



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

Appeal Number: PA/04129/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 12 September 2018**

**Determination
Promulgated
On 28 September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**S S
(Anonymity has been directed)**

Respondent

Representation:

For the Appellant: Mr S Withwell, Home Office Presenting Officer

For the Respondent: Mr Khan for Abbey Law, St Albans

DECISION AND REASONS

1. The appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-Tier Tribunal.
2. The appellant is a citizen of Bangladesh born on 18 November 1976. He appealed the Secretary of State's decision of 9 March 2018 refusing him asylum and humanitarian protection and on human rights grounds and

under the Immigration Rules. His appeal was heard by Judge of the First-Tier Tribunal Herbert on 1 May 2018 and the appeal was allowed under the Geneva Convention and under Articles 2, 3 and 8 of ECHR and under the Immigration Rules in a decision promulgated on 18 June 2018.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Chohan on 16 July 2018. The permission states that it is arguable that the Judge erred in law by failing to give adequate reasons for finding the appellant credible and that he is a homosexual. The permission states that the Judge's findings are short and at paragraph 34 he concludes that the appellant is a practising homosexual but he fails to give any reasons for that conclusion, so the permission states that it is open to argument that the Judge has given inadequate reasons for the findings made.
4. There is no Rule 24 response.

The Hearing

5. The appellant arrived in the United Kingdom in September 2005 and in 2008 he claimed asylum as a stateless person. This was refused and the appeal was dismissed. This decision was promulgated on 7 September 2010. There is therefore a Devaseelan issue in this claim and the 2010 decision is in the file.
6. The Presenting Officer made his submissions, submitting that there is a lack of reasoning in the Judge's decision as to whether the appellant is a practising homosexual or not. I was referred to paragraph 34 of the decision. In this the Judge states that the appellant is a practising homosexual on the lower standard of proof and the medical reports which are on file.
7. At paragraph 32 of the decision the Judge states the starting point is the lack of credibility in relation to the appellant and the finding that there was no merit in his asylum claim to be a stateless person in the decision in 2010. The Judge however at paragraph 33 states that this claim is significantly different as this relates to the appellant's sexuality.
8. He submitted that the Judge refers to the medical reports which are actually the General Practitioner's notes, and he submitted that these appear to be the only reason for finding that the appellant is homosexual apart from the evidence from the appellant and his partner which the Judge refers to at paragraph 33. The Presenting Officer submitted that the General Practitioner's notes come from information given to the General Practitioner by the appellant and that inadequate reasons are given by the Judge for his findings on the appellant's sexuality. At paragraph 36 of the decision he refers to **HJ (Iran)** and the background evidence on Bangladesh. He submitted that this has no bearing on the Judge's finding that the appellant is a homosexual.

9. I was asked to find that there is a material error of law in the Judge's decision as inadequate reasons have been given for his findings.
10. The appellant's representative submitted that the whole decision must be considered holistically. He submitted that the Judge has given sufficient reasons for his findings and at paragraph 34 of the decision the Judge makes reference to his reasons for finding the appellant is gay. He submitted that there is a low standard of proof and this is referred to by the Judge at paragraph 34 and mention is made of the GP's notes as these corroborate the appellant's account about his sexuality. He has clearly mentioned his sexuality to the GP.
11. The representative submitted that this case is completely different to the decision in the appellant's previous claim in which he was found not to be a stateless person and not to be of the Bihari tribe. He submitted that this appeal is based only on the appellant's sexuality and the Judge mentions having seen the appellant and his partner and having heard evidence from both of them.
12. He submitted that at paragraphs 14 to 16 he deals with the appellant's partner's evidence as well as the appellant's evidence and he submitted that the accounts were consistent. I was asked to find that this is important and note that the appellant and his partner have mutual friends. The representative referred to paragraph 17 and he submitted that when the appellant's and his partner's evidence are considered together there is clearly a genuine relationship between them. They are a couple. The Judge finds this at paragraph 34 of the decision and he also refers to the medical evidence. I was referred to page 47 of the appellant's bundle which is a report from the Medical Secretary at the Whitechapel Health Centre on the appellant. It is dated 30 January 2018 and refers to the appellant suffering from stress related symptoms and low mood. The appellant has told his doctor that being a homosexual is illegal in Bangladesh and he cannot go back there or he will be persecuted. Although the appellant did not go to any LGBT organisations until after March 2017 at paragraph 3 of the letter from the Whitechapel Health Centre reference is made to his fears for his life in Bangladesh relating to his sexuality. The doctor refers to multiple consultations and what the Judge has done is find that based on his consultations with the doctor and the doctor's findings, on the low standard of proof, this appellant is homosexual.
13. He submitted that the Home Office has only looked at paragraphs 33 and 34 where all the evidence is tied together but he submitted that when the decision is read as a whole and when the background material is considered, particularly at paragraphs 27 to 31, the Judge finds that based on the evidence before him there is a real risk on the lower standard of proof that the appellant's return to Bangladesh could lead to persecution.
14. He submitted that credibility is the issue and the Judge finds the appellant to be credible.

