



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10769/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 2 May 2018

Decision & Reasons Promulgated
On 17 May 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

M A M (PAKISTAN)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Chris Boyle, solicitor with Halliday Reeves Law Firm
For the respondent: Mr Myroslav Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him international protection under the Refugee Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.

2. The appellant is a citizen of Pakistan. It is his case that he is gay and that he is at risk in Pakistan because of his homosexuality, making him a member of a particular social group under the Refugee Convention. The appellant contends that his family will force him to enter into a marriage with a woman if he is returned to Pakistan and that he will face mistreatment from the family of his fiancée there and from other non-State actors in Pakistan.

Background

3. The appellant's evidence was that he began to have homosexual relations with another boy in Pakistan from about 12 or 13 years old, and that they were caught in bed together both by the other boy's father, and later, after the boy had been sent to live with a cousin, by the cousin, who assaulted the appellant. The appellant was later beaten and stabbed by the cousin and the cousin's friends on the way home from school.
4. The incident was reported to the boys' school. They told his father, who beat the appellant and confined him to home. By the time he was allowed to resume his schooling, the other boy had left and the appellant's sexuality was known in school, so he was ostracised, bullied, and tried to commit suicide by taking an overdose of his father's medication.
5. The appellant was privately tutored thereafter and began to work in the family business, but the other boy got in contact again a few years later, and they spent three months together in Dubai.
6. The appellant's brother married, and the family then arranged the appellant's marriage to a cousin; however, he instead began to have sexual relations with her brother, who was bisexual. The appellant told his fiancée that he was not interested in girls. His fiancée's family complained to the appellant's family, who attacked him physically when he said he would never marry.
7. The appellant fled to a friend's house, where he tried again to commit suicide with pills, and by cutting his wrists. He woke up in hospital: his family agreed to postpone the marriage and let him undertake further study in the United Kingdom. In the United Kingdom, he lived openly as a gay man, attending gay clubs and having a relationship with a man called Garry, a married man who shared very little of his life with the appellant.
8. Evidence in support of the appellant was given to the First-tier Tribunal by a Mr A, who has already been granted asylum as a homosexual from Pakistan, and who said that he and the appellant had a short-lived relationship, but remained friends thereafter. Mr A was apparently told that he would be risking his refugee status by giving evidence for the appellant, but did so nevertheless.

First-tier Tribunal decision

9. The First-tier Tribunal Judge noted that the appellant's Pakistani citizenship was not in dispute, and that the respondent's Country Information and Guidance on Sexual Orientation and Gender Identity in Pakistan in 2016 confirmed that LGBT people in

Pakistan were a particular social group within the meaning of the Refugee Convention; that they were rarely prosecuted but often suffered societal discrimination, beatings, and family confinement, and that the police were reluctant to become involved, leaving the family to resolve matters internally.

10. The First-tier Tribunal Judge accepted the appellant's account of his relationship with the boy at his school as fully credible, including the suicide attempt and his family's change of heart about the marriage, allowing the appellant to continue studying. The decision continues:

“...Bearing in mind the appellant was still a child at this time, this encounter [with the boy from school] does not necessarily mean that he is gay and in my judgment, this encounter is just as likely to have been an experimental stage in the appellant's sexual journey as the beginning of a true path of homosexuality. ...”

11. The Judge characterised as ‘bizarre...a red herring’ the appellant's account of his relationship with his fiancée's bisexual brother. The appellant's account was that they shared a bed and kissed, shirtless. The Judge found that lacking in credibility. The Judge rejected evidence from a taxi driver that the appellant was dropped off outside gay clubs or the taxi driver's assessment that the appellant's friends were gay.
12. Finally, the Judge rejected the evidence of Mr A that he and the appellant had a non-exclusive sexual relationship from February to about August 2016, and met in November 2017 to catch up on their subsequent lives. They both used the same firm of solicitors. The Judge continued:

“...their claims for asylum were made around the same time. Furthermore, the appellant's interview was some 11 days before [Mr A's] interview in March this year. There are too many similarities between their asylum journeys for it to be coincidental and I pl very little weight on his evidence because, in my judgment, [Mr A] has been asked to attend because he has been believed about his sexuality and their claim to have a relationship has been fabricated between them in order to bolster the appellant's claim. I find it is reasonably likely they are friends but no more than that. ...”

