



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07218/2019

THE IMMIGRATION ACTS

**Heard at Field House (via MS Decision & Reasons Promulgated
Teams)**

On: 12 November 2021

On: 25 November 2021

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

VKV

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs S Bhatti, solicitor, Duncan Lewis & Co Solicitors

For the Respondent: Mrs J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the remaking of an appeal against the decision of First-tier Tribunal Judge Hussain, promulgated on 16 February 2021 to dismiss the appellant's protection and Article 3 claim. As the appeal was allowed on Article 8 grounds, the appellant was granted discretionary leave to remain. That part of the decision is preserved.

Anonymity

2. An anonymity direction was made previously and is reiterated below because this is a protection matter concerning a particularly vulnerable appellant.

Background

3. The appellant is an Indian national now aged 36. He arrived in the United Kingdom on 13 February 2011 with leave to enter as a student. His leave was extended in the same capacity until April 2015 but was curtailed on 15 December 2014. Thereafter the appellant unsuccessfully sought further leave to remain as a student and was encountered working without permission during 2017. He applied for asylum on 2 October 2017. That claim was refused and certified. The appellant's judicial review claim was granted permission to proceed, following which the respondent agreed to reconsider his asylum claim. That reconsideration led to the decision to refuse to grant asylum, dated 15 November 2018 which is the subject of this appeal.
4. The appellant's protection case is based on his claim to be a gay man and fear of persecution at the hands of his family and Indian society. In summary, the appellant was beaten by his father as a child when the latter discovered that the appellant was gay. The appellant was taken to a Hindu priest who attempted to convert the appellant to heterosexuality by religious means/exorcism, as well as by the use of brutality. He was also at risk of forced marriage. The appellant later left his home and home state and formed a relationship with a male partner, but they were physically attacked by a group of people and the appellant fled, leaving his partner behind. The appellant returned to his parent's home but was rejected. Thereafter he was encouraged to come to the UK by a childhood friend, which he did, in 2011. The credibility of the appellant's claim was rejected by the respondent, principally on the grounds of a lack of consistency. Alternatively, the respondent considered there to be a sufficiency of protection in India as well as the prospect of internal relocation. The appellant's mental state and suicide attempt was considered however the respondent declined to grant discretionary leave on this basis.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant did not give evidence because he had been advised doing so may be harmful to his mental health. The judge rejected the protection claim for much the same reasons as the Secretary of State. The Article 3 claim was also dismissed because the judge found that the appellant's medical condition did not reach the required threshold of severity. The appeal was allowed on human rights grounds, with reference to paragraph 276ADE(1)(vi) of the Rules as the judge accepted that the appellant suffered from severe mental health conditions and was particularly vulnerable in that he had been placed in 24-hour supported accommodation.

The grounds of appeal

6. The grounds of appeal argued firstly that there had been a failure to correctly consider whether the appellant is homosexual with reference to the psychiatric evidence and secondly, there was a failure to properly consider the risk to the appellant, in respect of Article 3, of being removed to India, in that the case of *AM (Zimbabwe)* [2020] UKSC 17 was not considered despite being cited before the judge.
7. Permission to appeal was granted on the basis sought.

The error of law hearing

8. After hearing submissions on behalf of both parties, I found that the First-tier Tribunal made material errors of law and set aside the judge's decision, apart from his findings and decision on Article 8 ECHR. That decision was promulgated on 12 October 2021.

The hearing of 12 November 2021

9. The hearing proceeded by way of submissions only, as expected. Additional evidence was provided in a 7-page bundle, all of which was in relation to the appellant's mental state. Mrs Isherwood provided links to the respondent's CPINs relating to India on Medical and Health Care Provision and Sexual Identity and Gender Identity and Expression. I made a complete note of the submissions in my record of proceedings, which I have taken into consideration in reaching my decision.
10. At the end of the hearing, I reserved my decision with the exception of my findings as to the appellant's sexuality. I advised the representatives that I accepted that the appellant is a gay man.

Decision on the appellant's protection and Article 3 claims

11. In reaching this decision on the appellant's protection claim, I have applied the lower standard of proof, that of a reasonable degree of likelihood. In addition, I acknowledge that the burden of proof is on the appellant to make out his claim for international protection. I have considered all the evidence before me and submissions made in remaking this decision, even if not expressly referred to.
12. As indicated at the hearing, I accept the appellant's claim to be a gay man. I carefully considered the reasons put forward by the respondent for rejecting that aspect of the appellant's account along with the evidence as to the appellant's mental health at the time he was interviewed before coming to my decision. The respondent considered that the appellant failed to give a consistent account of when he realised he was gay. I do

not consider that there was any inconsistency here, it is more the case that the appellant provided several incidents during his childhood which led to that conclusion.

13. The respondent criticised the appellant's response to a question asking how being attracted to boys made him feel. Yet, the appellant's response at AIR27 which was focused more on the physical than mental, was not explored at the interview. On the contrary, he was warned not to give explicit answers at Q28 of the AIR and the subject was changed. It seems unfair to criticise the appellant's responses without giving him an opportunity during the interview to provide a more focused response.
14. The respondent was critical of the appellant's claim that he had no one to support him in India, describing this as an inconsistency because one of his teachers and friends had been supportive. It is hard to see why this is an inconsistency. Furthermore, there is no indication that this sole teacher and the appellant's childhood friends would be either able or willing to protect him from his own family.
15. The respondent did not accept that, aged 13, the appellant was ignorant of the views of Indian society in relation to gay people. The appellant's answer was more nuanced than this, in that he acknowledged at AIR30 that his attraction to boys was "not normal." This goes some way to indicating that he had some awareness of what was acceptable in Indian society.
16. The respondent did not accept that the appellant and his male cousin would take the risk of a sexual relationship in the family home, and this was considered to cast significant doubt on the veracity of the appellant's claim to be gay. Nor was it accepted that the appellant confided in a stranger with whom he eventually formed a relationship. No reasons are given for these conclusions. Other aspects of the appellant's claim were described as vague or improbable but there is an absence of thorough reasoning. There was also no attempt to consider the appellant's ability to provide an account during his interview, which took place in November 2017, against the background of his poor mental health. At the time of his asylum registration in October 2017, the appellant explained that he was on medication for depression and in addition, the GP's records note that the appellant had recently self-harmed. I accept that the appellant's mental state may have adversely affected his ability to adequately explain his circumstances during what was a very lengthy interview, at close to 4 hours in duration.
17. Putting aside the inadequate reasons provided for rejecting the appellant's claim to be a gay man, there is ample support for his account in the medical evidence before me. The report of Dr John Pilgrim was before the First-tier Tribunal and was accorded a high degree of weight. The appellant gave a full account of his situation to Dr Pilgrim as well as consents for his medical records to be accessed. Dr Pilgrim's agreed with the NHS professionals who had previously diagnosed the appellant with

severe depressive disorder with psychotic symptoms and PTSD. The appellant's sexuality was referred to throughout the medical evidence which covers a four-year period. It was the opinion of the doctor who completed the Rule 35 report that the appellant may be a victim of torture. A clinical psychologist who assessed the appellant in 2018 noted that he was experiencing nightmares and intrusive memories owing to his traumatic experiences in India due to his sexuality. That was echoed by a psychological therapist who saw the appellant after a referral from his GP, also in 2018.

18. The appellant's care plan of 27 October 2020 reports that the appellant's symptoms are *"linked to his experience of severe and multiple sexual, physical and psychological abuses in his home country..."* Indeed, the appellant disclosed to Dr Pilgrim that he was sexually abused by the group of people who beat him and his partner.
19. Additional evidence relating to the appellant's sexuality and mental state, which was not before the First-tier Tribunal includes a letter from MIND LGBTQ Service dating from 2109. That letter describes the appellant as living openly as a gay man.
20. A letter from Brighton Therapy Centre dated 28 October 2021 follows up from earlier correspondence and confirms that the appellant has been receiving trauma therapy since July 2020 and continues to do so. The author of that letter explains her view that the appellant suffers from *"dissociative identity disorder indicating extreme childhood trauma."* The letter refers to the recent attempts made with the appellant's solicitors to formulate a statement which had to be terminated owing to the appellant being lost in a traumatic flashback relating to the Hindu priest and suffering convulsions. Apart from the update on the appellant's therapy, this letter is rich with detail regarding the appellant's increasing confidence to express his sexuality in the context of the safety of living in a 24-hour supported accommodation. That account of the development in the appellant's confidence is mirrored in the letter from the registered manager of MacLeod Pinsent Care Homes Ltd dated 26 October 2021.
21. Considering the lower standard of proof, I am satisfied that the appellant has made out his claim to be a gay man who has been persecuted in India by his family, a priest as well as strangers owing to his sexuality. I further accept that were the appellant to return to his home area in Andhra Pradesh he would be at an unacceptable risk of further ill-treatment. The key issue in this case is whether the appellant should be expected to relocate to a different part of India to avoid persecution. I conclude that owing to the appellant's mental state, that it would not be reasonable to expect him to do so. The appellant remains extremely mentally unwell as evidenced by the letter from his therapist as well as recent attempts to draft his witness statement which led to him suffering severe traumatic symptoms. He continues to be supported around the clock by trained professionals and has regularly attended trauma therapy for close to eighteen months. It is only with this high level of support that the

appellant has begun to gain confidence to express himself as a gay man. When the appellant lived and worked in Pune, he and his partner were physically attacked and were dissuaded from pursuing a complaint by the police who warned that they risked being arrested rather than their attackers. The appellant also explained during his asylum interview that he continues to fear being attacked by members of Hindu religious groups.

22. The respondent is right to state that medical facilities are available in India to treat mental disorders, albeit the provision of trained mental health professionals is miniscule for the size of the population. I was referred to no evidence to show that the specific therapy the appellant requires is available in India. Perhaps that is not surprising, as the appellant's current therapist required further training to be able to assist the appellant with his dissociative identity disorder which involves assisting the appellant to access the different identities his mind has created to contain his traumatic experiences. That therapist described the appellant as suffering from "*the most severe form of post traumatic stress that I have come across in my time working in the trauma field.*"
23. The evidence before me shows that the appellant would struggle to access the limited services available in India owing to his particular symptoms. Those symptoms include the crippling flashbacks, hallucinations and episodes of disassociation described in the reports which on, one occasion, led to the appellant being unable to find his way to his appointment owing to a state of confusion. Dr Pilgrim echoes the risk of the appellant from a road traffic accident or being taken advantage of as well as the likelihood that his symptoms including suicidal ideation worsening if returned to India. Considering all the evidence relating to the appellant's mental state, I conclude that it would not be reasonable to expect the appellant to return to India and relocate to avoid persecution. It follows that the appellant has established that he is entitled to a grant of refugee status.
24. Given that I have allowed the appellant's protection appeal there is little to be gained in further considering a freestanding Article 3 claim. While succinct submissions were made on the appellant's behalf to the effect that there would be a serious, rapid and irreversible health decline resulting in intense suffering or a significant reduction in life expectancy, applying *AM (Zimbabwe)* [2020] UKSC 17, they fell well short of demonstrating that there was sufficient evidence that the appellant met this test. I will therefore decline from addressing this somewhat academic issue further.

Decision

The protection appeal is allowed.

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 their 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 18 November 2021

Upper Tribunal Judge Kamara