15. The Presenting Officer submitted that the Judge has considered all the evidence before him but has given inadequate reasons for his findings and although the Judge states that there was sufficient evidence before him to find that the appellant is a practising homosexual based on the oral evidence and the medical evidence, that is not the case and that because the appellant's and his partner's evidence is consistent is not a reason for finding it to be true.
16. I was asked to find that there are material errors of law in this decision and that the decision should be set aside.

Decision and Reasons

17. I have considered the background evidence on Bangladesh relating to homosexuals. I have also noted the sections of the background evidence quoted by the Judge but I find that he has been selective in his choice of the background evidence.
18. The background evidence, in particular the COI report, does not demonstrate that there is a reasonable likelihood of persecution of homosexuals in Bangladesh. There are LGBT networks in Dakar and although homosexuality is against the law it is rarely enforced and what gay people in Bangladesh may suffer is harassment. As stated by the Presenting Officer this does not affect the Judge's finding that the appellant is a homosexual but it is worth mentioning relating to the decision.
19. Although this claim is different from the appellant's previous claim which was decided in 2010 credibility was an issue at that time and I find that credibility is an issue still. The Judge has noted all the evidence before him but after noting it he has failed to give proper reasons for finding the appellant to be homosexual and I do not find that the medical evidence helps the appellant's case. The medical evidence is purely based on what the appellant told his GP. He may well be anxious and depressed and he may well have had multiple consultations with his doctor but what the doctor's notes are stating are that the appellant has told him that he is anxious and depressed because of his sexuality and his fear of persecution in Bangladesh. I find that the doctor has repeated what he has been told by the appellant and this is not sufficient for the Judge to find he is a homosexual. The fact that the appellant's and his partner's evidence is consistent carries little weight. The appellant was only able to give a vague description of his relationship with the person in Bangladesh and the respondent finds that the photographs etc, of the appellant in nightclubs do not prove his sexuality and that must be correct. There is also the Section 8 issue. Section 8 applies as he did not claim asylum for some 11 years as a result of his sexuality and because of this, credibility again is an issue.
20. The appellant's claim to be of the Bahari Tribr was not accepted at the previous hearing but the judge in this decision has made a finding about

the appellant being of this tribe at paragraph 35 so the claim does have similarities to the appellant's previous claim where there were serious credibility findings.

21. The Judge may have believed the appellant and his partner at the hearing but he has not given adequate reasons for believing them or believing that the appellant is a practising homosexual. I have considered the appellant's partner's statement in the appellant's bundle at paragraph 6. He admits that he has no links with Bangladesh. He states that if the appellant returns there he is likely to be tortured and beaten, he may even be killed, but again he is repeating what the appellant must have told him.

Notice of Decision



Because of inadequate reasoning I find that there are material errors of law in the Judge's decision and that the decision must be set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing.

The members of the First-Tier Tribunal chosen to consider the case are not to include Judge of the First-Tier Tribunal Herbert.

22. Anonymity has been directed.

Signed

Date 21 September 2018

Deputy Upper Tribunal Judge Murray