



IAC-FH-LW-CK-V2

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/14242/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
On 10 August 2018**

**Decision & Reasons Promulgated
On 03 September 2018**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**FAYZAN [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss X Vengoechea instructed by Livingstone Brown Solicitors

For the Respondent: Mr M Matthews, Senior Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mr [A] against the decision of First-tier Tribunal Judge S Gillespie who dismissed his appeal against the decision refusing protection claims that he had made with his then co-appellant Mr [Ad]. Both are citizens of Pakistan. Mr [A] entered the United Kingdom on a Tier 4 (General) Student visa which was granted on 8 June 2011. His leave was curtailed on 30 April 2012 as the Secretary of State had been informed that he was no longer studying at his chosen college. Mr [Ad] was granted a Tier 4 (General) Student visa on 27 April 2011 valid to 12 October 2015. He studied a Level 4 Business Management course at Leeds Professional

College until it was closed after about a year and a half. He and Mr [A] were arrested by immigration enforcement officers on 8 June 2016 in Belfast where they were living. Their protection claims were based on their orientation as gay men and their relationship as partners.

2. The Secretary of State did not accept that either appellant was gay or that they had a genuine subjective fear on return to Pakistan. He also rejected their claims on Article 8 grounds.
3. At the outset of the hearing Mr Matthews confirmed that Mr [Ad] had left the United Kingdom in November 2017. He had done so voluntarily without assistance from the Home Office. According to an explanation given orally to the respondent from his former agents in Belfast it was because his father had been taken ill. As a consequence, his appeal has been treated as abandoned. The two appeals were originally to be heard in Belfast, however Mr [A]'s appeal was transferred to Glasgow as he has moved here.
4. The First-tier Tribunal did not accept that either appellant had proved they were gay men or that they would be at risk of persecution or ill-treatment under the Human Rights Convention if returned to Pakistan. The detail of the two claims is recorded in the judge's decision which may be summarised as follows.
5. Mr [Ad] realised he was gay from the age of 14. A story of an encounter with another male who had produced photographs of him naked had reached his parents. Mr [Ad]'s mother had encountered Mr [Ad] having sex with another male in addition. This had resulted in ill-treatment from his father. After completing his GCSEs he moved to Multan where he obtained a diploma in electrical sub-engineering and thereafter to Lahore in 2009 where he met Mr [A]. Their relationship started in November 2009. Mr [A] was assaulted by Mr [Ad]'s father in 2010. The couple moved to Karachi where they lived in 2010/2011 and Mr [Ad] entered the United Kingdom as detailed above. He had last spoken to his father on the telephone in 2011 and had been informed that he had dishonoured the family by being gay and that he must never return otherwise he would be killed. He moved to Northern Ireland in 2013.
6. Mr [A] realised he was gay when he was about 16 years old. He had a previous relationship with another male who had secretly made a video of them having sex and began to blackmail him with that video. He had five or six short term relationships before meeting Mr [Ad] in 2009. In August 2010 they were together in Mr [A]'s hometown of Faisalabad when they were seen kissing in a park. Mr [Ad] was able to escape but Mr [A] was arrested and only released after detention of four or five days during which he was severely beaten and payment of a bribe by a friend. His family discovered his sexuality as a result of these events and he encountered hostility as a result in December 2010. He had moved to Northern Ireland with Mr [Ad].
7. The judge heard evidence from [SN] who said that she had known the appellant for two years having met them on the gay scene. She was sure as to their orientation

because they had told her about it a year-and-a-half previous that they were gay. She had met them for the first time at The Kremlin Bar, a venue frequented by gay people.

