



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12161/2017

THE IMMIGRATION ACTS

Heard at Field House
On 1st August 2018

Decision & Reasons Promulgated
On 22nd August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

AHK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L A Turnbull, Counsel instructed by Charles Simmons
Immigration Solicitors

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Bangladesh, appealed to the First-tier Tribunal against the decision of the Secretary of State for the Home Department of 9th November 2017 to refuse his application for asylum. First-tier Tribunal Judge Gurung-Thapa dismissed the appeal in a decision dated 15th January 2018. The appellant appealed against that decision to this Tribunal with permission granted First-tier Tribunal Judge Grant-Hutchison on 20th June 2018.

2. The basis of the appellant's claim is that he says he realised that he was gay in 2011 and he had a relationship with a man between 2015 and 2017. He entered the UK on foot of a visitor's visa on 24 December 2016. He claimed asylum on 25 May 2017. The appellant claims that he kept his relationship secret in Bangladesh. He claims that he attends gay bars in the UK and that he tried to get involved with LGBT community groups in the UK. He claims that his father wanted him to go back to Bangladesh to arrange to get married there but that after his father found out that he is gay he threatened him. Having considered the appellant's application the Secretary of State accepted the appellant's nationality, his sexual identity and that he had been subject to threats from his father. The Secretary of State considered the background evidence and concluded that it would be reasonable for the appellant to relocate to Dhaka or another location in Bangladesh and accordingly refused the appellant's application.
3. Accordingly, in considering the appeal, the task for the judge was to consider risk on return in light of the Secretary of State's findings and any other findings that she made. The judge noted the background evidence at paragraphs 39 to 42 of the decision and considered the case of **HJ (Iran) [2010] UKSC 31** at paragraph 43. The judge states at paragraph 45:-

"Having assessed the evidence in the round, I find that there is no satisfactory evidence before me to suggest that the appellant will live freely and openly as a gay man in Bangladesh."

In reaching that conclusion the judge took into account the fact that the appellant was able to conduct a gay relationship in Bangladesh between 2015 and 2017 without problems and therefore led a discreet life conducting a gay relationship in Bangladesh. The judge concluded that the evidence showed that the appellant conducted a discreet relationship due to family and social pressures rather than fear of persecution.

4. The judge considered the appellant's evidence as to his activities in the UK at paragraphs 46 and 47. The judge found that the appellant asserts that he has made many friends within the gay community, visits gay bars and wanted to volunteer for LGBT groups, but noted that there was no corroborative evidence to show that the appellant has friends within the gay community or that he attends gay bars. The judge further pointed to a material discrepancy in the appellant's account in that in his witness statement he asserts that he has managed to have a few relationships in the UK without fear of being imprisoned, whereas in cross-examination he said that he had not had any gay relationships and that he was not in a relationship at the moment.
5. The judge went on to conclude that the appellant will lead a discreet life as a gay person on his return in response to social and cultural pressures. The judge accepted that the appellant has been threatened by his father but found that there was insufficient evidence to suggest that the father and the wider family members have the power and influence to find out that the appellant has returned to Bangladesh, that he has not received any further threats from his father and he has not received threats from the wider family members, for example his cousin and uncles who he claims are living in Dhaka [49].

Error of law

6. The grounds of appeal complain that the judge failed to make adequate findings as to future risk and that the judge erred in the credibility findings that the appellant would live discreetly in Bangladesh. It is contended that the judge focused unduly upon matters in the periphery of the claim rather than the central elements of the appeal. In granting permission First-tier Tribunal Judge Grant-Hutchison considered it arguable that the judge misdirected herself by failing to take into account the appellant's choice as a practising homosexual to live openly on return to Bangladesh.
7. In her submissions Ms Turnbull submitted that the appellant's family would be aware of his return to Bangladesh. She submitted that the judge failed to take account of the letter from the appellant's father stating that, if the appellant returned to Bangladesh, he would report him to the police.
8. However, the judge found at paragraph 49 that there was no satisfactory evidence to suggest the father would have the power and influence to find that the appellant has returned to Bangladesh or that the appellant had received any threats from the wider family based in Dhaka and Ms Turnbull did not point to any evidence to contradict that finding. In these circumstances I am satisfied that finding was open to the judge.
9. Ms Turnbull referred to various paragraphs in the Country Policy and Information Note on Bangladesh: Sexual orientation and gender identity of November 2017, in particular at Section 2. For example, 2.3.16 states that LGBT persons are not in general open due to social stigma, pressures and norms and to avoid a level of discrimination and violence arising from this. 2.3.17 states that in general an LGBT person who does not conceal their sexual orientation or gender identity may be at risk of treatment which by its nature and repetition amounts to persecution or serious harm. Therefore a key issue is whether a gay person would live openly. Ms Turnbull submitted that the judge failed to give proper reasons for her finding that the appellant would not live openly in Bangladesh. She submitted that the judge erred in taking into account the appellant's decision to be discreet about his relationship when he previously lived in bang in 2015 and 2017 given that the circumstances have changed in that the appellant has now come out to his family. However, in my view it is clear that the point made by the judge at paragraph 45 is that the appellant was able to conduct a discreet relationship between 2015 and 2017 without problems. In my view it was open to the judge to take this into account.
10. Ms Turnbull referred to the appellant's witness statement where at paragraph 8 he said:-

