



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

Appeal Number: PA/13677/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20th June 2019**

**Decision & Reasons Promulgated
On 2nd July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MR U A
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris, Counsel instructed by Buckingham Legal Associates

Ltd

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan whose appeal was dismissed by First-tier Tribunal Judge Obhi in a decision promulgated on 27th February 2019. The judge concluded that the appellant was not gay and that the appeal should therefore be dismissed under the Refugee Convention and on human rights grounds.
2. Grounds of application were lodged. It was said that the judge had not given proper consideration to the appellant's inability to give oral evidence

and had attached too much weight to alleged discrepancies with insufficient weight given to the medical evidence. Reference is made to well-known case law. The core issue before the judge was that the appellant was at risk in Pakistan due to his homosexuality. While the judge had commented on the lack of evidence for the appellant the skeleton argument referred the Tribunal to the proposition that supporting evidence was not a pre-requisite for a genuine claim. The appellant's cousin (who was regrettably unable to attend the appeal hearing) had provided a written statement to confirm he was aware that the appellant was gay. The judge did not appear to reject the appellant's cousin's account and failed to give adequate reasoning as to why in the round the evidence from the appellant's cousin and friend did not amount to evidence of the appellant being openly gay. The judge had accepted that the appellant's extreme anxiety might be further confirmation of the fact that he was telling the truth, but these very reasonable considerations were disregarded by the judge because of the finding that there were inconsistencies in his account about when his family found out about his sexuality. In respect of the delay of disclosing his sexuality the judge did not consider whether the appellant's delay in disclosing that was reasonable and did not consider the evidence in the round. The judge had appeared to misdirect herself in paragraph 55 when she said that the Rule 35 report was a general report and did not examine the scars in detail and the physician compiling it was clear in stating that it was not a medico-legal report. This was independent evidence that the appellant was a potential victim of torture.

3. Permission to appeal was initially refused but granted by Deputy Upper Tribunal Judge Chamberlain in a decision dated 21st May 2019.
4. Thus, the matter came before me on the above date.
5. For the appellant Ms Harris submitted that the judge had considered the medical evidence in paragraphs 46 and 56 of the decision and had not given that report sufficient weight. This was an appellant who did not just suffer from anxiety but had post-traumatic stress disorder. The judge had attached too much importance to the evidence that was not available to the appellant and it was unfair that the appellant who could not give evidence should be criticised for not bringing forward further evidence. The judge had not considered that the terms of the medical report might be an explanation for the possible discrepancies in the appellant's evidence. The reasoning was flawed and too much attention was paid to the inconsistencies in the appellant's evidence. I was asked to set the decision aside and remit it to the First-tier Tribunal for a further hearing where the cousin would be available to give oral evidence.
6. For the respondent Mr Tufan said that it appeared the appellant wanted a second bite at the cherry. The judge could only make findings on the evidence that was available to her. She had given clear reasons why the appeal should be rejected. There was a Section 8 issue in that he only claimed asylum when his removal was imminent. The judge was entitled

to rely on the discrepancies that were clearly pointed out in the decision and there was no error in law. She had fully considered the medical evidence and the decision should therefore stand.

7. I reserved my decision.

Conclusions

8. The judge gave a number of reasons why she was not satisfied that the appellant was a gay person. In so doing the judge took the medical evidence into account. In paragraph 46 she said the psychiatrist had concluded that the appellant suffered from post-traumatic stress disorder and depression and that he was not fit to give evidence. The judge also noted that the psychiatrist had accepted his account without question and the report was based almost entirely on what the appellant had told her. There was an element of speculation in the report in terms of what would happen to the appellant should he be returned. The judge did not dispute the fact that the appellant was not fit to give evidence at the hearing saying in paragraph 47 that it was unfortunate but she had to rely on the written evidence which was provided.
9. In paragraph 48 of the decision the judge noted that the appellant claimed he was attacked by four people and the brother of the man he had a relationship with in Pakistan. It was unclear what his parents found out about this. In his interview he was asked at question 62 about when his parents found out that he was gay and he responded, "when the attack happened". He went on to say that that was 25th July 2010. Later in the interview he says that they knew that he had been attacked but it was not until he came to the UK that they knew why he had been attacked. At question 77 he says his family told him that they wanted nothing to do with him after he told them and they told him that he had brought shame on them.
10. In paragraph 49 the judge found it difficult to believe that the appellant did not tell his father that he had been attacked because he was gay. The appellant also makes a point of saying that people were spreading rumours saying he had had sex with five men and presumably there would be evidence in hospital that he had presented with wounds from a sexual assault. Indeed, at question 83 of the interview he stated he received threats from Pakistan after the incident "when people found out that I was gay ...".
11. The judge concluded that the appellant had been inconsistent about when his family found out about his sexuality, who knew about it and when they found out. In paragraph 50 the judge noted his account had developed from one in which he was attacked and beaten by four men to one which he was raped by them.
12. In paragraph 51 the judge noted that the appellant was examined by a doctor when he was detained and the findings of that report are contained

