



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

Appeal Number: PA/04261/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30 October 2017**

**Decision & Reasons  
Promulgated**

**On 02 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**[M A]**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Gayle, a Solicitor

For the Respondent: Mr D Mills, a Presenting Officer

**DECISION AND REASONS**

1. The facts of this case are that the appellant came to the UK as long ago as 2007 as a student. He is a citizen of Pakistan who was born on [ ] 1985. His last period of leave expired in 2015, but he

subsequently applied for leave to remain in the UK on grounds he was a refugee under the Refugee Convention by virtue of his membership of a particular social group. Alternatively, he claimed that his protected human rights would be infringed and/or that he was entitled to humanitarian protection in the UK.

2. The respondent refused the application and he subsequently appealed it to Immigration Judge Oliver (the Immigration Judge) sitting at Hatton Cross on 2 June 2017. Judge Oliver dismissed the asylum and human rights appeal and found that the appellant did not qualify for humanitarian protection within the UK. He found that the appellant would suffer no more than discrimination he were returned to Pakistan.
3. The appellant appealed to the upper tribunal following the grant of permission to appeal By Upper Tribunal Judge Canavan given on 7 September 2017. Judge Canavan found it to be arguable that the First-tier Tribunal had not considered adequately the appellant's sexual identity and in particular the fact that there appeared to be a credible risk that the appellant's sexual identity would put his safety at risk if he were to be forcibly returned to Pakistan.
4. The respondent's initial position was that she objected to the appeal to the Upper Tribunal and she submitted a Rule 24 response on 18 September 2017. Stated there that the appellant could discretely conduct his sexual preferences within Pakistan without risk of persecution
5. Realistically, before me, Mr Mills to save time, has helpfully indicated that in his view he cannot sustain the decision of the First-tier Tribunal. I was invited by both parties to remit the matter to the First-tier Tribunal because of the errors of law identified by Judge Canavan which it was accepted effectively infected the hold decision, which could not be allowed to remain.
6. Both parties agree that none of the findings of fact of the First-tier Tribunal can be preserved and they both agree that within the Presidential Guidance, and paragraph 7 of the Presidential Guidance, the effect of the Immigration Judges failure adequately to consider the appellant's sexuality and the risk on return deprived him of a proper opportunity to put his case. The nature and extent of the findings of fact were such that it would have to be remade afresh without considering any of the existing findings having regard to the overriding objective in Rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, it was appropriate in both of their views to remit the matter to the First-tier Tribunal for a fresh hearing.

## **Notice of Decision**

7. I have acceded to that agreed position and I make the direction that the matter is to be remitted to the First-tier Tribunal for a hearing which is to be conducted by any judge other than First-tier Tribunal Judge Oliver. I have indicated on the form which accompanies the file the approximate time estimate and number of witnesses, but I direct that the First-tier Tribunal should, after transfer, issue any further case management directions that are appropriate and give the parties an opportunity to revise the time estimate upwards or downwards, or indeed the number of witnesses as appropriate.
8. An anonymity direction was made by the First-tier Tribunal and I continue that direction.

Signed

Date 2 November 2017

Deputy Upper Tribunal Judge Hanbury