



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02262/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 14th November 2017**

**Decision & Reasons
Promulgated
On 28th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

**JA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Singh, Solicitor
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Oliver promulgated on 4th May 2017. At the appeal hearing before the Upper Tribunal the Appellant was represented by Mr Singh, a solicitor, and the Respondent was represented by Mr T Melvin, the Home Office Presenting Officer.
2. The judge in his findings noted that within the refusal letter from the Secretary of State which was dated 9th November 2016 it was accepted that the Appellant was a member of a particular social group of gay men in

Bangladesh, but found on an application of the case of **HJ (Iran)** that the Appellant would not be liable to persecution in Bangladesh upon return. Within his findings Judge Oliver stated at paragraph 25 that the Appellant's fear on return was of his family and religious leaders, not from state actors and that he had lived all his life in Sylhet and had limited family in Bangladesh. The judge found that the Appellant had not shown that his family members would be able to locate him upon return to Dhaka. He stated that a single incident in which two gay activists were killed had not demonstrated a general pattern of persecution and that 'gaybashing' was not entirely absent from the United Kingdom.

3. Within the Grounds of Appeal it is argued that the judge made a material error of law in that within his statement the Appellant had actually said at paragraph 16 that the police in Bangladesh did use anti LGBT laws to arrest, torture and extort money from LGBT persons under threat and they would be subject to prosecution unless they gave in to their demands. It is said that the appellant in his statement referenced how the Bangladeshi Penal Code makes it an offence for persons to commit unnatural acts and argues that if the police were to learn of his sexuality then he would be subject to the same treatment from Bangladeshi LGBT laws, so they could be used to arrest, torture and extort money from him by the police.
4. It is further argued in the grounds of appeal that the judge has failed to give reasons for believing the Appellant would be able to return safely in Dhaka and that the judge has failed properly to actually consider the full basis of the Appellant's claim and the fact that he claims not only the fear from family members, but he said within his statement that he also feared the police. Mr Singh argues that in the statement the appellant also mentioned fearing religious fundamentalists and the public at large.
5. Within the Respondent's Rule 24 reply dated 2nd October 2017 the Respondent does not oppose the Appellant's application for permission to appeal and invites the Tribunal to undertake a continuance hearing to determine whether the Appellant would be at risk from state actors due to his sexuality.
6. When one looks at the judgment of Judge Oliver in respect of his findings at paragraph 22, the first paragraph of his findings, he has just put "X" and at paragraph 23 he has just put "deal with killings of Xulhaz Mannan and his friend in April 2016". However the judge makes no findings in respect of what seemingly is a reference to the cross-examination for the use of "X", or the killings of Xulhaz Mannan and his friend in April 2016 within those paragraphs. It seems that the judge made a note for himself of items he wanted to deal with within his findings, but has actually then forgotten to do so.
7. The judge then at paragraph 24 dealt with the relevant UN guidelines which state that:

"While discrimination is a common element in the experience of many LGBT individuals, it will rise to the level of prosecution only

*where the measures of discrimination, individually or cumulatively, lead to consequences of the substantially prejudicial nature and this assessment is to be made by reference to reliable, relevant and up-to-date country of origin information, formulated within the context of leading authority, **HJ (Iran) v SSHD.**"*

8. He then dealt with the Respondent's policy document dated December 2016 and that LGBT people formed a particular social group in Bangladesh and said the question was whether or not a person will live freely and openly as an LGBT person, or whether they conceal aspects of their orientation, and if so, the question that had to be asked was to why, whether it was because of family or cultural pressures or fear of persecution. He noted that sex acts between males are illegal and punishable severely under Section 377 but said there were only two arrests and no cases of punishment. He noted the police had used the laws of pretext to harass and intimidate LGBT people.
9. The judge at paragraph 25 simply stated the Appellant's fear on return is family and religious leaders, not from state actors. However in that regard the judge as properly conceded by the Secretary of State, the judge has not dealt with the full reasons why the Appellant said that he was at risk. In his statement the appellant did state that he feared the police, who are clearly state actors. The judge has not adequately considered that aspect of the appeal and therefore has not made sufficient findings on a relevant issue regarding the risk upon return to the Appellant.
10. Further, although the judge says that he fears risk upon return from family and religious leaders again the judge in making his findings has not actually made any findings in respect of the claimed fear of religious leaders. Nor has the judge made findings in terms of the arguments made by the Appellant within his statement regarding the risk from the public themselves or from religious extremists.
11. In that regard I do accept that First-tier Tribunal Judge Oliver's decision does contain material errors of law and the fact that the judge has not fully dealt with all of the issue that were properly placed before him, in terms of the risk upon return to this individual Appellant.
12. In terms then of the disposal of the appeal I find that in fact, although it is accepted by the Secretary of State the Appellant is a gay man and will be returning as a gay man to Bangladesh, the risks have to be looked at in respect of him as an individual and how he will conduct his life following **HJ (Iran)** and whether or not he will conduct himself openly and whether that is as a result of any fear of persecution rather than any cultural or other reason. That is an individual based assessment, as also is the individual based assessment as to whether or not he individually will face risk from religious leaders or from state actors in terms of the police, religious extremists or from the public at large.
13. I therefore do find that there is a considerable amount of fact-finding which actually needs to be made and therefore in the circumstances it is

appropriate, given that amount of fact-finding, that the case is remitted back to the First-tier Tribunal for rehearing rather than the case being considered by myself in the Upper Tribunal. .

14. Mr Melvin seeks the maintenance of the finding that the Appellant would not be at risk from his family upon return which Mr Singh did not seek to argue against that particular finding been preserved. His argument is that the judge has not conducted a holistic assessment about risk upon return based on all quarters.
15. I do preserve Judge Oliver's finding within paragraph 25 that the Appellant had not shown that his family members would have the reach to locate him upon return to Dhaka and that he would not be at risk from his family members, but I do not preserve any other findings in Judge Oliver's judgment. Further, I do consider that a number of factors have not been considered by Judge Oliver despite them being put in the statement. Therefore, I do consider that it is a case where it is appropriate for the case to be reheard before a different judge other than First-tier Tribunal Judge Oliver so that the risk upon return can be looked at in the round, holistically, taking account of all the relevant factors.

Notice of Decision

The decision of First-tier Tribunal Judge Oliver does contain material errors of law and is set aside save for the preserved findings that the Appellant is not at risk from his family members were he to be returned to Dhaka.

I direct the case be remitted back to the First-tier Tribunal for a rehearing before any Tribunal Judge other than First-tier Tribunal Judge Oliver.

Anonymity

I do make an anonymity direction in this case, such anonymity direction having been previously made by Judge Oliver. In such circumstances the Appellant is entitled to anonymity and no report or transcript of these proceedings may identify the Appellant or any members 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

Date 27th November 2017



Deputy Upper Tribunal Judge McGinty

