



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

Appeal Number: PA/04885/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 December 2017**

**Decision & Reasons  
Promulgated**

**On 18 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**AR  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S. Saifolahi, Counsel instructed by Tower Hamlets Law Centre

For the Respondent: Mr. I. Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Mill, promulgated on 27 June 2017, in which he refused the Appellant's appeal against the Respondent's decision to refuse to grant asylum.

2. As this is an asylum appeal I have made an anonymity direction.
3. Permission to appeal was granted as follows:

“It is arguable that the Judge may have materially erred in his/her assessment of the evidence regarding the Appellant’s claimed sexuality and made unfair assumptions. All grounds may be argued.”
4. The Appellant attended the hearing. At the outset of the hearing, Mr. Jarvis indicated that he had spoken to Ms Saifolahi and that there was some agreement on the way forward. I heard brief submissions from Mr. Jarvis who accepted that the decision involved the making of a material error of law. I announced that my full reasons would follow but, in agreement with the submissions of Mr. Jarvis, I allowed the appeal and set the decision aside. I remitted it to the First-tier Tribunal to be remade.

### **Error of Law**

5. Mr. Jarvis’s submissions focused on the first ground of appeal, and the Judge’s approach to the manner in which the Appellant had grappled with his sexuality. He accepted that the Judge had not properly engaged with the Appellant’s account, or with his explanations for his delay in claiming asylum. He submitted that the Judge should have engaged with the Appellant’s own description of why he had delayed in claiming asylum. With reference to paragraph [23], the Appellant’s evidence was that he was personally conflicted rather than just culturally conflicted.
6. Paragraph 23 states:

“The Appellant entered the United Kingdom in 2012 and would have quickly have (sic) become aware that being gay and openly gay in the United Kingdom is completely acceptable. The Appellant does not suggest that he started to explore his sexuality in any way. He was, by that time, 23 years of age. He states he had no further sexual relations with another man until February 2016. This is unlikely. It is even more unlikely when one takes into account the fact that the Appellant states to have formed a romantic and sexual relationship with his now divorced wife in 2014 and married her on 18 March 2015. He was 25 years of age when he met his wife and almost 26 years of age when he married her. It is unlikely that despite understandable confused feelings regarding his sexuality given his cultural upbringing, the Appellant would continue to have had confusion over his sexuality and marry a woman.”
7. I find that there is an assumption on the part of the Judge that the fact that being gay, and openly so, is acceptable in the United Kingdom meant that the Appellant would have been able to express his sexuality freely on arrival. It was the Appellant’s evidence that he was not in a position

where he was able to throw himself into the gay scene and be open about his sexuality. The Judge has failed to take the Appellant's evidence into account. I find that he has failed properly to engage with the reasons given by the Appellant for his delay in claiming asylum, and I find that he has erred in so doing. His supposition that, if he were gay, when he arrived in the United Kingdom everything would be fine went against the factual matrix in the Appellant's case. I find that the Judge erred in failing to give proper consideration to the Appellant's evidence.

8. The judge finds that it is unlikely that the Appellant did not have sexual relations with a man until February 2016 [23]. No reasons are given for why this is unlikely given the Appellant's account of his confusion around his sexuality. No reasons are given for why it is "even more unlikely" because the Appellant formed a romantic and sexual relationship with a woman. The Appellant's age is clearly of significance to the Judge, but he has failed to explain why a 25 year old would not continue to have confused feelings of his sexuality, especially given his acceptance of the "understandable confused feelings regarding his sexuality". He has once again failed to take into account the Appellant's own evidence.
9. The other ground of appeal that was drawn to my attention at the hearing was that in relation to the treatment of the corroborative evidence, particularly surrounding the Appellant's previous marriage and divorce. I find that the Judge failed properly to assess this evidence. The Family Court accepted the reason for the divorce petition, in which the Appellant's wife stated her suspicions about his sexuality, but the Judge failed to place any weight on this. The Judge did not explain why he rejected this evidence which had been accepted by the Family Court.
10. Further, in finding that his wife was part of the deception, as pointed out in the grounds of appeal, if the marriage had been entered into for the purposes of assisting an immigration application, there would have been no reason for the Appellant and his wife not to have attended his appeal in 2016. There is no consideration of this in the assessment of the Appellant's marriage and subsequent divorce. Neither is there a proper assessment of the Appellant's reasons for getting married, which he raised at his asylum interview. It was submitted that his marriage, and the reasons for it, formed a large part of his claim, yet these had not been properly considered.
11. I find that the Judge has failed properly to assess the evidence before him, either that of the Appellant in relation to the reasons for the delay in claiming asylum, or the corroborative evidence provided. He has adopted an approach which does not take into account the complexities of an individual coming to terms with their sexuality. He has assumed rather that, on coming to the United Kingdom, the Appellant would quickly have been able to express his sexuality, failing properly to take into account the Appellant's own evidence of his feelings and confusion towards his sexuality.

12. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. I find that the errors affect the credibility findings, and therefore given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.
13. I am grateful to Mr. Jarvis for his approach to this appeal.

**Notice of Decision**

14. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside. No findings are preserved.
15. The appeal is remitted to the First-tier Tribunal for rehearing.

**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. 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 15 December 2017

Deputy Upper Tribunal Judge Chamberlain