



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11970/2017

THE IMMIGRATION ACTS

Heard at Field House
On 1 June 2018

Decision & Reasons Promulgated
On 5 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

C D E F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Raw, Counsel.

For the Respondent: Mr T Melvin, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a national of Trinidad and Tobago born on 21 May 1993. He entered the United Kingdom as a visitor and subsequently overstayed prior to making application for international protection on 16 June 2016 on the basis that he was homosexual and had been abused and sexual exploited by a former lover D D. It was asserted that if the Appellant returns to Trinidad and Tobago D D would kill him. His application was refused on 7 November 2017.
2. The Appellant appealed and following consideration his application was granted by Judge of the First-tier Tribunal O'Brien in a decision dated 31 January 2018. The reasons given for granting permission to appeal were: -

- “1. The Appellant seeks permission to appeal, in time, against a Decision of First-tier Tribunal Judge Row who, in a Decision and Reasons promulgated on 29 December 2017, dismissed his appeal against the Secretary of State’s decision to reject his claim for international protection.
2. The grounds assert that the Judge erred in the following ways. The Judge had accepted the factual basis of the Appellant’s claim, including the fact that he was gay and the incidents of sexual exploitation and violence suffered by the Appellant. However, the Judge had failed to consider the likelihood of future persecution or harm, given the fact of previous incidents. The Judge had failed properly to consider sufficiency of protection, in particular failing to take into account the Respondent’s own guidance where the risk arises from rogue state agents and in any event in failing to take into account relevant country guidance.
3. The Judge accepted the fact of past persecution and/or serious harm. He referred to background information given by both parties on sufficiency of protection. However, no apparent consideration was given to the country guidance case of MJB (Inability to provide Protections: JAM) Trinidad and Tobago CG [2010] UKUT 448 (IAC), whether it bore on the case and, if so, whether it was appropriate to depart from that case. This is an arguable material error of law, and permission is granted to appeal on all of the pleaded grounds.”

3. Thus, the appeal came before me today.
4. At the outset I reminded both advocates of paragraph 12 of the Immigration and Asylum Chamber of the First-tier Tribunal and the Upper Tribunal Practice Directions in relation to starred and country guidance determinations. Paragraphs 12.2, 12.3 and 12.4 state: -

“12 Starred and Country Guidance determinations

12.2 A reported determination of the Tribunal, the AIT or the IAT bearing the letters “CG” shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later “CG” determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:

- (a) relates to the country guidance issue in question; and
- (b) depends upon the same or similar evidence.

12.3 A list of current CG cases will be maintained on the Tribunal’s website. Any representative of a party to an appeal concerning a particular country will be expected to be conversant with the current “CG” determinations relating to that country.

12.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law.”

5. I also brought to the parties’ attention the authority of **MJB (Inability to provide Protections: JAM) Trinidad and Tobago CG [2010] UKUT 448**, which is a current case on the Tribunal’s country guidance list. The head note of that decision states: -

“1. There can be no doubt as to the willingness of the authorities in Trinidad and Tobago to operate an effective system for the detection, prosecution and punishment of acts constituting persecution or serious harm of its citizens.

2. However, given the current crisis in the policing and criminal justice system, in general, even persons who are witnesses or potential witnesses in trials involving serious organised crimes, will not receive effective protection either in the short or longer term, whether or not admitted to a witness protection programme.

3. For persons facing a real risk of being persecuted and/or other serious harm at the hands of Jaamat al Muslimeen (JAM), the state is currently unable to afford effective protection.”

6. Mr Melvin acknowledged that country guidance cases should normally be followed and that here not only was there no mention of the relevant country guidance case within the Judge’s decision but it had also not been taken into account by the decision maker when preparing the Respondent’s reasons for refusal letter. This, he accepted amounted to an error of law. The Judge has put forward opinion in the appeal without analysing the country guidance case and providing adequate reasons for any departure from it. Mr Melvin acknowledged that there was no cross appeal here but he was unwilling to say that the appeal should now be allowed. However, he accepted lack of consideration of not only the country guidance case itself but also other relevant authority (**HJ (homosexuality: reasonably tolerating living discreetly) Iran [2008] UKAIT 00044**). He urged me to dismiss the appeal for the reasons put forward within the Respondent’s refusal letter.

7. For the Appellant Mr Raw relied upon his skeleton argument. He submitted that Judge of the First-tier Tribunal Row, at paragraph 32 of his decision, had accepted that past harm the Appellant received at the hands of his former lover and his brother anticipates a risk of harm on return. Further that the Judge had failed to take into account comments made by the Appellant in relation to two complaints about assault to the police for which no satisfactory response was received. The Appellant had been shunned by his family because of his homosexuality and would have nowhere to stay were he to be removed to his country of origin. At paragraph 63 of the refusal letter the Respondent, referring to **HJ (Iran)**, accepts that living openly as a homosexual in Trinidad leads to discrimination albeit the Respondent maintains does not amount to persecution. Mr Raw contends that it does and that the appeal should have been allowed both on refugee grounds and under Article 3.

8. I share Mr Raw's analysis and find that this is an appeal that should be allowed. The decision maker and the Judge in the Appellant's appeal have both failed to take into account relevant country guidance. That makes it plain that effective protection will not be available either in the short or longer term. This is an authority that the Judge should have followed and I am not persuaded that the material he was referred to within the Respondent's refusal letter is such to suggest why relevant country guidance does not apply to this appeal. In not following country guidance the Judge has materially erred.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision in the appeal by allowing it on both refugee grounds and under Article 3.

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 their 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.

Signed

Date 4 July 2018.

Deputy Upper Tribunal Judge Appleyard