Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07752/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd November 2018	**On 9th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

JUNAID [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms V Easty (Counsel)
For the Respondent: Mr S Whitwell (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Bart-Stewart, promulgated on 30th August 2018, following a hearing at Taylor House on 3rd August 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 6th May 1979. He appealed against the decision of the Respondent dated 21st May 2018, refusing his claim to asylum and to humanitarian protection, pursuant to paragraph 309C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he has a well-founded fear of persecution in Pakistan on account of his membership of a particular social group in that he is a gay man. He became aware of his sexuality when he was 15 years old. He touched the hand of a friend, [S], and hugged him. [S] asked him why he was so loving towards him and he told him of his sexuality although he was unaware of his friend's sexuality. In July 1993, while at college he was attracted to a boy named [J], with whom he began a relationship. Since arriving in the UK he has been in an openly gay relationship with a man called [HA], that lasted for six to seven months (see paragraph 3 of the determination). This aside, the Appellant gave evidence that he has joined the LGBT Labour Club and London Friend. He has told three friends in the UK about his sexuality and there are an additional fifteen to twenty people he goes clubbing with. In October 2017 he had contact with his brother and father on the telephone. They wanted him to return to Pakistan to see his mother who was ill. During the conversation he told them that he would not return as he is a homosexual. The family then threatened to kill him. He no longer has contact with his family. If he returns he will be killed by his family, relatives, and law enforcement agencies (paragraph 4).

The Judge's Decision

4. The judge had regard to the fact that the Grounds of Appeal were pro forma "and do not address the issues raised in the refusal letter" (paragraph 20). Nevertheless, the judge considered the evidence in relation to the Appellant's claim of being homosexual, when he had an attraction with [S], and an attraction to [J], together with his present relationship with [HA] (see paragraphs 20 to 22). The judge observed that the Appellant stated that it was that he went to clubs after arriving in the UK "but less frequently. When he arrived he was afraid of being rejected socially as he had been in Pakistan which is why he did not take the opportunities to enjoy the freedoms available to homosexuals as normal members of society" (paragraph 23).

5. The judge also went on to consider the evidence of other witnesses appearing before him, including [HA], who made a statement (see paragraphs 24 to 26). The evidence of [RR] was also considered (paragraph 27). Consideration was given to the breakdown in the relationship with Mr Ali, with whom the Appellant claimed to have "an open relationship", and the judge observed that "there is no special

reason for the split but Mr Ali began to ignore him and was interested in other boys" (paragraph 32), and this was the evidence before the judge.

6. In the submissions before the judge, the Respondent submitted to the Presenting Officer that "the Appellant was not in an open relationship" (paragraph 37). This was because "he gave no information about doing anything with his partner. It was artificial the way the evidence came across. He would know certain things by familiarity as with a friend. [RR] did not know they were in a relationship" (paragraph 37). Moreover, the evidence in relation to the family's reaction was simply not plausible because the Appellant had told them that he was not going back to Pakistan, and so there was no need for them to place an announcement in the media saying that they had disinherited him, and that his life would be at risk (paragraph 37).

7. The judge also recorded that the submissions on behalf of the Appellant, on the other hand, was that

> "the evidence of the Appellant and Mr Ali that they had a superficial sexual relationship consisting of sexual contact and clubbing. It was not deeply emotional. This is not evidence that the account was not credible. They gave examples of clubs they went to and they said they went to dinner. All three were consistent that [RR] did not know of the relationship" (paragraph 38).

8. In his findings, the judge began by noting that the Appellant came to the UK as a student in 2011, and before this lived in Sialkot with his parents and siblings (paragraph 41). The Appellant had said he had never returned to Pakistan "because he was busy studying and had never intended to go. He claimed that within six months of arriving in the UK he had discovered gay clubs and that gay men could be open and free. By 2013 he also had a relationship with [HA]" (paragraph 42).

9. However, the judge went on to say that the Appellant's evidence was that he could not return to Pakistan because you could not live in an open and free relationship as a gay man in Pakistan, but "did not make any application to remain on the basis of sexuality until June 2017. In the meantime he made two Leave To Remain applications but had not made any reference to his claimed sexuality". This was a matter of some significance for the judge because the judge concluded that "I consider that the Appellant's actions is inconsistent with his claim to have been a gay man, socialising within the Asian gay community and attending gay clubs since 2011" (paragraph 42).

10. The judge also held that the Appellant's account during the asylum interview "was inconsistent and contradictory" because at question 22 he accepted that he had never intended to go back to Pakistan but at question 24 he said that his plan was to get a good education and then return to Pakistan (paragraph 43). Importantly, the judge also held that the Appellant's account of the realisation that he was gay at the age of 15 "is vague", because "he claims that he touched his friend's hands and

hugged him. His friend said nothing but at that point he realised that something attracted him to males only it is not clear how this one incident made him instantly realise he was gay ...” (paragraph 44).

