Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13572/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 March 2020	**On 27 April 2020**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr I Khan, Counsel instructed by Immigration Aid
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-tier Tribunal. However, as this is an appeal on protection grounds, it is appropriate to make that order. 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 his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

The Appellant appeals against the decision of First-tier Tribunal Judge G J Ferguson promulgated on 17 October 2019 ("the Decision") dismissing his appeal against the Respondent's decision dated 17 November 2018, refusing the Appellant's protection and human rights claims.

This matter first came before me on 16 January 2020 at which time the Appellant was unrepresented and had apparently received contradictory advice from those advising him. I therefore adjourned the hearing to a later date to allow him to find representation. My adjournment decision is annexed hereto for ease of reference.

As I explained in the adjournment decision, the Judge who granted permission to appeal almost certainly intended to refuse it (see the substance of the decision cited at [3] of my decision). However, as I also explained, the position in law is that permission is granted as that is what the decision says. Accordingly, I have to determine whether the Decision contains an error of law.

By way of brief factual background, the Appellant is a national of Bangladesh who came to the UK as a student on 14 November 2009. Following various applications, refusals and an appeal, his leave in that capacity came to an end on 10 October 2014 and he has remained since without leave. Having made an unsuccessful human rights' claim in 2016, based it appears on his relationship with a Ms B who was expecting his child (which application was refused finally in November 2016), the Appellant claimed asylum on 31 May 2017.

The basis of the Appellant's asylum claim is that he is a gay man who fears return to Bangladesh as he says he is at risk from Islamic extremists or his family members on account of his sexuality.

Although the Judge expressed doubts about the Appellant's sexuality, he nonetheless accepted based on the lower standard of proof and the benefit of the doubt, that the Appellant "has established that he identifies as being gay" ([7] of the Decision).

The Judge went on to apply the guidance laid down in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 ("HJ (Iran)") and reached findings as to how the Appellant could be expected to behave on return to Bangladesh and why. He concluded at [21] of the Decision that "[o]n return to Bangladesh, if [the Appellant] chooses to have a partner at all, he will conduct the relationship discreetly simply for social or cultural reasons, not out of a fear of persecution."

The Judge then turned to consider the background evidence concerning the position for a gay man who chose to live discreetly as such in Bangladesh. In that regard, he found at [23] and following of the Decision that the Appellant could relocate to areas of Bangladesh away from his family and that in general the evidence did not make out a risk from Islamic extremists. He therefore

concluded that the Appellant did not have a well-founded fear of persecution on return and therefore dismissed the appeal.

The Appellant appeals on two pleaded grounds. Ground one challenges the Judge's conclusions concerning the protection claim. Ground two challenges the dismissal of the appeal on human rights grounds (Article 8 ECHR). Mr Khan expanded on the pleaded grounds in his oral submissions. I deal with those submissions below.

The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

DISCUSSION AND CONCLUSIONS

Ground One: The Protection Claim

In essence, the Appellant's case is that, having been accepted to be gay, applying HJ (Iran) and taking into account the background evidence, he is entitled to succeed. Accordingly, he says, the Judge erred in law by dismissing the appeal.

It is common ground that homosexuality is a criminal offence in Bangladesh. However, that is not the end of the matter. As the Judge pointed out at [22] of the Decision, "the law prohibiting sexual activity between men is not enforced and .. there has been no case of legal proceedings resulting in any punishment under Section 377 of the Penal Code".

Although whether there would be sufficient protection for the Appellant from the police in Bangladesh forms no part of the pleaded challenge to the Decision, Mr Khan's oral submissions were largely directed at that issue and I deal with them for completeness.

Mr Khan relied on the Respondent's Country Policy and Information Note entitled "Bangladesh: Sexual orientation and gender identity" published November 2017 ("the CPIN") which appears at [AB/177-212]. Section 6 of the CPIN deals with "State attitudes and treatment". That refers first to reports of physical and sexual assault by the police dating back to 2015 and earlier. At [6.3] of that report, reference is made to official discrimination including harassment and a reluctance of LGBT individuals to identify as such to the police if reporting a crime. However, the point is made at [6.3.3] that it is difficult to know whether such persons are treated worse by the police than anyone else in Bangladesh. Section [6.4] of the CPIN also refers to unwillingness of LGBT individuals to approach the police for support. The point is made however at, for example, [6.4.4] that "members of the press noted that the police were obliged to take on a case, irrespective of the sexuality of the reporter of the crime; and the Bangladesh Legal Aid and Services Trust (BLAST) noted that there was 'very little research on these issues'".

