



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/09482/2016

THE IMMIGRATION ACTS

Heard at Manchester, Piccadilly

On the 8<sup>th</sup> December 2017

December 2017

Decision & Reasons Promulgated

On the 18<sup>th</sup>

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR H. S.

(Anonymity Direction made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain (Counsel)

For the Respondent: Mrs Aboni (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Khan promulgated on the 30<sup>th</sup> January 2017. The Appellant is a citizen of Iran who claims that he is a homosexual. Within his decision Judge Khan did not accept the Appellant's account of having been caught having sex with Massoud by Massoud's father and sister and further found there was no other evidence of the Appellant's homosexual other than 4

photographs, which he found had been taken by the Appellant to support his claim for homosexuality.

2. The Appellant seeks to appeal against that decision for the reasons set out within the Grounds of Appeal. That is a matter of record and is therefore not repeated in its entirety here but in summary, it is argued that the Judge's findings were insufficient and failed to express any sustainable reasoning except for finding that the Appellant was "vague and evasive" and the Judge had ignore evidence in his witness statement about the reasons why he had intercourse with his partner downstairs in the living room, rather than upstairs and argues that the Judge was wrong to find that the Appellant had not raised that contention at any stage. It was said that the Judge had not provided sustainable reasons for rejecting the Appellant's account and that it is necessary for Judges to explain in clear and brief terms their reasons so that the parties can understand why they have won or lost and that a bare statement a witness was not believed does not satisfy the requirement to give reasons.
3. Permission to appeal in this case has been granted by Upper Tribunal Judge Finch who found that there were arguable errors of law in the First-tier Tribunal Judge's decision and reasons.
4. At the start of the appeal although Mrs Aboni initially relied upon the Rule 24 Reply, having heard submissions made by Mr Hussain as to the lack of explanation provided by the First-tier Tribunal Judge as to his reasons for finding that the Appellant's evidence was not consistent regarding his account of having sex in the living room, the lack of sufficient reasons regarding the Judge's finding the Appellant was extremely vague and evasive in regards to the claimed events in Iran and the submission that he had failed to give sufficient and adequate reasons for rejecting the Appellant's account, Mrs Aboni conceded that pragmatically she had to accept that there was a lack of adequate reasoning here to substantiate the Judge's findings and that there was a material error regarding the reasons given for rejecting the Appellant's account. She conceded that the decision of Judge Khan should be set aside and the decision remitted back to the First-tier Tribunal for rehearing.

5. In light of that concession, I do accept and find that the decision of First-tier Tribunal Judge Khan does contain a material error of law, in that the Judge's reasons for finding that the Appellant's account was 'extremely vague and evasive' regarding the events claimed to have happened in Iraq have not been adequately explained, nor his reasons for finding that the Appellant's account of having had sex in the living room was not only not credible but also not consistent have not been explained. No details of such inconsistency have been explained. The fact that it was said that they had put on a sex video and decided to have sex despite them having little time, was something that the Judge took against the Appellant, without adequately explaining the reasons why he did not consider that to be credible. Additionally, the Appellant had provided an explanation as to why they had sex in the living room, rather than in Massoud's sister's room, on the basis that the computer was locked in his sister's room. Although the Judge at [21] found that the answer when asked why it was important for him to watch gay sex films while they were having sex and he said that they both liked watching these films was vague and evasive, the Judge had not adequately explained why that answer was vague or evasive. It seems perfectly plausible that they may wish to watch pornographic movies when having sex, and the reasons for the Judge's findings in that regard have not been adequately explained. I therefore do find, especially in light of the concession made by Mrs Aboni in having fully considered the Judgment, that the decision of Judge Khan does contain material errors of law and I set aside that decision in its entirety.

#### Notice of Decision

The decision of First-tier Tribunal Judge Khan does contain material errors of law and is set aside in its entirety;

The case is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge M. A. Khan;

I do make an anonymity order in this case, such order having been made by the First-tier Tribunal. In such circumstances, the Appellant is entitled to anonymity. No report or other publication of these proceedings or any part or parts of them

shall name or directly or indirectly identify the Appellant or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction can lead to contempt of court proceedings;

The case is to be reheard at Bradford, if possible, for the convenience of the Appellant.

Signed

Handwritten signature in black ink, appearing to read 'RFM McGinty' with a stylized flourish at the end.

Deputy Upper Tribunal Judge McGinty

Dated 8<sup>th</sup> December 2017