11. In the same way it did not make sense that [J] found out that the Appellant was gay simply because the Appellant wished to sit close to him (paragraph 45). Most importantly, the judge concluded that the claimed relationship with “[HA]” was one that raised serious concerns about the Appellant’s credibility because “his oral evidence is that he, [HA], and [RR] are part of the same friendship group and visit clubs together. It is not credible that [RR] would be unaware that the Appellant and [HA] had some form of relationship” (paragraph 46).

12. In the end, the judge did not find the Appellant to be credible, and applied the leading jurisprudence in this area by reference to **HJ (Iran) [2010] UKSC 31**, and observed that, “I remind myself that I should not rely on stereotypes. To the contrary I consider that the Appellant is playing upon a stereotype of promiscuity and sexual activity” (paragraph 50).

13. The appeal was dismissed.

Grounds of Application

14. The grounds of application state that the judge failed to follow the steps in **HJ (Iran) [2010] UKSC 31** in relation to the Appellant’s claim that he was gay. The judge’s full findings that the Appellant was not a homosexual were not properly reasoned. The judge also erred in his approach to credibility basing this on the late disclosure of the Appellant’s sexuality. The judge failed moreover to take account of all the relevant evidence.

15. Permission to appeal was granted on 2nd October 2018 on the basis that the judge additionally failed to take into account the evidence of the two witnesses confirming the Appellant’s sexuality.

16. A Rule 24 response was entered on 14th November 2018 (which I was helpfully shown by Ms Easty appearing as Counsel before me) and this states that adequate consideration was given by the judge to the evidence. The Appellant was not found to have been credible. The judge did not have to consider how the Appellant would behave on his return to Pakistan as she did not accept the Appellant’s case that he was gay. The judge did not accept that the Appellant had told his family that he was gay and that they had rejected him as a result.

Submissions

17. At the hearing before me on 22nd November 2018, Ms Easty submitted that there were two witnesses before the judge and they had not been properly considered in terms of the evidence that they had proffered and this was a serious error on the part of the judge. For example, the judge states (at paragraph 32) that the Appellant’s evidence was that he had an open relationship with Mr Ali, and “they were in an open relationship, they had

body contact, and Mr Ali is his friend" (paragraph 32). There is no finding of fact in relation to this aspect of the evidence. It is not clear whether this witness is believed or not. In the same way (at paragraph 46) the judge refers to the evidence as not to be implausible when she states that, "I find this further undermines the credibility of the Appellant's claim to have been in relationships with men" but there is a failure here, once again, to reach a specific finding in relation to a specific witness and that witness' evidence. As for the evidence that the Appellant had said that he never returned to Pakistan because he was busy studying and never intended to go (paragraph 42) there was no inconsistency that was identified in this evidence. The judge states that the Appellant's asylum interview "was inconsistent and contradictory" (paragraph 43) and attention is here drawn to question 22 of the asylum interview that the Appellant never intended to go back, but that at question 24, he said that he would get a good education and return to Pakistan, but this is by no means indicative of any inconsistency whatsoever.

18. Ms Easty helpfully handed up to me the trial bundle of the Appellant, which shows that there were witness statements here from the Appellant (pages 55 to 59), from [RR] (at page 50), and from [HA]. There were also reference letters from three other people (pages 61 to 68). Ms Easty submitted that if one looks at the contents of these witness statements it is clear that full findings had to be made with respect to the testimony that was there set up.

19. For his part Mr Whitwell submitted that this was nothing more than a disagreement with the findings of the judge. The judge applied the case law in **HA (Iran)** properly to the appeal (see paragraphs 38 to 40). The judge looked at the evidence of the witnesses in the round. The judge makes it clear why the evidence (at paragraph 44) was found to be "vague", because it was the Appellant's account that he touched his friend's hand and hugged him, and his friend said nothing, but that at that point he realised that something attracted him to males only, but the judge was clear in stating that

> "It is not clear why this one incident made him instantly realise he was gay particularly as in his response to question 33 he said that you can touch the hands of the males, touch their hands, shake their hands on your normal routine there is nothing wrong with that and you can hug other males there is nothing wrong with that" (paragraph 44).

20. Furthermore, the Appellant stated that he was not in an "openly gay relationship" (paragraph 23) and this was the case shortly after the Appellant arrived in the UK. Subsequently, the evidence suggested, as made clear by the Presenting Officer before the judge, that it was very much in doubt whether the Appellant was in an openly gay relationship at all thereafter. The judge was entitled to conclude that the Appellant was not gay at all. In relation to there being a delay in the Appellant claiming asylum, this was a case where the Appellant had made two leave to remain applications and made no reference at all to his claimed sexuality

(paragraph 42) and the judge was perfectly entitled to come to that conclusion.