In any event, the prior issue is whether the Appellant would have cause to seek protection from the authorities. It is doubtless due to the Judge's findings on that issue that the sufficiency of protection or otherwise was not considered by the Judge other than peripherally at [24] of the Decision.

The first issue for the Judge to consider was that directly raised in the pleaded ground one, namely how the Appellant would behave on return. As I have already recorded, the Judge's conclusion in this regard is that the Appellant would conduct any relationships discreetly ([21]).

The Appellant's pleaded ground can be summarised as follows. First, the conclusion that the Appellant would conduct himself discreetly was not open to the Judge on the evidence (as set out at [4] of the grounds). Second, that because there is a risk of prosecution, there is a risk of persecution. Third, the Judge has failed to consider whether the Appellant's behaviour would arise because of a fear of persecution. Fourth, because the Appellant would have to modify his behaviour, the appeal should have been allowed.

The Judge's findings on this issue appear at [20] and [21] of the Decision as follows:

> "20. The second aspect of the HJ test is a group of questions for which the focus is what will happen in [the Appellant's] country of origin: '*the question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does'.* [The Appellant's] actions in the UK, where he accepts he has lived with freedom are a guide as to how he will conduct himself if returned. He has not established that he has had any same sex relationship in the ten years he has resided here. The only relationship about which there is any evidence is with a woman. He claims that he was compelled into a relationship with her to satisfy his family but the evidence does not establish that he was acting under any compulsion in 2015 other than the pressure he imposed on himself of wanting to have some basis on which to make a further application for leave to remain in the UK.
>
> 21. The reasons for the breakdown of that relationship are also not established. [The Appellant] claims it ended in acrimonious circumstances but that does not establish the cause of the acrimony. It is significant that [the Appellant] has provided no evidence of any same-sex relationship prior to the date of the refusal on 17th November 2018. The evidence that he has provided to demonstrate that he is gay post-dates that event. That evidence (contained in an addendum bundle) amounts to receipts for drinks in bars which he says are 'gay bars'. Leaving to one side that buying a drink in a gay bar does not establish that a person is gay, the dates of the receipts are significant. They are dated in December 2018 (shortly before his first listed appeal) and in July 2019 (shortly before his adjourned appeal hearing). These have been obtained to use as evidence but are not evidence of his habitual behaviour, even habitual behaviour in the six months between listed appeal hearings. The ticket and evidence of his attendance at a 'Pride' event in July 2019 also highlights that he did not attend any similar events in any of the other nine years he has lived in the UK. On return to Bangladesh, if [the Appellant] chooses to have a partner at all he will conduct the relationship discreetly simply for social or cultural reasons, not out of a fear of persecution."

That reasoning has to be read alongside what the Judge says about the Appellant's claim to have been in a relationship with a man whilst in Bangladesh. He deals with this at [26] of the Decision as follows:

> "[The Appellant's] description of his relationship with [M] is not easy to reconcile with his fear of persecution on return. By his own account, [the Appellant] was able to conduct a 'happy relationship' with [M] for 8 years between 2000 and 2008. When they were discovered by a mob who attacked them [the Appellant] was stabbed with sharp objects and still carries 'horrible scars'. Yet he did not provide any evidence of these scars which are material evidence which would have been at his disposal. The 'punishment' of the religious community was simply to ask him to leave the village. It is not clear that he did, since his witness statement refers to his contact with his family immediately afterwards and being scared to go outside. In any event he resided in Bangladesh for between one and two years afterwards without any further problems. Again, the evidence that he was in a relationship which was discovered is finely balanced but must be resolved in his favour to the low standard giving him the benefit of the doubt. That evidence does not establish that [the Appellant] will be at risk from anybody who is aware of his sexuality in his home area: if they wished to persecute him they would have taken the opportunity in 2008 or 2009. There is no risk to [the Appellant] from his family or the wider community in his home area."

The foregoing passage deals mainly with the issue of risk from others but also demonstrates that the Appellant was able to conduct a relationship with another man as he chose for a lengthy period of eight years whilst in Bangladesh. That evidence and the way in which the Appellant has conducted himself whilst in the UK (where he cannot claim to have any fear of persecution) is a clear indicator of how he would behave on return.

