Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14091/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd August 2017	**On 20th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

P A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr P Armstrong (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M A Khan, promulgated on 27th February 2017, following a hearing at Hatton Cross on 1st February 2017. In the determination, the judge dismissed the

appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

2. The grounds of application allege that the Tribunal erred in the following five respects. First, that the judge referred to hearing evidence from the Appellant's cousin, and sister, when there was no evidence from either person before the Tribunal. Second, that the judge made incomprehensible findings of fact at paragraph 48. Third, that the judge made references to evidence being vague and/or evasive without it being clear why it was being viewed in this way. Fourth, that the judge did not make any criticism of the evidence of the Appellant's partner and friend and yet went on to dismiss the Appellant's account of being gay. Finally, that the judge's finding of the Appellant's credibility was seriously damaged by the delay in making his claim was unsustainable.

3. On 22nd June 2017, permission to appeal was granted by the First-tier Tribunal.

4. On 12th July 2017 a Rule 24 response stated that the "Respondent does not oppose the Appellant's application for permission to appeal and invites the Tribunal to remit the matter to the First-tier Tribunal for a fresh hearing".

5. On the day of the hearing before me on 3rd August 2017, the Appellant was not in attendance and neither was any legal representative in attendance. Mr Armstrong, following a discussion with the Tribunal, submitted that although there was a Rule 24 response, he was not bound by this and that it was arguable that there was no arguable error of law. He gave the following reasons.

6. First, whilst it was true that at paragraph 7 of the determination the judge had stated that, "I hear oral evidence from the Appellant, his cousin, sister and oral submissions from both legal representatives …" it was plain that this was simply a slip and was a proofreading matter which ought to have subsequently been corrected by the judge, because in the body of the determination, it is plain that no reference is made to the evidence from the cousin or the sister, leading any objective reader to conclude that no such evidence was actually given on the day of the hearing.

7. Second, whilst it was being suggested that there were incomprehensible findings at paragraph 48, if one looked at that paragraph, it was quite clear that the judge's fundamental conclusion here was that, "the Appellant's evidence is that he had gay relationships with [AF] and [SA] in the UK, again there is a lack of evidence with regard to these claimed relationships" and the judge had concluded that, "I find that the Appellant has invented all these relationships and none of them are genuine" (paragraph 48). There was, accordingly, nothing incomprehensible about the findings in paragraph 48.

8. Third, the suggestion that the references to the evidence being vague or evasive by the judge was not demonstrated as such, was equally untenable. This is because if one looks at paragraph 46 the judge actually draws a distinction between what the Appellant said in his asylum interview and what he said in his oral evidence at the hearing, thus leading the judge to conclude that he did "not find this to be credible or a consistent evidence" (paragraph 46). In the same way, the judge goes on to explain (at paragraph 47) that the relationship with Akhtar was also not "credible or consistent" for the reasons that are given and the judge went on to make clear findings that "the Appellant was making up his evidence as he went along" (paragraph 47).

9. Fourth, the suggestion that the judge had made no criticism of the evidence of the Appellant's partner and friend before dismissing the Appellant's account of being gay was equally beside the point. The judge could reject the evidence of the Appellant, that he was in a gay relationship, without necessarily finding the evidence of his partner to be equally implausible.

10. Put another way, it would be otherwise, if the judge had found the partner's evidence to be credible but had then gone on to say that the Appellant's own evidence was lacking in credibility.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are quite simply that, even though the submissions of Mr Armstrong this morning may well be entirely arguable, the fact that a Rule 24 response dated 12th July 2017 had invited the Tribunal to remit the matter to the First-tier Tribunal for a fresh hearing was one of important significance.

12. This is because, although Mr Armstrong appears to have not known this, there is a letter dated 2nd August 2017 from the Appellant's legal representatives, expressly referring to the concession made by the Respondent Secretary of State in the letter of 12th July 2017, in terms that they would "request you to remit the matter to the First-tier Tribunal for a fresh hearing as the Respondent agreed". Attached to this letter of 2nd August 2017 from the Respondent's legal representatives is the Rule 24 response of 12th July 2017. It is because of the concession made on 12th July 2017, that neither the Appellant nor his legal representatives were in attendance today.

13. They had, however, not ignored this hearing today. They had simply written in on 2nd August 2017 to say that they would request that the matter be remitted to the First-tier Tribunal. If the Respondent Secretary of State was now to withdraw the concession made in the letter of 12th July 2017, as Mr Armstrong plainly intended to do, then the appropriate course

of action was to put the Appellant's legal representatives on notice, so that they were in a position to attend and make legal representations.

14. Given that the withdrawal of the concession only took place on the day of the hearing before me by Mr Armstrong, this is a matter that plainly goes to procedural fairness and the right of the Appellant to be heard through his chosen legal representatives.

15. That being so, the only course of action available to this Tribunal is to do as the Appellant's legal representatives state in their letter of 2nd August 2017, namely, to remit the matter to the First-tier Tribunal for a fresh hearing.

Notice of Decision

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal under Practice Statement 7.2 to be determined by a judge other than Judge M A Khan.

17. An anonymity direction is made.

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.

Signed Date

Deputy Upper Tribunal Judge Juss 19th September 2017