



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

Appeal Number: AA/07288/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow**

**Determination  
Promulgated**

**On 15 December 2014**

**On 20 March 2015**

**Before**

**UPPER TRIBUNAL JUDGE DEANS**

**Between**

**MR ABDUL RASHID**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Winter, Advocate, instructed by Maguire Solicitors

For the Respondent: Mr M Matthews, Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) This is an appeal against a decision of Judge of the First-tier Tribunal P A Grant-Hutchison dismissing an appeal on asylum and human rights grounds.
- 2) This appeal has a not inconsiderable history. The appellant's first asylum appeal was allowed by the First-tier Tribunal after a hearing in August 2013. The Secretary of State challenged the decision, which was set aside on the grounds of an error of law by Upper Tribunal Judge Macleman in a

determination dated 20 November 2013. Judge Macleman determined that the extent of judicial fact-finding necessary for the decision to be re-made was such that it was appropriate to remit the appeal to the First-tier Tribunal. Accordingly the appeal was heard for a second time before the First-tier Tribunal before Judge P A Grant-Hutchison in July 2014.

- 3) Judge of the First-tier Tribunal P A Grant-Hutchison dismissed the appeal on the basis principally that the appellant's evidence was not credible. The appellant was born on 25 June 1978 and is a national of Pakistan. He claims to be at risk of persecution in Pakistan because he is a homosexual. The judge accepted that if the appellant's evidence was accepted then his appeal would succeed. The appellant's claim was supported by an FIR purporting to have been issued in Pakistan. The appellant, if credible, fell within the terms of HJ (Iran) [2010] UKSC 31. Having heard the evidence, however, Judge P A Grant-Hutchison found the appellant's evidence was not credible.
- 4) An application for permission to appeal was made on behalf of the appellant challenging the judge's reasoning. The first ground was that the judge had reached a conclusion on the appellant's credibility before surveying all the evidence, including, in particular, a First Information Report or FIR. In addition, the judge made a decision on the appellant's credibility without considering the evidence of a supporting witness.
- 5) It was submitted that the judge had failed properly to engage with the evidence of the supporting witness and failed to take proper account of his evidence or to give adequate reasons why his evidence did not assist the appellant. It was submitted that the witness's evidence was that he had seen the appellant being intimate with other men, he had dropped the appellant off at gay night clubs, and the appellant had confided to him that he was homosexual.
- 6) The third ground on which the application for permission to appeal was made was based on paragraph 21 of the determination in which the judge wrote with reference to the FIR produced by the appellant that "its existence does render the appellant's significantly more credible." It was submitted in the application for permission to appeal that if the FIR rendered the appellant's evidence significantly more credible the judge failed to explain why the appellant's evidence was rejected.
- 7) Finally, the application contended that the judge was wrong to take against the appellant as a credibility issue that he had left Pakistan using a passport and visa with his own personal details in them. The judge found this was "highly indicative, that the appellant was not fleeing Pakistan at the time." It was submitted in the application that a person is not prohibited from leaving Pakistan even if they have an FIR outstanding against them and reference was made to a Country of Origin Information Report (COIR) in relation to this.

- 8) Permission to appeal was granted because it was arguable, in particular, that the judge did not reach a conclusion about the evidence of the supporting witness and secondly, at paragraph 21, the judge reached the apparently inconsistent conclusion that the existence of the FIR “renders the appellant’s [evidence] significantly more credible.” In granting permission the judge stated that this finding might be the result of a typographical error but this was not entirely clear from the decision and reasons as a whole.
- 9) A rule 24 notice dated 29 August 2014 was submitted on behalf of the respondent. It stated that the judge made a series of well-reasoned adverse credibility findings and gave good reasons in support of them. It was clear that there was a typographical error in paragraph 21. The existence of an FIR which did not support the appellant’s account could not by any stretch of the imagination provide support that the appellant’s account was genuine. It was clear that the word “not” had been omitted.
- 10) It was further submitted in the rule 24 notice that the evidence of the supporting witness amounted to little more than hearsay and was not relevant to the issues in the appellant’s account which led the judge to make an adverse credibility finding. In short, the grounds of the application were “a thinly disguised disagreement with clear findings that the appellant, who allegedly fled Pakistan in 2004, did not claim asylum until encountered by enforcement officers in 2013 whilst he was working illegally.”
- 11) Notwithstanding the terms of the rule 24 notice, at the commencement of the hearing before me, Mr Winter informed me that the respondent would no longer be seeking to uphold the determination of the First-tier Tribunal. It was accepted that the judge’s apparent failure properly to assess the evidence of the supporting witness or to give adequate reasons as to why the witness’s evidence did not assist the appellant, together with the contradictory statement about the FIR and whether it did nor did not render the appellant’s evidence significantly more credible, were sufficient to amount to material errors of law such that the decision should be set aside.
- 12) For the respondent, Mr Matthews confirmed that this was the position. So far as the reference to the FIR in paragraph 21 was concerned, it could not necessarily be construed that the word “not” should be inserted in order to make sense of the reasoning.
- 13) For my part, I accepted the submissions of the parties. In particular, I considered that the judge of the First-tier Tribunal did not give adequate reasons for finding at paragraph 20 that the evidence of the supporting witness did little to assist the appellant. At paragraph 21 the judge clearly made a contradictory statement in relation to whether or not the FIR supported the appellant’s evidence. If this were the only error, it might be possible to construe the paragraph in a way that was consistent with the rest of the determination but this error, together with the lack of adequate

reasoning in respect of the witness's evidence, are sufficient to amount to errors of law such that the decision should be set aside.

- 14) As the errors made by the Judge of the First-tier Tribunal go directly to the issue of credibility, none of the findings made by the Judge of the First-tier Tribunal should be preserved. Once again the nature or extent of judicial fact finding required in order for the decision to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal in terms of Practice Statement 7.2(b). The hearing should not be before either Judge Quigley or Judge P A Grant-Hutchison.

## **Conclusions**

- 15) The making of a decision of the First-tier Tribunal did involve the making of errors on points of law.
- 16) I set aside the decision.
- 17) The appeal is remitted to the First-tier Tribunal for the decision to be remade. None of the findings of the First-tier Tribunal are to be preserved. The new hearing should be before a judge other than Judge Quigley or Judge P A Grant-Hutchison.

Signed

Date **15 December 2014**

Judge of the Upper Tribunal