



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/01290/2020

THE IMMIGRATION ACTS

**Heard at Manchester CJC on 11
November 2020**

**Decision & Reasons
Promulgated**

At a remote hearing via Skype

On 17 November 2020

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

A

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Elliot-Kelly, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. I have maintained the anonymity direction because this decision refers to the appellant's international protection claim.
2. This is an appeal by the appellant ('A'), a citizen of Pakistan, against a decision of First-tier Tribunal ('FIT') Judge M R Oliver, sent on 7 April 2020, dismissing his appeal on asylum and human rights grounds. This followed a previous decision by FTT Judge Colvin, sent on 29 January 2019, dismissing A's appeal as well as the appeal of his then claimed partner ('P'). For convenience I shall refer to these as the 2019 FTT and the 2020 FTT decisions. In summary, the 2019 FIT rejected A and P's claim to be in a gay relationship. The 2020 FTT considered those findings equally valid to A's claim that he was gay and would be at risk in persecution for reasons relating to this. The 2020 FTT considered A's further evidence to be unreliable, and rejected his claim to be gay as well as his claim that P had been killed when he returned to Pakistan.
3. In a decision dated 6 May 2020 FTT Judge G Wilson granted permission to appeal observing all issues in the grounds of appeal to be arguable. Judge Wilson regarded the grounds to assert, inter alia, that the 2020 FTT failed to consider material facts and evidence. The matter then came before me to determine whether the FTT decision contains an error of law, and if so whether it should be set aside.

Hearing

4. At the beginning of the hearing before me, Mr McVeety accepted that although the grounds of appeal were drafted in a general and generic fashion, Judge Wilson regarded them to at least include the assertion that the 2020 FTT failed to consider material facts and evidence. Mr McVeety agreed with me that even if that was an overly generous interpretation of the grounds of appeal, it was clear from the documents on file that the 2020 FIT failed to make important findings on the fresh evidence before it and not before the 2019 FIT, and this constituted a 'Robinson obvious' error of law - see Durueke (PTA: AZ applied, proper approach) [2019] UKUT 197 (IAC) at [34] to [37].
5. Both representatives accepted that the 2020 FIT failed to make findings of fact on key evidence such that the FTT decision should be set aside. Mr McVeety was entirely correct to concede the appeal for the reasons I summarise below.

6. Both representatives agreed that the error of law is such that the decision needs to be remade completely. This will require fresh findings of fact in relation to detailed and extensive evidence. I had regard to para 7.2 of the relevant Senior President's Practice Statement and the nature and extent of the factual findings required in remaking the decision, and I decided that the matter should be remitted to the FIT.

Error of law discussion

7. The 2019 FTT provided comprehensive reasons for rejecting A and P's respective claims to be gay and their joint claim to be in a gay relationship. The 2020 FTT had before it extensive fresh evidence post-dating the 2019 FTT decision. This included: written fresh claim submissions dated 30 September 2019, a witness statement from A dated 6 March 2020, witness statements from two friends who gave oral evidence at the 2020 FTT hearing, emails, facebook messages, medical evidence and supporting letters. These entirely recast A's case because of events said to post-date 29 January 2019, the date of the 2019 FTT decision. The chronology and the relevant evidence relied upon is summarised below.

- (i) In February 2019 P explained to A that his family wished for him to return to Pakistan and he was considering doing so. A and P argued about this and P left the home he was sharing with A in the UK in April 2019, in order to return to Pakistan. P has not been in contact with A since this time.

- (ii) A called P's friend in Pakistan, Hamza, in order to clarify P's whereabouts. Hamza called A two days later to say that P's family refused to answer and warned him against enquiring further regarding.

- (iii) In June 2019 A received a phone call in which P's brother and his own father threatened and abused him.

- (iv) On 26 June 2019 A received an email from Hamza in which he said that P had been killed by his own brother and A's family had been threatened by P's family. Hamza also explained that he had been beaten and threatened. A responded in an email dated 1 July 2019 asking Hamza to facilitate contact with his family. Copies of these emails were available to the 2020 FTT.

