



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA112532015

THE IMMIGRATION ACTS

Heard at Field House
On 25th May 2016

Decision & Reasons Promulgated
On 9th June 2016

Before

UPPER TRIBUNAL DEPUTY JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[I S]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

Representation:

For the Appellant: Mr Tufan
For the Respondent: Ms Benitez

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeal of [IS] against the Secretary of State's decision to refuse him asylum on account of his sexual orientation. For the

purposes of this decision, I shall refer to the Secretary of State as “the Respondent” and to [IS] as “the Appellant” reflecting their positions as they were before the First-tier Tribunal.

2. I have considered whether the Appellant requires the protection of an anonymity direction. No anonymity direction was made previously in respect of him and no application was made before me for one to be granted. I do not consider it necessary therefore to make an anonymity direction.

Background

3. The Appellant is a male born [] 1991 in Bangladesh. He is a homosexual. His claim is that in 2008 he was arrested in a hotel room after a police raid. He was found with his homosexual partner. The police also found alcohol and drugs (heroin) in the room. Towards the end of 2012, he was sentenced to four years imprisonment in respect of the illicit sexual activity and the alcohol and heroin found. By this time however he had left Bangladesh and entered the United Kingdom. His family disowned him but his claim he was able to sell some inherited family land to a brother and this realised enough money to fund his trip to the UK.
4. The Appellant arrived in the UK on 16th October 2010 in possession of a student visa which was valid until December 2012. On 17th April 2014 he applied for an extension of the student visa. This application was refused by the Respondent on 19th March 2015.
5. On 13th February 2015 therefore he claimed asylum on the grounds of his sexuality. He also claimed that he had atheist beliefs and did not believe in Islam because it was against homosexuality.
6. The Respondent refused the Appellant’s claim on several counts.
 - She was not satisfied that the Appellant was homosexual as claimed; nor that he had been arrested in Bangladesh as claimed. The Respondent considered that the Appellant had not shown that the documents he relied upon which included a newspaper article and various copy court documents following his arrest, were reliable.
 - She considered that the Appellant had provided vague and limited details concerning his experiences in the UK including a relationship with a man called [AA] which lasted six months.
 - She noted that the Appellant had remained in Bangladesh for almost a year following his claimed arrest and had provided a number of inconsistent statements regarding family land which he said he had sold in order to fund his entry to the UK.

- There was a general credibility difficulty for the Appellant in that he entered the United Kingdom in 2010 as a student but only claimed asylum in 2015 after his application for extension of his student visa was refused.

7. Following the Respondent's refusal of his application, the Appellant appealed to the First-tier Tribunal.

The FtT Hearing and Decision

8. When the appeal came before the FtT, the judge identified at [40] that he had to make a finding whether the Appellant is a homosexual. He also identified that once that assessment was made, he had to decide whether there was a real risk to the Appellant on account of his homosexuality, in returning to Bangladesh.

9. The judge also identified that the Respondent did not accept

- that the Appellant's homosexuality was made out [45] on the basis that the claimed conviction and arrest was for drugs and alcohol offences rather than homosexuality. The provenance of the documents to support the conviction was doubtful.
- that the Appellant's claim was a credible. He had delayed in claiming asylum - his claim being made some four and a half years after he first entered the UK.

10. However after consideration of those matters, the judge allowed the appeal.

11. The Respondent sought permission to appeal the FtT's decision. The grounds seeking permission took issue with the judge's analysis at [46]. It was said he had wrongly reversed the burden of proof when dealing with the documentary evidence produced by the Appellant and had not had regard to the case law of **Tanveer Ahmed IAT [2002] UKIAT 00439**. It was further claimed that the FtT had not given sufficient or adequate reason for accepting the Appellant's oral evidence and failed to give proper findings on whether the documents produced were reliable.

12. Permission was granted, the relevant parts of which are set out below:

"The application for permission to appeal asserts that the burden of proof regarding documents is wrongly reversed at §46; **Tanveer Ahmed -v- SSHD (2002) UKIAT 00439** not applied relative to the appellant's core account that he had been taken to court under arrest.

It is arguable that the documentary evidence of court proceedings have not been taken in the round as required by the starred determination of **Tanveer Ahmed -v- SSHD (2002) UKIAT 00439**."

Thus the matter comes before me to decide whether the FTT's decision discloses a material error of law requiring it to set aside and the decision re-made.