Mr Khan submitted that the conclusion reached was not open to the Judge based on what the Appellant himself says in his witness statement dated 15 July 2019 at [51] to [53] ([AB/60]) as follows:

> "51. The Respondent does not give due consideration to my entire circumstance and the persecution I will face in Bangladesh. I could not relocate in Bangladesh as Bangladesh is predominantly an Islamic country. Homophobia is inherently built into the Bangladeshi Society. It is illegal to be Homosexual and is a criminal offence according Bangladeshi Laws. The respondent has not adequately considered the risk of my return in light of recent up rise and incidents against homosexual people back in my country of origin.
>
> 52. Under the circumstances, I am scared to return to my native country due to my sexuality. I have no choice but to claim for Asylum in the United Kingdom. Being homosexual is a punishable crime in my country of origin, Bangladesh. Being gay was not a choice I made; it was a part of me that I couldn't help. Should I return to Bangladesh, my family would never be welcome me. I fear being killed by religious extremists and I know I will not be safe at all throughout Bangladesh. As being gay is considered immoral and unacceptable there. There is a chance; I will also be tortured by my own family as they will never accept my homosexuality. Suppressing my sexuality will deprive me of my freedom and my life would be purposeless.
>
> 53. Furthermore, the current social and political regime will offer no protection due to my sexual orientation. In addition, the recent rise of Islamic fundamentalism has been very hostile to homosexual people in Bangladesh. Notably, in year 2016, an editor (Xulhas) and his partner, of an

> only Bangladeshi gay magazine called Roopban were brutally murdered by a machete attack. The homosexual community in general hide away because of growing religious extremism…"

Insofar as that evidence deals with the Appellant's attitude to his own sexuality at all (as compared with the general position for homosexuals in Bangladesh), the high point is the last sentence of [52]. However, that says only that suppression of his sexuality would deprive him of freedom. As I have already noted, the extent to which he is open about his sexuality has to be considered on the evidence. The Judge was entitled to explore what that evidence shows rather than accepting the Appellant's assertion that he would be subject to any suppression of the way in which he chooses to conduct himself in that regard.

The Judge was entitled to reach the conclusion that the Appellant would conduct himself discreetly in Bangladesh and would do so because that is the way in which he chooses to behave and not because he is compelled to do so due to any fear of persecution.

I have already cited [26] of the Decision which deals with the isolated attack which the Appellant claims to have suffered twelve years ago whilst in Bangladesh. He claims to fear both Islamic extremists and his family on return. The Judge dealt with the risk from those sources at [23] to [25] of the Decision as follows:

> "23. In the light of all those findings the answers to the questions about how the appellant will conduct himself and what his situation will be in Bangladesh are that if he chooses to have a partner at all he will conduct the relationship discreetly simply for social and cultural reasons, not out of a fear of persecution. The evidence establishes that he has always lived discreetly in Bangladesh and the UK: he will not have to modify his behaviour in any significant way. If he wishes to live less discreetly, he could relocate to Dhaka where there are LGBT support groups and where he will have the ability to live more openly than in other areas of Bangladesh. His family will not pursue him there because they took no action against him for a lengthy period of time in 2009. His evidence was that people from his village did not even go to Sylhet city.
>
> 24. The '*final and conclusive question is: does he have a well-founded fear that he will be persecuted?'* The risk from Islamic extremists is not made out on the evidence provided for the appeal. The brutal attack on two gay activists in 2016, one of whom 'had founded a gay magazine for the country's gay and lesbian community' is an example of an attack by extremists on a gay activist. This does not establish that [the Appellant] is at the same risk simply on account of being a gay man. Page 131 of the appellant's bundle is entitled 'an analysis of homosexuality in Bangladesh' published in 2009. It states that the country: 'is perceived to be one of the few Islamic states which exercises considerable tolerance towards the issue of homosexuality'. The article analysis [sic] the tension between the government which almost never enforces the criminal law for homosexual activity but does not take positive action to change societal attitudes towards LGBT rights. This means that homosexual relationships are concealed. The article at page 138 of the appellant's bundle concludes that: 'More and more groups are advocating for the rights of the LGBT community in

