



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

Appeal Number: PA/11747/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12 March 2019**

**Decision & Reasons Promulgated
On 01 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**M M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Franco, counsel instructed by Schneider Goldstein
Immigration Law

For the Respondent: Ms Willocks-Briscoe, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Bangladesh, date of birth 31 December 1993, appealed against the Secretary of State's decision, dated 13 October 2017, to refuse an asylum/protection based claim. His appeal came before First-tier Tribunal Judge Cohen who on 19 December 2018 dismissed his appeal against that decision. Permission to appeal the Judge's decision was given by First-tier Tribunal Judge Garratt on 8 February 2019.

2. Permission was given on the basis primarily, it seemed to me, that it was considered in the grounds that the Judge had identified a discrepancy in the basis of the Appellant's claim which was not in reality a discrepancy. The Judge's view had been derived from a misunderstanding and the repetition of a misunderstanding by the Secretary of State in the Reasons for Refusal Letter. In addition, there were other issues taken as to the extent to which the Judge had properly addressed supporting documentation relied upon by the Appellant and properly assessment the evidence in the light of the Appellant's mental health issues.
3. The Appellant, before the Judge, was represented by very experienced counsel and it was clear both from the grounds of appeal and from the matters recorded by the Judge that the Appellant's representative at the hearing had not argued or submitted that care and caution needed to be given to the reliability of the Appellant's evidence because of mental health issues. If that had been at the forefront of the evidence it seemed to me wholly unlikely that his representative would have ignored it. In the Appellant's bundle there was a letter dated 13 September 2018 from the Appellant's solicitors asking for a medical report amongst other thing addressing the ability and fitness of the Appellant to give evidence and whether his evidence could be relied upon. It was clear from the report of Dr Kahmud MBBS, LMSSA, LRCP, LRCS. DRCOG from what appeared to be a GP practice at Wembley Road in East London that apart from a general description the doctor was unable to express a view amongst other things on the Appellant's ability to give evidence.
4. The Judge noted in the decision that the Appellant had said, when asked with reference to the GP letter about the issue of suicidal ideation, that he had not mentioned it in his witness statement but he did not know why not and as he said at the end of it "... his mind is not working properly".
5. It was clear that the Appellant gave his evidence as did others and the representations made on his behalf at the conclusion of the hearing did not indicate an invitation to the Judge to treat with care the Appellant's

evidence because of mental health or general wellbeing issues. The determination was silent as to that matter and equally the grounds seeking permission to appeal are silent as to any representations being made to that effect to the Judge by the Appellant's representative.

6. I agree with Mr Franco that there may well be circumstances where a Judge may for his own purpose raise concerns about the reliability of the evidence being given at the time and/or its confusing presentation or whatever may be the pertinent considerations. The Judge would raise it with the parties or invite the parties to make submissions as to discrepancies, differences in the evidence and why they may have come about. Again, it did not appear from the decision nor the Record of Proceedings that this issue was raised. Nor was it raised in the skeleton argument advanced on behalf of the Appellant at the hearing that caution was needed to address the claim being made because of unreliability in the Appellant's recollection.
7. For these reasons, I do not conclude that the Judge made any error of law in failing to carefully consider the evidence. Attractive as Mr Franco made and iterated the point it did not seem to me that the assessment the Judge made was simply driven by 'the date issue' as to when the Appellant had either actively pursued his claimed sexuality with one friend (SA) of his in Bangladesh and/or that he was involved in the incident which the Appellant claimed was the trigger for his needing to leave Bangladesh. It could be as Mr Franco rightly pointed out that in the Reasons for Refusal Letter there was a juxtaposition of dates and events and that may have caused the factual discrepancy there. The Judge looked at the variety in and whole of the evidence rather than simply finding the Appellant could not succeed in his claim because he had been discrepant in his account of when the relevant events relied upon had occurred.
8. On a fair reading of the decision, which Mr Franco does not avoid but perhaps with no discourtesy to him he does to a degree elide, the fact was that the Judge in considering this matter set out a number of other matters

where he found the Appellant's evidence at odds with the genuineness of his claim as to his sexuality: See for example and not exclusively [D36, 37, 39, 40, 41,42, 43, 44, 46] and of other witnesses issues at [D47, 48, 49 and 50].

9. It therefore seemed to me, putting aside the way the Judge summarised the overall position, it was, to a degree, unhelpful to say that there were further discrepancies which formed the basis of the view that the Appellant's claim was implausible; but which he did not set them out. It would perhaps have been helpful to have done so but since we do not know what those discrepancies were the conclusion appears to be that the Judge who heard the evidence and submissions ultimately took the view [D52]'... the Appellant's evidence before me was evasive, lacking in cohesive detail and I find this to be further damaging to his credibility'.
10. Mr Franco would probably and reasonably say, with reference to his point about the Judge's failing to properly assess the vulnerability of the Appellant, the impact that might have in the assessment of his evidence, the evidence as a whole, that that illustrated just why the decision was unreliable and therefore should be set aside.
11. For my part sympathetic as one may be to the attractiveness of the argument I conclude that the Judge did address the evidence and made an assessment which he was entitled to make. Of concern was undoubtedly what the Judge said [D51]:-

"the Appellant has produced miscellaneous additional documentation in support of his claim, including medical and police documentation, but in respect of the same and having regard to Tanveer Ahmed, having regard to my adverse credibility findings above, I attach little weight to the same".

This was a somewhat less than full expression of why there was some concerns about the reliability of whatever was the medical evidence the Judge was referring to let alone the police documentation.

12. The case file and the bundles do not, at least for my purposes, disclose what the police documentation may have been. The medical evidence was the report of the Appellant being treated for injuries after an attack but on what basis and what was the cause of the attack the medical evidence does not identify. It therefore may be that it has some relevance but to what extent it truly goes to support the issues, I cannot tell.
13. However absent of anyone being able to point to such medical evidence or police documentation for the purposes of the appeal to show why the judge erred in the view he expressed I do not think the matter can be taken further but it did seem to me it would have been better to have expressed more fully what the problem with the documentation was. Similarly, as was clear from the case law [D46] finding documentation was self-serving did require a reason however brief and short. In this case it seems to me marginal but I find there is sufficient reasoning given [D46] to explain the context and why the Judge thought that statement was self-serving.
14. Therefore, understanding the reservations that the Appellant has and appreciating it is not the result he wanted it did not seem to me that the grounds demonstrated a material error of law.
15. The grounds argued a further point by reference to the background evidence but rightly Mr Franco acknowledged the point was contingent upon a conclusion that the Appellant was of the sexuality claimed. It was not seriously argued that if he had been found to be gay then the realities were that he could not safely return to live a life as a gay man in Bangladesh. For obvious reasons, in the light of the Original Tribunal's decision nothing further need be said about it. Whilst I note what the Judge said in granting permission as to the Appellant suffering from anxiety and depression I return to the points made at the outset that that had not formed the basis of the claim either in the sense of demonstrating that the Appellant's condition was associated with the anxiety and stress related to his sexuality as opposed to, for example, the continuing

uncertainties of an immigration status or such other causes as there may be. In the circumstances I did not find that that of itself demonstrated an arguable material error of law.

16. For these reasons it seems to me that there was no basis, by the Appellant's solicitors, for any implicit criticism of the way the case was presented by Counsel below. It did not seem to me in the light of the way the decision was written and the way the grounds were drafted that there was any basis to criticise Counsel.

DECISION

17. The Original Tribunal's decision stands. The appeal against that decision is dismissed.
18. An anonymity order was made. It is to be continued.

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 21 March 2019

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed
Deputy Upper Tribunal

Date 21 March 2019