



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

Appeal Number: PA/08363/2019 (V)

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice  
Centre  
Working Remotely by Skype for  
Business  
On 28 January 2021**

**Decision & Reasons Promulgated  
On 18 February 2021**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**MI  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Evans instructed by Qualified Legal 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. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and 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 21 June 1990. He arrived in the United Kingdom in February 2014 with a student visa valid until 2 October 2017.
3. The appellant claimed asylum on 2 January 2019. He did so on two bases. First, he claimed that he was at risk from individuals whom he claimed had raped him on 17 July 2013 in Bangladesh. Secondly, he claimed to be at risk on return to Bangladesh as a gay man.
4. On 14 August 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR. In reaching that decision, the respondent rejected the appellant's claim to be gay.

## **The Appeal to the First-tier Tribunal**

5. The appellant appealed to the First-tier Tribunal. In a determination sent on 26 February 2020, Judge Loughridge dismissed the appellant's appeal on all grounds. First, as regards the claimed risk to the appellant as a result of the incident on 17 July 2013, without making any findings as to whether he accepted that incident had occurred, the judge found that the appellant could safely and reasonably internally relocate within Bangladesh. Secondly, as regards the appellant's claim to be at risk on return as a gay man, the judge did not accept that the appellant was gay and so rejected his claim to be at risk on return to Bangladesh on that basis.

## **The Appeal to the Upper Tribunal**

6. The appellant sought permission to appeal to the Upper Tribunal principally on three grounds. First, the judge had given undue weight in reaching his adverse finding as to the appellant's sexual orientation to the absence of supporting documentary and other evidence relating to the appellant's life in the UK, as he claimed, as a gay man. Secondly, the judge had erred in law in reaching his adverse finding by failing to engage with the appellant's evidence and give reasons why he did not accept the veracity of the appellant's evidence other than by reference to the absence of supporting documentary and other evidence. Thirdly, the judge had improperly required corroborative evidence in order for the appellant to establish his claim.
7. On 3 April 2020, the First-tier Tribunal (Judge Froom) granted the appellant permission to appeal. At para 4 of his decision, Judge Froom said this:

"However, whilst it is not remotely arguable that the FtTJ was not entitled to draw such an inference, it is arguable that he erred by failing to have regard to the appellant's own personal account of his

sexuality and to give reasons, based on that account, for rejecting it. The FtTJ has not engaged with the appellant's own account at all".

8. On 23 July 2020, the Secretary of State filed a response to the appellant's grounds of appeal seeking to uphold the judge's decision on the basis that the judge had not, improperly, required the appellant to provide corroborative evidence but had been entitled, in accordance with the well-known decision in TK (Burundi) v SSHD [2009] EWCA Civ 40, to take into account the absence of supporting documentation in reaching his adverse finding in relation to the appellant's claimed sexual orientation.
9. In response to directions made in the light of the COVID-19 crisis, the Upper Tribunal was invited to hold a remote hearing in order to determine the appeal. That appeal was listed at the Cardiff Civil Justice Centre working remotely on 28 January 2021. At that hearing, the appellant was represented by Mr D Evans and the respondent by Mr C Howells and the hearing was conducted via Skype for Business.

### **Discussion**

10. Mr Evans in his oral submissions relied upon his grounds of appeal. He submitted, reflecting the grant of permission by Judge Froom, that the judge had erred in law by failing to engage with the appellant's own evidence, in particular in relation to his sexual orientation. Instead, Mr Evans submitted, the judge had simply made his adverse decision on the basis that the appellant had failed to provide supporting documentary or other evidence.
11. Having heard Mr Evans' submissions, while Mr Howells did not accept that the judge had improperly required corroboration and had been entitled to take into account the absence of supporting evidence, he accepted that the judge had failed to look at the consistency of the appellant's account, its plausibility and its inherent reliability. As a result, Mr Howells conceded that the judge had erred in law by failing to engage with the appellant's evidence and to consider the credibility of the appellant's own evidence. Mr Howells conceded that Judge Loughridge's decision could not stand and should be set aside to the extent that the appeal had to be redetermined in respect of the appellant's claim to be at risk on return to Bangladesh as a gay man.
12. I agree with Mr Howells' concession. The judge set out the appellant's evidence relating to his claim to be a gay man at paras 19-24 of his determination. At para 25, the judge reminded himself that corroborative evidence was not necessary in order to establish his claim. However, at paras 27-29 the only reason given by the judge for his adverse finding, that the appellant had not established he is a gay man, was that the appellant had not provided documentary or other evidence as to his life in the UK to support his claim that he is gay. The judge did not engage with the appellant's own evidence at all. As Mr Howells conceded, the judge failed to assess the credibility of the appellant's evidence including

whether that evidence was internally consistent, was plausible and was evidence that was reliable. That holistic assessment, recognised by the Court of Appeal in SB (Sri Lanka) v SSHD [2019] EWCA Civ 160 at [46], was required in order to reach a sustainable finding that the appellant's account was not to be believed even in the absence of supporting documentary or other evidence..

13. For these reasons, therefore, the judge materially erred in law in dismissing the appellant's appeal on asylum grounds. That decision, accordingly, cannot stand and is set aside.

### **Decision**

14. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
15. The representatives invited me to remit the appeal to the First-tier Tribunal in order to re-make the decision solely on the issue of whether the appellant has established his asylum claim on the basis of his claimed sexual orientation.
16. I agree that it the proper disposal of the appeal having regard to the nature and extent of fact-finding required and para 7.2 of the Senior President's Practice Statement.
17. The appeal is, therefore, remitted to the First-tier Tribunal in order to re-make the decision to the extent indicated above. The appeal is to be heard by a judge other than Judge Loughridge.
18. The judge's decision (and findings) dismissing the appellant's international protection claim based upon the incident on 17 July 2013 was not challenged and stands on the basis that the judge found that the appellant could safely and reasonably internally relocate in order to avoid any risk arising from that incident.
19. Likewise, the judge's decision to dismiss the appellant's appeal under Art 8 was not challenged and that decision also stands.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
29 January 2021