> Bangladesh. Religious as well as social groups are part of this movement. While the country is still relatively behind compared to countries such as the US on LGBT rights, people are making certain strides'. The article refers to an online forum which arranges events for gay men to meet and socialize. [The Appellant] may not be able to do everything there that he could do openly in the UK, but that is '*not the test'.*
>
> 25. [The Appellant's] stated fear is also based in part on a fear of his family. His witness statement sets out that 'there is a chance I will also be tortured by my own family as they will never accept my homosexuality'. This is not established to the low standard. On his account his family have known that he was gay since sometime in 2008 after he was attacked by a group of people and given an ultimatum to leave the area or face death by the religious elders in the village. Despite this level of social opprobrium, and [the Appellant] claiming that 'in our culture people would kill if their family was dishonoured' he was able to continue to have the support of his family for somewhere between the next eleven months and the next two years depending on when in 2008 the alleged attack took place. He claims that his family were 'hostile and angry' but all it took was for him to say that he would not cause them humiliation and they became helpful to him, encouraging him to become financially independent by helping him with money to invest in shares. When that did not produce significant returns they assist him in 'sending him overseas to pursue higher education'. These are not the actions of family members who feel dishonoured, of people who will harm their son or brother when he returns. If they had any intention of harming [the Appellant] they would have done so before 2009."

As that passage shows, the Judge did not accept that there was any general risk to the Appellant from the section of the population he claimed to fear nor any specific threat from his family. The latter finding is based on the evidence in the Appellant's case. The former is, I accept to be considered against the background evidence. In that regard, I was taken by Mr Khan to the following articles appearing within the background evidence at [AB/129-176] as follows

A survey of LGBT individuals conducted in 2014 ([AB/144]) – the passage relied upon reads:

> "The survey revealed that 59% of respondents never faced discrimination due to their sexual orientation. However more than 50% say they live in constant fear of their sexual orientation being discovered. Some 25.8% of respondents said they did face discrimination and a higher percentage said they either had no knowledge of or no access to legal support."

That passage has to be read in the context of this case where the Judge found that the Appellant would choose to live discreetly in any event. Further, discrimination does not necessarily amount to persecution unless it reaches the requisite threshold. In any event, the survey dates back to 2014.

An article entitled "Nowhere to turn for Bangladesh's LGBT" ([AB/148]). The article dates back to 2016 and in any event deals with the murder of two gay activists leading to their death (to which the Appellant also refers in his

statement as set out at [21] above). That is the event recorded at [24] of the Decision but, as the Judge there points out, the Appellant is not within that category. Similarly, the article at [AB/151] concerns the murder of "secular bloggers and liberal activists". The Appellant does not claim to actively promote homosexuality even in the UK.

At [AB/150] is an article dealing with the law criminalising homosexual acts in Bangladesh. However, that only records the existence of that law and not its use. The Judge recognised that this law exists at [22] of the Decision but there noted that "there has been no case of legal proceedings resulting in any punishment under Section 377 of the Penal Code". I was not taken to any article which shows that this conclusion is wrong in fact.

The Appellant has failed to show that the Judge has wrongly analysed the risk on return based on the background material. Paragraph [24] of the Decision is an accurate summary of what that evidence shows about the general risk. The findings at [25] of the Decision were open to the Judge on the evidence about the specific risk.

It follows from the foregoing that the Judge was entitled to find that the Appellant would not be at risk based on an analysis of the Appellant's case and evidence looked at against the background of the law as stated in HJ (Iran). The Appellant would behave discreetly on return as he has in the UK. His family do not pose a threat and he does not fall within the category of gay activists who might be at risk from religious extremists generally as he is not open about his sexuality and would not actively promote it.

I began this discussion with consideration of Mr Khan's oral submissions regarding the sufficiency of protection of the Bangladeshi authorities against a risk arising to a gay man in Bangladesh. As I have already noted, this did not form part of the pleaded grounds. In any event, for the foregoing reasons, there is no error on the part of the Judge because he expressly found that the Appellant would not be at risk on return to Bangladesh, in part because he would conduct himself discreetly, not due to any fear of harm but because that is the way he chooses to (including in the UK) and in part because the case-specific and background evidence does not demonstrate that he is at risk on this account. For that reason, sufficiency of protection does not arise. The Judge did not err by failing to consider it as a separate issue.

