



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00086/2018

THE IMMIGRATION ACTS

Heard at Liverpool
On 17th July 2018

Decision & Reasons Promulgated
On 20th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR K F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Hussain, Counsel
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 27th January 1984. The Appellant first arrived in the UK in 2011 on a student visa which was subsequently renewed on three occasions.
2. The Appellant left the UK but returned from Iran in June 2017 arriving on 7th July 2017 at Gatwick Airport whereupon he claimed asylum. The Appellant's claim for asylum was based on a purported well-founded fear of persecution in Iran on the basis of his membership of a particular social group namely that he is gay. That application was refused by the Secretary of State by Notice of Refusal dated 15th December 2017.

3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Herwald sitting at Manchester on 5th February 2018. In a decision and reasons promulgated on 26th February 2018 the Appellant's appeal was dismissed on all grounds.
4. On 20th March 2018 Grounds of Appeal were lodged to the Upper Tribunal. On 3rd April 2018 Designated Judge of the First-tier Tribunal Woodcraft refused permission to appeal.
5. Renewed Grounds of Appeal were lodged on 25th April 2018. On 18th May 2018 Upper Tribunal Judge Finch granted permission to appeal. Judge Finch noted that the Appellant's right to asylum depended on the First-tier Tribunal Judge finding that he was a homosexual man and essentially depended on his finding that the Appellant's account was credible. Judge Finch noted as in all asylum appeals that the standard of proof was a low one and that in the current appeal the Appellant's difficulties were compounded by his accepted vulnerability which, as the judge had accepted in paragraph 2 of the decision, meant that he sometimes could not focus or be precise. Judge Finch considered that it was arguable that the judge did not apply the requisite low standard of proof.
6. In addition she considered that it was arguable that the First-tier Tribunal Judge had failed to fully reflect the evidence given by the Appellant in relation to why he did not enter into homosexual relationships when he was in the United Kingdom in 2011. She noted that the Appellant's evidence indicated that his lack of English and his ignorance of knowledge at the local gay scene were key causes. Further she accepted that there was a potential error in law in that it was argued that the judge's findings in relation to the videos were speculative as was his assertion that M's father would seek to draw attention to his son's activities. She considered it was arguable that this ignores the father's strong cultural and religious views.
7. No Rule 24 response has been filed or served. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Hussain. The Secretary of State appears by her Home Office Presenting Officer Mrs Aboni.

Submissions/Discussion

8. Mr Hussain relies on the Grounds of Appeal and contends that there is a material error of law in the decision. He notes that the judge found that the Appellant's testimony was not credible but bearing in mind that the Appellant was a vulnerable witness the judge was wrong at his findings at paragraph 15(c) to hold it against the Appellant how he had been hit by a truck, where it had come from or how it was possible for the Appellant to see the face of the assailant. He submits that these issues could have been clarified during the hearing by the Tribunal.
9. He submits that the failure of the Appellant to engage in the gay scene in the UK when previously here has been explained and that there are important material facts which

the judge has failed to take into account as stated by the Upper Tribunal Judge when granting permission. He notes the comments made with regard to the failure of the Appellant to engage in the gay scene as set out at paragraph 15(e) of the decision.

10. He thereafter takes me to the findings of the judge at paragraph 15(g) relating to the judge's comment "I find it very hard to get my head round how anyone could take video film, on a small mobile phone, of a couple, including the person taking the video having sex". He submits that this is not a conclusion that was open to the judge but merely a speculation in that he considers the error therein to be made and for it to be material. Further he considers the finding of the judge at paragraph 15(h) to be unsustainable and to fail to take into account the fact that M's father was a man of religion.
11. Mr Hussain acknowledges that the case turns on an assessment of credibility. He submits the judge has "got it wrong" and asked me to find material errors of law, to set aside the decision and to remit the matter to the First-tier Tribunal for rehearing.
12. Mrs Aboni submits that the judge has directed himself perfectly properly and that the judge has made findings that were open to him. She notes that the judge has followed the present guidance on vulnerable witnesses and has gone on to say why he has followed it. She further points out that the judge has reminded himself at various points in the decision of this finding and he has made every effort to accommodate this factor in his assessment of the Appellant's case.
13. She submits that the purported lack of awareness of the gay scene in the UK only holds good for the first occasion of the Appellant's visit to the UK as recited at paragraph 15(i) and that the findings made by the judge with regard to the video taken whilst the Appellant was engaging in a sexual relationship was one that was open to him. She acknowledges that the finding with regard to M's father is a bit speculative at paragraph 15(h) but submits it is not material due to numerous other adverse findings that have been made.

The Law

14. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
15. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision

or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

16. This is an appeal that turns on the judge's assessment of credibility. A proper approach to credibility requires an assessment of the evidence and of the general claim and can include firstly the internal consistency of the claim, secondly the inherent plausibility of the claim and thirdly the consistency of the claim with external factors of the sort typically found in country guidance.
17. This is a judge who has carried out that exercise. I accept that Judge Herwald is fairly forthright in his findings and analysis and his language but that is not to say that he has erred in law. He has analysed the factual evidence that was placed before him and set out an extremely lengthy set of findings at paragraph 15(a) to (l) which lead to his conclusion that the Appellant is not gay. These are findings that the judge was open to make. He has heard the evidence and in each case save one he has set out his reasons for reaching the findings that he has. I accept that at paragraph 15(h) he has failed to make reference to the fact that M's father was a man of religion. However firstly there is no certainty that had he made such a finding it would have influenced his decision and secondly I do not consider such finding material bearing in mind it has to be looked alongside all the other findings of credibility when assessing the case in the round.
18. Even if the judge were to be wrong on his finding of the ability to take a video on a mobile phone of his having sex that does not materially discredit the numerous other findings of negative credibility the judge makes.
19. This is a judge who has given cogent reasons for his disbelieving the Appellant. They are findings that he was entitled to make and effectively the submissions made on the Appellant's behalf by Mr Hussain, whilst quite properly made amount to little more than mere disagreement. The judge has assessed the evidence and made findings that he was entitled to and has applied the correct standard of proof. In such circumstances the decision contains no material error of law and the appeal of the Appellant is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Anonymity

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and the anonymity direction will remain in place.

Signed

Date 10 August 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 10 August 2018

Deputy Upper Tribunal Judge D N Harris