



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

Appeal Number: PA/06343/2017

**THE IMMIGRATION ACTS**

**Heard at the Royal Court of Justice  
On 23 October 2017**

**Decision & Reasons Promulgated  
On 6 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE CRAIG**

**Between**

**L K J-C  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Jones, Counsel, instructed by Thompson & Co  
Solicitors (Morden)

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

**DECISION AND REASONS**

1. The appellant is a national of St Lucia who was born in 1991. He appealed against the respondent's decision dated 22 June 2017 in which the respondent had refused his claim for asylum. His immigration history is very poor and he also has a number of convictions, following which a decision was made to deport him. It was only at this very late stage that he first made a claim for asylum on the basis that he was bisexual. For a number of reasons, including the delay, this claim was a difficult one to run and the respondent refused it.

2. The appellant appealed against this decision and his appeal was heard at Harmondsworth by First-tier Tribunal Judge M A Khan, on 7 August 2017. Judge Khan dismissed the appeal.
3. Regrettably (and also unacceptably) and as referred to in the grounds of appeal, Judge Khan's decision is littered with typographical errors. Further, his credibility findings are contained in six very short paragraphs (from paragraphs 30 to 35 of the decision) in which there is only the briefest reference to the evidence which was given during the hearing.
4. On behalf of the respondent before the Tribunal at today's hearing, Mr Duffy very fairly set out the respondent's position as follows:

"The respondent's position is that we accept essentially that there is a lack of adequate reasoning for the adverse credibility findings, and that this is a material error of law."
5. Regrettably again, this is by no means the first time that decisions of this particular judge have had to be remade because of a lack of adequate reasoning. In *ML (Nigeria) v SSHD* [2013] EWCA Civ 844 the Court of Appeal dealt with an appeal against a decision made by this judge which was subject to appeal for similar reasons. In that case, the case of that applicant was also very weak, but the errors made by Judge Khan were so egregious that the court considered that notwithstanding that the applicant's case was an extremely difficult one to run nonetheless he had been entitled to a fair trial, which it did not appear he had had. In that case also, the court was concerned with the number of errors, "carelessness", which had been demonstrated within the decision. At paragraph 13, Moses LJ stated as follows:

"... It seems to me that the only conclusion the Upper Tribunal should have reached was to set aside the decision of the First-tier Tribunal and try the matter again or, if there was not time to do so, ... send it back for a further hearing. For my part, because the FtT decision was so bad and because of the inability that I have to have any confidence that the judge conscientiously and fairly took into account the arguments deployed on behalf of the appellant, I am led to the conclusion that the Upper Tribunal's decision [upholding Judge Khan's decision from that time on the basis that despite the errors that applicant was still bound to lose] ought to be quashed."
6. At paragraph 14, Moses LJ added as follows:

"As a second limb, as I have hinted, Mr Rawat [Counsel for the Secretary of State] said that, even if there were these errors, there is no point in sending this case back for a further hearing. But so bad was the decision that, in my view, it would be wrong to consider the chances of success that the claimant might have a second time round. I am perfectly prepared, as a matter of hypothesis, to assume that he will have a very difficult run on a further occasion. But that cannot displace the obligation for the procedure to provide him with a fair opportunity of deploying his case. It is, after all, the reputation of the courts, and the courts in relation to immigration, which is at stake here. It seems to me that they cannot be preserved and

protected as deserving respect if a decision which is so flawed is allowed to stand.”

7. Although the decision in this case cannot be said to be quite as bad as the decision in *ML (Nigeria)*, as Mr Duffy on behalf of the respondent has very fairly and properly conceded, the decision is still sufficiently bad that it cannot be allowed to stand. However weak the appellant’s case may be (and at first blush his case does not appear to be by any means a strong one) he is still entitled to a fair hearing, and it is incumbent upon a decision maker to ensure that the decision which is made demonstrates that the appellant has had a fair hearing. Mr Duffy concedes that in this case it does not, and it is accordingly unnecessary to say more than that in my judgment that concession was properly made. It follows that the decision must be remade.
8. I would only add that having been criticised so harshly by the Court of Appeal in *ML (Nigeria)*, one might have expected this judge at least to ensure that all his future decisions were properly proof read. Sadly, that has not happened.
9. Both parties agree that the appropriate course would be for this decision to be remade in the First-tier Tribunal, by any judge other than Judge Khan, and I also agree that that is the appropriate course and will so order.

### **Decision**

**I set aside the decision of Judge M A Khan, as containing a material error of law and remit this appeal to the First-tier Tribunal sitting at Hatton Cross, for re-hearing before any judge other than Judge M. A. Khan.**

### **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:



Upper Tribunal Judge Craig  
2017

Dated: 24 October