Mr Khan also sought to challenge the Judge's finding that the Appellant could safely relocate to Dhaka rather than go to live in his home village. He drew my attention to an article dating back to 2017 entitled "A Deliberate Attempt to Silence the LGBT Community in Bangladesh" at [AB/161]. That refers to arrests of those attending a gathering of young gay men on "the outskirts of Dhaka". That records that "[w]hile it has been widely circulated that they have been arrested because they were found with illegal drugs and condoms – and not charged with homosexuality – an officer has informed that AFP that these men were arrested because they were homosexuals".

The Judge touched upon internal relocation at [23] of the Decision and reached the following conclusion at [27] of the Decision as follows:

> "In the alternative, [the Appellant] has already successfully utilised internal relocation. One version of his evidence was that after this event in 2008 he moved to the city of Sylhet. He could therefore return there without undue hardship. In the alternative he could choose to relocate to Dhaka, which is described as having areas which are a supportive environment for the LGBT movement."

Leaving aside that, yet again, this was not part of the pleaded grounds challenging the Decision, there are three answers to this point. First, the source of the statement in the article is not clear and, in any event, the article dates back nearly three years. Second, it relates to an isolated incident and does not show that the situation is not better in Dhaka (and see [8.7.2] to [8.7.3] of the CPIN at [AB/206-7]). Whilst I appreciate that the position is certainly not as liberal as in the UK, there is at least some support for the LGBT community there. Third, and most importantly, though, the issue of internal relocation only arises if the Judge's conclusion as to risk in the Appellant's home area was flawed. The Judge found that there was no such risk (see [25] and [26] of the Decision as recorded above at [19] and [24] respectively). The finding in relation to internal relocation is expressed in the alternative. Since I have concluded that the Judge did not err in law in relation to the prior issues of discretion and risk, it follows that, even if there were an error in relation to internal relocation (which I am satisfied there is not), it would not make any material difference.

For those reasons, the Appellant has failed to show that there is any error of law in relation to the Judge's reasoning or findings in relation to the dismissal of the appeal on protection grounds.

Ground Two

Mr Khan did not make any submissions on ground two but nor did he abandon it and I therefore deal with that ground as pleaded. The Appellant says that the Judge failed to deal with paragraph 276ADE of the Immigration Rules ("the Rules") and in particular paragraph 276ADE(1)(vi) which provides for leave to remain to be granted where "there would be very significant obstacles to the applicant's integration into" Bangladesh. He also says that the Judge has failed to consider the Appellant's case based on his private life under Article 8 ECHR generally and in particular his sexuality.

I note firstly that there is nothing to suggest that the Appellant's advocate before Judge Ferguson put forward any positive case based on Article 8 (see record of submissions at [13] of the Decision). However, and in any event, the Judge dealt with this at [29] and [30] of the Decision as follows:

> "29. Regarding Article 8, there was no evidence of any family life in the UK, or any particular private life beyond the length of time he had lived here. [The Appellant] does not have any family life which might give him a basis to remain in the UK under Appendix FM. His private life is to be considered under paragraph 276ADE(1)(vi). His claim under this paragraph is based on his assertion that there are very significant obstacles for him to be able to relocate to Bangladesh for the reasons connected to his asylum claim. However, those circumstances have

> not been established to be at real risk of happening and so do not amount to very significant obstacles.
>
> 30 Although he has lived in the UK since 2009 he previously lived in Bangladesh for 28 years. The evidence did not show very significant obstacles to his reintegration. In assessing the proportionality of the decision outside the Immigration Rules at stage 5 of the *Razgar* test, regard has to be given to section 19 of the Immigration Act 2014 which sets out a statutory duty on the Tribunal to have regard in all cases, to the considerations listed in section 117B. The first is that the maintenance of effective immigration control is in the public interest. No other section is of particular assistance to the appellant's claim: he speaks some English, but is not financially independent. The Act requires that little weight is given to his private life because it was established at a time when he knew his status in the UK was precarious. [The Appellant] did not provide any evidence to show he had any significant private life in the UK on which greater weight could be placed. Nothing in the evidence provided by the appellant outweighs the public interest in the maintenance of effective immigration control. His removal will not be a disproportionate breach of his Article 8 rights."