8. [WB] also gave evidence. He explained in his written statement that he had met Mr [Ad] through his partner's brother who works as an entertainer in The Kremlin. The judge noted evidence given that this person had performed an act as a "drag queen". Mr [B] gave evidence that the appellants had attended the Gay Pride event and had done so on two occasions to his knowledge. He had been aware of them being gay from the first time they had met and that they had attended the 2015 and 2016 Gay Pride event. He knew the people who had provided statements of support to the tribunal. Letters from these refer to the appellants being in a relationship. The judge was also provided with copies of photographs of the appellants appearing in front of a public building with a group behind them, some of whom are draped in a gay flag. There were also other photographs of the appellants together in other settings.
9. The judge's findings and conclusions include credibility concerns arising out of inconsistencies over the appellants' account of events in Pakistan, inferences drawn from their arrest in the United Kingdom and an assessment of the Northern Ireland based evidence which I have set out above in brief terms. The following conclusions were reached at [71] to [78]:
 - "71. The only explanation for them not claiming asylum earlier was the fear that they would be deported. That is not a credible reason for them living here and working without bringing their serious concerns to the attention of the authorities.
 72. I have considered the evidence of Ms [N] and Mr [B] and taken it into account. Both are convinced that the two men are gay but that it is largely based on what they have been told by them and a perception they have formed as a result of their friendship with them. Neither person is a homosexual. Mr [B]' [sic] statement that he believed both men were in the United Kingdom for a 'better life' does not show a perceptive insight. Ms [N] acknowledged that simply attending the Kremlin Bar in Belfast did not make one a homosexual.
 73. The Appellants, according to the claims they have made, have kept their gay activities very much to themselves. There is no evidence of association with an LGBT organisation or affirmation from such that they are practising gay men.
 74. Neither [MR] nor [MI] attended to support them in and yet they have been able to help them. Mr [A] said the latter knew he was gay. He had told him and he accepted the situation.
 75. I have considered the photographs filed. The two men are seen at the gates of the City Hall in one photograph, in front of a group of people apparently campaigning on behalf of gay rights. However, there is no evidence that they are actually part of the demonstration or that other gay people from the demonstration are prepared to support them.
 76. In reaching my conclusions I have considered carefully the submissions made by Mr Peters. Whilst he acknowledges that there were some

problems with their evidence, he said sexual orientation was a difficult subject to discuss, especially in those from a more conservative background. The events precipitating their flight from Pakistan occurred in 2009/2010 and it was reasonable to expect that they might have difficulty in recalling details. There were inconsistencies but also consistencies which deserved a fair consideration in their favour. The case was not entirely about what had happened to them in Pakistan but what would happen to them as gay men if returned there on the basis of their current homosexuality.

77. In regard to what he described as the 'enigmatic person' of the uncle, this man had been in the United Kingdom for about thirty years. It was mostly irrelevant whether he knew whether his nephew was gay. It was quite possible he did not know about events connected with his nephew's family back home. There might well be a deception on the uncle in securing financial support. He had not only been entirely truthful about his homosexuality in the UK with friends. Mr Peters enjoined me to consider the evidence of the witnesses, the fact that they had been observed attending Gay Pride in Belfast, had been seen holding hands and attending at a gay venue, the Kremlin Bar. Again, the appellants sometimes resort to telling lies for the legitimate purpose of protecting themselves against the fears they harbour. The question the Tribunal had to answer was whether they were gay or not and if gay, what they would face on return.
78. I have considered Mr Peters' submissions carefully but am not persuaded in light of the discrepancies and vagueness in their evidence that I can conclude their claims are experience-based. I find they have not proved they are gay men and are at risk of persecution or treatment proscribed by Articles 2 and 3 ECHR if returned to Pakistan."

10. With reference to the opinion dated 25 July 2017 and with the agreement of the parties I distilled six grounds on which I invited submissions. Miss Vengoechea had prepared a detailed skeleton argument and was content for Mr Matthews after initial clarification of matters to make his submissions and she thereafter responded.

Ground one

11. This is in terms that the judge made a mistake of fact. It is asserted that the judge had mis recorded the evidence of the witness Mr [B] with reference to when he learned of the appellants' immigration status. Ms Vengoechea did not have counsel's note of what was said at the hearing and explained that the grounds had been settled by previous agents. On reflection, she decided not to pursue this ground.

Grounds two and three

12. These may be taken together. It is argued that the judge's observation that the appellants had kept their gay activities very much to themselves was an irrelevant consideration as most people irrespective of their sexual orientation tend to keep this part of their life private. Miss Vengoechea clarified that the basis of this ground was that the judge had used this aspect to support a finding that the appellants were not gay. Mr Matthews submitted that this was an observation by the judge on the

evidence by the appellants. Miss Vengoechea accepted that it might be an observation but nevertheless it was an aspect taken into account.

