



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000668
First-tier Tribunal No:
PA/51028/2020
IA/02261/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 October 2023

Before

THE HON MR JUSTICE DOVE, PRESIDENT

Between

ABUL BASHIR
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hollywood

For the Respondent: Mr Mullen

Heard at Royal Courts of Justice (Belfast) on 31 July 2023

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh who was born on 5th December 1983. On 1st July 2020 the respondent issued a notice of a decision to remove him as an illegal entrant and make him subject to administrative removal under section 10 of the Immigration and Asylum Act 1999 along with refusing his asylum and human rights claim. The appellant's appeal against that decision was heard before a Judge of the First-tier Tribunal ("FtT") on 21st October 2021. His appeal was dismissed and he has been granted permission to appeal to the Upper Tribunal against that decision on the basis that it contains an error of law which is set out in greater detail below.
2. The appellant's asylum and human rights claim is based upon his fear of being persecuted in Bangladesh and founded upon his membership of a Particular Social Group under the Refugee Convention, in that he identifies as a gay man. In

essence the adverse decision made by the respondent was on the basis that it was not accepted that the appellant is a gay man; it followed that the issue before the FtT was the credibility of the appellant's evidence in relation to his sexual orientation. There was no dispute on behalf of the respondent that the appellant was a citizen of Bangladesh with the date of birth set out above, nor was it disputed that membership of the LGBT community in Bangladesh would qualify as membership of a Particular Social Group for the purposes of the Convention. Indeed at paragraph 15 of the FtT determination it is noted that the position of the respondent was, whilst not accepting that the appellant was gay, that if the FtT made a finding that he was gay he would not be returned to Bangladesh.

3. In summary the appellant's immigration history is that he applied initially for a Tier 4 Student Visa on 16th March 2011 and was in consequence granted a visa from 10th April 2011 to 30th November 2012. He travelled to London on 25th May 2011 and enrolled to study for a Postgraduate Diploma in Engineering, staying until March 2012 when he returned to Bangladesh before his visa expired. On 25th August 2013 the appellant left Bangladesh and travelled to Libya by car where he stayed for two days prior to travelling by boat to Italy where again he stayed for two days. He thereafter travelled by car and train to France, alternatively he claims that his cousin arranged a taxi from Italy to France, where he stayed with his sister in Paris for a week. Following this he travelled to London concealed in a lorry where he remained for the next six years. Subsequently, he travelled to Northern Ireland around July 2019 by bus and on 29th October 2019 he claimed asylum.
4. In the FtT determination the section of the decision relating to credibility, and the FtT judge's findings, commenced at paragraph 13 with the observation that the background material information with which the Judge had been provided had helped him to assess the appellant's credibility and the veracity of his claim. The FtT Judge set out the concerns of the respondent in respect of the appellant's contention that he is a gay man, which relied upon claimed inconsistencies in the appellant's account and the absence of significant support for his lifestyle. At paragraphs 21 and 23 of the determination the FtT Judge noted the concern of the respondent that the appellant was unable to elaborate how he came to a realisation that he was gay and how he reacted and dealt with it, but noted that being repetitive in his account and having difficulty understanding what was happening to him at the young age when he came to a realisation that he was gay "was not unreasonable".
5. Following these paragraphs in the determination comes the paragraph which is central to the appellant's concerns in this case. It is necessary to set out what the FtT Judge observed in full.

"24. The Appellant's evidence is clearly inconsistent and what level of knowledge he had regarding his legal standing as a gay man in Bangladesh, what the laws were and how they were applied against gay men. He repeats the claim that he fears he will be killed in Bangladesh because of his sexual orientation. The background evidence does not support this contention and it would appear, at first, to be an assertion to perhaps bolster his claim for asylum status."
6. The determination subsequently proceeds to rehearse the FtT Judge's concern about a degree of evasion in relation to the appellant's account of his faith as a Muslim, and to note inconsistencies in the answers which he provided as to when

he disclosed his sexual orientation to his sister. The FtT Judge noted inconsistencies in his account in asylum interviews, his written statements and his oral evidence. The Judge dismissed his account of a relationship with another man in London on the basis of an absence of details, as well as his account of a further relationship with a man whilst in Northern Ireland. The Judge was concerned that the appellant had not provided evidence of any organisations or other support groups for gay men that he had engaged with whilst living in Northern Ireland. The Judge went on to conclude for these and other reasons (including the application of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004) that the appellant was not a credible witness and had not therefore demonstrated on the lower standard of proof that he is a gay man. As a result the appeal was dismissed.

