



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

Appeal Number: PA/12193/2018

THE IMMIGRATION ACTS

Heard at Field House

On 15 April 2019

**Decision & Reasons
Promulgated
On 25 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**W H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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.

Representation:

For the Appellant: Ms R Bagral, Counsel, instructed by Sohaib Fatim Solicitors
For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Bowler (“the judge”), promulgated on 7 December 2018, in which she dismissed the Appellant’s appeal against the decision of the Respondent, dated 9 October 2018, refusing his protection and human rights claims. The essence of his protection claim was that he is a gay man and would be at risk on return to Afghanistan.
2. The judge made a number of adverse credibility findings contained between [44] and [84] of her decision. These related to aspects of the Appellant’s claim relating to past experiences in Afghanistan, his circumstances in the United Kingdom, and in respect of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. In essence the judge did not accept the core factual claim that the Appellant was gay.
3. In challenging the judge’s decision, four grounds of appeal were initially put forward. In summary, these related to the judge’s consideration of the section 8 issue, the failure of the judge to have regard to country information or a relevant country guidance decision of the Upper Tribunal, a failure to give adequate reasons, and an alleged misinterpretation of the facts of certain parts of the Appellant’s case.
4. In granting permission to appeal, Deputy Upper Tribunal Judge Mailer considered that there was little merit in grounds 1, 3 and 4, but more so in respect of ground 2.

The parties’ submissions

5. At the hearing before me Ms Bagral, with her customary professionalism, accepted that certain aspects of the grounds were effectively unarguable. She focused her attention on ground 2 and one particular aspect of ground 4. She submitted that the judge had indeed failed to take account of either the relevant country information and, perhaps more importantly, the country guidance decision in AJ (Risk to Homosexuals) Afghanistan CG [2009] UKAIT 00001 (“AJ”). The particular aspects of the Upper Tribunal’s consideration of the relevant country information related to the prevalence of homosexuality in Afghanistan (with reference to [35] of that decision).
6. Ms Bagral submitted that it was imperative that any judge had regard to relevant country guidance decisions and that credibility was assessed in the context of the background information of the country in question. This had simply not been done in the present case and as a result the judge’s credibility findings were fundamentally flawed.

7. In respect of ground 4 she submitted that the judge had appeared to misconstrue the Appellant's evidence relating to the Sweatbox Club at which he said he had met a partner in the United Kingdom. Although the Appellant had submitted evidence (contained in his appeal bundle), the judge appeared to have taken an additional point against the Appellant without having canvassed the issue at the hearing.
8. For the Respondent, Mr McGirr submitted that a failure by the judge to have expressly considered the country guidance case was, in the context of this appeal, immaterial. It simply would not have made any difference to the judge's credibility assessment when viewed as a whole. In respect of ground 4 he wondered what evidence had in fact been put before the judge. In essence he submitted that the judge had found against whatever evidence had been offered and that was a conclusion open to her in all the circumstances.
9. In reply Ms Bagral emphasised the importance of taking country guidance cases into account and referred me specifically to paragraph 21(e). of the Court of Appeal's judgment in AM (Afghanistan) [2017] EWCA Civ 1123 (incorrectly cited in the grounds as AM (Iran) [2018] EWCA Civ 2706). She submitted that the error was indeed material.

My error of law decision

10. I conclude that there are no material errors of law in the judge's decision.
11. Maintaining the focus on the grounds argued before me by Ms Bagral, I must of course have regard to the judge's decision as a whole and to read what she has said in a sensible manner.
12. It is true that the judge failed to have specific regard to both the Country Policy Information Note produced by the Respondent and the decision in AJ. On the face of it, and specifically in relation to the country guidance decision, this would appear to be an error of law. The core issue here is that of materiality.
13. It appears to me as though the only way in which the AJ decision could have offered any potential support for the Appellant's claim was in relation to what was described as the "prevalence" of homosexuality in Afghan society. It would also appear that this "prevalence" does not necessarily relate to individuals having a confirmed homosexual orientation, although I accept that it is nonetheless part of the background to a case involving such an assertion.
14. However, this potential support for the Appellant's claim has to be seen in the context of what the judge has said in [46]-[55] of her decision. There, as elsewhere in her findings and reasoning, she deals with specific aspects of the Appellant's account. Clearly it is the *specifics* of an account which will very often be the most important issues for a judge to reach findings

on. It is clear from what the judge has said in the paragraphs referred to that she has applied care and adequate reasons to a number of particular aspects of evidence put forward by the Appellant.

15. As I read the judge's consideration of these matters, I cannot see that a factoring-in of what is said in [35] of AJ (Afghanistan) could have made any material difference to the overall credibility assessment. I say this not only in respect of the aspects of the claim relating to past experiences in Afghanistan, but also when viewing the judge's decision as a whole, something that I am bound to do.
16. In respect of the particular aspect of ground 4 relied on by Ms Bagral, I see a degree of merit in the way she has put the point. It is difficult to ascertain whether or not the specific issue taken against the Appellant was canvassed at the hearing itself. However, as I pointed out during the course of argument, the judge was proceeding on the basis of the evidence actually submitted by the Appellant. This included documentary evidence contained in the bundle and referred to in [70] of the decision. The judge properly considered this and found that on its face, rather than supporting the Appellant's claim, it went to undermine it.
17. Even if there were a degree of confusion or misapprehension as to an aspect of the evidence, it is likely that this arose out of the evidence put forward by the Appellant rather than any error by the judge. In addition, I cannot see that, even if such an error existed, it would in the context of the judge's decision as a whole be material to the overall outcome.

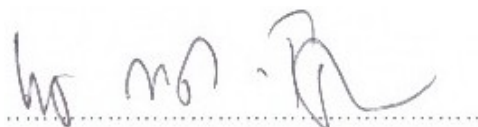
Notice of Decision

The decision of the First-tier Tribunal does not contain material error of law and it shall stand.

The Appellant's appeal to the Upper Tribunal is dismissed.

I make an anonymity order

Signed



Date: 19 April 2019

Deputy Upper Tribunal Judge Norton-Taylor