



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

Appeal Number: PA/05595/2019

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 12 March 2020

Promulgated

On 15 April 2020

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 2 January 1987. He has been given permission to appeal against the decision of First-tier Tribunal Judge Cooper dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant arrived in the United Kingdom on 14 February 2011 with leave to enter as a Tier 4 student valid until 29 February 2012. On 21 January 2016 he was encountered working illegally and was served with removal papers. He then claimed asylum on 2 February 2016. His claim was refused on

8 August 2016 and he did not appeal the decision. On 19 February 2019 the appellant made further submissions which the respondent agreed to consider as a fresh asylum claim. That claim was refused on 21 May 2019. His appeal against that decision gave rise to these proceedings.

3. The appellant's first asylum claim was made on the basis that he feared his local MP because of a land dispute between that person and his own family which resulted in several fights and with the appellant being beaten, kidnapped and ill-treated. The respondent did not consider that the appellant had demonstrated a genuine subjective fear or that any such fear was objectively well-founded and refused the claim.

4. The appellant's subsequent, and current claim, is that he is homosexual and would be at risk on return to Pakistan on that basis from his own family and from the wider society. The respondent did not consider that the documentary evidence relied upon by the appellant in the form of letters of support, photographs, screenshots of conversations, a ticket confirmation for an event and a club membership card, could be accorded weight and did not accept that he was homosexual. The respondent did not accept that the appellant was at risk in Pakistan and considered that his removal would not breach his human rights.

5. The appellant's appeal against that decision was heard on 12 July 2019 before First-tier Tribunal Judge Cooper. The judge recorded the appellant's evidence, that he had first realised that he was gay when he was about 15 and had a relationship with a boy, AR, for two and a half years until AR moved to Dubai with his family, that he had another relationship in the UK with a Pakistani man, S, from January 2012 until December 2013 and that he subsequently had casual relationships in the UK and was in an open relationship with HA whom he met at a club in London. The appellant claimed that he had been living as an openly gay man since 2012. He claimed that in October 2018 his family in Pakistan had found out that he was gay after he refused to marry his cousin and his brother had threatened to kill him. The judge also heard from two further witnesses, Mr R and HA, both of whom had been granted refugee status on the grounds of their sexuality.

6. The judge did not accord weight to the evidence relied upon the appellant and considered there to be no satisfactory documentary or other evidence indicating that he had been living openly as a gay man since 2012. The judge did not believe the appellant's claim to be gay. The judge noted inconsistencies between the appellant's evidence and that of his witnesses as well as inconsistencies within the appellant's own evidence and considered that he had made up his claim. She accordingly dismissed the appeal on all grounds.

7. The appellant sought permission to appeal outside the time limit and the First-tier Tribunal rejected his explanation for the delay and did not admit his application. Permission was, however, granted by Upper Tribunal Judge Finch on 28 January 2020 on different grounds to those raised by the appellant.

8. At the hearing the appellant appeared in person and confirmed that he did not have a legal representative. As it was noted that UTJ Finch had not dealt with the timeliness issue when making her grant of permission, Ms Fijiwala was content for time to be extended and the application to be admitted, for the sake of expedience. I therefore extended time and admitted the application.

9. Ms Fijiwala made submissions addressing the grant of permission by UTJ Finch and the appellant was given an opportunity to respond.

10. The first and second bases for the grant of permission were that the judge had arguably applied an incorrect standard of proof at [42] and [43] by directing herself that she had to rely on evidence which was conclusive of the appellant's sexuality, and that she arguably failed to take a holistic approach to the evidence. However, I am entirely in agreement with Ms Fijiwala that there was no error on the part of the judge in either respect. The judge clearly applied the correct, lower standard of proof to the evidence as she was required to do and there is nothing in her findings in those paragraphs or her assessment of any of the evidence which indicates that she applied a higher standard of proof. As Ms Fijiwala submitted, the judge was not, at [42] and [43], requiring evidence to be conclusive, but was simply making a finding that the photographs relied upon by the appellant were not in themselves indicative of his claimed homosexuality. She provided cogent reasons for so concluding and was fully and properly entitled to conclude as she did.

11. In those paragraphs and in the subsequent paragraphs, the judge assessed the documentary evidence which included the photographs, social media messages and Candygirls letter, in accordance with her self-direction at [39] and [41], considering the evidence in the round together with the appellant's own evidence. The judge's assessment was a detailed and careful one and she provided clear and cogent reasons for according the evidence the limited weight that she did. Likewise, the judge carefully assessed the evidence of the two witnesses, having full regard to the fact that they had been granted refugee status themselves, a matter noted at [51]. The judge did not suggest that the witnesses had been paid to give evidence on the appellant's behalf, but simply recorded their evidence that they denied having been paid. The judge gave appropriate weight to the witnesses' status at [52], but was also fully and properly entitled, in considering the weight to be accorded to their evidence, to take account of the inconsistencies between their evidence and that of the appellant and to make the adverse credibility findings that she did. The judge was also fully entitled to consider, as she did at [52] and [69], that the fact that the witnesses had been granted refugee status undermined the appellant's claim that he was not aware that he could claim asylum on grounds of sexuality, at a time when both witnesses were known to him.

12. Accordingly, and contrary to the grounds given for granting permission, the judge's assessment of all the evidence, documentary and oral, from the appellant and from his witnesses, was a full and careful one, which was undertaken holistically and with due regard to the position and status of the witnesses. The judge was fully entitled to accord the weight that she did to the

evidence and her conclusions in that regard were supported by full and cogent reasoning. Neither the appellant's own rather vague and unparticularised grounds seeking permission, nor his response to Ms Fijiwala's submissions, added anything of value. The judge gave full consideration to all the evidence before her and to all relevant matters and she was fully and properly entitled to reach the adverse conclusions that she did. There is no merit in the challenge to the judge's decision.

DECISION

13. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed 
Upper Tribunal Judge Kebede

Dated: 13 March 2020