



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

Appeal Number: PA/00540/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 29th November 2019**

**Decision & Reasons Promulgated
On 6th December 2019**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**'HC'
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: Mr P Georget, Counsel, instructed by Polpitya & Co Solicitors

For the respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

These are the approved record of the decision and written reasons which were given orally at the end of the hearing on 29 November 2019.

Introduction

This is an appeal by the appellant against the decision of First-tier Tribunal Judge A J M Baldwin (the 'FtT'), promulgated on 14 June 2019, by which he dismissed the appellant's appeal against the respondent's refusal on 7 January 2019 of his protection and human rights claims. The respondent's decision had in turn refused the appellant's application for leave to remain, on the basis that the respondent did not accept the appellant was gay; or that he had suffered problems from members of his family, two of whom were said to be high profile (his father was a local Imam and his uncle worked for the Algerian presidency); or that he had been blackmailed with a visual recording of having sex with another man; or that he suffered problems with his family on account of being an atheist, in the context of having a devout Muslim family. In the alternative, the respondent concluded that it would be reasonable to expect the appellant relocate away from Algiers where his family lived. For the same reasons, the respondent rejected the appellant's claims by reference to articles 2 and 3 of the European Convention on Human Rights ('ECHR'), and also by reference to article 8, on the basis that there was no family life in the United Kingdom claimed and there would not be very significant obstacles to his integration in Algeria, his country of origin.

The FtT's decision

While the FtT found that the appellant was gay, he was not impressed by various aspects of the appellant's evidence, including that the appellant had failed to claim to be gay during the asylum screening interview, and that this had not been referred to for a further six months afterwards, despite the appellant claiming to be willing to report matters to the Algerian police in connection with the threat of blackmail against him. In that context, the FtT found that the appellant would be discrete about his sexuality for reasons unconnected with threats of persecution, as he was initially discrete in the UK. The appellant's discretion was as a result of personal choice rather than because of a well-founded fear of persecution. The FtT also did not regard as plausible the appellant's claim to have gone to the Algerian police in relation to a recorded footage of him in engaging in homosexual sex. The FtT further concluded that the appellant's father and uncle would not have the ability between them to locate him throughout Algeria and noting the appellant's recent stays in various locations, that he would be able to relocate in Algeria, without it being unduly harsh.

The grounds of appeal and grant of permission

The appellant lodged grounds of appeal which are that the FtT had erred in making the finding of fact that the appellant had failed to refer to his sexuality until 6 months after the screening interview. In fact, the day after the FtT hearing, it came to light that the appellant's previous solicitors had submitted a statement of additional grounds only 16 days after the screening interview, which had been provided to the respondent

and which had not been included in the respondent's bundle, which expressly referred to being gay. This evidence was sent to the FtT prior to the FtT reaching his decision on 14 June 2019. This was relevant to the appellant's credibility. The grounds also assert that the FtT had failed to consider adequately the hostile reaction of the appellant's family; or how he could internally relocate, particularly if he were living as an openly gay man. The FtT had also failed to consider the fact that the appellant was a model in Algeria, and so of high media profile, which might be material to the assessment of risk and undue harshness of relocation. The FtT had also made no finding on the appellant's lack of religious belief and his family being strict Muslims. Finally, it was said that the FtT had failed to consider the appellant's relationship with his current partner and whether it amounted to family life in the UK.

First-tier Tribunal Judge Landes granted permission on 14 October 2019. She regarded it as arguable that the FtT had erred in finding when the appellant had first stated that he was gay to the respondent; this was arguably material as it went to the appellant's credibility. This also in turn impacted on the finding as to whether the appellant would be discrete out of choice, as opposed to fear, which in turn impacted on the viability of internal relocation. She also regarded as arguable the FtT had failed to consider the appellant's high-profile status as a result of having been a model, and the appellant's relationship with his partner. Whilst she regarded the criticisms of the FtT's assessment of the risk from the appellant's family as having less merit, she did not limit the scope of her grant of permission.

