



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

Appeal Number: PA/12458/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 5 March 2019**

**Decision & Reasons
Promulgated
On 18 April 2019**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**MUHAMMAD [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Akinbolu, Counsel instructed by Connaughts
For the Respondent: Ms S Jones, Home Office Presenting Officer

**DECISION AND REASONS
(Decision delivered orally on 5 March 2019)**

Introduction

1. The appellant is a citizen of Pakistan, born in October 1989. He entered the United Kingdom on or around 25 March 2012 as a student. The appellant's application for an extension of such leave was refused on 19 November 2014.

2. Subsequently, the appellant made a protection and human rights claim founded primarily on the fact that he is gay and, it is said, would be persecuted in Pakistan as a consequence (whether this be as a consequence of him living openly or, alternatively, being required to hide the fact that he is gay in order to avoid persecution). This application was rejected by way of a decision of 14 November 2017. Ostensibly, the Secretary of State disbelieved the core assertions made by the appellant.

Decision of the First-tier Tribunal

3. The appellant appealed the Secretary of State's decision to the First-tier Tribunal. In a decision promulgated on 5 October 2018 First-tier Tribunal Judge Geraint Jones QC dismissed the appeal.
4. Permission to appeal was granted by Upper Tribunal Judge Jackson in a decision dated 4 January 2019. The core reasoning deployed by Judge Jackson in granting permission reads as follows:

"The appeal of the First-tier Tribunal materially erred in law in, first, reaching adverse credibility findings which were unreasonable and/or irrational; secondly, its assessment of the evidence; and finally, in its risk of inconsistency with Mr Ahmed's appeal.

The grounds of appeal are all arguable, in particular the manner and tone in which the decision is drafted, including commencing with statements tending towards findings of adverse credibility before consideration of any of the detail of the evidence was considered together with the statement in paragraph 14, discloses arguable bias by the judge in considering protection claims based on sexuality from men from particular countries. It is arguable that the appeal was not approached by the judge with an open mind or that a holistic assessment of credibility was undertaken. It is further arguable that too much weight was placed on the appellant's screening interview."

Setting aside the FtT's Decision

5. The grounds of appeal are framed so as to identify three substantive grounds, but each of those grounds contains a number of sub-grounds, making the reading and understanding of the grounds very difficult indeed.
6. Despite the thorough nature of Ms Jones' response to the grounds my conclusion is, that the decision of the First-tier Tribunal is unsustainable and must be set aside. I have come to this conclusion for three reasons.
7. First, is the concern over the context and framework within which FtT's credibility assessment sits. A prime example of this can be found in paragraph 14 of the FtT's decision wherein the following is said:

"This is one of those appeals that has been encouraged by the higher courts wedging open the floodgates which have resulted in very many men who do not wish to return to some parts of Asia, but who wish to procure continued residence in this country belatedly coming forward to allege that

they cannot be expected to return to their native land because they are homosexual. This Tribunal has experienced a torrent of such appeals which perhaps was only to be expected once the floodgates have been so firmly wedged open. The significance of that fact is that one has to examine each individual ... claim with considerable care because of the ease with which such allegations can be made by those intent upon procuring continued residence in this country."

8. At paragraph 28 the FtT also says:

"If as the appellant now claims he had mixed with homosexual Asian men some of whom would have been trying to procure continued residence in this country it is inconceivable that the now well-trodden asylum route would not have been a subject of discussion and/or advice and/or research on the internet."

9. Ms Jones made no observations about these comments and, for reasons which Ms Jones was unable to explain, there is no rule 24 response from the SSHD dealing with them.

10. When these comments are read together and seen in the context of the decision as a whole it is clear to me that the FtT took the view that this 'category' of claim - which is said to be claims by Asian gay men to be homosexual - required particularly careful consideration because of the possibility that the applicants are not telling the truth. There was, however, absolutely no evidence before the FtT that (i) this particular applicant had any awareness of the preponderance of claims by Asians to be at risk of persecution because they are gay, or (ii) there is a preponderance of asylum applications by Asians claiming to be at risk because they are gay. Furthermore, the appellant was neither put on notice of this claimed fact nor of the FtT's views in relation to it so that he could be given an opportunity to rebut the 'assertion' if thought appropriate.

11. Whilst the FtT provides a number of reasons for finding the appellant not credible, these reasons must be considered through the lens what is said above. I only need to address two of these reasons, Ms Jones being unable to identify any rational basis for either.

12. The first is found at paragraphs 17 and 42(vi) of the decision, in which the FtT found implausible the appellant's assertion to have gone into hiding in Pakistan. This conclusion is said to be founded on the answer to question 12 of the appellant's asylum interview - the full text of the question and answer reading as follows:

"12. Question:

Before you left PAK in 2012 did you have any problems with anyone for any reasons?

Response:

Yes [Can you tell me what problems you had]. As I said I was homosexual I used to live **in hiding**. No one knew about me Pak in Islamic country they don't like people like ... and if they find out about anyone they beat them up and even kill them." (emphasis added)

13. The FtT construed this answer as the appellant asserting that he had gone into hiding in Pakistan i.e. moved to a place where nobody knew who or where he was. It is palpably clear, however, that the appellant was in fact stating that he was required to hide the fact that he was gay. When set in this context it is clear that the FtT's reasoning at paragraphs 17 and 42(vi) of its decision is wholly irrational.
14. The second example of irrationality in the FtT's decision is found in paragraphs 25 and 42(viii) therein, in which the FtT treats the appellant's evidence that his alleged partner took the appellant to a gay club despite not knowing at the time that the appellant was gay, as being implausible. This conclusion must be founded on the assumption that only gay people attend gay clubs. Such an assumption has no foundation in the evidence before the FtT and no foundation in reality.
15. There is also a sustained attack by the appellant on a number of other reasons provided by the FtT and Ms Jones responded to each of these in turn. I make no finding on those aspects of the decision because in my conclusion when taken cumulatively the issues I have identified above are such that this decision is unsustainable.

Notice of Decision

I conclude that the First-tier Tribunal's decision must be set aside.

The remaking of the decision will be undertaken afresh, nothing is to stand. The parties concur in submitting that the appropriate course is for this matter to be remitted back to the First-tier Tribunal and for the matter to be linked to the extant appeal in reference PA/12638/2017, which is to be heard at Taylor House.

Upper Tribunal Judge O'Connor

Date

Mark O'Connor

17 April 2019