



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

Appeal Number: PA/03551/2017

THE IMMIGRATION ACTS

**No hearing
29 November 2018**

**Decision & Reasons Promulgated
6 December 2018**

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

[S K]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. On 29 October 2018 I wrote to the parties as follows:

“I have reviewed the file in this case.

Permission to appeal was granted for the following reasons:

“The grounds allege that the Judge erred by referring to the public interest factors in Part 5A of the NIAA 2002 in the context of an asylum claim and failed to adequately consider the appellant's explanation for delay in making an asylum claim before finding against him and applying s8 of the Asylum and Immigration (Treatment of Claimants) Act 2004. The Judge referred to paras 339L & 339N of the rules and made negative credibility findings without identifying which statements he found not to be coherent and plausible or providing reasons. The circumstances giving rise to the asylum claim did not occur until September/October 2012 and there was good reason for no claim being made before May 2013. The Judge

placed insufficient weight on the decision of Judge Buckwell who determined the appeal of the appellant's partner, Iqbal Hussain (IH) and found the appellant's evidence (as a witness) credible. Judge Gillespie dismissed the appellant's appeal against refusal of asylum in 2014 and disbelieved his claim to be homosexual. Too much weight was placed upon Judge Gillespie's finding and insufficient weight on evidence produced at the hearing. The appellant attempted to rectify the defects in his evidence identified by Judge Gillespie but this was viewed as further undermining his credibility.

The Judge placed weight upon the appellant's failure to adduce evidence of activities within the gay community. This was irrelevant and inappropriate; based on a stereotypical, prejudicial assumptions about homosexual men and contrary to caselaw and the respondent's policy on assessing sexual orientation in asylum claims. The appellant had provided evidence of activity within the gay community by virtue of IH's evidence to which the Judge appeared to attach no weight. The Judge erred by not taking into account translations of text messages containing death threats from the appellant's family in Pakistan."

I propose without more ado to allow the appeal, set aside the determination of the First-tier Tribunal and direct a fresh hearing before that Tribunal. Any submissions to the contrary will be considered if received within **14 days** of the date of this letter."

2. No response has been received.
3. I now allow the appeal to this Tribunal, set aside the decision under appeal on the ground of error of law. I remit the appeal to the First-tier Tribunal and direct that it be determined afresh.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 29 November 2018.