The hearing before me

The appellant's submissions

Mr Georget, on behalf of the appellant, argued that at [28], the FtT had referred to the appellant's failure to refer to his sexuality for six months after the screening interview; and it was now no longer disputed that the appellant had revealed that he was gay, to the respondent, far earlier. The factual error ran as a thread throughout the evidence and it was not possible to unpick the adverse findings on credibility from that error. In expanding on the submission, at [28], the FtT noted that to have failed to record his claim to be gay at the interview would amount to a very serious failure on the part of the interpreter and on the part of the appellant's solicitor. The FtT recorded that the appellant's assertion that he had mentioned that he was gay had not been put to his former representatives, to allow them to comment, which would be a significant failure in the sequence of the events '*if the appellant is to be believed*'. The FtT continued:

"I simply do not believe the appellant in his assertions about this and this is unhelpful to his credibility for two reasons. Firstly, it represents a significant [my emphasis] omission in setting out the core of his claim at screening and, secondly, it indicated the

appellant is prepared to try and mislead, as other aspects of his evidence also make clear. He also invited me to consider that in a country where homosexuality is widely condemned and where its practice is a criminal offence, he went on to the local police station to enlist their support in trying to stop his partner using a DVD of him having sex with another man. This, I find, makes no sense at all, even if he were friends with some of them."

Mr Georget submitted that the adverse finding on credibility then impacted on the FtT's consideration of the viability of internal relocation, as his assertions regarding the high-profile status of his relatives and his own social media profile were also damaged. The FtT's consideration of internal relocation had been brief (at [29]) and inadequately reasoned, noting that the evidence before the FtT, in particular the paragraph 2.53 of the Country Policy and Information Note or 'CPIN' at page [66] of the appellant's bundle had regarded the question of internal relocation as a complex one, requiring detailed assessment.

Mr Georget also submitted that consideration of the appellant's family life was brief and inadequate, at [30] of the Decision.

The respondent's submissions

In response, Mr Melvin asked me to consider, by reference to the Rule 24 response, that the evidence pointed to the appellant being openly gay in Algeria; having friends who are gay people in Algeria, and so the impact on the one issue which focussed on the Upper Tribunal permission about when he had disclosed that he was gay in the UK, did not infect the overall credibility findings. This was in particular in the context of his inability to provide any evidence about his father, an Imam being a high-ranking official, noting that he was still in dialogue with female relatives, and if he had been openly gay in Algeria, he had not suggested that he had been persecuted by state authorities. The issue of being a model had not been substantively raised and whilst atheism had been dealt with in the original refusal decision, it was not raised in the grounds of appeal to the FtT or identified as an issue by the FtT as the basis of an appeal.

Discussion and Conclusions

The FtT had made a finding that the appellant had not disclosed to the respondent that he was gay until 6 months after the screening interview, when the evidence available to the FtT before he reached his decision was clear that the appellant had disclosed this no later than 16 days after his screening interview, when his former solicitors provided a statement of additional evidence. While I accept that there will be cases where an appellant's credibility in one regard will not impact on findings in relation to other disputed issues, it was clear in my view, not least because of the passage already outlined by Mr Georget, that the FtT's perception of the appellant's failure to disclose that he was gay to the respondent for some 6 months after the screening interview did significantly impact on the FtT's

assessment of the appellant's credibility. The FtT regarded it as going to the core of his explanation of his claim during the screening interview and it also suggested, in the FtT's view, that the appellant was prepared to try and mislead him. The FtT went on to link this to the appellant's allegation about the circulation of a DVD involving the appellant. I also accept that the appellant's credibility was directly relevant to the profile of the appellant's father and uncle; which would then necessarily in turn impact on his ability to relocate internally, away from Algiers, where his family had lived.

Whilst the appellant's family life and his claimed fear of persecution on the basis of being atheist may not have featured largely in the appeal, nevertheless the FtT's decision did contain an error of law at its heart, in the FtT's assessment of the appellant's credibility, which is key to the protection claim. The FtT's decision is therefore unsafe and must be set aside.

With reference to paragraph 7.2 of the Practice Direction and the necessary fact-finding, this is a case that has to be remitted to the First-tier Tribunal for a rehearing. In doing so, I expressly preserve the FtT's finding that the appellant is gay as claimed, but without preservation of any other findings.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remit this appeal to the First-tier Tribunal for a rehearing.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a rehearing, with the preserved finding that the appellant is gay.

The remitted appeal shall not be heard by First-tier Tribunal Judge A J M Baldwin.

The anonymity directions continue to apply.

Signed **J. Keith**

Date: 4 December 2019

Upper Tribunal Judge Keith