



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

Appeal Number: PA/10139/2017

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**Decision & Reasons**

**On 10 January 2019**

**Promulgated**

**On 29 January 2019**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**M S A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Hussain of Raiyad Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

## **Introduction**

2. The appellant is a citizen of Bangladesh who was born on 16 November 1990. He arrived in the United Kingdom on 28 March 2011 as a student with leave valid until February 2014. Thereafter, he was refused further leave to remain as a Tier 4 Migrant and subsequently under Art 8 of the ECHR.
3. On 24 March 2017, the appellant claimed asylum on the basis that he is gay and, if he returned to Bangladesh, he feared both his family (who have threatened him) and also other non-state actors. He claimed that he could not safely live openly as a gay man in Bangladesh.
4. On 24 September 2017, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR.

## **The Appeal**

5. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge Clemes and, in a determination promulgated on 3 April 2018, he dismissed the appellant's appeal on all grounds. Although he accepted the appellant's claim that he is gay, the judge found that he would not be at real risk of persecution or serious ill-treatment on return either from the Bangladesh authorities or from non-state actors. The judge found that the appellant would "choose to conceal aspects of his sexuality for reasons of responding to social pressure, not because he fears that he will be persecuted" (at [26]).
6. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds.
7. First, the judge had failed properly to apply the CPIN "Bangladesh: Sexual Orientation and Gender Identity" (November 2017) which, it was contended, accepted that an LGBT person would be at risk of persecution or serious harm if they did not conceal their sexual orientation and, it was in order to avoid such harm, that LGBT persons were not open (see paras 2.3.16 and 2.3.17).
8. Second, the grounds also rely upon para 2.4.4 recognising that the state authorities are responsible for arbitrary arrests, detentions, harassment and discrimination towards LGBT persons and there are reports of the police physically and sexually assaulting such individuals and also para 2.4.2 which states that whilst the state appears "able" to protect LGBT persons it is "unwilling to offer effective protection".
9. In addition, the grounds contend that the judge, in reaching his factual findings in [26] that the appellant would choose to avoid any ill-treatment out of choice or social pressure, failed to take into account the appellant's evidence in his witness statement at paras 29-31 where the appellant said that, in effect, he hid his sexuality because of his fear of violence and

abuse from the public and his family and also that he would be subject to ill-treatment by the police.

10. Initially, the First-tier Tribunal refused the appellant permission to appeal. However, on 19 September 2018, the Upper Tribunal (UTJ Pitt) granted the appellant permission to appeal.

## **Discussion**

11. At the outset of the hearing, having heard brief submissions from Mr Hussain on behalf of the appellant, Mr Howells indicated that he conceded on behalf of the Secretary of State that the judge had materially erred in law in reaching his adverse finding in [26] that the appellant would conceal his sexuality, not because he feared violence and abuse, but because of social pressure and out of choice. That, Mr Howells accepted, failed to take into account what the appellant had said in his witness statement, in particular at paras 29-31.
12. Mr Howells invited me to set aside the judge's decision on the basis of this material error of law. He then invited me to allow the appeal on asylum grounds on the basis that the judge, in the light of the appellant's evidence and the CPIN, could only have allowed the appeal. Mr Howells invited me to allow the appeal for the following reasons.
13. First, as Judge Clemes had accepted, the appellant is gay.
14. Secondly, Mr Howells acknowledged that the judge had, in effect, accepted the appellant's credibility and I should accept the appellant's evidence set out at paras 29-31 of his witness statement that he would be discreet on return to Bangladesh in relation to his sexuality but only because he feared violence, abuse and other serious ill-treatment.
15. Thirdly, Mr Howells invited me to find on the basis of the CPIN report that the appellant would be at real risk of persecution by non-state actors, including his family if he were openly to express his sexual orientation. He drew my attention to para 3.1.5 of the CPIN report which states:

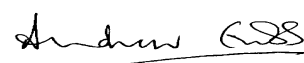
"In general, an LGBT person who does not conceal their sexual orientation or gender identity may be at risk of treatment, which by its nature and repetition amounts to persecution or serious harm. The nature and degree of treatment may vary according to geography and socio-economic status. Gay rights activists and bloggers may be at greater risks due to their profile. Each case must be considered on its facts and merits."
16. Mr Howells accepted that, in the case of the appellant, he would be at real risk of persecution from non-state actors and, given his own history, including his family on return.
17. Fourthly, Mr Howells accepted that the appellant, as a gay man, formed part of a particular social group.

18. Fifthly, Mr Howells accepted, in the light of para 3.1.6 of the CPIN report, that the Bangladesh state although “able” to provide protection would be “unwilling” to do so.
19. Finally, Mr Howells accepted that there was no internal relocation option open to the appellant.
20. I accept Mr Howells concession, on the basis of the background evidence (in particular in the CPIN report) and the appellant’s own evidence, that he has established that he would be at real risk of persecution for a Convention reason from non-state actors including his family if he were openly to express his sexuality in Bangladesh. He would choose not to do so in order to avoid that persecution or serious ill-treatment. The state would not be willing to provide him with a sufficiency of protection. Applying the approach set out in the Supreme Court in HJ (Iran) and Another v SSHD [2010] UKSC 31 at [82] per Lord Rodger the appellant has, in my judgment, established that he has a well-founded fear of persecution for a Convention reason (namely as a member of a PSG).

**Decision**

21. For these reasons, therefore the decision of the First-tier Tribunal to dismiss the appellant’s appeal involved the making of an error of law. That decision is set aside.
22. I remake the decision allowing the appellant’s appeal on asylum grounds.

Signed



A Grubb  
Judge of the Upper Tribunal

24 January 2019

**TO THE RESPONDENT**  
**FEE AWARD**

Mr Hussain invited me to make a fee award. It was not entirely clear whether the appellant had, in fact, paid a fee to bring his asylum appeal. However, given my decision, I am content to make a fee award in the appellant's favour in respect of any fee paid or payable in relation to these appeal proceedings.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", with a horizontal line underneath it.

A Grubb  
Judge of the Upper Tribunal

24 January 2019