



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

Appeal Number: PA/11189/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 19th March 2019**

**Decision & Reasons
Promulgated
On 7th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**SR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Butler; Fountain Solicitors (Walsall)

For the Respondent: Mr. McVeety; Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") Judge declined to make an anonymity order. No application is made before me, but the appeal concerns a claim for asylum and international protection and in my judgement, it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. SR is granted anonymity

throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant appeals against the decision of First-tier Tribunal (“FtT”) Judge Chambers promulgated on 24th May 2018, dismissing the appellant’s asylum and human rights appeals. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 12th November 2018. The matter comes before me to consider whether or not the decision of FtT Judge Chambers involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
3. At the conclusion of the hearing before me, I announced that in my judgement, the decision of the FtT is not infected by a material error of law and the appeal is dismissed. I said that I would give the reasons for my decision in writing. This I now do.
4. The appellant arrived in the UK on 23rd February 2009 and claimed asylum. Briefly stated, the appellant claimed that he left Iran because the authorities were after him because he had converted from Islam to Christianity in March 2008. The claim was refused for the reasons set out in a decision dated 19th March 2009. The appellant, as he was entitled to, appealed to the Tribunal and his appeal was heard Immigration Judge Baird on 12th May 2009. The appeal was dismissed for the reasons set out in a decision promulgated on 29th May 2009. Judge Baird found that the general evidence of the appellant was vague, inconsistent and unsubstantiated and rejected the account being advanced by the appellant. Judge Baird found that the appellant’s account is unlikely to be true, but even if she was wrong about that, the appellant has not established to the standard of proof required that he would have a well-founded fear of persecution upon return to Iran.

5. On 19th April 2012 solicitors instructed by the appellant made further representations into the respondent. It was submitted on the appellant's behalf that the further representations are materially different to the basis of his original claim. The claim advanced on behalf of the appellant was that he had formed a relationship with his partner, AT, an Iranian national who had been granted refugee status on the basis of his homosexuality. The further representations state:

“.. In his witness statement our client provides background information to his homosexuality and his reasons for not advancing the matter previously. Our client asserts that he began exploring his sexuality following moving to Bolton and particularly following his relationship with [Mr AT] which our client states is his first homosexual relationship. These matters occurred following the determination of our clients asylum claim by the SSHD and the Tribunal”.

6. The further representations made on behalf of the appellant were supported by a witness statement made by the appellant, dated 17th April 2012, and a witness statement comprising of four short paragraphs, made by AT, also dated 17th April 2012. They both claimed to have met in August 2010 and to have moved in together, in January 2012. By a decision dated 17th October 2017, that further claim for international protection was refused by respondent. It was that refusal that was the subject of the appeal before FtT Judge Chambers.
7. At this juncture, it is appropriate to record that in October 2016, before the respondent's decision of 17th October 2017, the appellant gave evidence in an appeal brought by 'AR', another Iranian national who appealed against a decision of the respondent of 29th January 2016, to refuse his claim for international protection. AR arrived in the UK in June 2015, and claimed asylum on the grounds of his sexuality. FtT Judge Chambers had been provided with a copy of the decision of FtT Judge Lloyd-Smith promulgated on 26th October 2016. The appellant and AR both gave evidence before FtT Judge Lloyd-Smith, who rejected their claim to be in a genuine homosexual relationship. AR was found to have a distinct lack of knowledge about the appellant. The appellant's evidence before FtT Lloyd

Smith was that after being in the UK for a year he had realised he was gay. He explained that in Iran he had considered his sexuality but had not had the opportunity to discover or experience a homosexual relationship. The Judge found the appellant's knowledge about AR, particularly his reasons for coming to the UK to be equally vague. At paragraph [16(b)(vi)], FtT Judge Lloyd-Smith states:

"I likewise find the evidence of the partner's knowledge about the appellant's reason for coming to the UK was extremely vague and lacking in detail, the only detail he gave was that in Iran "he had told me his life was in danger also that he is not in a stable mental state". Again, as with the appellant's knowledge of the witnesses background, if in a genuine relationship I would have expected a far greater level of knowledge, particularly given their claimed similar circumstances and experiences."

