



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

Appeal Number: PA/12970/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

Heard on 14 May 2019

On 15 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MUHAMMAD [N]
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones of Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Pakistan born on 7 July 1989. He appeals against a decision of Judge of the First-tier Tribunal Coufts sitting at Hatton Cross on 11 December 2018 in which the Judge dismissed the Appellant's appeal against a decision of the Respondent dated 29 October 2018. That decision was to refuse the Appellant's application for international

protection. The Appellant entered the United Kingdom on 18 April 2011 with leave as a student valid until 23 May 2012. Leave was extended in this category until 31 May 2014. A further application to remain in the same category was refused by the Respondent on 9 September 2014 with no right of appeal. The Appellant has had no leave to remain since then. On 30 April 2018 the Appellant made a claim for asylum the refusal of which has given rise to the present proceedings.

The Appellant's Case

2. The Appellant claimed to be at risk on the grounds of his membership of a particular social group namely, homosexual men. The Respondent does not accept the Appellant's claimed sexual orientation. The Appellant realised he was gay when he was 16 years old and he became attracted to a college friend. The Appellant concealed matters from his family and friends and hoped that no one would realise he was gay. He was a practising Muslim and had been taught that homosexuals should be killed. He did not have any relationships with men or women when he was living in Pakistan. When he came here to study it was his intention to return to Pakistan at the conclusion of his studies.
3. He had had two relationships with men since being in the United Kingdom. The Appellant was taken to a gay club in Soho by his friend [J] after which the Appellant started a relationship with [J] which lasted for 18 months. They would go to the XXL gay club in London together. The relationship ended when [J] moved to Canada with his family. The Appellant next entered into a relationship with another man called [OA] whom he had met in the XXL club. This relationship lasted until June 2015. The Appellant had attended gay clubs and used gay apps such as Grindr. He had been tested for sexually transmitted disease and was presently living in Streatham Vale sharing his house with some gay friends.
4. The Appellant feared his family in Pakistan who have been asking him to get married since 2017. His family told him they had arranged to his engagement in Pakistan to a woman known as [A]. He then told his family he was gay; he felt compelled to do so because he did not wish to ruin [A]'s life. The Appellant's uncle came on the telephone and verbally abused the Appellant and the Appellant's brother threatened to kill the Appellant. His last contact with his family was on 8 February 2018. He had been suffering from anxiety when he attended for his screening interview on 30 April 2018 and had meant to say that he told his family two weeks before the screening interview that he was gay but mistakenly had said he had told them two months before the screening interview.

The Decision at First Instance

5. The Judge did not find the Appellant's claim to be credible to the lower standard. If the Appellant was gay it would be reasonable to expect that he could explain in more detail how he came to realise his sexuality and

the barriers and issues he faced in trying to live that different life in Pakistan given the restrictive situation there. Instead the Appellant has asserted that in coming to terms with his sexuality he avoided contact with friends and family. This was a vague explanation in the Judge's view, see [56] and it was more credible that the Appellant was concentrating, as he had maintained in his interview, upon his studies. It was reasonable to conclude that the Appellant would have applied for protection upon arrival here but it was noticeable that he had told the Respondent it was his intention to complete his studies then return.

6. If the Appellant were genuinely a homosexual it was reasonable to conclude that he would find how his sexuality was treated by the Islamic faith to be upsetting. He had not sought to change his religion or provide any details of the conflicts he had experienced with his faith or how he had tried to resolve them. If the Appellant was in an intimate relationship with a person for 18 months, it was not credible to think he would not know that person's date of birth. The explanation that the Appellant was under a lot of stress was being used by him to explain away a deficiency in his account. It was not credible to say that the Appellant had no photographs of himself with [J] because he did not possess a camera when the possession of a smart phone was an everyday item. As a student he would be required to keep in contact with his college by email and would thus need a smart phone.
7. It was not credible that the Appellant could not remember the date of birth of the man he claimed to have had a second relationship with. The Appellant was in a relationship with this person for over two years and he would have wanted to know this person's age and date of birth. It was inconsistent that on the one hand the Appellant said he did not know of [O]'s immigration status but later said that [O] was a British citizen and believed the Appellant only wanted to be in a relationship with [O] for that reason, to get status. On the other hand, the Appellant had been clear in his interview with the Respondent that he had never asked [O] about his immigration status. Photographs said to show the Appellant with [O] could not be verified. The Judge was not satisfied that the Appellant had been in a relationship with either [J] or [O] as claimed.
8. The evidence of a supporting witness, Mr Raja, was found by the Judge to be partisan and was accordingly afforded less weight, see [77]. The Appellant's attendance at gay clubs was not determinative of the Appellant's sexuality. It was reasonable to conclude that the persons the Appellant shared a house with would be able to speak to the Appellant's personal circumstances, but no supporting witness statements had been obtained from them. The Appellant had been inconsistent about when he claimed to have told his family that he was gay. The Judge did not accept the Appellant had a conversation with his family in Pakistan. The Appellant's conduct in overstaying his student visa and not leaving when required damaged the Appellant's credibility. The Judge dismissed the appeal.

