



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

Appeal Number: PA/10856/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 April 2018**

**Decision & Reasons  
Promulgated  
On 2 May 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**[A K]  
(~~ANONYMITY ORDER NOT MADE~~)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Professor W Rees (for Farani Javid Taylor Solicitors)

For the Respondent: Ms J Isherwood (Home Office Senior Presenting Officer)

**DECISION AND REASONS**

1. This is the appeal of [AK], a citizen of Pakistan born [ ] 1990, against the decision of the First-tier Tribunal of 19 December 2017, dismissing his appeal against the decision of the Secretary of State to refuse his asylum claim.

2. The Appellant entered the UK as a student on 6 September 2010 with leave until 31 October 2012, ultimately extended until 31 March 2015, though curtailed to end in May 2014 when his Sponsor's licence was revoked. He was subsequently served with notice of being an illegal entrant on 18 March 2015 as information came to light indicating he had relied on false educational certificates to secure entry in the student route. He brought a judicial review application against that decision which was refused on 8 December 2015. He claim asylum on 24 August 2017 having been detained two days earlier when reporting to the Home Office.
3. The Appellant's asylum claim as summarised by the Home Office refusal letter was based on his homosexuality. He was an engineering student from Karachi who had discovered his sexuality between the age of 17 and 18 after he developed an attraction to a male friend, [U]. He came to the UK as a student and began to live openly as a gay man, visiting gay clubs from March 2011 and telling his friends about his relationship; in 2011 he had an eight-month relationship with a man named [AA], and in 2013 a year long relationship with a man called [A]. The Appellant told his father of his gender preference in June or July 2013, provoking his anger: he threatened to kill the Appellant if he returned to Pakistan; he had since had no contact with his family. He now feared death at the hands of his family or society generally.
4. His application was refused on 25 October 2017 because the Secretary of State did not accept that his account of past events and his claim to be gay were true, as
  - (a) He had given different dates at different points in his asylum interview as to when he first became aware of his sexuality: he had said both that he was at the time aged around 14/15, and 17/18;
  - (b) He could not recall his own age when he first became attracted to [U];
  - (c) He was vague in his recollection of events that might be thought significant in his journey to coming out in the UK, such as same sex parades;
  - (d) He could not recall [A]'s surname and the circumstances of their claimed meeting in a shop: furthermore his claim that he had told [A] that he was gay upon meeting him was inconsistent with the general tenor of his evidence elsewhere, which was to the effect that he was reluctant to tell strangers of his sexual orientation;
  - (e) A letter he provided from the sexual health charity NAZ of 13 October 2017 stated he had accessed their services since January 2015 represented the sole corroborative evidence of his activities in the gay community;
  - (f) Letters from his friends were essentially self-serving;
  - (g) He claimed asylum only after being detained, and very late in his period of UK residence.

5. In these circumstances the Secretary of State did not accept that he was gay or that anybody would so perceive him. Accordingly he faced no risk of persecution in Pakistan.
6. The Appellant appealed against that decision and gave oral evidence before the First-tier Tribunal. His appeal was dismissed, on the basis that his account was not credible, because
  - (a) His account of being pressured by his parents to get married was vague and did not adequately explain his decision to reveal his sexuality to them, given the likely serious consequences for their relationship that would ensue;
  - (b) His asylum claim was brought very late given he had been attending gay clubs and parades from 2013, attended NAZ sessions since 2015, and he had had legal representation from at least 2015 when he brought a judicial review application, all of which indicated that he would have met other gay Asian men in the same situation a significant time ago;
  - (c) His inability to recollect [A]'s surname was surprising if their relationship had been genuine;
  - (d) Given these findings, the photographs of him and other men said to support his claim were considered fabricated.
7. The Judge refers to oral evidence from [SH] who adopted a letter he had already written supporting the asylum claim, confirming he met the Appellant in Disco Rani Club in June 2016 and knew him to be openly gay and comfortable with his sexuality. A letter from [HA] also confirmed the Appellant lived openly as a gay man and that he had had sex with him following a meeting at a club. This evidence was rejected, on the basis that the Appellant's own evidence had already been found wanting.
8. In the light of its rejection of the critical characteristic claimed by the Appellant as underlying his asylum claim, the First-tier Tribunal dismissed his appeal.
9. Grounds of appeal argued that the failure to make findings on the evidence of the witnesses [SH] and [HA] amounted to a material error of law by way of a failure to assess the Appellant's evidence in the round.
10. The First-tier Tribunal granted permission to appeal on 16 January 2018 on the basis that the evidence from a male witness who claimed to have had sex with the Appellant had not been considered, and that typographical errors and missing words in the decision suggested a lack of the proofreading and professionalism expected from the judiciary.
11. Before me Mr Rees submitted that a failure to make findings on ostensibly independent witnesses of fact who corroborated the critical issue in the appeal was a material error of law. Ms Isherwood replied that whilst it was undesirable to make credibility findings on witnesses

other than the Appellant without giving some independent reasoning, nevertheless overall the decision was sustainable.

## **Findings and reasons**

12. As I indicated at the hearing, I considered that the grounds of appeal were made out. The evidence from the witnesses went to the central issue in the appeal. Both witnesses gave oral evidence, as can be seen from the record of proceedings and as was confirmed by the Appellant himself.
13. As the Earl of Halsbury, Lord Chancellor, stated in *Montgomerie & Co Ltd v Wallace-James* [1904] AC 73:

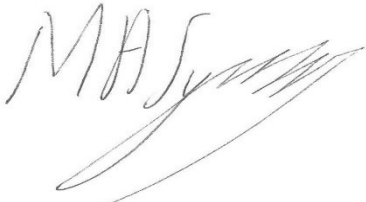
“It is simply a question of fact, and doubtless, where a question of fact has been decided by a tribunal which has seen and heard the witnesses, the greatest weight ought to be attached to the findings of such a tribunal. It has had the opportunity of observing the demeanour of the witnesses and judging of their veracity and accuracy in a way that no appellate tribunal can have.”
14. Of course, as most recently noted in *KB & AH Pakistan* [2017] UKUT 491 (IAC), “in asylum appeals it will rarely be safe to attach significant weight to demeanour as a factor.” Nevertheless, the reason that appellate tribunals afford significant deference to first-instance trial judges is because of the advantage they have when assessing oral evidence. The other side of the coin is that where there is some patent failing in the assessment of oral evidence, a decision is very unlikely to be unsafe. That is clearly the case here.
15. [SH]’s evidence was consistent with the Appellant’s claim to have lived openly in recent times. [HA]’s evidence went directly to the Appellant’s gender preference, and additionally constitutes evidence of an intimate nature which it would require some degree of personal fortitude to reveal in court. That does not necessarily make the evidence true, but given its materiality to the key issue upon which the parties were divided, it plainly demanded reasoned adjudication.
16. I accordingly find that the First-tier Tribunal’s decision is flawed by material errors of law and the appeal is allowed to the extent that the matter is remitted back to that Tribunal for hearing afresh.

### Decision:

The appeal is allowed to the extent it is remitted back to the First-tier Tribunal.

Signed:

Date: 5 April 2018

A handwritten signature in black ink, appearing to read 'M. A. Symes', with a long, sweeping underline that extends to the left.

Deputy Upper Tribunal Judge Symes