Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11275/2017

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre	**Decision Promulgated**
On: 9th October 2018	**On 9th November 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MWL
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Semega-Janneh, Counsel instructed by Direct Access**
For the Respondent: **Mr McVeety, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Pakistan born in 1986. He appeals with permission the decision of the First-tier Tribunal (Judge Ford) dated 14th December 2017 to dismiss his protection appeal.

2. The Appellant had asserted a real risk of persecution in Pakistan for reasons of his membership of a particular social group, namely

homosexual men. The Respondent had refused protection on the grounds that it was not accepted that the Appellant was in fact gay.

3. When the appeal came before the First-tier Tribunal it was determined, at the request of the Appellant, on the papers before the Judge. Having had regard to the transcripts of the Appellant's screening and asylum interviews, and a bundle of further evidence supplied by the Appellant, the Tribunal found that the Appellant had failed to discharge the burden of proof in establishing that he was in fact gay.

4. In this onward appeal the Appellant seeks to challenge the First-tier Tribunal's findings on the grounds that they are vitiated for material error of law. In particular it is submitted that:

    i) The First-tier Tribunal applied a higher standard of proof than that applicable in protection appeals;

    ii) The Tribunal failed to have regard to the Appellant's cultural origins and vulnerability.

5. In granting permission to appeal First-tier Tribunal Keane considered in arguable that Judge Ford had acted irrationally in that he rejected the Appellant's claimed sexual orientation with reference to his own perception about how gay men might behave.

6. For the Respondent Mr McVeety defended the decision on all grounds. It was submitted that the Tribunal had reached findings open to it on the evidence, and it had at all times applied the appropriate, lower, standard of proof.

Discussion and Findings

7. I am not satisfied that the First-tier Tribunal applied a higher standard of proof than that applicable in this protection claim. At paragraphs 14-16 the determination sets out the applicable, lower, standard of 'real risk'. It is apparent from the body of the reasoning that this was the standard in fact applied: "Having considered all the evidence provided by [the Appellant] I am not satisfied even to the low level of proof applicable in this appeal that [the Appellant] has told the truth about his sexuality … I am not satisfied that he is at real risk of persecution".

8. The determination sets out five reasons why the Appellant was found not to have discharged the burden of proof.

9. The first is that there was a significant delay in the Appellant seeking international protection. He had been a student in the United

Kingdom since June 2012, and since that date had maintained contact with the Home Office, and indeed had appeals before the First-tier Tribunal. During the entire period the Appellant had, on his own evidence, been aware that he was gay. His family had known he was gay since 2014 and had allegedly been threatening him with violence since that date. Yet the claim was not made until February 2017. The Tribunal held this delay to undermine the Appellant's claim to have a subjective fear of persecution in Pakistan. There can be no quarrel with that finding, which the First-tier Tribunal was plainly entitled to make. It was a finding in accordance with the view expressed by parliament in s8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. Mr Semega-Janneh submitted that the Tribunal had failed to consider the Appellant's explanation for the delay: I reject this ground because the explanation is specifically considered, and rejected, at paragraph 25 of the decision.

10. The second reason was that the Appellant had produced no witnesses to support his claim to have been in frequent contact with members of the gay community in Manchester, including three men with whom he claimed to have directly associated with. He claimed to have had a relationship with at least one of these men and to have lived with him for four months. Mr Semega-Janneh pointed out that in protection claims there is no obligation of claimants to produce corroborative evidence, and it may be an error of law to require them to do so. I accept that general principle. The reason underpinning that principle is that where people have fled for their lives it would be irrational and unfair to expect them to produce documentary evidence of their persecution; repressive regimes are unlikely to provide their victims with proof of their crimes. Where however the evidence is readily available to the claimant, for instance because it is evidence stemming from their life in this country, that principle is not so directly applicable: see TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40. I agree with Mr McVeety that it would have been a straightforward matter to produce some evidence, even it was only in the form of a letter or a photograph. The Tribunal was entitled to take into account the absence of this *TK (Burundi)* type evidence.

11. The third reason was that there were contradictions in the evidence. The Appellant had said at his interview that he had a sexual partner called Mark, and that when "Mark becomes comfortable they would become partners". Printed-out text messages between the two men indicated that in fact Mark was keen to have a relationship, and it was the Appellant who was being evasive.

12. The determination further notes that the medical records obtained by the GP, (which make frequent reference to the Appellant telling the doctor that he is gay) record that he has had multiple sexual partners; this is to be contrasted with his evidence in the asylum interview

where he only mentioned one man. Fifthly the Tribunal notes that all of that 'medical evidence' in fact amounts to no more than the Appellant telling his doctor something and his doctor writing it down.

13. All of those reasons were manifestly open to the Tribunal, and considered cumulatively were a sufficient basis upon which to find that the Appellant had not discharged the burden of proof. There is nothing in the material before me to suggest that the Tribunal somehow erred in failing to consider the Appellant's cultural origins; nor can I find any support for the contention that the Tribunal erred in conducting its evaluation through the lens of how it thought gay men might behave.

14. For those reasons I dismiss the appeal. As I explained to the Appellant at the hearing, it may have been that the decision of the Tribunal would have been otherwise had it been provided with rather more evidence than it had. It was however the Appellant's decision to have his appeal determined on the papers and the Tribunal cannot be held responsible for the evidence – or lack of it – that it is given.

Anonymity Order

15. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

16. The determination of the First-tier Tribunal contains no error of law and it is upheld.

17. There is an order for anonymity.

Upper Tribunal Judge Bruce
31st October
2018