- (v) This evidence is contained not only in A's witness statement but also referred to in the witness statement of Ikram UI Haq, who gave oral evidence before the 2020 FIT. This statement states that P went back to Pakistan and has not been heard of since. In addition, A was informed that P was killed because of his sexuality.

- (vi) On 13 July 2019 A received a facebook message from his friend in Pakistan, Orangzaib, in which he said that a fatwa had been issued against A and newspaper reports had been

published in which A's father stated that he had disinherited A. In an email that day A asked his friend to provide copies of the fatwa and newspaper reports. The friend then sent a copy of the fatwa against A and newspaper reports published on 10 and 11 July 2019. This correspondence and attachments were before the 2020 FTT.

(vii) A was very upset and depressed during this period and sought medical attention and counselling. In particular, A attended his GP at Tooting South Medical Centre on 9 August 2019. A letter from the GP dated 21 February 2020 confirms that A registered at this practice in August 2019 when he was diagnosed as having moderate depression, given antidepressants and referred for counselling. The GP notes for 9 August 2019 also contain A's explanation that he felt low because P had been killed and he was afraid for his own life. The 2020 FIT also had a letter from 'NHS Talk Wandsworth' dated 28 August 2019 which recorded A's claim that P had been killed and described his self-report as indicating that measures of depression and anxiety scores were in the severe range. A also sought help from his friend Ghulam who put him on to 'Mind Out', a LGBTQ mental health service, which offered him assistance in July 2019. In a letter dated 13 August 2019 a Senior Mental Health Advocate outlined a history consistent with the one provided by A.

8. The FTT considered the reliability of the fresh documentary evidence to be "key" [43] and stated that this had been considered in the context of all the evidence and the reasoning of the 2019 FIT [44]. The 2020 FTT judge concluded at [45] that each of the reasons provided for disbelieving A remained "equally valid following the service of documentation which I find has not been shown, even to the lower standard to be reliable". Although the evidence was referred to in a general sense, Mr McVeety was correct to concede that the 2020 FTT failed to address and make findings upon the fresh evidence post-dating the 2019 FTT. In particular, the 2020 FTT:

- (1) Failed to make any findings of fact as to the credibility of A's detailed account (which cross-referenced to emails and facebook messages) that he believed that P had been killed by his family in Pakistan because of his gay relationship with A. Although the 2020 FTT considered A to have provided a "striking" lie before the 2019 FIT at [44] and was obliged to treat those findings as a starting point, the judge was nonetheless obliged to make findings in relation to A's evidence as to what had taken place since the 2019 FTT decision. The 2020 FIT failed to consider the utility of a 'Lucas' self-direction about A's honesty - see Uddin v SSHD [2020] EWCA Civ 338 (12 March 2020).

- (2) Made no findings of fact regarding A's two witnesses, who attended the hearing and were cross-examined. They are

referred to at [40] without names, and no further mention is made of them in the decision.

- (3) Entirely failed to refer to or address the supporting evidence from the GP which corroborated A's claimed chronology of events.
- (4) Rejected the reliability of the fatwa and the newspaper reports without considering the context in which this evidence was provided. A did not have supportive family members in Pakistan - these materials were sent attached to emails and messages from a friend.
- (5) Failed to address all the fresh evidence in the round before concluding that the 2020 FTT reasoning remained "equally valid".

Conclusion

9. The 2020 FIT's errors of approach in relation to the credibility of A's account post-dating the 2019 FIT decision constitute material errors of law. These errors have infected the credibility findings made, such that the decision needs to be set aside and remade de novo on both asylum and human rights grounds.
10. The FIT decision contains errors of law. Its decision cannot stand and is set aside. The matter is remitted to the FIT, where it will be remade de novo by a judge other than Judge Abrebrese or Judge Oliver.

Signed: Ms. M. Plimmer
Judge of the Upper Tribunal

Date: 13 November 2020