"I was not able to openly display my sexual orientation in Bangladesh as same sex sexual activities, in public or private is illegal and is punishable with fines and imprisonment."

In her submission this indicates the appellant's intention to live openly in Bangladesh.

11. However paragraph 8 of the witness statement does not indicate any such intention. I note that the appellant's oral evidence is set out at paragraphs 27 to 35 of the decision, however there is no record of the appellant stating that he wished to live openly as a gay man in Bangladesh.
12. Ms Willocks-Briscoe relied on the case of **LC (Albania) v Secretary of State for the Home Department [2017] EWCA 351** which endorsed the decision in **HJ (Iran)**. She referred to paragraph 52(iv) which states:-

“Where an individual, on return to his home country, would conceal that he is gay, the foundation of his right to protection is that he modifies his behaviour so as to conceal his sexual orientation to avoid persecution. As a preliminary point, where an individual would behave in the same way wherever he was living and irrespective of the regime so far as protecting his right to a particular sexual orientation is concerned, it seems to me to be a distortion of language to say that he would ‘modify’ his behaviour on return. Whether a person who would hypothetically wish to reveal his sexual orientation might be required to modify his behaviour to avoid persecution is not to the point. The focus must be on the particular individual himself. If, wherever he lived, an individual would in any event keep his sexual orientation concealed, it is not right to say that, to conceal his sexual orientation, he would modify his behaviour on return.”

13. Ms Willocks-Briscoe also referred to paragraph 52(ix) where the court made clear that a judge was entitled to take into account all factors relevant to the issue of how an appellant would behave in the future and was entitled to give considerable weight to how the appellant in that case had behaved in the UK where the constraints on behaviour are different from those in Albania. That is exactly the situation in this case where the judge had attached considerable weight to the way that the appellant has behaved in the UK.
14. In this case the judge considered all of the facts including the way the appellant had lived whilst in Bangladesh in the past and, crucially, how he had lived in the UK. The judge was not satisfied with the appellant's evidence as to how he had been living in the UK. It is clear from paragraph 46 that the judge did not accept that the appellant has friends within the gay community or that he attends gay bars in light of the lack of corroborative evidence. Such evidence could easily have been obtained and there appears to have been no evidence before the judge to explain its absence. Further, at paragraph 47, the judge pointed to what she considered to be a material discrepancy in the appellant's account in that in his witness statement he asserts that he has managed to have a few relationships in the UK without fear of being imprisoned, whereas in cross-examination he said that he had not had any gay relationships and that he was not in a relationship at the moment. I find that the judge was entitled to conclude at paragraph 48 that the evidence shows that the appellant will lead a discreet life as a gay person on his return to Bangladesh.
15. The judge also took into account other factors in relation to the appellant including his education, his ability to speak English, his health and his employment prospects at

paragraph 51 and concluded that internal relocation would not be unduly harsh for this appellant.

16. Reading the decision as a whole I am satisfied that the judge considered all of the evidence and reached conclusions open to her on the evidence that the appellant would live a discreet life upon return to Bangladesh for reasons connected to cultural and social pressures and that accordingly it was reasonable to expect the appellant to relocate to Dhaka or elsewhere and therefore the appellant had not established a well-founded fear of persecution in Bangladesh.

Notice of Decision

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

The decision of the First-tier Tribunal shall stand.

An anonymity direction is made.

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

Date: 14th August 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT

FEE AWARD

The appeal has been dismissed therefore there can be no fee award.

Signed

Date: 14th August 2018

Deputy Upper Tribunal Judge Grimes