



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06938/2018

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 5<sup>th</sup> November 2019

Decision & Reasons Promulgated  
On 20<sup>th</sup> November 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE KING TD

Between

RAMAZAN [R]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Toora of Counsel, instructed by the Immigration Advisory Service

For the Respondent: Ms H Aboni, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Albania born on 5<sup>th</sup> November 1990. He sought to appeal against the respondent's refusal of his claim for asylum and humanitarian protection, made on 31<sup>st</sup> January 2016, which was refused on 18<sup>th</sup> May 2018.
2. The basis of his claim was that he was a gay man and as such was at risk in his home country were he to return.

3. The appeal came before First-tier Tribunal Judge Davey for hearing on 1<sup>st</sup> April 2019. It was clear that the appellant had certain mental health problems and as such the Judge properly treated him as a vulnerable witness. No complaint has been made as to the way in which his evidence was obtained at the hearing.
4. It was the appellant's claim in summary that he formed a close friendship with a person named as Mario since he was aged 14. Although there was no overt sexual activity, his bond with Mario was noted by an uncle in 2016 who attacked him with a screwdriver and thereafter was unpleasant and sometimes violent towards him. This relationship only came to the knowledge of his parents in 2011. He left Albania with Mario to work in Italy and then to come to the United Kingdom in July 2013. He was encountered by Immigration Officers during an enforcement visit in 2016. When encountered he gave the explanation that he had been in the United Kingdom since 2010. It was his claim that following his detention he had lost all contact or means to communicate with his friend Mario.
5. The Judge heard medical evidence particularly the psychiatric report from consultant psychiatrist Dr Furtado, who had spoken to a Ms Walsh and a Ms Jones.
6. The doctor noted that the appellant had stated that he had never had a sexual relationship with anyone, including Mario. He claimed that he was unable to enter into a relationship because he had no money, he did not know anyone, he was not in any relationship currently and without having money to eat or things to do he could not enter into such a relationship.
7. Much of the consultant forensic psychiatrist's report is set out in the determination and no challenge has been made to the accuracy of the matters put forward. It was noted that the appellant meets a mix of anxiety and depressive disorder of mild to moderate severity. The doctor, however, was resistant to make a formal diagnosis of post-traumatic stress disorder based on the evidence presented.
8. In terms of the credibility of the account the Judge did not find that the appellant was credible. A number of reasons were given for that conclusion. The Judge did not accept, for example, that had the uncle been so angry and incensed with the appellant in 2006 that his parents would not have known about it earlier than 2011. In terms of the relationship with Mario there was a degree of contradiction in the various accounts given by the appellant as to whether he left with Mario or met Mario in the United Kingdom. There was also the issue as to whether in fact he left in 2013 or in 2010 as he indicated to the immigration authorities.
9. The Judge did not accept that it was a plausible explanation for any lack of sexual activity with Mario that the appellant did not have any money or security. It would be reasonable to expect that if there were such feelings towards Mario they would have been manifested in the usual course of a relationship.

10. The Judge noted that the appellant had not entered into the gay scene or purchased magazines or had done any overt action in terms of his claimed sexual orientation. In summary, therefore, it was the finding of the Judge that the appellant was not gay and was not credible as to his account.
11. Challenge has been made to that finding and permission to bring an appeal before the Upper Tribunal has been granted.
12. A challenge to the credibility findings has been mounted on the basis that the evidence of Ms Jones was not considered by the Judge. It is said that the Judge was in error in stating that there was no supporting evidence regarding the appellant's sexuality from friends.
13. At paragraph 10 of the determination the Judge noted evidence as previously provided to the consultant psychiatrist from a Ms Linda Walsh. Ms Walsh had made her assessment that the appellant was gay on the strength of experiences which she had had when she was living in London with friends. She did not press him to admit his sexuality to her but she believed as a result of his conduct that that was indeed the case. She did not know if the appellant had contact with his family and she did not think that he had same sex relations but rather she described him as an isolated individual who did not go out and was anxious about his safety.
14. The Judge commented that he had taken into account Ms Walsh's feelings and perception but did not find that sufficiently reliable in terms of establishing, even to the lower standard, that the appellant's sexuality was as claimed.
15. In terms of the evidence of Ms Jones, that was cited indirectly by the Judge in paragraph 13. This was when the doctor was considering the medical evidence provided by the appellant and noted the information provided by Ms Jones, with whom the appellant was currently resided and his examination of the appellant on 7<sup>th</sup> March 2019. The doctor did not dwell upon that evidence.
16. It is said that such evidence was contained in a witness statement provided by Linda Jones in the bundle of documents presented to the Judge. It is far from clear as to whether that bundle was in fact before the Judge because, as Ms Aboni indicated, she had a bundle of such documents in her file that was stamped as received by the Tribunal and with a covering letter addressed to the Tribunal, rather than to the Home Office. Be that as it may, I have now seen the statement of Linda Jones. She and the appellant met in April 2016. She had her difficulties and recognised his difficulties. They kept in touch. The central paragraph is as follows:- "Ramazan told me he was gay when I was on the train down to London to visit him. He text me that he had something to tell me and then confirmed he gay. This was in 2016. I was not surprised as I already knew. My ex-partner was gay".
17. The statement went on to indicate that the appellant moved in with her and her family in October 2016. She found it difficult to cope because of her own mental

