



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06755/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

Promulgated

On 17 January 2018

On 12 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

Mr M B I

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T N Hussain, authorised representative (Raiyad Solicitors) For the Respondent: Mr D Clarke, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge O'Garro on 10 November 2017 against the determination of First-tier Tribunal Judge Robertson who had dismissed the appeal of the Appellant against the refusal of

- his international protection claim. The decision and reasons was promulgated on 31 August 2017.
2. The Appellant is a national of Bangladesh, born on 10 September 1988. He had claimed asylum on 6 January 2017, having entered the United Kingdom as a Tier 4 (General) Student Migrant as long ago as 4 February 2010. His immigration history is summarised at [3] of Judge Robertson's decision. The Appellant asserted that he was at risk on return because of his sexual orientation. His sexual orientation had been accepted by the Respondent. Judge Robertson found that the Appellant would live discreetly on return to Bangladesh because he wished to hide his sexuality from his parents: see [28] of the decision and reasons. The appeal was accordingly dismissed.
 3. Permission to appeal was granted by Judge O'Garro because it was held arguable that the judge had erred in her approach to HJ (Iran) [2010] UKSC 31. The Appellant had also stated that he would live discreetly for fear of persecution. A rule 24 Notice in letter form had been served by the Respondent opposing the appeal.

Submissions

4. Mr Hussain for the Appellant relied on the grounds of onwards appeal and grant. In summary, he submitted that the judge had become confused. At [30] the judge had expressly found that the Appellant would not live openly in Bangladesh because of fear of physical harm. There was no dispute about country conditions. HJ (Iran) had not been applied correctly, because if that question were answered affirmatively as the judge had done, the appeal succeeded. The decision and reasons was unsafe and should be set aside and the appeal reheard.
5. Mr Clarke for the Respondent submitted the judge had found as a fact that the Appellant's reason for not living openly was his unwillingness to reveal his orientation to his parents. That finding was open to the judge. The onwards appeal should be dismissed.

Material error of law finding

6. The tribunal finds that the First-tier Tribunal Judge had erred materially, such that the decision and reasons must be set

aside and remade. Perhaps for understandable reasons, the judge focussed on the Appellant's claim that he was unwilling to reveal his orientation to his parents, which must be virtually unavoidable at some stage given his age alone. Nevertheless the Appellant said that he was afraid of upsetting them. That assertion led the judge to the conclusion that this was the main reason why the Appellant would live discreetly on return to Bangladesh. But the judge overlooked her other highly significant finding that the Appellant also feared the community and violence: see [30] of the decision and reasons. In her detailed study of the country background evidence, the judge had concluded that the Appellant would indeed be at real risk of harm if he led an openly gay life: see [27].

7. The judge inadvertently slipped into material error of law of law by not giving sufficient recognition to the dual reasons which the Appellant put forward: he feared his community as well as not wanting to upset his parents. That error can readily be corrected, as there was no challenge to the judge's general fact finding in a full and carefully written decision. Hence all findings of fact stand, save that it must be accepted and the tribunal finds that the Appellant fears his community and so would not, because of that fear, live openly as a gay man in Bangladesh. His appeal succeeds.

DECISION

The appeal is allowed_

The making of the previous decision involved the making of a material error on a point of law. The decision is remade and the original appeal is allowed.

Signed

Date: 8 February 2018

Deputy Upper Tribunal Judge Manuell