



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

Appeal Number: PA079452016

THE IMMIGRATION ACTS

Heard at : Field House

**Decision and
Promulgated**

Reasons

On : 29 August 2017

On: 31 August 2017

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**MR
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, instructed by Abbey Law

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

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 15 July 2016 to refuse his protection and human rights claim.

2. The appellant is a citizen of Bangladesh, born on [] 1994. He arrived in the UK on 25 March 2014 with a Tier 4 student visa. On 11 June 2015 he made

an application for leave to remain on family life/private life grounds which was refused. On 16 December 2015 he made an appointment with the Home Office and claimed asylum on 15 January 2016 at the Asylum Screening Unit. His claim was refused on 15 July 2016.

3. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 14 February 2017 and was dismissed in a decision promulgated on 23 February 2017.

The Appellant's Case

4. The appellant claims to be at risk on return to Bangladesh as a result of being gay. His case is that he had a sexual relationship with a boy to whom he became attracted when he was 12-13 years of age and attending school. They were caught on two occasions and as a result he was beaten by his father and uncle. He left his home area of Habiganj and went to Dhaka where he lived for one and a half to two years. He worked as a private tutor. He was attracted to the relative of one of his tutees but was too scared to express his feelings because of his past experiences. He came to the UK on a Tier 4 student visa. He initially kept his sexuality to himself but when he saw men kissing and holding hands he became more open and met a man with whom he entered into a casual relationship and attended gay clubs.

5. The respondent, in refusing the appellant's claim, accepted that he was gay and that he had been caught having sex with his partner twice, and accepted that he had a genuine subjective fear of return to Habiganj, but concluded that he could safely and reasonably relocate to Dhaka where he had previously resided without problems and where there was more tolerance to the LGBT community. It was not accepted that his removal to Bangladesh would breach his human rights.

6. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Walker. The judge noted that the starting position was that the appellant's history in Bangladesh and the fact that he was gay had been accepted by the respondent. The judge accepted that the appellant would have difficulties returning to his home area of Habiganj but found that he could relocate to Dhaka. He noted that the appellant had changed his evidence about his experiences in Dhaka and, having said in his interview that he had no problems whilst living there, had said in his oral evidence that he was threatened by local lads. Given the change in the appellant's evidence he did not accept the most recent account of threats. The judge concluded that the appellant would not be at risk on return to Dhaka and he dismissed the appeal on all grounds.

7. The appellant sought permission to appeal Judge Walker's decision to the Upper Tribunal on two grounds. The first ground asserted that the judge had failed properly to apply the test in HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31, that he had failed to apply the correct standard of proof to the evidence and that he had ignored the objective

evidence supporting the appellant's claim to be at risk in Bangladesh as a gay man. The second ground asserted that the judge had failed to consider the private life aspect of the appellant's claim and had failed to consider Article 8 within and outside the immigration rules.

8. Permission to appeal was granted by the First-tier Tribunal on the second ground only.

Appeal hearing and submissions

9. The appeal came before me on 29 August 2017. Both parties made submissions.

10. Mr Khan submitted that the judge's failure to consider the appellant's Article 8 claim was a material error of law. Given the judge's acceptance of the references in the background information to harassment and violence suffered by LGBT people, consideration should have been given to whether there were very serious obstacles to the appellant's integration in Dhaka and whether exceptional circumstances existed outside the rules.

11. Mr Singh accepted that the judge had failed to consider paragraph 276ADE(1) and Article 8 outside the rules but submitted that there was no material error as he had considered the question of harassment and risk and had rejected the appellant's account of having been threatened in Dhaka.

12. Both parties agreed that if the judge was found to have materially erred by failing to make findings on Article 8 the decision could be re-made in that respect without the need for further evidence or submissions, since all the relevant materials were already available.

Consideration and findings.

13. It was accepted by Mr Khan that the only arguable ground of appeal was the judge's failure to consider the appellant's private life claim, there having been no application to the Upper Tribunal to renew the first ground challenging the judge's application of the test in HJ (Iran) and his conclusion on risk on return following the refusal of permission in the First-tier Tribunal.

14. It was Mr Khan's submission that the failure to consider paragraph 276ADE(1)(vi) and exceptional circumstances outside the immigration rules was a material error of law in light of the references in the background information, as accepted by the judge, to reports of violence against LGBT persons and to prejudice and harassment.

15. However, it is not the case that the judge omitted to give any consideration to, or make any findings on, Article 8. At [40] the judge found that the respondent's decision did not breach the appellant's human rights. He therefore did consider Article 8. It is relevant to note that the evidence before the Tribunal of the appellant's private life in the UK was very limited and the

submissions made with respect to Article 8 were extremely brief, with the main focus of the appeal being on the question of risk on return.

16. I do accept that that paragraph would have benefitted from a more detailed analysis of the appellant's claim in the context of paragraph 276ADE(1)(vi) and compelling circumstances outside the immigration rules, given the nature of the appellant's claim. Nevertheless I do not consider the absence of such an analysis to be material, given the judge's findings in respect to the appellant's asylum claim which he specifically stated at [40] formed the basis of his conclusion on Article 8. What is particularly relevant is that, having found that the appellant could internally relocate to Dhaka, the judge implicitly, albeit not explicitly, concluded that it would not be unreasonable to expect him to live in Dhaka. At [22(5)] he set out the respondent's view in that regard. Having found as such, the judge plainly contemplated there to be an absence of very significant obstacles to integration or other compelling circumstances and his conclusion at [40] is thus consistent with the findings made in regard to the asylum claim.

17. In any event, on the judge's findings overall it is plain that the appellant could not demonstrate very significant obstacles to integration or exceptional or compelling circumstances so as to make out a viable Article 8 claim. The judge did not accept the appellant's claim to have experienced threats or difficulties whilst living in Dhaka for up to two years. He was entitled to conclude as such and that finding has not been challenged. Whilst the appellant claimed at his interview that he did not tell anyone in Dhaka that he was gay, his oral evidence was that he was known in Dhaka as being gay. Accordingly, on the basis of the appellant's own lack of difficulties when living as a gay man in Dhaka, and on the judge's analysis of the background information, which included references to Dhaka providing a more tolerant attitude to the LGBT community despite the existence of prejudice and discrimination, the appellant simply could not show that he met the requirements in paragraph 276ADE(1)(vi) and could not establish compelling circumstances so as to succeed on Article 8 private life grounds either within or outside the immigration rules.

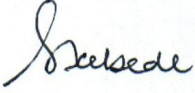
18. Accordingly, and for all of these reasons, I find no error of law in the judge's decision requiring it to be set aside. I uphold the judge's decision.

DECISION

19. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. The decision to dismiss the appellant's appeal therefore stands.

Anonymity

The First-tier Tribunal made an order for anonymity. I maintain that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 
Upper Tribunal Judge Kebede
2017

Dated: 30 August