in a Rule 35 report. He was found to have a lot of scars and the account which he gave the doctor was that he had been approached by five people who were drunk, for sex and that he refused and he was beaten thereafter. The judge noted that the doctor was concerned that the appellant may have been a victim of torture. The appellant did not tell the doctor at that point that he was gay. There was a statement which appears at page K3 of the respondent's bundle in which the appellant gives a similar account to the one he gave his doctor.

13. The judge went on to note that the appellant's account of what happened in Pakistan needed to be set out into the context of his life here. He came here as a student. He met a boyfriend when he was at college and had a relationship. He claimed that he had open relationships and was therefore having relationships with lots of men but there was no evidence of that. He claimed he attended gay clubs but there was no evidence of that either. The only evidence that the appellant could point to is from his friend Mr Akhtar who had provided a statement to the Home Office in support of his claim. He is a British national who says he knew the appellant was gay in 2010. However, his oral evidence was vague and unhelpful. All he could say was that he had seen the appellant share a room with a friend and he knew that he had a white boyfriend for a few months.
14. The second witness was the appellant's Belgian national cousin who was unable to come to the UK to give evidence but he provided a handwritten letter.
15. The judge said in paragraph 54 that apart from the appellant's cousin and his friend Mr Akhtar there was no evidence of the appellant being a gay person. The judge was surprised that he did not ask for one of his acquaintances from the clubs he visits or one of the people that he had an "open" relationship with to support his claim.
16. Reviewing the evidence, the judge did not accept, even on the lower standard of proof, that there was a reasonable likelihood that the appellant was gay. He had been inconsistent about who he knew about his sexuality, he had been inconsistent about whether he was beaten because he refused to have sex with his five drunken assailants or whether he was raped by people seeking to avenge him of having a relationship with the brother of the ringleader. The judge was unable to find that the scars on his body were as a result of him being gay. It was likely that he had been assaulted but she could not make a finding as to when that assault occurred.
17. In paragraph 56 the judge considered the medical report of Dr Kashmiri in which he described a very distressed individual. The judge was aware that often there would be no supporting evidence in relation to claims which are made by asylum seekers. She also bore in mind that some asylum seekers would not tell the true reason that they left their country. In paragraph 57 the judge concluded that the appellant's account about what

his family found out about his sexuality was inconsistent. There was no evidence to support the fact that he had relationships here and the only other witness was unable to provide persuasive evidence that the appellant was having a gay relationship when living with him. He had also had many opportunities to claim asylum and the fact that he had not done so until he was going to be removed was a significant factor that went against him. The judge accepted that he was likely to have been the victim of an assault but she did not know the context of that attack. The attack alone did not confirm that the appellant was a gay person (paragraph 59).

18. In a case of this nature it is unfortunate if the appellant is unable to give oral evidence. However, the judge did not hold that against the appellant and she properly appreciated that she could only proceed based on the evidence presented to her. She clearly had regard to all the evidence including the terms of the medical report the terms of which she rehearsed in paragraphs 46 and 56. The judge did not ignore or discount the medical evidence but the appeal turned on the evidence presented to the judge that the appellant was homosexual.
19. What the judge correctly focused on was the quality and extent of the evidence placed before her that the appellant was a gay person and she gave very clear reasons for concluding that the evidence was not sufficient, even to the lower standard, to prove that the appellant was gay. Those reasons are sustainable and adequate. It follows that there is no error of law in the judge's decision which must stand.

Notice of Decision

20. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
21. I do not set aside the decision. I shall continue the anonymity order.

Order 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 order applies both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed *JG Macdonald*

Date 28th June 2019

Deputy Upper Tribunal Judge J G Macdonald