Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02144/2019

THE IMMIGRATION ACTS

Heard at: Bradford	**Decision & Reasons Promulgated**
On: 12th November 2019	**On: 20th November 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AMYZ
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Brown, Counsel instructed by Collingwood Immigration Services
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a Palestinian born in 1971, last resident in Occupied Palestinian Territory in the West Bank. He appeals with permission against the decision of the First-tier Tribunal (Judge Chambers) to dismiss his protection appeal.

2. The basis of the Appellant's claim for protection is that he is a homosexual, and that his family have discovered this. He claims to have a well-founded fear of persecution by his family who will seek to kill him in order to preserve their 'honour'.

3. It was not in issue that homosexuality falls within the rubric of the Refugee Convention, since gay men in Palestine could be considered to be members of a particular social group. Nor was it in issue that the Palestinian Authorities would fail to provide a sufficiency of protection for a gay man fearing 'honour'-based violence. The claim was nevertheless rejected on the grounds that the Appellant was lying about being gay.

4. The only question before the First-tier Tribunal was therefore whether the Appellant had discharged the burden of proof and shown that he was 'reasonably likely' to be gay. The Tribunal was not satisfied that he had. In its decision of the 20th June 2019 the Tribunal found that the Appellant had given chronologically discrepant evidence about when he was outed in Palestine, when and why he decided to apply for a British visa. It further placed weight on the fact that the Appellant was married with four children: it found that the Appellant must have been having sex with his wife in the period 1996-2003 because they had four children in that time, during which he was projecting an image that he is a "contented heterosexual".

5. The Appellant now challenges the decision of the First-tier Tribunal on the grounds that the decision is flawed for a failure to take material evidence into account, a failure to make relevant findings and for taking immaterial matters into account. The particulars are as follows.

6. First, Mr Brown submits that the First-tier Tribunal erred in failing to examine with anxious scrutiny, and make findings on a key aspect of the case, namely the *sur place* evidence of the Appellant's life as a gay man in the United Kingdom. He had placed reliance on the evidence of two witnesses who attested that over long hours they had spoken with the Appellant and offered him support in coming to terms with his identity. The witnesses were British men who work for an organisation supporting gay asylum seekers. Neither had any doubt that the Appellant is gay; in fact it was their evidence that on their very limited resources they would not come to court for an individual if they were not "convinced" that he was gay and needed their help. Although the Tribunal acknowledges their evidence, and their experience in their field, it concluded that their evidence was outweighed by other material before it: "they are not been in the more advantageous position of the tribunal in looking at the totality of the evidence" (*sic)*.

7. Mr Brown takes issue with this reasoning on the ground that the Tribunal in effect dispenses with this important evidence about the

Appellant's *current* identity, by unduly focusing on his narrative of events in Palestine before he left. Having found that the account of historical events is untrue, the Tribunal does not go on to ask itself whether, nevertheless, it can be satisfied that the Appellant is in fact gay.

8. For the Respondent Mr Diwnycz accepted, and I found, that this ground is made out. The Appellant may have exaggerated or even invented evidence about what happened before he left Ramallah in order to bolster his claim, but it is perfectly possible that he is still gay. That was where the evidence of these witnesses assumed great significance. It was incumbent upon the Tribunal to examine it with care: I am satisfied that this it did not do.

9. Similarly, the Tribunal's focus on historical events meant that the decision did not engage with the Appellant's own detailed evidence about his experience: the emotional turmoil he had endured as he came to the realisation that he was gay, the tension between his homosexuality and his love for his wife, and his struggle to reconcile his sexual desires with his Islamic faith. In granting permission to appeal Upper Tribunal Judge Stephen Smith said of this ground:

> "The Judge said at [23] that 'core elements' in the appellant's account 'strongly suggest that he has fabricated a story concerning the events in his home country'. Arguably, it was not open to the judge to state that 'core elements' of the appellant's account had been fabricated in circumstances when he had not engaged in any operative analysis of the 'core' account provided by the appellant of the realisation of his homosexuality"

10. Mr Brown's second submission concerned the finding made by the Tribunal that the Appellant had been a 'contented heterosexual' whilst living with his wife. Here the Tribunal appeared to place significant weight on the fact that the Appellant is married with four children. Before me Mr Diwnycz acknowledged that in the particular circumstances of this case, where the Appellant has from the outset advanced a narrative of being a married man who gradually came to a realisation that he is homosexual, it is difficult to see what adverse inference might legitimately be drawn from the fact that the Appellant once lived an outwardly heterosexual existence. It is a sad reality that most homosexual people in the world today are required by their circumstances to live an outwardly heterosexual life. I agree that placing weight on that matter the Tribunal erred in taking immaterial matters into account.

11. Given that all of the findings of fact have been set aside I agree that it is appropriate that this is a matter that is remitted to the First-tier Tribunal for hearing *de novo.*

Anonymity Order

12. The Appellant continues to seek international 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

13. The decision of the First-tier Tribunal has been set aside for error of law.

14. The decision in the appeal is to be remade following a fresh hearing in the First-tier Tribunal.

15. There is an order for anonymity.

Upper Tribunal Judge Bruce
12th November
2019