



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

Appeal Number: PA/08355/2018

THE IMMIGRATION ACTS

Heard at Field House

On 21 January 2019

Decision & Reasons

Promulgated

On 19 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**MISS J M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvan, Counsel

For the Respondent: Ms J Isherwood

DECISION ON ERROR OF LAW

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge M A Khan dated 31 August 2018 dismissing her asylum claim. The appellant claimed that on return to Pakistan she would be persecuted on the basis of her sexuality.
2. I accepted Mr Chelvan's submission that the judge materially erred in law by acting procedurally unfairly by relying on the statement evidence of Miss L, when this evidence had been withdrawn. Ms Isherwood accepted that the statement of Miss L was withdrawn at the hearing. Ms L did not

give evidence at the hearing. I find that in the light of the fact that the statement of Ms L was withdrawn the judge erred in law in relying on it to discredit the appellant's evidence.

3. I also find that the judge erred in law in allowing the respondent to cross-examine on matters relating to sexual activity of the appellant and make adverse credibility findings relating to sexual activity. This was in contravention of the respondent's own published Asylum Policy Instruction on Sexual Orientation issues in the asylum claim published in August 2006 and contrary to EU law.
4. I find that in the light of these material errors the judge's decision cannot stand. It is set aside in order to be remade.
5. The appellant's appeal is remitted to Harmondsworth for rehearing by a First-tier Tribunal Judge other than FtTJ M A Khan.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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: 13 February 2019

Deputy Upper Tribunal Judge Eshun