for his conclusions just by referring to the respondent's refusal letter and explain (as a reasonable response) the basis for which he would have expected more from the appellant in expressing his "feelings".

Ground (1) is not arguable. The Judge was entitled to take into account the appellant's delay in claiming asylum applying s.8 of the 2004 Act. This was not the case where, as in A and others, the CJEU cautioned against taking into account the failure to mention a claim based upon sexual orientation when first claiming asylum. Here, it was the delay in making the first claim which was relevant to credibility under s.8 of the 2004 Act.

Consequently, I grant permission on Grounds (2), (3) and (4) only.

Background

4. The history of this appeal is detailed above. The Appellant is a citizen of Pakistan born on 8 March 1990. He arrived in the United Kingdom on 11 April 2011 as a student and overstayed. Having been served with Notice of Removal he claimed asylum on 28 February 2017. The basis of his claim was that his sexual orientation as a gay man would cause him to face persecution on return to Pakistan.

5. The Secretary of State refused the Appellant's claim not accepting that he was gay and consequently that he would face adverse interest on return. The Judge dismissed his appeal making adverse credibility findings and concluding that the Appellant was not gay and would not be perceived as such.

Submissions

6. At the hearing before me Ms Grubb appeared for the Appellant and Mr Howells for the Respondent.
7. For the Appellant Ms Grubb said that the grounds of appeal refer to her skeleton argument before the First-tier Tribunal. Grounds (2), (3) and (4) are interlinked. There is a failure to adequately identify reasons for the findings at paragraphs 36 to 42 of the judgement. The main areas of concern are paragraphs 39, 40 and 41. At paragraph 39 the judge said that he would expect "an appellant in the circumstances to express more about their feelings as a gay man than the appellant has done" but the Judge does not make it clear what sort of feelings he is referring to or the basis upon which he would expect such feelings to be shown. At paragraphs 68 of A and others v Staatsscceretaris van Veiligheid en Justitie C-148/13 the CJEU held that stereotypical notions should not be applied to applicants' claims. The Judge appears to be presupposing that a certain standard of feelings are required or that there was a "correct response". Paragraph 15 of the decision is all that is recorded about feelings. However, the Appellant's statement goes into detail about his feelings and there is also mention of the Appellant's feelings at interview. The Judge does not say what it is about feelings that he would have expected the Appellant to express more or in what way his detailed expression of his feelings is lacking.
8. At paragraph 41 of the decision the Judge says that there were a number of adverse credibility findings identified by the Respondent in the refusal letter and the Judge has considered the responses provided. The Judge is not satisfied that the responses are plausible but does not go into any further detail. In fact, the Appellant gave a detailed response to each and every point made by the Respondent and the Judge does not explain at all why any of these responses are not plausible. Nothing is reasoned.
9. For the Respondent Mr Howells conceded that the errors of law contained in paragraphs 39 and 41 as explained in the grounds and referred to by Ms Grubb in submissions were evident.

10. I said that the appeal would be allowed, and the matter remitted to the First-tier Tribunal for the decision to be remade and I reserved my written decision.

Decision

11. Permission to appeal was granted on three grounds. As the Respondent has conceded that a material error of law is made out I will deal with them briefly in turn.
12. Firstly, it is asserted that the First-tier Tribunal made adverse credibility findings based upon its own perception of what was reasonable contrary to Y v SSHD [2006] EWCA Civ 1223. The grounds point to A and Others (above) and to the Judge's statement at paragraph 39 of his decision "I would expect an appellant in the circumstances to express more feelings as a gay man than the appellant has done".
13. In my judgement this error of law is clearly made out. Not only does the Judge fail to explain what feelings he would expect the Appellant to express but also, he does not examine the Appellant's feelings expressed in some detail in the interview record and the appeal statement and say why these clearly expressed feelings are insufficient or inadequate.
14. Within the same ground it is also asserted that at paragraph 41 the Judge dismisses the Appellant's explanations for the credibility issues raised in the refusal letter with the simple statement "I am not satisfied that those explanations are plausible" without explaining why the explanations are not plausible.
15. In my judgment this reveals a further error of law. Despite detailed explanations being given in the Appellant's witness statement to each of the Respondent's reservations not a single one of these explanations is examined and no reasoning at all is given for the Judge's conclusion that the explanations given are implausible.
16. Secondly it is asserted that the Judge failed to give anxious scrutiny to the facts and matters raised by the Appellant.
17. Ms Grubb submitted that the grounds are interlinked and in my judgement for the reasons given above this ground is also made out. There is no indication in the decision that the Judge has considered the feelings expressed by the Appellant at interview or in his witness statement or that he has considered

the explanations given by the Appellant to the Respondent's reservations.

18. It must follow for the same reasons that the third ground, that the Judge did not set out the reasons for making adverse credibility findings with a sufficient degree of particularity is also made out.
19. In my judgement the First-tier Tribunal erred in law in its assessment of the Appellant's credibility and for this reason this appeal is allowed, and the matter is remitted to the First-tier Tribunal to be heard by a Judge other than Judge Trevaskis for the decision to be remade with no findings preserved.

Summary

20. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the appeal and remit the matter to the First-tier Tribunal for hearing ab initio.

**Signed:
2018**

Date: 24 September

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

**J F W Phillips
Deputy Judge of the Upper Tribunal**