The Onward Appeal

9. The Appellant appealed against this decision in grounds settled by counsel who had appeared at first instance and who appeared before me. Nevertheless, counsel's grounds persistently referred to the Judge as she notwithstanding that Judge Coutts is male. The grounds argued that the Judge had not made clear findings about the witness Mr Raja who had given evidence that he had seen the Appellant in a wide range of circumstances and situations. Mr Raja was either mistaken in his genuinely held belief or was lying but it was not possible to tell from the determination which decision the Judge had made. The question was whether the Judge should have asked himself did he accept the witness' evidence? The Judge was not obliged to accept the evidence of the witness but was obliged to make findings as to credibility.
10. The Judge had failed to take into account the particular difficulties of an asylum claim made on the basis of sexuality. A report dated September 2013 from the UK Lesbian and Gay Immigration Group was before the Judge which commented extensively on delay in claiming asylum in homosexual cases. Small discrepancies should never be the basis of a refusal of protection because of a lack of credibility.
11. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Hollingworth on 15 February 2019. He noted that the Judge had stated that the evidence of Mr Raja was found to be partisan and thus afforded less weight in the round. Given that the attendance of Mr Raja at the hearing and the extent of his knowledge had been acquired on the basis of being a friend of the Appellant it was arguable that the Judge should have found Mr Raja to have been credible and attached greater weight to Mr Raja's evidence. The Judge should have set out clear findings why Mr Raja's evidence that the Appellant was seen kissing other men was not accepted. It was arguable that the absence of any further evaluation of Mr Raja's evidence affected the outcome. It was arguable that the features of Mr Raja's evidence were relevant to the conclusions reached although not necessarily determinative thereof. It was also arguable that too much weight had been attached to the absence of the witnesses referred to at [79] of the decision (the persons with whom the Appellant shared a house). The evaluation by the Judge of the application of section 8 had been affected through not taking into account the totality of the factors as identified in the permission application.

The Hearing Before Me

12. For the Appellant counsel argued that the witness Mr Raja had been granted refugee status on the basis of his membership of a particular social group, gay men in Pakistan, but the Judge had not made adequate

findings in relation to Mr Raja's evidence. Mr Raja was sure that the Appellant was homosexual. He had given wide-ranging evidence that the Appellant had frequented gay situations and had interacted with other men. There were only two possible conclusions about Mr Raja's evidence either he was mistaken, or he was lying. The Judge had not given much weight to that evidence but had not made a decision why he rejected it for example because it was mistaken. The Judge was obliged to say what evidence he accepted or rejected and why. The 2nd ground was that the Judge had overlooked the report "Missing the Mark" which had offered an explanation why there could be delay in disclosure in LGBT cases. Counsel emphasised that she relied principally on ground one, the treatment of Mr Raja's evidence.

13. In reply, the Presenting Officer acknowledged that the Respondent had granted Mr Raja asylum status and it was not a case of Mr Raja succeeding on appeal to a Tribunal. The Judge had dealt at [76] and [77] with whether Mr Raja was mistaken or lying. What the Judge had said at [77] was permissible, that he had found his evidence to be partisan as a friend of the Appellant which detracted from its probative value and so was afforded less weight in the round. At [78] the Judge had arrived at permissible and well-made findings that the Appellant's attendance at gay clubs and that he had been seen kissing other men were not on their own determinative of the Appellant's sexuality. In arriving at those conclusions, the Judge was following the guidance.
14. There were a vast number of adverse credibility findings in this determination such as: the 3-and-a-half-year delay in claiming and the absence of evidence from either of the men said to be in the two main relationships which the Appellant had had in the United Kingdom. The Judge had rejected the Appellant's claim not have a smart phone and the Appellant had failed to provide evidence from his housemates. When set in the context of the claim these were permissible even if some findings were stronger than others. There was nothing irrational or perverse about the Judge's determination. The guidance from the 2013 report cited in the grounds did not have the force of law. [78] showed the Judge was not taking a binary or over prescriptive view. The Judge was entitled to take the delay point into account at [85]. The Appellant's conduct in overstaying his visa and not leaving when required damaged the Appellant's credibility but having considered all matters in the round such damage was minimal because the Appellant's evidence was otherwise not credible.
15. In closing counsel accepted that this was not a rationality challenge and it was not being argued that the Judge's credibility conclusions were either irrational or Wednesbury unreasonable. The issue was whether the Judge had dealt properly with Mr Raja's evidence and the guidance.

