



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-000578

First-tier Tribunal No: PA/55676/2021

IA/17386/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 June 2023

Before

UPPER TRIBUNAL JUDGE OWENS

Between

JUEL AHMED
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Reza, Solicitor acting on behalf of JKR Solicitors
For the Respondent: Mr T Melvin, Senior Presenting Officer

Heard at Field House on 9 May 2023

DECISION AND REASONS

1. The appellant appeals against a decision of First-tier Tribunal Judge R E Barrowclough promulgated on 25 January 2023 (“the judge”) dismissing his appeal against a decision by the respondent dated 18 November 2021 refusing his asylum and human rights claim.

Background

2. The appellant is a citizen of Bangladesh born in March 1987. He originally entered the United Kingdom as a student on 20 October 2010. On 7 December 2018 he applied for asylum on the basis of his sexual orientation as a gay man.

The Decision

3. The judge heard oral evidence from the appellant as well as three witnesses, one of whom, Miss Kawsar, is an LGBT activist and the current chairperson of the Apanjon Association. A second witness, Mr Hossein, is also a member of the same association and claimed to be a previous sexual partner of the appellant. The third witness was the appellant’s brother. The judge decided that the appellant was not a credible witness and disbelieved his account of being gay. He relied on

the delay in the appellant's claim for asylum, inconsistencies in his evidence as to whether he had been living an openly gay lifestyle since 2011 as well as inconsistencies between the evidence of the appellant and his brother. The judge dismissed the appeal on all grounds.

Grounds of Appeal

Ground 1 - The judge failed to assess the evidence of the witnesses and failed to give reasons or adequate reasons for rejecting the witnesses' evidence

4. The judge failed to engage properly with the evidence of Miss Kawsar and Mr Hossein. Although the judge provided reasons why he rejected the evidence of the appellant's brother, the evidence of the second two witnesses was not challenged by the respondent. It was unfair of the judge not to give any weight to their evidence.

Ground 2 - Attaching excessive importance to the delay factor

5. The judge gave too much weight to the issue of the appellant's late claim for asylum. The appellant gave plausible reasons for not claiming asylum earlier because of his religious and cultural background.

Ground Three - Failure to give weight to photographs and evidence of the appellant's attendance at gay clubs and gay events

6. The appellant provided ample evidence of his attendance at gay events and although this is not conclusive it is likely to be indicative that the judge's assessment was flawed.

Permission

7. Permission was granted by First-tier Tribunal Hatton on 1 March 2023 on all grounds.

Rule 24 Response

8. I was provided with a brief Rule 24 response opposing the grounds of appeal on the basis that the judge directed himself appropriately and took Miss Kawsar's evidence into account in reaching the decision.

Documents

9. Both parties confirmed that they had had sight of the decision, the grant of permission, the grounds of appeal, the Rule 24 skeleton as well as the original respondent's and appellant's bundles.

Submissions

Ground 1

10. Mr Reza submitted that in this appeal there were two independent witnesses, one was a previous casual sexual partner of the appellant and the other was a gay activist and a chairperson of a gay association. The witnesses had no personal interest in the appellant winning his appeal and yet attended court to

give evidence. Mr Reza submitted that the judge failed to explain why he rejected the evidence of Miss Kawsar when her evidence was that she had observed the appellant over a number of years, had held one-to-one interviews with him, did not support individuals who made claims for asylum on the basis of their sexuality unless she genuinely believed them to hold that sexuality and had also spoken to other members of the organisation about the appellant's activities. The judge stated this evidence was potentially probative but then went on to ignore it. It is not clear why her evidence was rejected. There was a lack of proper reasoning.

11. Mr Melvin submitted that when the decision is read as a whole it was clear why the judge had rejected the appellant's account that he was a gay man. The judge took Miss Kawsar's evidence into account. In the submission of Mr Melvin, the judge was entitled to give weight to the fact that her evidence was based on what she had been told by third parties. The judge clearly took into account Mr Hossein's evidence at [30] and [31] and the cross-examination at [32]. The judge relied on the lack of evidence of threats from relatives in Bangladesh and inconsistencies in the appellant's claim to have lived an openly gay way of life and yet at the same time failed to claim asylum until 2015 because he had "gradually opened up". Having considered the evidence in a holistic way it was open for the judge to give no weight to Miss Kawsar's and Mr Hossein's evidence. It is not incumbent on a judge to give an infinite number of reasons. In respect of Mr Hossein's evidence the judge commented that both he and the appellant remembered their encounter with "unusual particularity" which was indicative of the judge's view of this evidence. Apart from the witness who gave evidence of the encounter in 2018 there was very little supporting evidence apart from the photographs to which the judge was entitled to give little weight.
12. In response Mr Reza submitted that Miss Kawsar had known the appellant personally for five years and explained clearly in her evidence how she vetted members of her association. The appellant did not obtain a membership card until 2019 after a period of vetting and observation. Her evidence was that she made these observations with her own eyes.

