Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04291/2016

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision & Reasons Promulgated**
On: 10th May 2017	**On: 8th June 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Ahmed Mohamed
(anonymity direction not made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: **Mrs Chawdhery, Counsel instructed by Broudie Jackson & Canter**
For the Respondent: **Mr Harrison, Senior Presenting Officer**

DETERMINATION AND REASONS

1. The Appellant is a national of Egypt, born in 1991. He appeals with permission the decision of the First-tier Tribunal (Judge Tully) to dismiss his appeal on protection and human rights grounds, a decision promulgated on the 11th November 2016.

2. The basis of the Appellant's protection claim was that he was a gay

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man who would face persecution in Egypt for reasons of his membership of that social group. The Respondent did not accept that the Appellant was gay, and so the claim failed at that first hurdle. Protection was refused.

3. The matter came before the First-tier Tribunal which was required, on the case put, to evaluate two related aspects of the claim. Had the Appellant encountered problems as a result of his sexuality in Egypt, which had culminated in a warrant being issued for his arrest? Further, had the Appellant established, with reference to evidence about his life in the UK, that he was in fact gay? The First-tier Tribunal found the answer to be both questions to be negative. The appeal was dismissed.

4. The Appellant now submits that the determination of the First-tier Tribunal should be set aside for four material errors of law:

    (i) The Tribunal failed to take material evidence into account;

    (ii) It unlawfully sought corroboration of the Appellant's claims when it is established principle that asylum seekers should not be required to produce the same;

    (iii) The Tribunal misunderstood the evidence;

    (iv) Matters were taken against the Appellant which he did not have an opportunity to address because they were not put to him.

5. At the hearing I heard submissions from Mrs Chawdhery and Mr Harrison and I reserved my decision.

My Findings

Ground (i)

6. At paragraph 33 of the determination the Tribunal considers the evidence in respect of the Appellant's claim that he lives with his partner in the UK:

> "I have noted the utility invoice contained in the appellant's bundle and accept that this is dated 28 December 2015 and gives both their names and have taken this into account, but I do not accept that this is determinative because the inclusion of a name on an isolated invoice does not necessarily mean they are in a relationship, or even living at the same address. There are no other forms of evidence in the appellant's bundle to show that he is living at the

> address. If he genuinely lives there, there must be other utility bills, phone bills, doctors/dentist records and personal correspondence."

7. It is submitted on the Appellant's behalf that the Tribunal here erred in failing to take material evidence into account, namely his screening interview, his asylum interview and correspondence from the Home Office, all of which places the Appellant at the address in question. The Tribunal was wrong to say that there was "no other evidence" that he lived at that place. Further it is submitted that the Tribunal was speculating when it found that the Appellant should have been registered with a dentist or a doctor.

8. There is certainly no error of fact in the determination when the Tribunal records, at paragraph 33, that there are no other forms of evidence relating to the claimed cohabitation in the Appellant's bundle. There is no evidence at all. The only document that the parties could identify was an item of correspondence from a water company in the Respondent's bundle which contains both names. I do not read paragraph 33 as the Tribunal specifically requiring the Appellant to produce, for instance, something from a dentist. Rather it was merely pointing out the kind of evidence one might expect to see if both men lived at the property, and the fact that it was strikingly absent.

9. At paragraph 38 the determination addresses the fact that the Appellant did not claim asylum on arrival, but rather waited for five months before doing so:

> "The appellant came to the UK in May 2015 and did not identify himself as an asylum seeker on arrival, despite saying he was running for his life. He waited for five months before making his claim. He says that this was because his claimed partner only told him to claim asylum on return from a trip, but I reject this explanation because the partner is a refugee and I have not accepted the relationship is genuine".

10. It is submitted that in so finding the Tribunal failed to take into account the evidence that the claimed partner had been on a trip. It is further submitted that the Tribunal acted unfairly in rejecting the evidence of the partner because he is a refugee.

11. I am unable to read the determination in the same way as the drafter of the grounds. First of all, there does not appear to have been an issue that the man went on a trip, so there was no need to refer to evidence of the same. Secondly, it is perfectly clear that his evidence was not rejected "because he is a refugee". The point being made (in accordance with the Tribunal's statutory duty under s8 AI(TC)A) 2004)

was that there had been a delay in the claim being advanced, and that this must be held to undermine the claim that the Appellant held a subjective fear of return to Egypt. The reasoning cited is concerned with the Appellant's explanation for the delay, namely that his partner was not around to give him advice or support his application. The Tribunal was rejecting that explanation *inter alia* on the grounds that his claimed partner was a refugee himself and so could be expected to have a good understanding of the processes and requirements of the Home Office, including the duty to make a prompt claim.

