



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
PA/12641/2018**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 16 May 2019

On: 23 May 2019

Before

Deputy Upper Tribunal Judge Mailer

Between

**ALAMGIR [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms M Malhotra, counsel, instructed by City Heights Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh, born on 15 May 1985. He appeals with permission against the decision of the First-tier Tribunal Judge, promulgated on 22 March 2019, dismissing his appeal against the respondent's decision dated 17 October 2018 to refuse his asylum, humanitarian protection and human rights claims.

2. The appeal was heard by the Tribunal on 30 November 2018. The decision was promulgated on 22 March 2019. The substantial delay in promulgating the determination constituted one of the grounds of appeal, namely that the Judge's credibility findings were "vitiating."
3. The appellant claimed that he is gay and that he had casual relationships from 2009 until 2017. He claimed that on return to Bangladesh, his family, extended family and the police would kill or arrest him because he is gay.
4. The Tribunal produced a 43 page decision containing 347 paragraphs. It was also contended in the grounds seeking permission to appeal that the findings are difficult to locate because there are numerous paragraphs prior to the commencement of his "reasons" at [157] onwards, which also appear to contain "reasons" or "findings," for example, at [73-75] and [82].
5. Moreover, some paragraphs, for example [78] and [148] run to over a page in length without any sub-paragraphing. Even within the "reasons" section, the Judge simply repeats large swathes of the evidence rather than providing proper reasoning for his findings.
6. Moreover, in his "reasons" at [172-178] sub-clauses are used with regard to his findings, which are at the same time interspersed by other paragraphs [179-187] which then returns to sub clauses at [188] and [189].
7. Designated Judge of the First-tier Tribunal MacDonald granted permission to appeal on all grounds, including the assertion that the determination is prolix, confusing and incoherent. The second ground referred to the inordinate delay between the hearing and the promulgation of the decision. The third ground was that in fact the Judge did have the determination of Mr Rahman but for some reason had not seen it.
8. In that respect, Ms Malhotra, who did not represent the appellant before the First-tier Tribunal, contended that the Judge did not properly consider all the relevant documents in the appellant's case, including the determination of one of the key witnesses whom the appellant called, namely, Mr Rahman. He was a key witness in the appellant's case and his evidence provided crucial support for the appellant.
9. Mr Rahman's appeal was allowed by the First-tier Tribunal sitting at Taylor House in a decision promulgated on 10 April 2018. His claim was also based on his homosexuality in Bangladesh. The determination was not available to the Tribunal at the date of hearing of the appellant's appeal in November 2018. Accordingly, the First-tier Tribunal Judge allowed a short time period for the appellant's solicitors to send it to him.
10. I was informed that the hearing before the Tribunal took place on 30 November 2018 and that the appellant's solicitors sent the First-tier

Tribunal Judge an email directly on 3 December 2018 with the determination attached. It was accordingly received on 3 December 2018. However, the First-tier Tribunal Judge stated at [109] that “I have not seen the determination.”

11. Ms Malhotra submitted that the First-tier Tribunal Judge did not find Mr Rahman to be credible. He had regard to the statement provided by Mr Rahman from [101] onwards. Mr Rahman also gave evidence at the appellant's hearing. At the end of his evidence, the Judge directed the appellant's solicitors to serve the determination in Mr Rahman's appeal within ten days following the hearing [108].
12. The decision allowing Mr Rahman's appeal found him to be credible. Ms Malhotra submitted that he was accordingly a reliable witness.
13. At [205] the First-tier Tribunal Judge found that it was somewhat surprising that Mr Rahman said the same thing that the appellant claimed in his oral evidence, namely that he had never seen the appellant with girls, as an explanation why Mr Rahman believed that the appellant is gay. That he found was a fundamental misapprehension to the point of being crass and superficial, in that it seemed to equate being gay with having a misogynistic approach to life [206].
14. Ms Malhotra submitted that “the difficulty is that the determination is all over the place.” The Judge found at [240] that it is not credible that Mr Rahman and Mr Miah did not mention a person, Ahmed, in their appeal statements. At [293] he found that the witnesses, including Mr Rahman, were to all intents and purposes professional witnesses in gay asylum appeals. They have dishonestly supported the appellant in an asylum claim that they know to be fabricated. He found the evidence of Mr Hart and Mr Rahman to be untrustworthy and so lacking in credibility that little weight could be attached to what they say.
15. She submitted that the latter finding is particularly problematic given that in Mr Rahman's appeal, heard at Taylor House on 26 March 2018, First-tier Tribunal Judge Neville found that the appellants, including Mr Rahman, easily met the lower standard of proof as to their sexual identity and their relationship. He found that they were gay men and in a relationship.
16. The First-tier Tribunal Judge in the appellant's appeal however, did not consider that important determination and the principle of natural justice has been infringed.
17. Ms Malhotra also submitted that the assessment of the appellant's medical evidence, and in particular his mental illness, was not properly assessed.

18. On behalf of the respondent, Mr Walker agreed that the delay coupled with the lack of findings relating to the determination in Rahman cumulatively leads to a material error.
19. Although other grounds are relied on, he accepted that the two main points advanced are sufficient to justify the setting aside of the decision.

Assessment

20. It has been accepted that there was excessive delay in the promulgation of the decision. Moreover, the First-tier Tribunal Judge failed to consider as part of the assessment of his credibility findings, the determination of First-tier Tribunal Judge Neville who found that Mr Rahman had given credible evidence. The decision had been sent to the First-tier Tribunal on 3 December 2018 as part of an attachment.
21. In the event, the Judge determined the appellant's appeal in ignorance of the fact that the appellant had provided this determination which confirmed the credibility of his witness, Mr Rahman.
22. The Judge had permitted the appellant to provide the decision. No subsequent enquiries or efforts were made after the expiry of ten days to ascertain why he had not been provided with that decision. His decision was moreover not promulgated for almost four months.
23. In the circumstances, Mr Walker has very fairly accepted that the decision cannot stand. Both parties are agreed that it would be appropriate in the circumstances to remit the appeal to the First-tier Tribunal for a fresh decision to be made.

Notice of decision

The decision of the First-tier Tribunal involved the making of an error on a point of law.

Having set it aside, I remit the case to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made by another Judge.

Anonymity direction not made.

Signed

Date 21 May 2019

Deputy Upper Tribunal Judge Mailer