



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

Appeal Number: PA/08582/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 3 February 2020**

**Decision & Reasons Promulgated
On 4 March 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR M W L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood, Counsel instructed on a Direct Access basis

For the Respondent: Mr A Tam, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan who was born on 20 April 1986. He came to the UK as a student on 23 April 2011 and made a subsequent application for an extension of leave. His sponsor's licence was revoked on 19 February 2013. The Appellant then made a further application but this was refused, however his appeal against that decision was allowed on 30 April 2014. There was then a reconsideration, a further refusal and a further appeal which was dismissed and the Appellant became appeal rights exhausted on 22 November 2016.

2. On 3 February 2017 the Appellant claimed asylum on the basis that he had a well-founded fear of persecution in Pakistan on the basis of his sexual orientation. His appeal was dismissed, he made further submissions and following a judicial review he was given the right of appeal. His appeal came before Judge of the First-tier Tribunal Holt for hearing on 10 October 2019.
3. In a Decision and Reasons promulgated on 15 October 2019 the judge dismissed the appeal for a number of reasons, finding essentially that the Appellant's claim was not a credible one.
4. Permission to appeal was sought, in time, on a number of grounds: firstly, that the judge erred materially in law in failing to take documentary evidence into account and in failing to give the evidence anxious scrutiny; secondly, in failing to take the contents of the Appellant's detailed witness statement into account and making material errors of fact; thirdly, the judge materially erred in law in failing to give anxious scrutiny to the witnesses' oral evidence.
5. Permission to appeal was granted by First-tier Tribunal Judge Swaney on 29 November 2019 on the basis:-

"It is arguable that the judge found the Appellant lacking in credibility for reasons of plausibility rather than by having regard to the available evidence. Paragraphs 27(ii), (iii) and (vii) are examples of this. The judge rejects evidence based on her own assumptions and opinions without making clear findings about the evidence itself.

The grounds of appeal disclose an arguable error of law."

Hearing

6. At the hearing before the Upper Tribunal the Appellant was represented as he was before the First-tier Tribunal by Mr D Maqsood of Counsel instructed on a Direct Access basis.
7. Mr Tam, on behalf of the Respondent, submitted at the outset that he was able to accept that there were material errors in the decision of the First-tier Tribunal, that this was in relation to a failure by the judge to apply anxious scrutiny to the witness evidence and to have regard to the documentary evidence.
8. Mr Tam stated that he also agreed with the observations of Judge Swaney in the grant of permission to appeal, specifically in terms of the evidence of the witnesses recorded by the judge at paragraph 27(i)(a). The witnesses only knew the Appellant after he had made his asylum claim and therefore the judge could not properly utilise this to undermine the Appellant's credibility in failing to make an earlier asylum claim.
9. Mr Tam also acknowledged that the Appellant had submitted a letter and copy of the passport of one of his former partner's which the judge had not

properly taken into account on the basis, which Mr Tam accepted was unsustainable, that he was not a longstanding or committed partner.

Findings and Reasons

10. In light of Mr Tam's helpful concessions I find material errors of law in the Decision and Reasons of Judge Ford, in particular:

10.1. Whilst *Devaseelan* applied in light of the previous decision of First tier Tribunal Judge Ford, who heard an appeal by the Appellant on the papers on 8.12.17, I agree that at [27](i)(a) First tier Tribunal Judge Holt fell into error in assuming that the Appellant's three witnesses, who had all been granted refugee status on the basis of their sexual orientation, had been known to him prior to him making his own asylum claim, when the evidence before the Judge was that he met all of them after he made his claim: [18] of the grounds of appeal refers.

10.2. At [27](ii) the Judge held against the Appellant that there was no reliable evidence of any longstanding/committed gay partner, when the only witness asked about this was his current partner and there was evidence from at least one former partner in the appeal bundle.

10.3. It is further apparent from the terms of the Judge's decision and reasons that the observation by Judge Swaney, in granting permission to appeal, is correct and Mr Tam properly conceded as much. It is not appropriate for a Judge to make findings based on assumptions and opinions eg as to the Appellant having constructed an artificial lifestyle of "gay activities" rather than make clear and sustainable findings on the evidence that was actually before her.

11. I remit the appeal for a hearing *de novo* to the First-tier Tribunal in Manchester. An Urdu interpreter will be required and the hearing should be listed for three to four hours.

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 his 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 Rebecca Chapman

Date 12 February 2020

Deputy Upper Tribunal Judge Chapman