



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12567/2017

THE IMMIGRATION ACTS

Heard at Field House
On 12 June 2018

Decision & Reasons Promulgated
On 27 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

AS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. A. Lahore

For the Respondent: Mr. T. Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Young, promulgated on 16 March 2018, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum appeal I make an anonymity direction.
3. Permission to appeal was granted as follows:

"There is some arguable merit in the grounds because the Judge does not make findings on whether or not he found the Appellant's witnesses credible; As to I-LD, the implication is that she may not be an objective, independent witness but this is not

stated (see [88]). As to SC, the Judge does not state whether or not he found SC's evidence credible and if so why his evidence did not carry weight. Permission to appeal is granted."

4. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Error of Law

5. The evidence of SC is set out from [45] to [53], and that of I-LD at [54] to [62]. An assessment of their evidence in the conclusions is set out in relation to I-LD at [88] and SC at [90]. The conclusions of the Judge start at [83] and finish at [91] where he states:

"In the round and in considering the above issues I was not able to find that the appellant was a gay person even on the low standard of proof. The matter that weighed most heavily in that assessment was the failure of the appellant to make any claim regarding his sexuality since arrival in the UK in 2008 albeit he says he knew at that time that he was gay. As indicated I consider that there were very strong indications that he well knew of the position in Pakistan and that he was not truthful when he said he only became aware of the position in May 2017. There was ample opportunity to make his claim had he truly been a gay person. I consider that he makes this claim because he has run out of other options. Thus I do not think he is able to avail himself of the protection of the Refugee Convention."

6. At [85] the Judge states that a significant issue was the fact that the Appellant had not made his claim for asylum earlier. At [86] he set out detailed reasons for why he did not accept the Appellant's claim that he did not realise that there was persecution in Pakistan until he spoke with his friend in May 2017. At [87] he set out the difficulties in the evidence regarding MT and MT's age.
7. At [88] he made findings regarding I-LD's evidence. I will turn to this later. At [89] he set out the evidence from NAZ and found that this was not supported by any witness. The evidence of SC is considered at [90], which states:

"Evidence from SC indicated that he met the appellant in September 2016 and that he became friendly with him and he believes the appellant to be a gay man. He recounts one incident of him being in bed with the appellant in June 2017 engaging in oral sex. This of course would be after the appellant made his asylum claim. SC had not been introduced to any other acquaintances of the appellant and there was no ongoing physical relationship the parties having decided they would just be 'friends'."

8. It was submitted on behalf of the Appellant that this was not an accurate summary of the evidence. SC had not said that he had not met any of the other acquaintances of the Appellant, but that he had not met any acquaintances with whom the Appellant claimed to have had a relationship. At [53], where the evidence is set out, it states: "He advised that he had not been introduced to any of the appellant's friends with whom

he may have had a relationship but he knew that the gay community was small and he would be aware of the individuals.”

9. I find that there is no material error here. The finding at [90] is that SC had not been introduced to any other acquaintances of the Appellant. With reference to the Record of Proceedings, SC was asked whether he had met any of the Appellant’s friends with whom he had a relationship. The fact that the Judge has stated at [90] that he had not met any other acquaintances of the Appellant is not material to whether or not the Appellant is a gay man.
10. However, the evidence of SC as set out in his witness statement is material to whether or not the Appellant is gay. SC states in his witness statement that he believes that the Appellant is gay. He gave evidence of the “in-depth conversations about his feelings for men”. He states that he had had a sexual encounter with the Appellant. He fully supports his asylum claim on the grounds of sexuality.
11. I find that, had this witness been found to be credible, placing weight on his evidence, it is possible that the Appellant’s appeal would have succeeded, given that there was one issue before the Judge which is whether or not the Appellant was gay. I therefore find that to make no finding as to whether or not SC was credible, given that this was a witness whose evidence went directly to the core issue before the Judge, is a material error of law. At [90] the Judge has not made any finding as to SC’s credibility, but has merely set out his evidence again. He has failed to make any finding as to the weight given to SC’s evidence.
12. There was only one issue on which the Judge had to make a finding of fact, and the evidence of SC went directly to this issue. I therefore find that it was incumbent on the Judge to make a finding as to whether or not he found SC to be a credible witness.
13. While I accept that the Judge has appeared to consider all of the evidence before him, he has failed to make a credibility finding in relation to a key witness who gave evidence on the core issue in the Appellant’s appeal. I find that this affects his credibility findings as a whole.
14. In relation to the Judge’s treatment of I-LD’s evidence, it is clear that the Judge did not find her to be a witness on whose testimony he could place any weight. The reasons given are due to the “odd circumstances of her relationship with LH”, a good friend of the Appellant. It was submitted that the evidence as set out in the conclusions had not been recounted correctly, and that she had not stated that she had no knowledge of the rental arrangements. While I find that the Judge could have been clearer, he gave reasons for finding that he could not give weight to her evidence, and I do not find there is any error of law.
15. However, I have found that the Judge erred in his treatment of the evidence of SC and I have found that this error is material. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s

case to be put to and considered by the First-tier Tribunal. The error affects the credibility findings and therefore, given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

16. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
17. The appeal is remitted to the First-tier Tribunal to be remade.
18. The appeal is not to be listed before Judge Young.

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 their 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

Date 26 June 2018

Deputy Upper Tribunal Judge Chamberlain