



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

Appeal Number: PA/09755/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2019**

**Decision & Reasons Promulgated
On 6 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**M B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Capel of Counsel

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh. He was born on 30 November 1984.
2. The appellant appealed against the respondent's decision dated 29 July 2018 to refuse his application for asylum, humanitarian protection and human rights.
3. Judge Housego (the judge) dismissed the appellant's appeal in a decision promulgated on 3 December 2018. The judge did not find the appellant to be a credible witness. The judge did not accept the appellant would be at

risk on return. As regards Article 8, the judge found the respondent's decision proportionate.

4. The grounds claim that the judge misdirected himself in law, that the judge acted unfairly in relying upon an unreported error of law decision of the Upper Tribunal without giving the parties a copy of that decision or inviting oral submissions on it at the hearing or subsequently, further that the judge failed to have regard to relevant issues and failed to give adequate reasons.
5. Judge Grant-Hutchison granted permission to appeal on 28 December 2018. She said *inter alia* as follows:

"2. It is arguable that the judge has erred in law

- (a) by using an unreported decision of the UT (PA/06221/2017) as guidance indicating gay people in Bangladesh are not generally at risk without giving the parties a copy or inviting submissions;*
- (b) in the interpretation of **HJ (Iran)** when the appellant has given evidence that he keeps his sexuality quiet because of social pressures both in the UK and Bangladesh;*
- (c) by finding that psychiatric reports conclusions are 'predicated on the appellant's account being true' when the report is based on the psychiatrist's observations and other sources of information and not merely on the symptoms described;*
- (d) by failing to engage in the appellant's explanation for*
 - (i) the timing of his asylum claim and his reasons for rejecting it;*
 - (ii) the lack of corroborative evidence; and*
 - (iii) the mischaracterisation of the appellant's claimed religious beliefs given the evidence that he has provided including evidence from two theological experts;*
- (e) by failing to have regard to the country expert report which discloses a risk on return for LGBT persons and those holding the appellant's religious beliefs from both state and non-state actors and*
- (f) by failing to give any sustainable reason why the appellant's 'vitality and enthusiasm' in discussing his religious beliefs is undermining of the psychiatrist's diagnosis of PTSD and depression or her conclusions as to the severity of his symptoms."*

6. There was no Rule 24 response.

Submissions on Error of Law

7. Ms Capel relied upon the grounds; misdirection in law, unfairness, failure to have regard to relevant matters, failure to give reasons and irrationality.
8. Mr Lindsay submitted that in the event that I found ground 1(a) to be made out, that is, the judge relied upon an unreported error of law decision without giving the parties a copy or inviting oral submissions, that he accepted that the judge had materially erred.

Conclusion on Error of Law

9. I do find that the judge materially erred. At [57] he said inter alia as follows:

"57. The most recent guidance from the Upper Tribunal is PA/06221/2017, promulgated in March 2018. This indicates that gay people in Bangladesh are not generically (sic) at risk. The appellant in that case asserted fear of his father. Each case is fact specific is indicated by the extracts from the UT decision below:"

The judge goes on to quote extensively from [6], [8] and [21] of PA/06221/2017.

10. At [101] of his decision the judge says this:

*"As in the Upper Tribunal case cited above, dismissing an appeal, I have not cited the hundreds of pages of objective material provided to me individually. They are in any case irrelevant as the appellant has not passed tests one or two in **HJ (Iran)**. The decision would be excessively long if it went through all 642 pages. Case law from the Upper Tribunal is set out above. If an asylum appeal is to succeed on the basis that, generically, bisexual people from Bangladesh are entitled to asylum or to humanitarian protection then that will have to be decided on appeal. I am not persuaded that the evidence supplied to me, individually or collectively, is such that I should depart from the case law in the Upper Tribunal so recently set out (above) in PA/06221/2017, in March 2018. In any event the appellant has not made out the basis of any of his various claims for international protection."*

11. The judge materially erred with regard to this case as follows:
 - (a) He unfairly relied upon an unreported error of law decision of the Upper Tribunal without giving the parties a copy of that decision or inviting submissions on it at the hearing or in writing subsequently.
 - (b) He relied upon such unreported error of law decision of the Upper Tribunal as providing "guidance" on the position of LGBT persons in Bangladesh.

- (c) He treated that unreported error of law decision as having the status of a country guidance case from which departure had to be justified.

Notice of Decision

The judge's decision is set aside in its entirety and will be remade in the First-tier following a de novo hearing.

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 March 2019

Deputy Upper Tribunal Judge Peart