



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10866/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 9 August 2018

Decision & Reasons Promulgated  
On 29 August 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

[H N]  
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms N Ahmad of Counsel, instructed by Buckingham Legal Associates

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

**DETERMINATION AND REASONS**

1. The appellant challenges the decision of First-tier Tribunal Judge C H Bennett to dismiss his asylum appeal. He is a Pakistani national born on 16 October 1985. He entered the UK as a student in October 2010. Thereafter his leave was extended until 29 June 2016 on the same basis. He then applied for a residence card on the basis of his marriage to an EEA national. That was refused with a

right of appeal which the appellant exercised but later withdrew. He subsequently claimed asylum when directions for his removal were set.

2. The appellant's case is that he is bisexual and feared harm on return from his own family, who had disowned him, and from the authorities and community at large.
3. The appellant was previously married in an Islamic ceremony in 2005 and had two daughters from that marriage. The marriage was terminated by a talaq divorce in 2012. His second marriage to an EEA national had ended when his wife discovered that he had been engaging in sexual relations with men. He had not had any relationships in the UK after his second marriage broke down although he had attended gay and LGBT bars and clubs and had engaged in sexual activities.
4. The judge heard evidence from the appellant and witnesses. He did not accept the claim and dismissed the appeal in a lengthy determination promulgated on 28 June 2018.
5. The appellant challenged the decision. The grounds argue that the judge was biased, that he had humiliated one of the appellant's witnesses who had made a formal complaint against him and that his approach to the evidence and s. 8 issues was flawed.
6. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 19 June 2018.
7. **The Hearing**
8. I heard submissions from the parties when the matter came before me on 9 August 2018. The appellant was present.
9. Ms Ahmad submitted that the judge had given the impression of bias against the appellant and his witnesses from the outset. Indeed, his witness had made a formal complaint with the Judicial Complaints Department and that was under investigation. The judge's finding that the witness had dressed up as a female "for fun" and "as an act" had unfairly implied that he had lied to the court.
10. It was submitted that the judge's description of the photographs of the appellant and a friend as "posed" to suggest "a loving relationship" failed to take heed of the fact that they had never claimed to be in a relationship at all. No good

reasons were given for the rejection of the evidence of the other witnesses both of whom had direct personal knowledge of the appellant and his activities and indeed had accompanied him to LGBT events.

11. Ms Ahmad also submitted that the judge was factually incorrect to state that the appellant had not made any further applications to remain after the expiry of his student leave when the evidence from the respondent was that he had made an application under the Regulations. In fact, I note that the judge himself acknowledges this elsewhere in his determination.
12. The judge is also said to have entered into a forensic examination of the appellant's entitlement to a residence card, of the genuineness of the marriage and the sponsor's position as a qualifying person even though these were not matters raised by the respondent or relied upon in the refusal of asylum. This created an unfair bias against the appellant.
13. The judge criticized the appellant and his representatives for not supplying evidence of the divorce from his first wife, but this fact had never been disputed by the respondent and so should have been accepted by the judge.
14. There were also problems with the judge's finding that the appellant's medical issues were a new matter and that consent had not been given by the respondent. The evidence showed, in fact, that the appellant had raised mental health issues as part of his claim, had supplied documentary evidence of the medication he had been prescribed and indeed this had been considered by the respondent in his decision letter. It was not therefore correct to maintain this was a new matter.
15. Finally, the judge's assessment of the appellant's credibility on s.8 grounds was flawed in that he failed to take account of whether the appellant had provided a reasonable explanation.
16. Mr Walker very fairly conceded that the judge had made several errors of law with respect to the treatment of the witness testimony, reliance on incorrect facts and at going off on a tangent with respect to the EEA claim. In the circumstances he did not seek to defend the determination.
17. I did not need to hear against from Ms Ahmad given Mr Walker's concession with which I am in agreement. At the conclusion of the hearing I formally reserved my determination but indicated that I would be setting aside the determination in its entirety. I now give my reasons for doing so.

## **Discussion and Findings**

18. Despite the judge's lengthy consideration of the appellant's claim, or perhaps because of it, he made several factual and other errors of law which necessitate the setting aside of the determination in its entirety.
19. It is unfortunate that the judge's treatment of the evidence of the appellant's witness, led to the making of a formal complaint. I make no further comment on that matter as it is under consideration by the appropriate department. However, I do accept that the other complaints are made out.
20. The judge's consideration of the EEA issue was wholly unnecessary given the respondent's lack of reliance upon it and given the fact that the judge did not even have the papers relating to the application or the refusal. I agree with Ms Ahmad that it may have led to unfairness in how the judge viewed the appellant.
21. Similarly, the judge raised other matters which had not been disputed by the respondent and which therefore the appellant had not needed to provide evidence on. Had these been matters on which the judge felt he required documentary evidence, the appellant should have been given the opportunity to obtain it.
22. The judge was factually wrong, and indeed contradicted himself in the determination, about the appellant's position after the expiry of his student leave. He was wrong to maintain that the appellant had raised a new matter in respect of his medical issues when the decision letter showed plainly that this was a matter already known to and considered by the respondent. The judge also erred in his approach to the photographic evidence as the appellant and his friend had never sought to argue that they were or had been in a relationship.
23. For all these reasons I set aside the judge's decision. No findings are preserved.

## **Directions**

24. All further documentary evidence shall be served and filed no later than five working days prior to the hearing. This shall include full statements of evidence from all witnesses.

**Decision**

25. The First-tier Tribunal made a material error of law which necessitates the setting aside of the decision. The appeal shall be re-heard by another judge of the First-tier Tribunal and the decision shall be re-made.

26. **Anonymity**

27. I continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read "R. Keir". The signature is written in a cursive style with a small dot at the end.

Upper Tribunal Judge

Date: 9 August 2018