21. Finally, what is most conspicuous about the Appellant's lack of credibility in this appeal is the statement that "[HA] and [RR] are part of the same friendship group and visit clubs together", but that [RR] was unaware that the Appellant and [HA] had some form of relationship (paragraph 46) as the judge made clear. In fact, the judge expressly stated that, "If it was no more than friendship it is unclear why both would refer to it as an open relationship rather than casual sex" (paragraph 46).

22. In her reply, Ms Easty submitted that it was well established (since the case of Mohd Amin) that a decision-maker must make it clear what evidence he or she accepts, what is rejected, and the reasons for this decision. Second, the judge falls into the error of treating the evidence as lacking in "plausibility", whereas the proper test is that of "credibility". Third, the judge does not explain why the Appellant's conclusion that he was gay at the age of 15, was on the basis of "vague" evidence. Finally, the proper steps in **HJ (Iran)** had simply not been followed.

No Error of Law

23. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. In fact, the determination of Judge C Bart-Stewart, is a careful, comprehensive, and sophisticated in its determination of both the factual issues and the legal position, imploring upon the situation in Pakistan, the treatment of gay people there, and the Appellant's own immigration background in this country.

24. First, there is no inconsistency whatsoever in the judge's statement (at paragraph 23) that the Appellant "when he arrived he was afraid of being rejected socially as he had been in Pakistan which is why he did not take the opportunity to enjoy the freedoms available to homosexuals as normal members of society". When this is compared to the judge's statement (at paragraph 46), the judge is equally clear that the Appellant was not in an "open relationship" at all because although he and his two friends, [HA] and [RR], "are part of the same friendship group and visit clubs together" the startling fact here was that "[RR] would be unaware that the Appellant and [HA] have some form of relationship" (paragraph 46). Indeed, the judge makes the situation absolutely clear when stating that in response to question 89, the Appellant had said, "I did have relationships and would meet each other once or twice during the week but I did not have a dedicated relationship with anyone because they had other commitments". There can be simply no criticism at all of the judge's conclusion here that "I find this further undermines the credibility of the Appellant's claim to have been in a relationship with men". There can be no criticism that the judge is focusing upon "plausibility", because the judge in turn states that "it is not credible that [RR] would be unaware" (paragraph 46). In fact, the sophisticated and far sighted approach to this

appeal is exhibited nowhere better than in the judge's final conclusion that, whereas she herself must not rely on stereotypes, "I consider that the Appellant is playing upon stereotypes of promiscuity and sexual activity" (paragraph 50). That was the conclusion that the judge was entitled to come on the evidence.

25. Second, it is not the case that the Appellant's account was wrongly described as "being vague" when he said at the age of 15 he realised that he was gay because by his own evidence he had said that "you can touch the hands of the males, touch their hands, shake their hands on a normal routine there is nothing wrong with that", and the judge accordingly properly concluded that "it is not clear how this one incident made him instantly realise he was gay" (paragraph 44).

26. Similarly, the Appellant states that he met [J] when he changed school and

> "… he sat beside and studied and would sit nearby to watch him change into his swimming trunks and get out of the swimming pool. He said he did not tell [J] that he was gay and he did not have a relationship with him. [J] found out from his behaviour and suspected he was gay because he sat close to [J] and he was warned off" (paragraph 45).

The judge was entirely correct here in concluding that "it is not at all clear how or why [J] suspected that the Appellant was gay" (paragraph 45).

27. Third, no criticism whatsoever can be made in the judge's treatment of the leading case of **HJ (Iran) [2010]** because the judge is clear that the Appellant is not even gay as he claims to be, so that it is unnecessary to consider whether he would suffer persecution or ill-treatment, on account of having to lead a discreet or closeted life, for fear of the state, or state authorities. The case on that basis comes nowhere remotely near the strictures set out in **HJ (Iran)**.

28. Fourth, the Appellant claimed that his family, including his brother and father, had sent him threatening SMS messages due to his sexual interests, and the judge was clear here that "this is not part of the Appellant's claim and he has not produced any SMS messages from his father or brother" (paragraph 48). The judge was equally sceptical of the claim that the family had disinherited and disowned him by putting an advertisement in the newspaper within a day or two of finding out from the Appellant that he was gay, as the Appellant's name was not mentioned so that "no-one would know why he was not returning. I do not accept as credible the explanation that it would get out as he suddenly was asked by people from his area about his sexuality" (paragraph 47).

29. Finally, the judge was entirely correct in drawing attention to the fact that there had been a delay in the Appellant making his claim. This is not a criticism of the Appellant on account purely of having delayed in raising a sexual orientation claim with respect to his protection claim, it is to do with the fact that the Appellant had made two Leave to Remain

applications "but had not made any reference to his claimed sexuality" (paragraph 42). Accordingly, the appeal before this Tribunal is completely without foundation and there is no error of law.

No Error of Law

30. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law.

Notice of Decision

31. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

32. The appeal is dismissed.

33. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 18th December 2018