7. As set out above the central concern raised on behalf of the appellant in this appeal is the observations of the Judge in paragraph 24 of the determination that the appellant's concern that he would be killed in Bangladesh because of his sexual orientation was unsupported by the background evidence, and was therefore, because it was unsupported by the background evidence an assertion made to bolster his asylum claim undermining his credibility. It is submitted on behalf of the appellant that, firstly, that observation was inaccurate and unfair and that, secondly, bearing in mind the nature of the credibility assessment that needed to be undertaken in this case it affected and undermined the ultimate conclusions which the judge reached.
8. In support of the first element of this submission the appellant draws attention to a range of background information from a variety of sources which, firstly, attest to the fact that LGBT activists in Bangladesh were murdered in 2016 in an episode which received little press coverage or condemnation by the authorities. This background material also supports the contention that Islamic extremists are responsible for threats of violence and death targeted at the LGBT community. Whilst some of these sources are from journalists and academic articles, particular attention is drawn by the appellant to, firstly, the contents of the Australian government's Department of Foreign Affairs and Trade country information report in respect of Bangladesh dated 22nd August 2019. At paragraphs 3.131 to 3.133 this report records the murder of an LGBT activist, and that, following this murder, gay men (whether activists or non-activists in the LGBT community) were in receipt of threats of violence leading to members of the LGBT community going into hiding or leaving the country. The report also noted that the murder of the LGBT activist received almost no press coverage on its first anniversary and that in May 2017 there had been a co-ordinated mass arrest of LGBT individuals attending a party.
9. Observations in relation to the murder of two LGBT activists are repeated in the CPIN and at paragraphs 5.5.5 to 5.5.7. Reports are noted of the Prime minister of Bangladesh, in response to the murders of the two LGBT activists, stating in 2016 that the Government would not take responsibility for "untoward incidents" that befell people who expressed "objectionable opinions", and the activist's writing was likened to porn. Thus, it is submitted on behalf of the appellant that the Judge was simply wrong to suggest that background evidence did not support the contention of the appellant that he feared death if he were returned to Bangladesh. In fact the background evidence available demonstrates that there is serious reason to be concerned in respect of the threats of violence and death toward the LGBT community in Bangladesh, accompanied by an insufficiency of protection.

10. Having reviewed the background material in this case I am satisfied that the appellant is correct, and that the FtT Judge's characterisation of these observations by the appellant was unfair and inconsistent with the background evidence to which I have alluded. The sources comprised in the background evidence support the fact that LGBT activists have been murdered in the past and that there are threats of death and ill-treatment as a result of the activities of Islamic extremists. The concerns that this material gives rise to are reinforced by the observations made as to the attitude of the authorities in Bangladesh to these incidents. The appellant's observations recorded in paragraph 24 are unfairly characterised as an assertion made to bolster his claim for asylum status. It is also in my view worthy of note that it was agreed that were he accepted to be a gay man it would be inappropriate for him to be returned to Bangladesh. Whilst in the course of submissions on behalf of the respondent it was suggested that the appellant could not have a well founded fear of persecution as a result of his sexual orientation that submission is inconsistent with the position agreed before the FtT that were he found to be gay the appellant could not be safely returned.
11. The second question which then arises is to whether or not that mischaracterisation of the background evidence, and its relationship to the appellant's evidence, was one which renders the conclusions reached by the FtT Judge as unsound and subject to an error of law. As set out above I note that, correctly, the FtT Judge identified at the outset that the background material and information would help him assess the appellant's credibility. An aspect of the assessment of a witness's credibility in this context will be to consider its relationship to the background information which is available. In this case there was a clear error in relation to the assessment of the appellant's evidence and its relationship with the background material. Whilst therefore there were other aspects of the credibility assessment which were not challenged in the context of this appeal, in my view it is significant that the Judge's evaluation of the appellant's credibility by reference to the background material contained was erroneous. In those circumstances what has to be regarded as a key strand of the credibility assessment was incorrect, and it is therefore difficult to accept that the overall credibility assessment reached by the Judge is one which can stand. I am therefore satisfied that both elements of the appellant's contentions in relation to paragraph 24 are made out and that there is an error of law in this decision.
12. Given the nature of a credibility assessment, and the fact that this appeal stood or fell on the assessment of the appellant's credibility, in my view there is no alternative but to return the matter to the First-tier for it to be remade. In effect, none of the factual conclusions which the Judge made as to the appellant's credibility can stand and it will be necessary for a re-evaluation of the appellant's credibility to be made in the context of the whole of the evidence available in his case through a comprehensive re-hearing. Thus, in effect the appeal process needs to be restarted and the case of the appellant and the respondent re-evaluated in order for a just disposal to occur. It is not, therefore, suitable for remaking in the Upper Tribunal on the basis that it is in the interests of fairness for the appellant in this case to have the full two-stage appeal process contemplated in principle by the legislation starting with a complete re-evaluation of the credibility of his claim.

Notice of Decision

1. The decision of the FtT is set aside as a result of an error of law.
2. The case is remitted to the FtT for the decision to be remade with none of the FtT's findings of fact retained.

Ian Dove

President of the Upper Tribunal
Immigration and Asylum Chamber

17th October 2023