13. In my judgment, this does not amount to legal error. As will be seen from the paragraphs that I have quoted above the judge undertook an analysis of the evidence before him and the observation needs to be read in the context of the second sentence in the same paragraph. It is not argued there was evidence of an association with an LGBT organisation or affirmation from such that they were practising gay men. It is not evident from a fair reading of the decision that the judge had in mind that such an evidential absence of itself undermined the appellant's claim to be gay but it was one of several factors he took into account. It is significant that the witnesses who gave evidence to the judge were not gay. The appellants had indicated their participation in a Gay Pride march and I consider he was entitled to observe an absence of evidence from a gay group which might have supported their claimed orientation.

Ground 4

14. It is asserted that the judge had overlooked the evidence of Mr [B], who confirmed that the appellants had taken part in Gay Price demonstrations in 2015 and 2016 when assessing the photographic evidence relied on by the appellants in support of their attendance at Gay Pride. Paragraph 75 of the decision makes it clear that the judge was commenting on the photograph. In [45] he recorded Mr [B]'s evidence that the appellants had attended the 2015 and 2016 Gay Pride events. The evidence was not that Mr [B] had attended such events. In my judgment, it was open to the judge to draw the inference he did from the photograph that the appellants were not participating. They are portrayed standing in front of a crowd, many of whom are wearing the gay flag. The photograph does not show them mixing with the other participants. The judge was entitled to note this and did not fall into error.

Ground 5

15. This asserts that having failed to address the burden and standard of proof the judge had failed to have proper regard to these aspects when dealing with the evidence. Mr Matthews argued that this ground was general rather than specific. Miss Vengoechea developed this ground further by arguing the erroneous approach related to the way in which the judge had selected the evidence, made observations and referred to the absence of corroboration.
16. I find too that this ground is without any merit. At [16] the judge set out the standard of proof to be applied and only at [15] the burden. His assessment of all the evidence and findings made do not show that he elevated the standard in doing so.

Ground 6

17. It is argued that the judge erred by failing to attach sufficient weight to the evidence both written and oral from the people who had had the opportunity to observe the appellants over two years. Mr Matthews argued that weight was a matter for the judge and it was not argued that the conclusions reached on the evidence had either

been perverse or irrational. The judge had carried out an analysis of the corroborative evidence from the witnesses at [72]. Miss Vengoechea argued that the judge had failed to give due weight to that evidence.

18. I do not consider there is any merit in this ground. The judge acknowledged, as indicated by Mr Matthews, the evidence from Mr [B] at [72] and was entitled to observe that their evidence was largely based on what they had been told.
19. Miss Vengoechea's detailed skeleton raises further grounds of challenge on which permission was not sought or indeed granted. Specifically, reference is made to the judge's analysis of the events relied on by the appellants in Pakistan. She argued that this aspect came within the scope of her general challenge to the erroneous weight given by the judge to the evidence. As already observed, ground 6 is general and unspecific. The grounds are silent on the judge's treatment of the pre-flight evidence.
20. In my judgment, the judge gave legally correct reasons open to him for doubting the appellants' account of events pre-flight and I am satisfied that the judge was entitled to conclude that the account was contradictory, vague and implausible. The judge clearly sensitive to the care needed in a claim based on sexual orientation and directed himself at [47] in the following terms:

"I have been provided with a copy of the Home Office Country Information and Guidance Pakistan: Sexual Orientation and Gender Identity dated April 2016. The policy summary in that document at paragraph 3 states that although same sex sexual acts per se are criminalised in Pakistan, in practice, the authorities rarely prosecute cases and in general gay men, lesbians and transgender people are not at real risk of persecution. There is widespread and systematic state and societal discrimination against LGBT persons in Pakistan, including harassment and violence. This treatment, may, in individual cases, amount to persecution or a risk of serious harm. No effective protection is provided by the authorities. Some LGBT persons do however enjoy a degree of openness with immediate social and/or family circles provided they live discreetly and their sexual orientation does not become unknown outside of these close circles. Most LGBT do not live openly as LGBT due to the social stigma attached. Each case must therefore be considered on its individual facts."

21. A reading of the decision as a whole shows that the judge took a cautious evaluation of all the evidence on which he made findings that were adequately reasoned. Despite the best efforts of Ms Vengoechea, I am not persuaded that the judge erred on the basis of the grounds of challenge and the points raised in her skeleton argument.

NOTICE OF DECISION

The appeal is dismissed.

Signed

Date 20 August 2018

UTJ Dawson
Upper Tribunal Judge Dawson