



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

Appeal Number: AA/06301/2015

THE IMMIGRATION ACTS

**Heard at Field House
On Tuesday 20 October 2015**

**Determination Promulgated
On Wednesday 21 October 2015**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR J A

[ANONYMITY DIRECTION MADE]

Respondent

Representation:

For the Appellant: Mrs Williock-Briscoe, Senior Home Office Presenting Officer

For the Respondent: Mr Miah, Counsel

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

Background

1. This is an appeal by the Secretary of State for the Home Department. For ease of reference, I refer below to the parties as they were in the First-Tier Tribunal albeit that the Secretary of State is technically the Appellant in this particular appeal.
2. The Appellant is a national of Bangladesh. He arrived in the UK as a work permit holder on 8 August 2006. He applied for a certificate of approval to enter into a civil partnership with a same sex partner in November 2009 which was granted on 29 November 2010. He applied for leave to remain on human rights (Article 8) grounds on 28 November 2011 which application was refused on 25 May 2012. On 16 December 2013, he was served notice of liability to removal as an overstayer. He claimed asylum on 11 February 2014. His asylum claim was rejected on 27 March 2015 and a notice to remove him to Bangladesh was served leading to his current appeal.
3. The Appellant's asylum claim is based on political opinion (on the basis of active membership of the Youth Wing of the BNP party) and his homosexuality. His appeal was allowed by First-Tier Tribunal Judge Phull in a decision promulgated on 30 July 2015 ("the Decision"). The Judge rejected the claim based on political opinion but appears to have accepted the claim based on the Appellant's sexuality and on that basis has found that he would have a well-founded fear of persecution on return.
4. The Respondent sought permission to appeal the Decision on the basis that the Judge has failed to provide adequate reasons for her finding that the Appellant's claim to be homosexual is credible when viewed in the context of the inconsistencies identified in the Respondent's decision letter. Permission was granted by First-Tier Tribunal Judge Simpson on 1 September 2015 on the basis that the Judge had arguably erred by providing inadequate reasons for her findings at [31] and [32] of the Decision. The matter comes before the Upper Tribunal to determine whether the First-tier Tribunal decision involved the making of an error of law.

Submissions

5. Mrs Williocks-Briscoe pointed to the distinction between [25] to [30] where the Judge sets out her reasons for rejecting the claim based on BNP membership and [31] to [32] where the Judge deals with the claim to be homosexual. The Judge failed to engage with the inconsistencies identified in the Respondent's decision letters or give reasons why she accepted the Appellant as credible in relation to the core of this part of his claim in light of those inconsistencies, particularly having found him not to be credible in relation to the core of his political opinion claim. The Judge failed to engage with the Appellant's own evidence in relation to how he

and his former partner met and the communication difficulties between them. She accepted that Karanakaran does not require the Judge to deal with every point but submitted that the Judge should say why she accepts or rejects parts of the claim and should on that basis have dealt with the conflict of evidence.

6. Mr Miah submitted that the Judge had adequately reasoned her (implicit) finding at [31] and [32] that the Appellant's claim to be homosexual is credible. He referred to [10] to [13] where the Judge sets out the facts on which the claim is based. The Judge considered the evidence of the relationship in Dhaka which the Judge accepts as credible. At [32] the Judge sets out the reasons why the Respondent rejected the claimed relationship in the UK as not credible but for the reasons given in that paragraph, she accepts that this relationship also was genuine. The Judge was not required to set out every sentence of the Respondent's decision letter.
7. In relation to whether it was inconsistent for the Judge to find the Appellant credible in relation to this part of his claim, having rejected the other part of the claim, Mr Miah submitted that when read as a whole, the Appellant was not disbelieved in relation to the claim relating to his political opinion. That aspect of his claim was rejected on the basis that the evidence was not sufficient to meet the standard of proof in order to make out that part of the claim. Even if the Appellant was not believed in relation to this part of the claim, that did not mean that he could not be believed in relation to the claim based on his sexuality (relying on the case of Chiver).

Decision and reasons

8. The Appellant's claim to be homosexual was evidenced by three relationships. The first was that, whilst in Bangladesh and before he moved to Dhaka, he realised when sharing a bed with other boys in his family that he had sexual feelings towards other boys. He said at interview that he did not have sex with any boys at that time but later contradicted that and said that he had sex with his cousin. When he moved to Dhaka, he claimed to have been in a relationship with another man, Joshim, with whom he shared a flat for two years. They were in a sexual relationship but could not express that relationship outside the home for fear of repercussions. He has since lost contact with Joshim. In the UK, the Appellant relies on a relationship with a Polish national, Rummel. The Appellant claims that they met in July/August 2009 although it appears from evidence apparently given by Rummel in February 2010 that this may have been 2008. The Appellant and Rummel claimed in a written document dated 15 February 2010 that they met on a train but in interview the Appellant says that they met when they were introduced by a friend at his friend's house. In the document dated 15 February 2010, they said that they had been living together for three months. At interview, the Appellant said that they had never lived together although they met up at a friend's house four or five times per week. He lived with his brother. Rummel lived in a rented property. The Appellant obtained a

certificate of approval to enter into a civil partnership with Rummel in November 2009 but the relationship broke down when Rummel disappeared in October 2010 and the Appellant has not seen him since. It is also worth noting that the Appellant says that his friend interpreted for him and Rummel so that they could communicate as the Appellant spoke little English.