Discussion and Analysis

13. Miss Kawsar's evidence was set out in her witness statement which she adopted as her evidence-in-chief. She says that she is originally from Bangladesh but has been recognised as a refugee in the UK because of her sexual orientation. She is a gay woman and an LGBT activist and is the current chairperson of the Apanjon Association. Her evidence was that she has known the appellant since February 2018 when he joined Apanjon and that he has attended monthly meetings since then. Before he was issued with a membership card in 2019 Miss Kawsar held a one-to-one meeting with the appellant in order to satisfy herself of his claimed sexual orientation because Apanjon does not want "fake participants who might cause them problems". From her own observations at Apanjon as well as at gay clubs and events and from what she has been told from others, Miss Kawsar believes that the appellant is a gay man. Miss Kawsar kept in touch with the appellant and other members during the Covid-19 pandemic by phone. This evidence is recorded in the decision at [34]. At [35] the judge sets out Miss Kawsar's evidence in cross-examination. She said there had been no Apanjon meetings during the Covid-19 outbreak from early 2020 until more recently and that during that time she would have spoken to the appellant about twice a month on the phone. The appellant had been a regular attendee at the monthly

meetings before the pandemic and like others would have signed the register that is kept by the organisation.

14. The judge's treatment of Miss Kawsar's evidence can be found at [36] where he states:

"I bear in mind both the appellant and the brother's accounts, and in particular the testimony from Mr Hossein and Miss Kawsar, the ostensibly independent witnesses in this case."

15. There is no further reference to Miss Kawsar's evidence. Although the judge has stated that he has taken the evidence into account, he does not clarify what he made of it or what weight he gave to it. In my view the judge has failed to provide any or adequate reasons for explaining why he rejected the evidence of Miss Kawsar who had explained why she believed the appellant to be gay from her personal interactions with him. This is a failure on the part of the judge. The judge at the very least had to give some reason for rejecting her evidence. It is not the case as submitted by Mr Melvin that her view was formed entirely on what she had been told by third parties and if this was the view of the judge he did not say so in the decision.
16. Similarly, it seems to me that there is a lack of reasoning for the rejection of Mr Hossein's evidence. Both Mr Hossein and the appellant claimed to have had a sexual encounter at the Legs 800 nightclub one evening about 10 p.m. The judge's only comment on this evidence was that Mr Hossein remembered this event "with considerable particularity". This is not an adequate reason for rejecting this evidence. Had the witness not remembered the incident or had there been inconsistencies between the account of Mr Hossein and the appellant no doubt this would have been given as a reason for rejecting this evidence.
17. I am persuaded by the arguments of Mr Reza. I am satisfied that the judge failed to give adequate reasons for rejecting the evidence of the witnesses. In my view this error on its own is significant enough to render the entire decision unsafe. I take into account that a Tribunal should in general be slow to overturn the factual findings of a First-tier Tribunal Judge who will have heard and seen "the sea of evidence" before him. Nevertheless, a judge is mandated to give some kind of reasoning for rejecting the evidence of a witness and it is manifest that in this appeal there was no reasons were given. Miss Kawsar in particular was an important witness and had her evidence been accepted by the judge this may have made a difference to the outcome of the appeal. In these circumstances I am satisfied that the error is material.
18. I therefore do not go on to discuss grounds 2 and 3.

Disposal

19. Mr Reza submitted that the appropriate way of disposing of this appeal would be to remit it to the First-tier Tribunal because the findings were all based on credibility. I am in agreement with that course of action. Mr Melvin also accepted that because it is a case based on credibility it would be difficult to retain it at the Upper Tribunal. I am satisfied that the appropriate course of action in these circumstances is to remit the appeal in its entirety to be heard afresh.

Notice of Decision

- (1) The making of the decision of the First-tier Tribunal involved an error of law.
- (2) The decision is set aside in its entirety with no findings preserved.
- (3) The appeal is remitted to be heard de novo by the First-tier Tribunal in front of a judge other than First-tier Tribunal Judge Barrowclough.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 June 2023