That passage deals with the claim both under and outside the Rules. Insofar as the Appellant relies on the Respondent's guidance at [15] of the Decision (which guidance is not included in the Appellant's bundle), the elements to be considered are looked at by the Judge under the heading of the protection claim. As such, as the Judge observed, the "very significant obstacles" factors are already considered and rejected.

There is no justification or authority cited for the proposition at [17] of the grounds that "[t]he Appellant's private life outside of the rules is likely to be given significant weight". That is contrary to Section 117B Nationality, Immigration and Asylum Act 2002 and case-law. The Appellant's presence in the UK has been precarious and more recently unlawful. Indeed, the citation which follows in the grounds does not support the assertion made. It simply records that "a private life developed or established during periods of unlawful or precarious residence might conceivably qualify to be accorded more than little weight". As Judge Ferguson pointed out, though, it is for the Appellant to show the strength and intensity of the private life which he has formed and the interference with that private life occasioned by removal.

The Judge did not therefore err in his consideration of the Appellant's Article 8 claim and was entitled to reject that claim for the reasons he gives. Ground two is not made out.

CONCLUSION

For the foregoing reasons, I am satisfied that the grounds do not disclose any material error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

Notice of Decision

I am satisfied that there is no material error of law in the decision of First-tier Tribunal Judge Ferguson promulgated on 17 October 2019. I

therefore uphold that decision with the consequence that the Appellant's appeal remains dismissed.

Signed  Date: 2 April 2020

Upper Tribunal Judge Smith

APPENDIX: ADJOURNMENT DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13572/2018

THE IMMIGRATION ACTS

Heard at Field House **21 January 2020**
On Thursday 16 January 2020

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M K
[Anonymity direction made]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-tier Tribunal. However, as this is an appeal on protection grounds, it is appropriate to make that order. 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 his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

ADJOURNMENT DECISION AND DIRECTION

1. The Appellant appeals against the decision of First-tier Tribunal Judge GJ Ferguson promulgated on 17 October 2019 dismissing his appeal on protection and human rights grounds ("the Decision").

2. Ground one of the Appellant's grounds challenges the Decision dismissing the protection appeal. It is asserted that the Judge has misapplied HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 in reaching his conclusions. The second ground challenges the Decision dismissing the human rights appeal on the basis that it is said that the Appellant would face very significant obstacles in integrating in Bangladesh and that his private life in the UK is deserving of more than just little weight.

3. Permission to appeal was, on the face of the decision, granted by Designated First-tier Tribunal Judge McClure on 29 November 2019. The following reasons were given so far as relevant:

> "... 3. The appellant had come to the United Kingdom as a student in November 2009 but had ceased studying by October 2014 at the latest. He had made several applications after that date to remain on the basis of human rights which were refused. It was not until May 2017 that he sought to claim international protection.
>
> 4. In paragraph 22 the judge highlights that there are LGBT groups in Bangladesh. Those groups have reported upon harassment and discrimination but they do provide a supportive environment for LGBT people. The judge has gone on to indicate that the appellant would as he had done in the past live discreetly. The judge had also considered the background information in which it was pointed out that the provisions of the penal code were not enforced against LGBT individuals. The judge had noted that the appellant claimed in the past to have moved out of his home village and had relocated thereby avoiding harassment and discrimination.
>
> 5. The judge has properly considered the evidence and was entitled to conclude that the appellant would act discreetly as he had done in the past not by reason of the risk of persecution. The judge did consider the background evidence and on the basis of it was entitled to conclude that the appellant would not be at risk in such circumstances.
>
> 6. In paragraph 29 the judge noted that there was no family life and that the only evidence of private life was the length of time the appellant had been in the United Kingdom. The judge did consider whether there were any very significant obstacles and on the basis of the findings of fact found that there was not.
>
> 7. The judge has considered all of the evidence and given valid reasons for the conclusions reached. There is no arguable error of law. For the reasons set out the application is refused."

4. As is apparent from the final paragraph, and indeed the reasons as a whole, the Judge did not intend to grant permission to appeal. He intended to refuse it. However, the decision as stated is that permission is granted. What then is the effect of that decision?

5. The Respondent by her rule 24 reply invites me to agree with Judge McClure's assessment of the Decision on the basis that the grant of permission was an administrative slip. I accept that the grant is a typographical error but it does not resolve the issue of how I must treat the decision apparently granting permission.

