



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-
003721

First-tier Tribunal No: PA/00338/2022
PA/52247/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

23rd November 2023

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MJH

(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Iqbal
For the Respondent: Ms Isherwood

Heard at Field House on 23 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is the appeal of MJH, a citizen of Bangladesh, against the decision of the First-tier Tribunal of 11 July 2023 dismissing his appeal, itself brought against the refusal of his asylum claim on 23 October 2020.
2. The Appellant arrived in the UK as a student on 15 February 2014 with leave to enter until 30 April 2016; his college's licence was revoked and his leave was curtailed to end sooner. On 29 April 2016 he applied for leave to remain on compassionate grounds, that application being refused on 8 March 2017 and a removal notice issued against him; he claimed asylum on 30 November 2017.
3. The Appellant has advanced an asylum claim based on his sexuality. The essence of his account is that he first felt himself attracted to other men whilst at university but received a strongly negative and aggressive reaction from a fellow student, Shakib, for whom he had revealed his feelings, and the next day he became aware of a group of several people roaming near his accommodation; he now feared for his safety and departed for his home town and thereafter kept his phone switched off, though when he turned it on again he received hundreds of messages from people including classmates teasing and insulting him. He disclosed his story to a friend residing in the UK who offered to help him if he travelled here; the Appellant subsequently made arrangements to enrol for a MSc at London College. He came to the UK and lived freely here (indeed according to his one-stop notice, apparently completed by himself, at one time having a girlfriend). In July 2014 his father sought his return to Bangladesh for an arranged marriage, but he tried to withstand his family's pressure; eventually he told his mother that he was gay and subsequently his father disowned him. In his Statement of Additional Grounds the Appellant wrote of a relationship with a man called Arif from 2011 to 2013.

Relevant evidence before the First-tier Tribunal

4. Supporting evidence upon which the Appellant relied included
 - (a) A letter from APONGHOR of 18 July 2019, a Bangladeshi LGBT organisation indicating that the appellant became a member of the organisation in May 2018 and stating he is gay and would face persecution on return to Bangladesh.
 - (b) Letters from friends who state that they know the appellant from LGBT clubs and events in the UK as a gay man.
 - (c) Photographs showing the appellant at various clubs and events over a period of time.
 - (d) A letter from one of his former partners, Mr E.

- (e) Screenshots of various conversations on the WhatsApp and Grizzly apps

The First-tier Tribunal decision

5. The First-tier Tribunal dismissed the Appellant's appeal because
 - (a) His assertion that the interviewer curtailed some of his answers to questions was not borne out by the interview record.
 - (b) It was implausible that he would be unaware of the possibility of claiming asylum based on his sexuality given his account of having freely disclosed his sexuality to persons living here since 2014. Indeed one of his friends was also of Muslim heritage and had himself been granted refugee status in 2016.
 - (c) It was implausible that he would have failed to mention his same-sex relationship in Bangladesh with Arif were it true; and also implausible that he would have disclosed his attraction to him without prior knowledge that he was gay given Bangladesh's laws relating to homosexuality, or that he would have done so to Shakib at a student party.
 - (d) His evidence at the hearing of having been in a two-year relationship with Mr E whilst in his screening interview claiming he had just been in a previous relationship for a few days was inconsistent, as were his claims to have variously lived openly as a gay man for about 1½ years as at the date of his asylum interview in July 2019; but alternatively since 2014.
6. Having made those observations, the First-tier Tribunal reviewed the Appellant's corroborative evidence. Of the photographs, it considered it was odd none came from the period from 2014 when he had lived an openly gay lifestyle; all were thought to post-date the asylum claim and in any event, applying Tanveer Ahmed, were in the light of his conclusions on the Appellant's oral, witness statement and interview evidence, manufactured for asylum purposes. The letters and witness statements from friends were considered self-serving and merited little weight, as given the adverse credibility findings on the Appellant's own evidence, it was to be concluded that their evidence had been rehearsed and should receive no weight. The APONGHOR organisation's letter-writer had not attended the Tribunal to give evidence and seemed to have accepted the Appellant's word at face value; this letter too thus deserved very little weight, as did the Appellant's attendance at organisations, events and demonstrations.
7. Accordingly the Appellant's assertion of facing persecution as a gay man was rejected. The objective country evidence showed that consensual same-sex activity in Bangladesh was illegal, that attacks on

homosexuals occurred on occasion with impunity, and that the level of violence, murder and rape extends well beyond societal discrimination and were largely dismissed by the authorities such as to go unpunished. But it created no real risks to him given he was not accepted to be a person who would be exposed to any such difficulties. As to his Article 8 claim, it was to be presumed, his narrative of ostracism having been rejected, that his family would in fact be available to support him, that adequate care for any mental health problems could be found, and that overall he would face no very significant obstacles to integration in Bangladesh, where he could find work and maintain links with any UK friends via modern means of communication.

