Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11511/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 October 2018	**On 14 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR HR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance by or on behalf of the Appellant
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The appellant is a citizen of Pakistan born on 10 January 1988 whose application for asylum on the basis of being a gay man from Pakistan was refused. The appellant's subsequent appeal to the First-tier Tribunal was dismissed by Judge of the First-tier Tribunal Robinson, who rejected the appellant's claim to be gay. The judge stated at paragraph 49 that he found the appellant to have fabricated his core story to avoid removal from the UK and rejected it in its entirety. The appellant is now appealing against the decision of Judge Robinson.

The grounds of appeal make four arguments. The first is that the appellant applied for an adjournment at the hearing, renewing an earlier request that was refused, in order to obtain an expert medical report on his mental health. The Tribunal refused the application orally but failed to record the decision or even that an application had been made in the decision. The grounds argue that this shows that the judge did not consider the request fairly.

The second ground of appeal refers to an apparent contradiction in the decision at paragraph 48. At paragraph 48 the judge stated:

> "I conclude that the appellant has not demonstrated that his account is reliable and can be believed. In summary, I find that his core story about his sexual orientation and the nature of his relationship with [his former partner] cannot be relied upon. I take the view that he has manufactured an account of a gay relationship in order to support a false asylum claim. I do accept that the appellant's father was informed by [the appellant's former partner] that he is gay. In summary I do not accept that the appellant has shown that he is gay or that his father has threatened him."

It is contended in this ground that it was unclear how the judge reached a conclusion that the appellant was not gay, having found that his former partner had told the appellant's father that he was.

The third ground of appeal concerns the consideration given by the judge to a First-tier Tribunal decision promulgated in September 2016. In that case a man who is a witness in this appeal successfully appealed a decision of the respondent refusing his application for asylum on the basis of being gay. The appellant had been a witness in that appeal, where the judge found that the witnesses' evidence was credible. The grounds submit that the judge failed to have proper regard to the appellant's credibility having previously been assessed positively.

The fourth argument in the grounds of appeal is that the judge stated that a witness could not recall the appellant's address. The grounds dispute this and state that the witness gave the address and did so quickly and without hesitation. The grounds also argue that a further indication that the appellant's evidence was not properly considered arises from the judge recording that Premier Inn receipts were supplied when they had not been.

Neither the appellant nor a representative on his behalf attended the hearing. On the morning of the hearing an email was received by the Upper Tribunal from the appellant's solicitors, stating that they would not be attending the hearing due to limited funding. There is no mention in the letter as to whether the appellant would himself attend and there was no request for an adjournment.

Before considering the case I asked the clerk to check whether the appellant had arrived at the hearing centre or if any communication had been received from him or his representatives. Having established that there had been no such communication and after leaving the appeal to the last on my list to allow for a late arrival, I decided to proceed despite the absence of the appellant or a

representative on his behalf, given that it was clear from the email received from his representatives that they were aware that the hearing was scheduled to take place today and no application for an adjournment had been made.

Ms Isherwood argued that no material error could arise from the failure to agree to the requested adjournment as there was nothing to indicate what an adjournment would have achieved. The appellant claimed that he suffered from depression, for which he took a single pill daily. Ms Isherwood argued that medical evidence in respect of this could not conceivably affect the outcome of the appeal. She also noted that no medical records or other evidence had been submitted to the Upper Tribunal to show why an adjournment would have made a difference. She also argued that the other grounds of appeal had no merit.

I am satisfied that the appellant has not established that the decision of the First-tier Tribunal contains a material error of law.

On 20 November 2017 the appellant requested an adjournment on the basis that he was suffering from depression for which he was taking medication and wished to rely on a medico-legal report but this could not be obtained in time for the hearing that was scheduled to take place on 7 December 2017. On 23 November 2017 the application was refused and directions were given for the appellant to obtain from his GP medical records to show how often he has consulted his GP about the alleged psychiatric condition and details of any treatment recommended by his GP.

There is no reference in the decision to a renewed application for an adjournment. However, the judge's handwritten Record of Proceedings sets out in considerable detail the application and the reasons it was rejected. The judge noted that the appellant claimed he was unable to obtain medical records because of a merger of GP practices and that further time was needed to obtain them. The judge also recorded in the Record of Proceedings that the application was refused because the appellant had had ample time to obtain written evidence from his GP (having raised the issue in May). The judge also noted that this was an appeal where past ill-treatment was not alleged, and that it was unclear how psychiatric evidence could assist any assessment of risk on return or relocation.

It is unfortunate that these reasons were not recorded in the written decision. However, the reasoning is clear from the Record of Proceedings and I am satisfied that the judge's reasons are adequate to justify the decision to not adjourn the hearing.

The argument that the judge's reasoning in paragraph 48 is confused has no merit. It is clear from reading the decision as a whole that paragraph 48 contains a typographical error and that the judge intended to say that he did <u>not</u> accept that the appellant's father was informed that he is gay. Any other reading of this paragraph would make no sense. Any doubt is removed by considering paragraph 38 of the decision where the judge found there to be no plausible explanation for the appellant's claim that his partner would contact

his father. It follows from the finding at paragraph 38 that the judge did not accept that the partner informed the appellant's father that he is gay. I therefore reject the second ground of appeal.

The third ground of appeal is also without merit. The earlier decision referred to in the grounds of appeal was an appeal in which the appellant was merely a witness. Therefore the judge was not in any way bound by it. In any event, the judge has given consideration to the decision and has explained why a different view has been reached. He also noted that the earlier decision is unclear whether the reference to finding a witness credible was to the appellant or another witness.

The argument that the judge erred by stating that a witness could not remember the appellant's address when in fact he did is not accepted. There is no evidence before me (such as a witness statement from the appellant or the representative who acted for him in the First-tier Tribunal) to support the contention that the judge made this mistake. In the absence of such evidence the appellant cannot succeed with this ground of appeal.

I accept the submission in the grounds that the judge mistakenly referred to Premier Inn receipts. However, this error is not material as it does not undermine any of the core findings made by the judge.

Notice of Decision

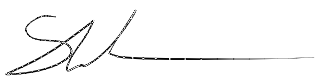
The decision of the First-tier Tribunal does not contain a material error of law and stands.

The appeal is dismissed.

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 his 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



Deputy Upper Tribunal Judge Sheridan Dated: 7 November 2018