



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

Appeal Number: PA/05080/2016  
PA/05493/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 May 2017**

**Decision Promulgated  
On 18 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**N H and M S**

Appellant

**and**

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

Respondent

**(ANONYMITY DIRECTION MADE)**

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity was granted at an earlier stage of the proceedings because the cases involve protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent.

**Representation:**

For the appellant: Ms B. Asanovic, Counsel instructed by DJ Webb & Co.

For the respondent: Mr N. Bramble, Senior Home Office Presenting Officer

## **DECISION AND REASONS**

1. The appellants appealed against the respondent's decisions to refuse their protection claims. First-tier Tribunal Judge Walker ("the judge") dismissed the appeals in a decision promulgated on 01 December 2017.
2. The judge's findings of fact are unchallenged. He accepted that both men were gay as claimed and that they are in a genuine relationship [43]. He considered the background evidence relating to the treatment of people who are in same sex relationships in Bangladesh. He noted that the evidence showed that same sex sexual activity was illegal but the law was rarely enforced. Societal treatment and attitudes were hostile to same sex relationships and were sufficiently widespread and severe to amount to a real risk of persecution for those who openly pursue a same sex relationship [44]. The judge went on to consider the four-step test outlined in *HJ (Iran) & HT (Cameroon) v SSHD* [2010] UKSC 31, but concluded that the appellants were likely to live discreetly as a result of familial and societal disapproval as they were doing in the UK [47-53]. He acknowledged that the appellants expressed a fear of being forced into marriage by their parents and accepted that family pressure was likely to be very strong. However, he concluded that it would be open to the appellants to relocate to another area of Bangladesh to avoid pressure from family members [54]. He concluded that the "appellants themselves realise that they are able to live discreetly in Bangladesh and so avoid any persecution" [55].
3. The appellants seek to appeal the First-tier Tribunal decision on the following grounds:
  - (i) The First-tier Tribunal failed to apply the test outlined in *HJ (Iran)* correctly.
  - (ii) In assessing the reasons as to why the appellants might live discreetly in Bangladesh the judge failed to take into account material evidence that indicated that it was due to a fear of persecution and failed to take into account alternative explanations as to why they might live discreetly with relatives in the UK.

### **Decision and reasons**

4. On behalf of the respondent Mr Bramble accepted that the decision disclosed errors of law, and considering the judge's finding that an openly same sex relationship would give rise to a real risk of serious harm, the consequence of that finding is that the appeal should be remade and allowed. This was a sensible concession in the circumstances of this case.

5. The judge considered the appellants' fear of persecution arising from the possibility of forced marriage. The first ground of appeal argues that, if they were forced to live discreetly in order to avoid the harm of forced marriage, then the judge wrongly applied the test set out in *HJ (Iran)* because they would do so because of a fear of persecution. However, it was open to the judge to take into account the fact that the feared harm was likely to emanate from a small number of people. This aspect of the claim does not necessarily rely on the appellants having to live discreetly to avoid the feared harm. If they hid their sexual orientation their parents might think them more likely to be available for marriage. Given that the feared harm emanated from a small group of non-state agents, it was open to the judge to find that they could move to another area of Bangladesh where their family members could not exercise the same pressure.
6. However, having accepted that the appellants were gay and in a relationship the judge failed to consider material evidence given by the appellants as to why they would feel forced to live discreetly in Bangladesh. In interview both appellants expressed fears about living openly as gay men in Bangladesh due to the possibility of arrest or serious physical attacks.
7. The judge also failed to take into account evidence given by the second appellant to explain why they felt the need to be discreet while living with relatives in the UK. Both men live with their respective families and are dependent upon them for financial support. The second appellant explained that they did not have sufficient income to live independently from their families in the UK. In other words, they act discreetly not through choice, or necessarily out of respect for the feelings of their family members, but out of financial necessity. In addition, the judge failed to consider the appellants' evidence that, aside from discretion in the presence of family members, they were otherwise able to express their sexuality openly when they socialise with friends in the UK.
8. Even if one reason why the appellants have lived discreetly is out of respect for the views of their family members, it is of course possible for a fear of persecution to exist alongside societal pressures. They wish to have an openly gay identity. If the appellants return to Bangladesh they could also feel forced to act discreetly due to a fear of persecution. If one part of the reason for living discreetly engages the operation of the Refugee Convention their claim is made out. The appellants were found to be credible witnesses. There is no good reason to doubt the fact that one reason why they might feel forced to live discreetly in Bangladesh is because of a fear of persecution, which the judge concluded was likely to be well-founded if a person wishes to live openly in a gay relationship.
9. For these reasons I conclude that the First-tier Tribunal decision involved the making of an error of law. In view of the judge's findings relating to

risk on return to those who wish to live openly in a gay relationship I conclude that there is a reasonable degree of likelihood that the appellants have a well-founded fear of persecution for reasons of their membership of a particular social group.

### **Decision**

The First-tier Tribunal decision involved the making of an error of law

The decision is set aside

The appeal is ALLOWED on Refugee Convention grounds

Signed  Date 16 May 2017  
Upper Tribunal Judge Canavan