6. The Appellant's representatives invited the Tribunal to consider the permission application either on the basis of it being a valid permission grant or submitting that I should set it aside and remit the application for permission for a properly formulated decision on the application for permission to appeal. Their "rule 24" reply dated 7 January 2020 invites me to consider the effect of the grant as a preliminary issue as it is said that the Appellant is vulnerable and impecunious and should not be forced to pay for a barrister to represent him if the Tribunal is not intending to consider the grounds substantively.

7. In response to a communication on 13 January 2020 querying the approach of the Tribunal to the permission grant, the attention of the Appellant's representatives was drawn by a Tribunal lawyer to the cases of Isufaj (PTA decisions/reasons; EEA reg. 37 appeals) [2019] UKUT 00283 (IAC) ("Isufaj") and Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC). Although the lawyer properly did not offer advice, she informed the representatives that the Appellant should be prepared to argue the grounds substantively at the hearing before me. She also booked an interpreter in response to their request for one on the basis that it was said that the Appellant would be in person.

8. In relation to the effect of the permission grant, the guidance given in Isufaj is as follows:

> "(1) Judges deciding applications for permission to appeal should ensure that, as a general matter, there is no apparent contradiction between the decision on the application and what is said in the 'reasons for decision' section of the document that records the decision and the reasons for it. As was said in Safi and others (permission to appeal decisions) [2018] UKUT 388 (IAC), a decision on a permission application must be capable of being understood by the Tribunal's administrative staff, the parties and by the court or tribunal to which the appeal lies. In the event of such an apparent contradiction or other uncertainty, the parties can expect the Upper Tribunal to treat the decision as the crucial element."

9. Although Isufaj is not on all fours with this case and it might be said that the permission to appeal decision was not unclear particularly in light of the final sentence of the reasons, it was sent out by the Tribunal as a permission grant with directions indicating that there would be an appeal hearing in this Tribunal. Accordingly, if it were now not treated as a permission grant, there would be prejudice to the Appellant who might otherwise have renewed his application for permission to appeal to this Tribunal. Accordingly, I follow the guidance there given with the consequence that I treat the appeal before me as being one to consider whether there is an error of law in the Decision, permission having been granted.

10. A problem however arose in proceeding with a hearing. The Appellant appeared in person assisted by an interpreter. The Appellant was able to communicate via the interpreter. However, he explained that he was confused about the hearing. He had received contradictory advice, first telling him that he need not attend and then telling him that he should. He indicated in a letter handed to me and signed by him that he had not wished to pay for a barrister to attend until he knew whether the hearing would proceed substantively. He told me that the information given to his representatives that he should be prepared to argue the grounds substantively had not been passed on to him. He was not prepared to argue the grounds substantively.

11. Although as Mr Tufan pointed out, if the grounds are indeed as weak as Judge McClure considered to be the case, it might not be in the Appellant's best interests to adjourn to pay for a barrister to attend, the Appellant himself indicated that he wished to incur that expenditure. I made plain that I had not pre-judged the outcome of the appeal but asked him to note Judge McClure's comments when considering his position. He indicated nonetheless that he wished to be legally represented.

12. Mr Tufan did not oppose the adjournment sought.

13. It is not clear to me why the Appellant's representatives took one month from the sending of the notice of hearing (12 December 2019) and over one month from the sending of the permission grant and directions (5 December 2019) to query the terms of the grant of permission nor why they had not properly advised the Appellant following the Tribunal's communication on 14 January 2020 nor why they did not see fit to advise him to be legally represented in light of the indication that the Appellant should be prepared to argue the grounds substantively. However, I accept that confusion has been caused in this case by the Tribunal itself and it is therefore in the interests of justice to allow the Appellant to be legally represented for consideration of the grounds substantively if that is his wish. I accept that there is a big difference between arguing the effects of an administrative error and a legal one and it would be unfair to proceed where the Appellant was not properly prepared to do so.

14. For those reasons, I granted the adjournment request and indicated that the appeal would be relisted on the first available date after 28 days (13 February 2020) to give the Appellant time to seek legal representation at the next hearing.

DIRECTION

The appeal will be listed before me for a resumed hearing on the first available date after Thursday 13 February 2020 with a time estimate of 1.5 hours.

Signed  Dated: 16 January 2020

Upper Tribunal Judge Smith

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email