



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

Appeal Number: PA/08460/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8<sup>th</sup> September 2017**

**Decision & Reasons  
Promulgated  
On 27<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**AB  
(ANONYMITY DIRECTION MADE)**

**and**

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

Appellant

Respondent

**Representation:**

For the Appellant: Mr S Mustafa, Counsel, instructed by Solicitors Inn  
For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

There will be an anonymity direction.

**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.

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge I Howard to dismiss his asylum claim. The basis of the Appellant's claim had been that he is gay and that thereby he would be at risk from his family and others if he was to be returned to his home country of Pakistan. The judge had not accepted that the Appellant was gay and he thereby rejected the Appellant's appeal. The judge had correctly identified that the Supreme Court's decision in **HJ (Iran) & Others v Secretary of State [2010] UKSC 31** was of crucial consideration.
2. However, as identified by Judge Chohan of the First-tier Tribunal when he granted permission, the judge needed to deal with why important evidence on behalf of the Appellant was being rejected. Judge Chohan had said at paragraph 3 of his decision in part as follows:

“It does seem, particularly at para. 32, that inadequate reasons have been given as to why the judge found that the Appellant's father had not discovered the homosexuality and why the Appellant's lawyer's letter was dismissed without any reasons.”
3. Mr Mustafa, Counsel on behalf of the Appellant, has taken me through the decision and he says the main issue is that there were inadequate reasons from the judge and there needed to be clear findings as to why specific evidence was rejected.
4. Mr Walker in his submissions helpfully said that although Judge Howard's decision was brief in its findings he had properly considered at paragraph 27 that they were matters which were open to the judge such as the position in respect of the Appellant's claimed partner was uncertain because he himself had an asylum claim which had yet to be fully concluded. Ultimately the evidence had been considered as was required.
5. It was submitted that there was consideration at paragraph 32 in relation to the shame that the Appellant would bring on his family. Indeed, Mr Walker said there were many other adverse points which the judge could have found against the Appellant such as why was it that the Appellant's father would write letters in English to him when their first language was Urdu but ultimately the judge concluded, quite properly, it was submitted, that there was enough to enable him to decide that the Appellant could not be accepted to be a credible witness. The judge did not find the lawyer's letter reliable. **HJ (Iran)** was referred to and the case fell at the first step. Although there was brevity in the judge's finding, he came to a sustainable decision.
6. As Mr Mustafa in reply said that the difficulty here with the brevity was that this was a protection claim. The judge needed to set out why it was that the Appellant and his documents were not found to be credible. There was a lack of reasoning. It was a misdirection and the error was a material one.

7. When looking at the judge's decision, in particular paragraph 32, as Judge Chohan said, the judge did not find the lawyer's letter to be a reliable document. However, saying merely, as the judge did, that the lawyer would not have been engaged to write such a letter, in my judgment, was not sufficient in the circumstances of this protection claim.
8. Similarly, as for the gathering of information for the Appellant's father by the boys, which is referred to briefly in paragraph 32 and which the judge also said he did not accept, the reasoning there was also inadequate. The judge said of that, "I do not find the Appellant's account of these boys gathering information for his father at all credible. I do not accept that his father has learnt of the Appellant's sexuality from them." In my judgment, it is reasonable for the Appellant to ask why that finding was made and for there to have been adequate reasoning for such a finding.
9. When looked at cumulatively in my judgment, those aspects of the case are such that they do undermine the decision as a whole and although brevity is to be commended, in this case the decision is simply too brief in terms of the reasoning and, indeed, I go so far as to say that the decision is lacking in reasoning in respect of the vital and important aspects.
10. As a consequence, I set aside the decision of the First-tier Tribunal Judge. There will have to be a rehearing on all issues. None of the current findings shall stand. That rehearing will take place at Hatton Cross. I am told that an interpreter in Urdu will be required.

### **Notice of Decision**

The decision of the First-tier Tribunal contains an error of law and is set aside. There shall be a rehearing on all issues at the First-tier Tribunal.

Signed

Date: 8 September 2017

Deputy Upper Tribunal Judge Mahmood