8. FtT Judge Lloyd-Smith rejected AR's claim that he is a gay man, and it follows that she rejected the claimed relationship between AR and the appellant. AR's appeal was dismissed for the reasons set out in the decision of FtT Judge Lloyd-Smith promulgated on 26th October 2016.
9. The appellant's appeal against the decision of 17th of October 2017 was heard on 22nd May 2018. A summary of the claim advanced by the appellant is set out at paragraph [2] of the decision of FtT Judge Chambers. FtT Judge Chambers heard evidence from the appellant and his partner AT. The evidence given by AT of his relationship with the appellant is referred to at paragraph [16] of the decision of FtT Judge Chambers. Briefly stated, AT claimed that he first met the appellant in August 2010, their relationship began in October 2011 and that they started living together in January 2012. He claimed that the relationship ended in February 2015 but they met, and started seeing each other again in October 2017.
10. At paragraph [18] of his decision, FtT judge Chambers refers to the evidence given by the appellant at the hearing of AR's appeal before FtT Judge Lloyd-Smith. At paragraph [18], FtT Judge Chambers states:

“... having regard to the fact that the appellant gave evidence of a four-year gay relationship with [AR] which was rejected, the findings are of some importance in this appeal. The Judge in [AR’s] appeal decided that what the appellant said about delaying making a claim because of his sexuality for several years lack credibility. The decision in the appeal of [AR] it’s not the starting point in this appeal. The appellant’s appeal must be separately considered on its own individual circumstances. It is however difficult to reconcile the basis of the finding against [AR] in the appeal that it was not demonstrated that he was in a relationship with the appellant. The Tribunal looking at the same evidence from the appellant concludes that he was not in a relationship with [AR]. That finding does not stem from the decision in [AR’s] appeal but from the Tribunal’s rejection of the appellant as a credible witness in this appeal.”

11. In reaching his decision, F&T Judge Chambers considered the evidence of the appellant’s witness, AT, having considered in particular, the reasons advanced for the breakdown of the appellant’s relationship with AT in February 2015. At paragraphs [20], F&T Judge Chambers states:

“... the appellant is not demonstrated to be interested in religious matters. The Tribunal having regard to the cavalier fashion in which the appellant seems to put forward categories of persecution, concludes that the appellant was not telling the truth about his religious involvement. The contention that the appellant and [AT] were partners from January 2012 to February 2015 appears to be a recent concoction to fit in with either side of the gap of 33 months in relation to the claimed but fictitious relationship he is said to have had with [AR], whose appeal was dismissed in separate proceedings.”

12. At paragraph [21], F&T Judge Chambers noted that the appellant had now abandoned his previous claim, that in any event had been rejected, that he fears return to Iran due to his religion. F&T Judge Chambers stated:

“... The appellant is not a witness of truth. The Tribunal conclude (*sic*) he is not telling the truth. The Tribunal plays (*sic*) no reliance upon the evidence of Mr [TA]. The Tribunal agree (*sic*) with the submissions made in the letter on behalf of the respondent. The appellant is not a refugee. The appellant has not since coming to the United Kingdom become a Refugee. The asylum appeal is dismissed.”

The appeal before me

13. In the grounds of appeal relied upon by the appellant, it is said that the F&T Judge has failed to give anxious scrutiny to the claim and has failed to make any findings on any factual aspect of the appellant’s case. It is

accepted that the FtT Judge found that the appellant is not a credible witness, but in reaching the decision, it is said, the FtT Judge fails to demonstrate that he applied the lower standard applicable. Furthermore, it is said that the FtT Judge fails to give adequate reasons for rejecting the live evidence of [TA], who has been recognised as a refugee on account of sexuality, and fails to give adequate reasons for rejecting the appellant's evidence that he is gay.

14. Before me, Ms Butler relied upon the grounds of appeal, and submits that the FtT Judge failed to give adequate weight to the evidence of the witness, AT. She submits that the evidence of AT was not properly considered by the Judge, and the adverse credibility findings that had previously been made against the appellant in entirely separate appeals, have impacted upon the Judge's assessment of the claim now being advanced, and the evidence before the Tribunal.
15. In reply, Mr McVeety submits that at paragraphs [5] and [6] of the decision, the FtT Judge properly refers to the applicable burden and standard of proof and there is nothing in the decision that suggests that the Judge applied any heightened standard of proof. He submits the FtT Judge was entitled to consider the adverse credibility findings made against the appellant, by two different Tribunal Judge's in two unrelated appeals previously. He submits that at paragraphs [14] to [19], the FtT Judge considered all the material available to the Tribunal in the round, and having considered the evidence of the appellant and his witness, TA, reached findings that were properly open to the Tribunal on the evidence. He submits it was open to the Judge to reject the claim and to find that the account given by the appellant and TA of a relationship between January 2012 and February 2015, and since October 2017, was a concoction to fill either side of the gap to the claimed, but fictitious relationship, that the appellant claims to have had with AR.