12. I am not satisfied that the Tribunal did fail to take evidence into account, or that if it did, that was material.

Ground (ii)

13. The complaint under this heading is that the Tribunal applied too high a standard of proof and/or erred in requiring additional evidence contrary to the principle that asylum seekers should not be required to provide corroboration of their claims: Kasolo v Secretary of State for the Home Department (13190). It is contended that the Tribunal made these errors in respect of the Appellant's claimed relationship in the UK.

14. The principle in question has its origins in the UNHCR Handbook[1]

> 196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

[1] HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees

> 197. The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself. Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant.

15. The point made, and adopted in Kasolo, is that when people are fleeing from the place of persecution, it is unreasonable to expect them to collate documentary evidence of the same before they leave. In this case the matter in issue was whether the Appellant was having a homosexual relationship with a man who lived in Liverpool. The Judge had set out [at 31-32] the reasons why she was not prepared to attach any significant weight to the Appellant's evidence on this point: he had been vague, inconsistent and uncertain about matters which she expected a person in a genuine committed relationship to know about. What happens thereafter is the Tribunal looks to see whether there is other evidence to support the claim being made: statements from friends, utility bills etc to confirm cohabitation, confirmation from agencies such as 'Asylum Link' that they attend together. Finding it lacking, she found the burden of proof was not discharged. I am not satisfied that her approach was wrong. The evidence in question was not of the type considered in Kasolo. This was not material out of the Appellant's reach, or that would have been particularly onerous for him to obtain. There was no *requirement* that he submit corroborative evidence, but given the deficiencies in his own evidence, it plainly would have been useful to his case. The Tribunal was not obliged to accept the oral evidence at face value.

Ground (iii)

16. It is submitted that in its analysis of the Appellant's evidence the Tribunal misunderstood what had been said. At paragraph 31 the Tribunal weighs against the Appellant the fact that he was only able to name one bar in Liverpool that he claims to attend with his partner. The Tribunal did not find that to be consistent with the claim that the men had been socialising in the city for over five months: "I do not find it credible that the he would not know the names of bars they went to as a couple". Issue is taken with that finding because it is said that the Appellant was not asked to name bars that he had attended, but bars that were in the area that he visited.

17. I accept that there may have been some misunderstanding of the evidence on this point, and that it is arguably more likely that the Appellant would be ignorant about other bars in the vicinity than he would be about bars he had actually gone to.

Ground (iv)

18. It is an established principle of law that parties should be put on notice of a forensic challenge to their evidence, in order that they might fairly be given an opportunity to address that challenge.

19. In this case it is said that the Tribunal erred in failing to apply this principle at paragraph 28 when it apparently weighed against the Appellant the fact that he has not produced a copy of the arrest warrant that he says has been issued against him in Egypt, and moreover had failed to provide a good explanation why not.

20. I cannot be satisfied that the Appellant has been taken by surprise by this matter being raised. His claim that he is wanted in Egypt, and that an arrest warrant has been issued against him, was disputed in the reasons for refusal letter dated 15th April 2016 [at 29]. Questions about that warrant, and how he managed to leave the country without difficulty, were expressly put in cross examination. This ground is not made out.

Conclusions

21. In granting permission Judge Southern had observed that this is a determination that contains numerous typographical errors and that it might be arguable, as a result, that there was a lack of anxious scrutiny applied by the First-tier Tribunal. That is a factor that I have weighed in the balance with my findings on ground (iii), the only submission that I have found to have any merit. It is unfortunate that the determination appears to have been dictated and not proof read. I am however quite satisfied that the Judge has assessed the relevant evidence before her, and given intelligible reasons why she has found it not to discharge the burden of proof. The Appellant can readily understand why he has lost, and there can be no legitimate complaint that the Tribunal did not turn its mind to the substantive matters in issue. For that reason I am not persuaded that the decision contains an error of law such that the decision should, or must, be set aside.

Decisions

22. The decision of the First-tier Tribunal does not contain an error of law such that the decision must be set aside. The decision of the First-tier Tribunal is upheld.

23. There is no direction for anonymity.

Upper Tribunal Judge Bruce
11th May 2017