



**Upper Tribunal
Immigration and Asylum Chamber
AA/00304/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 4 July 2013**

**Sent:
On 5 July 2013**

Before

Upper Tribunal Judge Kekić

Between

M K

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation

For the Appellant: Mr S Chelvan, Counsel

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

Details of appellant and basis of claim

1. This appeal comes before me following the grant of permission on 22 May 2013 by First-tier Tribunal Judge Nicholson in respect of the determination of Immigration Judge Oxlade who dismissed the

- appeal following a hearing at Hatton Cross by way of a determination promulgated on 1 May 2013.
2. The applicant is a Lebanese national born on 19 January 1983. He claimed asylum in December 2012 prior to the expiry of his student visa. His claim is that he is gay and that he would be at risk if he returned to Lebanon.
 3. The application for asylum was refused by the Secretary of State on 13 December 2012 and a decision to remove him by way of directions was made.
 4. The appeal came before me on 4 July 2013. I heard submissions on whether or not the First-tier Tribunal Judge made an error on a point of law.
 5. At the conclusion of the hearing I indicated that I would be setting aside the determination and allowing the appeal. I now give my reasons for so doing.

Findings and Reasons

6. Mr Chelvan relied on two grounds. The first was that the judge erred in failing to apply the reasonableness test when assessing whether the appellant could internally relocate. The second was based on a contradiction between the judge's acceptance of certain evidence and her finding that the appellant would be able to live openly and freely as a gay man in Beirut. I deal with each challenge in turn.
7. The judge accepted that the appellant was gay and accepted that he would be at risk if he returned to his home area. She then asked herself whether the appellant could relocate to Beirut without there being a real risk of persecution (at paragraph 52). Mr Chelvan is quite right to say that this is the wrong test and Mr Nath did not seek to challenge that. The judge should have been looking at whether it would be reasonable to expect the appellant to relocate and she should have taken account of his personal circumstances, as detailed before her, in making that assessment. She failed to do either. That is an error of law. It makes the determination unsustainable.
8. With respect to the second challenge, I was referred to paragraph 53 of the determination. In that paragraph the judge accepts that the government introduced anal testing in order to identify gay men. Mr Chelvan argued that despite the other articles before the judge on gay tourism (geared, it has to be said, towards foreign tourists rather than locals), this evidence and the judge's acceptance of same showed that the appellant would not be able to live freely in Beirut or anywhere else. Having considered the

evidence contained in the bundle I concur with Mr Chelvan's submissions. Whilst it may be that the public have condemned such testing, the fact that they are continuing does demonstrate the attitude of the state towards homosexuality. It therefore directly impacts on the appellant's ability to live freely and openly as a gay man in Lebanon. This being the case, I did not consider it necessary to hear further oral evidence from the appellant and Mr Nath did not indicate that he had any questions to ask. The judge erred in her finding that the appellant would be able to live freely and openly without any fear of persecution given the evidence before her on the attitude of the state (which she accepted).

Decision

9. The First-tier Tribunal made errors of law which render the determination unsustainable. I set it aside and remake the decision. The appeal is allowed on asylum and Article 3 grounds.

Anonymity

10. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed:

**Dr R Kekić
Judge of the Upper Tribunal**

4 July 2013