Discussion

16. I reject the claim that the FtT Judge fails to demonstrate that he applied the lower standard applicable. Ms Butler was unable to direct me to anything within the decision itself, that demonstrates that the Judge had in mind anything other than the lower standard that is applicable.
17. As Brooke LJ observed in the course of his decision in **R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ 982**, “unjustified complaints” as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.
18. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are wholly unsupported by the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really could not understand the original judge's thought process when the Judge was making material findings.
19. The claim made by the appellant is a simple one. It is summarised at paragraph [2] of the FtT Judge's decision. I have had an opportunity to read the witness statements that were before the FtT Judge. The appellant's witness statement dated 17th April 2012, was a statement that the appellant made in support of the further submissions made to the

respondent. It comprises of eight paragraphs, and in the briefest of terms, the appellant sets out where and when he met AT. There was also a statement from AT dated 17th April 2012, which comprises of four very short paragraphs. Neither of those witness statements contain any meaningful information about their relationship. Following the refusal of the claim by the respondent, the appellant signed a further witness statement dated 11th May 2018 in readiness for the hearing of his appeal. The appellant responded in the briefest of terms to the matters referred to in the respondent's decision. At paragraph [7] of that statement, the appellant refers to his relationship with AR and claims that on 10th August 2017 the appellant found out that AR was cheating on him, and so he stopped seeing AR. In September 2017 the appellant started to post on the internet about being homosexual, and in October 2017 he was contacted by AT. The appellant claimed that they met up, and resumed their relationship. The appellant stated that AT lives in Wigan, and they see each other as much as they can, and the appellant sometimes stays over with AT. AT had also signed a witness statement dated 15 May 2018. In his statement, AT refers to their relationship between October 2011 and February 2015. He claims that the relationship ended in February 2015, because of their disagreements with regards to the appellant's involvement with religious activities. AT claims that after about 33 months, one of his friends told him about an article from the appellant on the internet. AT claims that he read the article, and he then contacted the appellant.

20. As the FtT Judge properly noted at paragraph [20] of the decision, the appellant's claim that he converted to Christianity and became involved in religious activities, was a claim that was rejected by FtT Judge Baird. At paragraph [21] of his decision, FtT Judge Chambers refers to that previous claim and properly notes that the appellant has simply abandoned that aspect of his claim without qualification or explanation. It was in the circumstances open to FtT Judge Chambers to conclude, having carefully considered all of the evidence, that the claim made by the appellant and

AT that they were partners between January 2012 and at February 2015, “.. *Appears to be a recent concoction to fit in with either side of the gap of 33 months in relation to the claim that fictitious relationship [the appellant] is said to have had with AR..*”.

21. Although it is right to say that AT has been recognised as a refugee, on the basis of his sexuality, it does not follow that the FtT Judge was bound to accept that the appellant and AT are in a relationship, or that the appellant is a homosexual. The evidence of AT was that his relationship with the appellant had ended in February 2015, because of disagreements with regard to the appellant’s involvement with religious activities. In reaching his decision, the FtT Judge was entitled to have regard to the fact that the appellant’s claim to have converted to Christianity and his account of religious activities had been rejected by Judge Baird, and that the appellant has now abandoned that claim, without any explanation.
22. It is clear in my judgement that the FtT Judge considered the claim advanced by the appellant. The Judge rejected the appellant’s claim for the reasons set out in the decision, and in my judgement it was open to him to do so. In my judgement, the findings reached by the Judge were neither irrational nor unreasonable in the *Wednesbury* sense, or findings that were wholly unsupported by the evidence. The assessment of such matters is always a highly fact sensitive task. The FtT Judge was required to consider the evidence as a whole and clearly did so.
23. The FtT Judge considered the claim by reference to the test set out by Lord Hope in his judgement in **HJ (Iran) -v- SSHD [2010] UKSC 31**. Such appeals involve what is essentially an individual and fact-specific inquiry. The FtT Judge found that the appellant is not a homosexual male. The first stage of the test set out in HJ (Iran) is not satisfied by the appellant.
24. In my judgment, the appellant is unable to establish that there was a material error of law in the decision of the FtT and it follows that the appeal is dismissed.

Notice of Decision

25. The appeal is dismissed and the decision of FtT Judge Chambers stands.

26. No anonymity direction was made by the First-tier Tribunal. As this is a protection claim, it is appropriate that a direction is made.

Signed

Date

2nd May 2019

Deputy Upper Tribunal Judge Mandalia