



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11507/2017

THE IMMIGRATION ACTS

Heard at Field House
On 8 June 2018

Decision & Reasons Promulgated
On 06 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPELYARD

Between

I A T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Jones, Legal Representative.
For the Respondent: Miss S Kiss, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan who appealed against the decision of the Respondent who refused his application for international protection. He claimed asylum on the basis of his sexual orientation as a bi-sexual man. That application was

refused and he appealed and following a hearing, and in a decision promulgated on 22 January 2018 Judge of the First-tier Tribunal Page dismissed the Appellant's appeal. He concluded that the Appellant and his partner Mr F were not in a homosexual relationship, or bi-sexual relationship. The Judge at paragraph 29 of his decision found that the Appellant's asylum claim to be "false".

2. The Appellant sought permission to appeal which was initially refused but a renewed application was granted by Upper Tribunal Judge Finch in a decision dated 22 April 2018. Her reasons for that decision are: -

"The Appellant is appealing against the decision by First-tier Tribunal Judge Page to dismiss his appeal against the decision by the Respondent to refuse his claim for asylum.

The First-tier Tribunal Judge failed to accord appropriate weight to individual pieces of evidence such as the written and oral evidence of the Appellant's partner and his other witness and the medical report and assess the evidence holistically. Instead, he placed disproportionate weight on his delay claiming asylum without taking into account the reasons he gave for this delay.

In addition, the First-tier Tribunal made findings on the basis of his own assumptions of what was plausible in another culture. (See *HK v Secretary of State for the Home Department* [2006] EWCA Civ 1037.)

As a consequence, it is arguable that First-tier Tribunal Judge Page's decision contained arguable errors of law and it is appropriate to grant permission to appeal."

3. Thus, the appeal came before me today.
4. Mr Jones argued that the Judge erred in failing to give adequate reasons for rejecting the core aspect of the Appellant's claim given that he is a bi-sexual man in a long-term relationship with his same sex partner. Further the Judge has failed to attach appropriate weight to the Appellant's evidence, that of his partner and the medical evidence. Beyond that though the Judge has attached disproportionate weight to the Appellant's delay in making his application for asylum. Mr Jones supported his submissions with material taken from the Respondent's own guidance. That states: -

"The provision of any extrinsic supporting evidence is not a prerequisite for a genuine claim. The Home Office accepts that most claimants may not be able to provide any extrinsic evidence. The Supreme Court has confirmed in RT (Zimbabwe) that there are no hierarchies of protection amongst the Convention reasons. In such circumstances it would be discriminatory to expect claimants with sexuality based claims to surmount a higher hurdle of providing extrinsic evidence to corroborate their claims. Where a claimant has extrinsic evidence, it will be considered, for example membership of LGB dating sites or support groups. We do not consider sexually explicit material as this is prohibited. Where a claimant has no extrinsic evidence, we will consider the claim based on their

own credibility and consistency of statements with what we know. The position is supported by the Qualification Directive.

To enable claimants to present their case, it may be necessary to ask questions about where claimants have socialised or whether, for example, they have been members of clubs, groups or organisations, including through social media. Where a claimant has indicated that they have interacted with the LGB community, questions enabling the claimant to detail their knowledge and/or interactions with LGB contacts, groups and activities (in either their country of origin or the UK) may be useful. It is important however to note, that claimants who were not, or are not, open about their sexual orientation may not have information about LGB venues or culture. Ignorance of commonly known meeting places and activities for LGB groups is not necessarily indicative of claimant's lack of credibility. Lack of engagement with other members of the LGB community in the UK or failure to join LGB groups may be explained by economic factors, geographic location, language and/or cultural barriers, lack of such opportunities or a fear of exposure. It may also be through personal choice."

5. Mr Jones submitted that continuity of behaviour should not be a cause to doubt the Appellant's claim and that extrinsic supporting evidence is not a necessary requirement. This was an Appellant who had been consistent throughout and in not accepting the Appellant's partner's evidence as it closely mirrored that of the Appellant the Judge appeared to reject anything that corroborated the Appellant's appeal thus creating an "impossible threshold".
6. Further that in considering the medical evidence within the credibility assessment the Judge had not applied an holistic approach. In considering the Appellant's account of what happened to him in Pakistan lacked credibility the Judge had failed to take into account that notwithstanding the fact that the Appellant's claim may appear entirely implausible, it may still be true. For example, the fact that family members within the police force assisted the Appellant. At paragraph 32 of his decision the Judge has wrongly rejected the Appellant's claim to have disclosed his sexuality to a homosexual friend. Further the Judge erred in not considering the explanation that the Appellant put forward for not making claim for asylum upon entry into the United Kingdom.
7. Miss Kiss urged me to accept that the Judge was entitled to come to the conclusions that he did. That his decision is adequately reasoned and deals with the key issues in this appeal. The medical evidence was flawed in that it was simply a function of what the Appellant told the report writer. The Respondent's own guidance, emphasised that "it may be necessary" to ask questions about where claimants have socialised or whether, for example, they have been members of clubs, groups or organisations including through social media. The Judge was entitled to take into account the delay in making application for asylum, and that there are no material errors within this decision whatsoever.
8. I find that the First-tier Tribunal Judge failed to give appropriate weight to individual elements of the evidence including the written and oral evidence of the Appellant's

partner and other witness. The medical report needed to be taken into account simultaneously ensuring that an holistic approach had been given to the assessment of the evidence. That did not happen here. Disproportionate weight has been placed upon the delay in claiming asylum without taking into account the reasons that were given for it. The Judge has made findings on the basis of his own assumptions as to what was plausible in Pakistan and for all the reasons put forward within the grounds seeking permission to appeal to the Upper Tribunal has material erred.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Page.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 4 July 2018.

Deputy Upper Tribunal Judge Appleyard