The grounds of appeal and hearing before the Upper Tribunal

8. Grounds of appeal made various contentions though the only material one is that the evidence should have been assessed in the round and that Tanveer Ahmed principles did not necessarily extend to evidence emanating from the United Kingdom.
9. Judge Gumsley granted permission on the basis that it was arguable that potentially corroborative evidence was discounted due to the adverse credibility findings made on the Appellant's oral evidence.
10. The pleadings were unsatisfactory in this case. The Upper Tribunal and Ms Isherwood had available only grounds of appeal dated July 2023. However Judge Gumsley's permission grant referred to amended grounds being before him dated 4 August 2023. Judge Gumsley thought the Appellant would be well advised to urgently supply further amended grounds that put his case more cogently. It seems that invitation was not taken up. The potential difficulties caused by this state of affairs were pragmatically alleviated by Mr Iqbal indicating that he would limit himself to the matters raised in paragraph 3.9 of the July 2023 grounds of appeal, and on that basis the hearing proceeded without objection from Ms Isherwood.
11. Mr Iqbal's submissions materially concentrated on the following points. The Appellant's asylum claim was made on 30 November 2017, and various photos were marked as dating from 2011-2012, so the First-tier Tribunal was wrong to suggest they all post-dated his asylum claim. It was wrong to apply the Tanveer Ahmed doctrine to material such as photographs of UK activities, which were not to be equated with documents emanating from the country of origin. Each element of the potentially corroborative evidence had been discounted due to prior findings on the Appellant's evidence. It was wrong to draw an adverse inference against the Appellant for making a late asylum claim when there was no evidence that the curtailment decision was validly served on him.
12. Ms Isherwood replied that the First-tier Tribunal's reasoning was legally sustainable and it was notable that significant aspects of its decision

were now effectively unchallenged, such as its treatment of events in Bangladesh.

13. We reserved our decision.

Decision and reasons

14. The decision of Tanveer Ahmed [2002] UKIAT 00439 holds that

“1. In asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on.

2. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.

3. Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2.”

15. Until one reaches the part of the First-tier Tribunal’s decision dealing with potentially corroborative evidence, one could be forgiven for thinking its approach to have been impeccable. The conclusions to which it came as to the evidence emanating directly from the Appellant appear reasonable and within the range of legitimate responses to the evidence before it.

16. However, the difficulty with its approach is the manner in which the evidence from third parties and by way of photographs is treated. Each element of that evidence is patently discounted not for its intrinsic worth, but because of the findings already made on the Appellant's evidence: findings which, in the light of the clear architecture of the overall decision, were made without regard to any potential corroboration that the Appellant might derive from the supporting material. This represents a failure to make a holistic assessment of the evidence as a whole (thereby breaching Tanveer Ahmed principle (2): “looking at all the evidence in the round”). Doubtless there are cases where the supporting evidence is simply too thin for it to be reasonably thought capable of leading to a different outcome. But here there is a range of witness evidence, from persons claiming to know the Appellant from his participation in the life of the LGBTI community, from a former partner, from dating “Apps”, and from a supportive organisation, as well as the photographic evidence of his attendance at diverse events.


17. The First-tier Tribunal was also wrong to consider that none of the photographs ostensibly predated the Appellant's asylum claim. Whilst photographic evidence of events in the UK may well be found unreliable

when assessed holistically with other material, strictly speaking it is difficult to see that the Tanveer Ahmed doctrine applies to it, focussed as that decision is upon the “permutations of truth, untruth, validity and ‘genuineness’” arising from documents produced from countries abroad. Indeed the Home Office Guidance Assessing credibility and refugee status states that “The principles outlined in the Tanveer Ahmed case apply to overseas documents and should not be cited in reference to UK documents.”

18. This defect in the First-tier Tribunal’s approach effectively undermines the entirety of its reasoning. Accordingly the scale of the future fact-finding is such that remittal for a re-hearing is the only possible outcome.

Decision:

The decision of the First-tier Tribunal contained a material error of law. The appeal is remitted for hearing afresh before the First-tier Tribunal.

A handwritten signature in black ink, appearing to read 'M. A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

13 November 2023