



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/11307/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 April 2018**

**Decision & Reasons  
Promulgated  
On 16 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**AT  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Reza of JKR, solicitors.

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

*An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court.*

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 25 October 2017 refusing his protection and human rights claim.

2. The appellant is a citizen of Bangladesh born on [ ] 1991. He arrived in the UK on 12 December 2009 with a student visa valid until 31 December 2011. On 29 November 2011 he applied for leave to remain as a Tier 4 student, but this was refused. In August 2015 and December 2016, he made applications for leave to remain on compassionate grounds, but both were unsuccessful. On 19 December 2016 the appellant was encountered whilst working illegally and on 28 April 2017 he was served with a removal notice. He then claimed asylum on 2 June 2017.
3. He claimed that he would face persecution on return to Bangladesh as a gay man. The respondent accepted the appellant's identity and nationality and that gay men in Bangladesh formed a particular social group. However, she was not satisfied that the appellant was gay. She described his evidence as vague and lacking in detail and that, in any event, he would be able to relocate away from his home area in Bangladesh.
4. At the hearing before the First-tier Tribunal, the appellant gave oral evidence as did two of his friends. The judge recorded at [21] that both these witnesses said they were in the habit of meeting the appellant regularly in gay clubs and other venues, where there was a large Bengali community, and both believed him to be gay.
5. The judge set out her findings on the appellant's sexuality at [32]-[38]. She did not accept that he was gay or that he would face any real risk of serious harm or ill-treatment on return to Bangladesh. She went on to consider article 8 and in particular whether the appellant had established a private life in the UK within article 8 (1). At [51] she said that it was clear from the evidence of his two friends that he had established a private life in the UK and a social life especially within the Bengali community, although there were no findings on the nature and extent of his private life. She added that he did not currently have a long-term partner. She dismissed the appeal on both asylum and human rights grounds.
6. In the grounds of appeal, it is argued that the judge erred by failing to make a proper assessment of the evidence of the two witnesses called in support of the appeal. One had confirmed that the appellant was gay because of his activities in gay clubs which he had witnessed and the second had given evidence that he had met the appellant in a gay club and they had been intimate. The grounds argue that the judge did not give any reason why she was disregarding this evidence.
7. At the hearing before me Mr Jarvis conceded that the judge erred in law by failing to deal adequately with the evidence of these witnesses in so far as it related to the appellant's claimed sexuality. Whilst their evidence had been briefly summarised in [21] the judge only referred to it in her analysis of the evidence in the context of whether the appellant had established a private life in the UK. She had not made any findings on the that evidence in the context of the asylum claim.

8. I accept that this concession is correctly made. Whilst the judge identified a number of factors capable of undermining the appellant's evidence about his sexuality, she has failed to take into account the evidence of the two witnesses in her assessment of whether his account of his sexuality was credible to the lower standard of proof and, therefore, left a relevant matter out of account. If, in fact, the judge rejected this aspect of their evidence, she has not given her reasons for doing so.
9. Both representatives submitted that in the circumstances the appeal should be remitted for a full rehearing before First-tier Tribunal. I agree that this is the proper course.

### Decision

10. The First-tier Tribunal erred in law and the decision is set-aside. The appeal is remitted to the First-tier Tribunal for reconsideration by way of a full rehearing by a different judge.
11. In the light of the issues raised in this asylum appeal, I am satisfied that this is a proper case for an order to be made under Rule 14 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I make an order prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

Signed: H J E Latter  
April 2018

Dated: 11

Deputy Upper Tribunal Judge Latter