



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

PA/03312/2019

THE IMMIGRATION ACTS

Heard at Glasgow  
On 5 December 2019

Decision & Reasons Promulgated  
**On 10 December 2019**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**LOVERT [T]**

Appellant

and

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

Respondent

For the Appellant: Mr Aslam, of McGlashan MacKay, Solicitors  
For the Respondent: Mr Clark, Senior Home Office Presenting Officer

**DETERMINATION**

1. The appellant is a citizen of Russia, born on 3 June 1977. He is originally from Cameroon. He is divorced from his wife, through whom he acquired Russian citizenship. She lives in Russia with their two daughters. He sought asylum in the UK on 23 November 2018, based on risk from his wife's family and from Russian society in general because he is gay.
2. The salient points of the respondent's refusal of the claim on 22 March 2019 are these:

[25] “accepted that LGBT persons form a particular social group ... in Russia”;

[50] “not accepted you are gay”, “your claim to have been beaten as a result of being gay is also not accepted”;

[51-52] no risk of persecution on racial grounds.

3. FtT Judge Kempton dismissed the appellant’s appeal by a decision promulgated on 5 June 2019. She found that the appellant is gay. However, she also found that if returned he would live discreetly, and would not be at risk.
4. The appellant appealed to the UT on 3 grounds:
  - [1] misapplication of the *Hj (Iran)* principle, or failure to assess very significant obstacles to integration in terms of immigration rule 276ADE(1)(vi);
  - [2] error on internal flight, as risk to gay men is state-wide; and
  - [3] misconstruing or misunderstanding the evidence about the appellant living discreetly.
5. On 3 September 2019 permission was granted on all grounds, although with the observation that the point about rule 276ADE(1)(vi) had less apparent merit.
6. On 18 September 2019 the SSHD responded to the grant of permission:
 

“... [2] The respondent does not oppose the appellant’s application for permission to appeal and invites the tribunal to determine the appeal with a fresh oral (continuance) hearing to consider why the appellant would be discreet on return to Russia.”
7. The case firstly came before the UT on 31 October 2019. It was common ground that the FtT erred in law by misapplying the principles of *Hj (Iran)*, although its favourable credibility findings should stand as the starting point for further decision.
8. In terms of a decision promulgated on 4 November 2019, the decision of the FtT was set aside. The case was listed again on 5 December 2019.
9. The appellant adopted his further statement, and was cross-examined. The statement of [RV], who was in attendance, was treated as his evidence-in-chief, and there was no cross-examination.
10. Having heard submissions, I indicated that the appeal would be allowed.
11. It was common ground that the appellant is gay, and that he would live discreetly, as he has done in the past, if returned to Russia.
12. The crucial question, as defined by the respondent, is why.
13. Mr Clark referred to evidence in a “Home Office Response to an Information Request, Russia, LGBT and African Communities”, at 4.2.7, of

a “Queerfest” event held in St Petersburg annually for 11 years which has not been impeded by the authorities for the last 4. That, however, is an isolated example rather than the general gist of the evidence. Mr Clark accepted that 4.3.1 of the same source says that a similar event is not permitted in Moscow, where the appellant lived, despite an ECHR ruling in 2010. The appellant has attended such events in the UK, but he said that he would not do so in St Petersburg or anywhere else in Russia, for fear of identification and reprisals.

14. There is no reason not to accept the appellant’s evidence on that point.
15. The evidence establishes, to a level well above the lower standard of proof, that a material reason for the appellant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man.
16. The case thus reaches the stage which Lord Rodger held at [82] of *HJ (Iran)* to be sufficient:

“Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.”
17. Even if the respondent had not conceded that it remained to be decided only *why* the appellant would choose to live discreetly, I would have had no difficulty in reaching the same conclusion. The evidence shows that a person electing to live openly to the same extent as the appellant has in the UK would be at risk; and while the appellant’s case was not put simply on racial grounds, as a gay black man in Russia he would be particularly conspicuous.
18. The appeal, as originally brought to the FtT, is allowed.
19. No anonymity direction has been requested or made.



31 October 2019  
UT Judge Macleman