Error of Law Hearing

13. I heard submissions from both representatives. Mr Tufan for the Respondent relied on the grounds seeking permission but helpfully indicated that there was no issue with the Appellant's sexuality. He submitted that the judge's findings on the documentary evidence were unsustainable. That evidence goes to the core of the Appellant's claim. It is for the Appellant to show that the documents could be relied upon. There is insufficient reasoning to show why the documents produced should be relied upon.
14. In addition, he submitted, the judge found the Appellant to be a credible witness, but there must be a large question mark over the Appellant's credibility under Section 8 of the Asylum and Immigration Act 2004. It took the Appellant four and a half years, after entering the UK, to claim asylum. In these circumstances the decision of the FTT is unsustainable.
15. Ms Benitez responded by relying on a skeleton argument. The thrust of her argument is that the Appellant is a homosexual and this fact has now been accepted by the Respondent. Homosexuality is a criminal offence in Bangladesh under S.377 of the penal code. Whilst it is accepted that the section is seldom invoked, it is used to harass, threaten and suppress the gay community in Bangladesh. Amnesty International has reported that it is unsafe for homosexuals to conduct themselves openly in that country.

Error of Law Consideration

16. The Secretary of State challenges the FTT's failure to deal with the documentary evidence produced by the Appellant, in accordance with the principles of **Tanveer Ahmed**. At [44] the judge said

"At base, however, I accept the Appellant's account; nothing submitted from the Respondent casts doubt upon the Appellant's credibility."

Further at [46] the judge said

"Given my findings in relation to the Appellant's sexual orientation, I proceed to look at what is likely to happen to the Appellant in the event of his return to Bangladesh. The Appellant has been convicted before a criminal court in Bangladesh. There are scant details of that conviction. However, the Appellant gave an account of his arrest and subsequent appearance in court. I accept that account. The documents submitted, said to support that, are not the most impressive but they do not, as such, cast doubt on the Appellant's account. The Respondent submitted that the conviction was for criminal conduct not solely related to the Appellant's sexual orientation. I am of the view that the fact that other charges feature in the Appellant's prosecution and conviction is nothing to the point. There is a conviction for conduct related to his sexual orientation.

That fact is not detracted from because other charges featured in the criminal process.”

17. I am not persuaded that the judge has fallen into the error to the extent that the decision must be set aside and re-made. I give my reasons for that finding.
18. It is clear from a full reading of the decision, that the judge conducted a lengthy oral hearing. He has written an extremely detailed and thorough decision. He identified at [40] what he was tasked to do. The core of this appeal rests on the Appellant’s credibility.
19. The Respondent doubted that the Appellant was homosexual as claimed. The judge devotes three substantive paragraphs from [41] to [43] setting out why he reached a finding that he believed the Appellant’s claim of homosexuality. That finding is one which was fully reasoned and as Mr Tufan helpfully conceded, the Appellant’s sexuality is not in issue now. It is also clear from those paragraphs that the Appellant was cross-examined in detail by the Respondent. Having taken account of all that evidence, the judge concluded, as he was entitled to do, that the Appellant’s story was a credible one. There is nothing perverse in that reasoning.
20. Having established that the Appellant is a homosexual, the judge then directed himself to the question of whether it was safe for this Appellant to return to Bangladesh. He decided it was not.
21. Whilst the judge may be criticised for badly expressing himself at [44] the substance of this case is that the judge believed that the Appellant had given a credible account of his circumstances leading to his arrest and conviction [42]. Throughout his decision the judge makes findings that the Appellant’s credibility is not in doubt.
22. So far as any risk on return is concerned the Respondent’s position is that although homosexual acts remain illegal in Bangladesh, in practice the law is rarely enforced. The judge found otherwise in this Appellant’s case. He had regard to the extensive background documentation which was produced, but in addition he took into account the Appellant’s history of his arrest/conviction. The judge carried out a detailed analysis of that evidence and I find that, in substance, the judge’s error in badly expressing himself as regards the **Tanveer Ahmed** principle, simply does not vitiate his reasoning for finding as he does. It follows therefore that this does not justify setting aside his decision. It would be wholly disproportionate to do so.
23. In these circumstances, I dismiss the Secretary of State’s appeal and the decision of the First-tier Tribunal stands.

Notice of Decision

The Secretary of State's appeal is dismissed. The decision of the First-tier Tribunal allowing [IS]'s appeal against the Secretary of State's refusal to grant him asylum, stands.

No anonymity direction is made.

Signed

C E Roberts

Date

08 June 2016

Upper Tribunal Deputy Judge Roberts