health issues, "I know that he is gay but also I think he struggles to accept it. He feels ashamed." The statement then goes on to describe his mental issues.

18. Seemingly the appellant continued to live with her from 2016 and was living with her at the date of the hearing on 1<sup>st</sup> April 2019. She did not attend to give evidence but rather her statement was presented. Ms Jones gives no detail as to how she knows that he is gay. In terms of the text message, this of course is at a time when the appellant has claimed asylum on the basis that he is gay. Without more, it is difficult to understand how his statement to her can amount to any independent assessment of his sexuality in the absence of any detail as to why she thinks that he is. It was not clear indeed why the appellant should text Ms Jones in the way that he did with that information, particularly when she indicates in her statement that he struggles to accept that he is gay.
19. He was interviewed in connection with that matter on 5<sup>th</sup> February 2016, but the text as stated by Linda Jones would be after they had first met in April 2016. It is perhaps surprising that, having lived under her roof for close to three years, she cannot be more specific about what it is that leads to her conclusion that he is gay.
20. I do not find that that evidence is so material to the overall assessment that it's absence renders the analysis by the Judge as unfair or unsafe. Indeed, the Judge had considered Ms Walsh's feelings and perceptions but found little by way of probative value. In effect Ms Jones is making a similar comment, without any particularity as to why she came to the conclusion that the appellant is gay.
21. I have no doubt that, even had the Judge been aware of that statement, it would have made any material difference to the outcome of his deliberations.
22. Challenge is also made to the comments of the Judge that the appellant has not purchase magazines or gone online looking for homosexual material or contacts and has not gone to clubs in order to meet likeminded individuals. Mr Toora invites my attention to the Home Office Asylum Policy Instruction Sexual orientation in asylum claims, Version 6.2 of 3<sup>rd</sup> August 2016 which said:

"Ignorance of commonly known meeting places and activities for LGB groups is not necessarily indicative of claimant's lack of credibility. Lack of engagement with other members of the LGB community in the UK or failure to join LGB groups may be explained by economic factors, geographic location, language and/or cultural barriers, lack of such opportunities or fear of exposure. It may also be through personal choice. Any perceived lack of contact with the LGB community, is a relevant area of investigation to explore and should be considered on a case by case basis, in the round with all other evidence."

23. The appellant has never manifested his sexuality overtly to anyone including his long-standing friend Mario. He has not engaged in any relationship nor exposed

himself to any relationship, club or association. The Judge found that the absence of money would not have supported the reason advanced as why he had not done anything to express his sexuality in the United Kingdom for some six or more years.

24. The Judge took into account the vulnerability of the appellant but did not accept the credibility of his claim overall nor that the evidence as presented established that he was gay.
25. It seems to me that the Judge has applied the proper standard of proof and has considered all matters in the round and was entitled to come to that conclusion.
26. The Judge looked briefly at the alternative scenario namely that the appellant was gay. This was a case of an appellant who chose not to overtly express himself since 14, notwithstanding his claimed relationship or friendship with Mario and was not somebody then who had given any indication that he was inclined to promote his sexuality upon return. The respondent's decision letter went into considerable detail, specifying particularly the support which would be available to the appellant by NGOs and other groups to deal with his sexuality if returned elsewhere to Albania. It also dealt with his mental health condition and the support. Those matters were not considered in any great detail because of the findings of the Judge on the preliminary issues. No challenge has been made in the grounds of appeal to that aspect of the matter but rather to the findings of the Judge as to whether or not the appellant was credible and/or was gay.
27. Looking at the matter overall, I find that the determination was a careful one. I do not consider that the absence of specific consideration of Linda Jones' evidence would have made any material difference to the outcome. I do not find therefore any material error of law in the decision.
28. In the circumstances therefore, the appellant's appeal before the Upper Tribunal is dismissed. The decision shall stand, namely that the appellant's appeal in respect of asylum, humanitarian protection and human rights stands dismissed.

No anonymity direction is made.



Signed

Date 15 November 2019

Upper Tribunal Judge King TD