Unfortunately, none of this was put to Mr A in cross-examination.

13. The Judge noted that the appellant had felt able to return to Pakistan in 2014, but that he had not given any explanation why he did so. Again, the appellant was not asked that question. The Judge did not believe that the appellant's family were now insisting upon his marrying anyone. He rejected the appellant's claim to be gay, found him not to be a member of a particular social group, and added weight to the negative credibility findings pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, on the basis of the delay in applying for asylum.
14. The appellant's claims in humanitarian protection and human rights were also dismissed.

15. The appellant appealed to the Upper Tribunal.

Permission to appeal

16. The grounds of appeal complain that the evidence of Mr A was rejected for unsound reasons, that their choosing the same legal representation when they were in a relationship was not surprising, and that discrepancies relied upon in the decision were minimal and immaterial. No issues were raised with Mr A's evidence overall, nor did the Judge give any reason to treat him as being a dishonest witness whose evidence lacked credibility.
17. Secondly, the appellant rebutted the Judge's assertion that his schoolboy relationship was mere experimentation incapable of supporting a finding that he had a homosexual sexual orientation in adult life.
18. Thirdly, the appellant contended that there was a *Chiver* credible core in the account which should have been given weight. That submission misunderstands the ratio decidendi of *Chiver*, which is that it is not an error of law for a Judge to choose to accept only part of an account as true. This Judge accepted the account of the youthful relationship with another schoolboy as credible, but rejected the rest of his account.
19. Finally, the appellant contended that the Judge's approach to gay relationships was rigidly heteronormative and did not allow for the promiscuity and brevity of relationships in the gay community in the United Kingdom.

Rule 24 Reply

20. The respondent in a Rule 24 Reply asserted that the First-tier Tribunal Judge had considered properly the evidence of Mr A and was entitled to reach a finding of fact that they were merely friends, and a further finding that the appellant's claim to be gay lacked credibility, even to the lower standard applicable in international protection claims.
21. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

22. The decision of the First-tier Tribunal errs in law in considering whether the appellant has had sex with various partners, rather than whether he has a homosexual sexual orientation. I have reminded myself of the guidance given at [82] in *HJ (Iran) and HT (Congo) v Secretary of State for the Home Department* [2010] UKSC 31 and I have regard to the judgment of the Court of Justice of the European Union in *A v Staatssecretaris van Veiligheid en Justitie (United Nations High Commissioner for Refugees (UNHCR) intervening)*(Judgment) [2014] EUECJ C-148/13.
23. I apply the decision of the Court of Appeal in *R (Iran) & Ors v Secretary of State for the Home Department* [2005] EWCA Civ 982 at paragraph 90 in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed. I am satisfied that is appropriate to set aside the finding that this appellant is not gay, on the grounds of perversity, because I consider that finding to be irrational and unreasonable,

and I am unable to understand why the First-tier Tribunal Judge reached the decision he did in relation to the appellant's homosexual orientation while in the United Kingdom, as opposed to his relationships with Garry and Mr A.

24. I have considered whether I can go on and remake the decision. I do not consider that I can, as I did not hear or see the appellant and Mr A give their evidence. Reluctantly, therefore, I have concluded that there is no alternative but to set aside this decision and remit it to the First-tier Tribunal for hearing afresh.
25. No findings of fact or credibility from the decision under challenge are to be preserved, save the appellant's Pakistani citizenship, which is not in dispute.

DECISION

26. For the foregoing reasons, my decision is as follows:
The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Date: 14 May 2018

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson