



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

Appeal Number: PA/11129/2019

THE IMMIGRATION ACTS

**Heard at Manchester by Skype for
Business
On 11 February 2021**

**Decision & Reasons
Promulgated
On 2 March 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**RA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Reza

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh who was born in 1987. He appealed to the First-tier Tribunal against a decision of the Secretary of State refusing his claim for international protection and on human rights grounds. The First-tier Tribunal, in a decision promulgated on 11 February 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal which contain a number of separate elements all of which seek to challenge the First-tier Tribunal's findings on credibility. Judge Sheridan granted permission to appeal in the Upper Tribunal.
3. The first ground challenges the judge's finding at [61] that the appellant's credibility was diminished by his failure before a previous Tribunal (which had dismissed his asylum appeal in November 2016) to produce a medical certificate which he claimed supported his account of past events. The certificate had been produced at the hearing in 2020. The judge noted that the person who had sent the appellant the certificate had been in touch with him in 2016. The ground of appeal asserts that the appellant 'had provided a plausible reason for its non-availability at the time of the earlier hearing.'
4. The ground is without merit. The fact that the availability of the certificate now may have led to the respondent recognising the appellant's fresh claim under paragraph 353 is irrelevant. The judge was entitled to find that the evidence could have been produced in the previous appeal and the appellant's failure to produce it impacted on his credibility (see *Devasseelan* [2002] UKIAT 00702*). The ground is nothing more than a disagreement with a finding available to the judge on the evidence.
5. The second ground concerns the weight attached by the judge to the evidence of four of the appellant's witnesses, three of whom had filed statements but who did not attend the hearing to be cross-examined. The fourth, Mr H, did attend the hearing. The ground complains that the judge erred by attaching no significant weight to the evidence of the witnesses who did not attend. The ground is without merit. The judge was fully entitled to consider that the probative value of witness evidence which had not been tested in court by cross examination was limited. He found the evidence of Mr H under cross examination to be generally consistent [69]. The grounds complain that the judge then failed to make detailed findings on Mr H's evidence or to explain why he found that his evidence failed to establish that the appellant is a gay man, as he claims to be. This challenge is also meritless. The judge makes it clear at [83] that he had considered the totality of the evidence before making his findings of fact. He expressly states at [84] that '[the appellant's] witnesses [i.e. including the evidence of Mr H] ... lack credibility to the extent that their evidence seeks to establish [that the appellant is a gay man].' It is made abundantly clear by the judge, in findings supported by cogent reasons (with which the grounds do not take issue), found that none of the evidence adduced by the appellant established his claim to the necessary standard of proof. Moreover and significantly, this was a second appeal; the appellant had already been found to be untruthful by a previous Tribunal, a finding which the judge correctly took as the starting point of his own analysis. Further, the appellant submission that the judge acted unfairly in his treatment of the witness Mr O is also baseless. At [74], the judge found that Mr O had been inconsistent as between his written evidence and his oral evidence as to whether he had had sex with the appellant. The grounds complain

that this discrepancy had not been put to the witness by the judge. However, there was no reason why it should have been; the witness's evidence was plainly contradictory on its face. There appears to have been no attempt by the appellant's representative to address this obvious contradiction during re-examination or in submissions; it seems that the appellant (and the witness) were prepared to let the contradiction stand and the judge was entitled to find the witness's credibility diminished accordingly.

6. Finally, the appellant complains that the judge has applied too high a standard of proof. At [75] and [77], the judge uses the word 'determinative' when discussing social media evidence and whether the application's attendance at a Pride event and activity with the Apajon Group, whilst consistent with his claim to be gay, was not 'determinative' of that claim.
7. The judge has correctly set out the burden and standard of proof at [38-39]. Having carefully read the decision as a whole, I am entirely satisfied that the judge has not at any point in the decision departed from that standard and applied too high a standard of proof. He has used the word 'determinative' in the sense that the evidence adduced by the appellant has not discharged the burden of proving what the appellant asserts that the evidence does prove, namely that he is a gay man. He has not used it in the sense that evidence had failed to prove categorically and beyond any doubt that the appellant is gay. I have absolutely no doubt that the judge has concluded that the evidence was not determinative of the appellant's claimed sexuality by reference to the appropriate standard of proof.
8. In the circumstances, I conclude that the judge did not err in law for the reasons advanced in the grounds of appeal or, indeed, at all and that his decision should stand. The appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed

Date 11 February 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.