9. I set out below [31] and [32] of the Decision where the Judge set out her findings in relation to the above facts:-

“[31]I turn to consider the appellant’s claim that he would be at risk in Bangladesh because he is a homosexual. I find the appellant’s evidence to be credible that he had a sexual encounter with his cousin before he left for the [sic] Dhaka, where he worked and had a clandestine sexual relationship with another man, Joshim, for 2 years. I find that the appellant’s account is consistent throughout his claim about his relationship with Joshim. I find he gives a candid explanation that because of the anti gay culture in Bangladesh he and Joshim were unable to display any affection or reveal their sexuality to the community because of a fear of reprisals.

[32] The respondent alleges that the appellant is not a homosexual because in the UK he claims to have entered a relationship with the Polish national, Rummel, but the relationship ended before the certificate of approval was granted. The fact the relationship ended cannot in my view be construed as the appellant not being a homosexual. I find what goes to his credibility is that he did not embellish the details of his relationship. He was candid that the relationship was conducted behind closed doors at a friend’s house. He and Rummel did not display any affection or touch one another in public to avoid adverse attention. I accept his explanation that he is at a loss to understand why his partner left him.”

10. Although as those paragraphs show, the Judge did not make a direct finding that the Appellant’s is a homosexual based on that assessment of the evidence, it is clearly inferred from the paragraphs that follow that she accepted that claim and found him to be at risk on return to Bangladesh on that account.
11. I am acutely aware that the Judge heard the Appellant give evidence and it was for her to assess credibility based on that evidence. However, where there were inconsistencies in that evidence based on what the Appellant had said at various times in the past, it was incumbent on the Judge to at least make reference to those inconsistencies and to make findings giving reasons why facts were found to be credible notwithstanding those inconsistencies. The lack of reasoning in relation to the Appellant’s sexual encounter prior to moving to Dhaka may be inconsequential. He had said at one time that he did not have sex with another male before Joshim but changed his account. However, the Judge had to accept one or other account and has done so. That was sufficient given the limited inconsistency.
12. However, the reasoning in relation to the acceptance that the Appellant was in a relationship with Rummel is inadequate. It is clear from what is set out at [8] that there were major inconsistencies in the Appellant’s

account of how and when they met, where they lived, whether they lived together and how they communicated given their lack of a common language. It was incumbent on the Judge to explain why, notwithstanding those inconsistencies she accepted that the relationship was genuine or to set out the evidence to resolve the inconsistencies on which the Respondent relied. I am therefore satisfied that the Judge made an error of law in failing to provide adequate reasons for her finding that the relationship with Rummel in particular was genuine.

13. It is possible that the Judge has relied on the granting of a certificate of approval by the Respondent as an acceptance that the relationship was genuine and therefore on the breakdown of the relationship thereafter as being the reason why the Respondent did not now accept the account as credible. If that is so, that remains an error as a certificate of approval does not confer leave to remain in the UK and as such was simply a permission to enter into a civil partnership (as is clear from the face of the document). Otherwise, it is clear on the face of the Respondent's decision letter that the inconsistencies went far beyond simply the breakdown of that relationship before the Appellant could enter into the civil partnership with Rummel.
14. Having found an error in relation to the finding at [32] of the Decision, I have considered whether it could be said that the error is not material. I have noted above that the Judge was entitled to make the finding at [31] that the Appellant had a sexual encounter with his cousin and that the relationship with Joshim was genuine. However, I conclude that the error is material. It is possible that, on the basis of the two relationships which the Judge found genuine at [31], she could go on to find that the Appellant is a homosexual even if the relationship with Rummel was fabricated or the inconsistencies were satisfactorily resolved. However, the converse is also true. I am not satisfied that the same outcome would be reached if there were an adverse credibility finding about the relationship with Rummel as this may well impact on the finding of credibility in relation to the other two relationships and therefore the whole claim based on the Appellant's sexuality. I am therefore satisfied that the Decision contains a material error of law and I set it aside.
15. The parties agreed that if I were to find a material error of law, the appeal should be remitted to the First-Tier Tribunal for a re-hearing of the claim. The parties agreed that the findings in relation to the claim insofar as it is based on political opinion should be preserved.

DECISION

The First-tier Tribunal Decision did involve the making of an error on a point of law.

I set aside the Decision

I remit the appeal to the First-Tier Tribunal for re-hearing. The findings in relation to the Appellant's claim based on political opinion (dismissing that part of the claim) are preserved.

Signed 

Date 21 October 2015

Upper Tribunal Judge Smith