Findings

16. The Judge did not find the Appellant to be a credible witness and gave a number of reasons which led him to that conclusion. The main complaint taken against the determination is in relation to the Judge's treatment of a supporting witness Mr Raja who had been granted refugee status by the Respondent on the grounds of sexual orientation. The Judge rejected Mr Raja's evidence because he found it to be partisan as Mr Raja was a friend of the Appellant. As an interested witness the weight that could be placed on Mr Raja's evidence was reduced. The principal issue in this case turns on whether that self-direction which appears at [77] was or was not a material error of law. The reduced weight afforded to Mr Raja's evidence was a factor in the overall credibility assessment of the Appellant's claim to be gay. However, it is going too far to suggest that the Judge should have made a finding on whether Mr Raja was or was not lying. The burden of proof was on the Appellant. He put forward Mr Raja as a witness, but Mr Raja was not, in the Judge's view, an impartial witness. He was someone who was a long-standing friend of the Appellant and wished to support the Appellant's claim. Such a situation is not unknown in this jurisdiction. An Appellant might call a close relative to confirm the Appellant's account of matters, but that evidence might, depending on the circumstances, be given little weight by a Judge because the Judge concludes that the relative has allowed their closeness to an Appellant to influence their evidence.
17. A misguided attempt to help a friend or family member does not mean that a Judge has to make a finding that the witness is lying. It is sufficient that the Judge in assessing the weight of the various pieces of evidence ascribes little weight to that particular witness' evidence. I bear in mind that this Judge had the benefit of seeing both the Appellant and Mr Raja give evidence and be cross examined. It was a matter for the Judge to assess the evidence that was being given to him and decide what weight if any he could place upon it. As the Presenting Officer submitted to me, there were many areas where the Appellant's evidence was found to be unreliable. The Judge had to weigh all the evidence and arrive at a holistic assessment in the round.
18. I do not accept that the Judge had come to a view on the Appellant's credibility based on what the Appellant had said and then as an afterthought dismissed Mr Raja's evidence. That would be to make the mistake prohibited by the authority of **Mibangi**. A fair reading of the determination shows that the Judge considered all the evidence in the round before arriving at any specific conclusions. The findings on Mr Raja's evidence for example come before the Judge's findings on the section 8 delay point under the 2004 Act and also come before the Judge's conclusion at [84] that the Appellant had not had a conversation with his family in Pakistan informing them that he was gay. The Judge found it more credible that the Appellant was under pressure to get married and when the Appellant rejected that arrangement it prompted a claim for asylum in order to avoid a return to Pakistan. In short, the Judge found

that the Appellant's claim for asylum was not motivated by a need or desire to seek international protection.

19. The 2nd ground of onward appeal in this case is that the Judge paid inadequate attention to the UKLGIG report. I agree with the submission of the Presenting Officer that the Judge evidently did have the guidance on the correct treatment of sexual orientation claims in mind when giving his determination. At [78] the Judge specifically stated that behaviour was not the basis on which one could conclude a person's sexual orientation (and see page 13 and onwards of the UKLGIG report). The report states that small discrepancies should never be the basis of a refusal of protection because of what is as a result said to be a lack of credibility. That is true of any credibility assessment in this jurisdiction. The problem for the Appellant was that these were not small discrepancies in his account but fundamental ones which went to the core of his claim.
20. There were significant omissions such as the failure to call the Appellant's housemates, there was a lack of knowledge of the two men with whom the Appellant had said he had lengthy relationships, there was no supporting evidence for example photographs showing the Appellant with [J] in circumstances where it was reasonable to have expected that evidence to have been relatively easily provided. The burden was on the Appellant and it was for him to provide evidence in support of his claim. A failure to provide evidence in circumstances where it was reasonable to expect such evidence, entitled the Judge to form an adverse credibility view. I do not find there was any material error of law in the determination in this case and the grounds of onward appeal are no more than a disagreement with the result. I dismiss the Appellant's onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 15 May 2019

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT

FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 15 May 2019

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Judge Woodcraft
Deputy Upper Tribunal Judge