



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02362/2018

THE IMMIGRATION ACTS

Heard at Field House
On 3 September 2018

Decision & Reasons Promulgated
On 27 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

M F M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Jorro, counsel instructed by Wilson Solicitors LLP
For the Respondent: Miss A Everett, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, appealed against the Respondent's decision dated 2 February 2018 to refuse an asylum claim. The appeal came before First-tier Tribunal Judge Housego (the Judge) who, on 23 May 2018, dismissed the appeal on all grounds. Permission to appeal was given by First-tier Tribunal Judge Kelly on 19 June 2018. There was no Rule 24 response by the Respondent.
2. The gravamen of the extensive challenge, which was not drafted by Mr Jorro, could well have been shorter and more pithy, nevertheless made a number of points. Quite

simply the Judge had either misappreciated the nature of the evidence or had failed to have regard to the matters that were being put forward: The grounds cite a number of examples. It is unnecessary for me to go through those one by one because having heard Mr Jorro's submissions I am satisfied that the Judge failed to give sufficient and adequate reasons, which amounted to an error of law, in his rejection of the Appellant's claim to be gay or that his homosexuality would be a basis of risk on return to Bangladesh. The adverse findings by the Judge, it seemed to me on a fair analysis of it, knowing that a Judge is not expected to give detailed reasons and pick up every single point an Appellant raised, or indeed the Respondent makes, nevertheless seemed to have misappreciated the evidence of a Mr M A R, with whom the Appellant has an occasional sexual relationship; which Mr M A R referred to as a casual sexual friendship which was ongoing. There was nothing to suggest it is, in any sense, a one-off sexual encounter. The evidence of Mr M A R which, it appears, the Judge accepted as reasonably reliable [D67] said this of Mr R and another witness:-

"There is the evidence of S C and M R who say that they have had casual sexual activity with the Appellant, whose pleasure in it they say was unlikely to have been faked. They had no reason to lie, and gave evidence in a straightforward way. This is the best evidence for the Appellant, whose own oral evidence was evasive and unconvincing."

3. Unfortunately, the Judge does not give particulars of why he found the Appellant's evidence evasive and unconvincing so as to diminish the evidence he was accepting of the two third parties who had no evident "axe to grind" and were giving evidence in support of their sexual relationships with the Appellant, bearing in mind they were both expressing the view that the Appellant was gay. The Judge in something of a shortage of reasons, made a general conclusion that the account was fabricated and that the Appellant was essentially an economic migrant who was presumably prepared to dissemble to avoid removal, but the Judge did say this:-

"84. There are few other facts that can be found, given that I do not accept the core account of the Appellant. The Appellant has attended many parades

dressed in normal clothing with the addition of a multicoloured wig and tie, and stood in the middle of a number of groups parading for photographs to be taken. Similarly he has attended various demonstrations in order to be photographed at them. ...”

4. Those may be conclusions he was entitled to reach, if he did not believe the Appellant’s evidence, but it really did not fit in with the wider evidence and the whole picture that needed to be addressed in relation to the overall case. I did not find that the Original Tribunal gave adequate or sufficient reasons, and as such that amounted to an error of law. The Judge, to a degree, compounds the issue by dismissing the Appellant’s claims in the following way:-

“87. The Appellant has engaged in isolated sexual activity with 2 men to support his claim, and is not homosexual. The account of a 7 year relationship with a man in Bangladesh is not reasonably likely to be true.”

I do not understand the way the case was put at the hearing, or indeed the Respondent’s case that the two men who gave evidence were essentially fronting and supporting the Appellant, misrepresenting his sexual activity, nor did it seem a fair description to simply describe it as isolated sexual activity when it is clear that it was related to casual sex with Mr M A R, as and when the same arose.

5. For these reasons I am satisfied the Original Tribunal erred in law. None of the findings of fact can stand and the matter will have to be remade in the First-tier Tribunal.

NOTICE OF DECISION

The appeal is allowed to the extent that the matter is to be remade in the First-tier Tribunal, not before First-tier Tribunal Judge Housego.

No further directions being given, but the matter will have to be addressed with a CMHR or a PTR in the First-tier Tribunal when appropriate directions can be sought.

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

Signed
Deputy Upper Tribunal Judge Davey

Date 10 September 2018