



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/05673/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 October 2017**

**Decision & Reasons  
Promulgated  
On 05 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**AM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr W Rees, Counsel instructed by Farani Javid Taylor  
Solicitors

For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Devittie sitting at Taylor House on 12 July 2017 whereby the Appellant's appeal was dismissed in a determination promulgated on 3 August 2017. The Appellant's claim was that he was at risk on return to Bangladesh because he is gay and that thereby he would be persecuted or that he would be at serious risk of harm in terms of humanitarian protection or indeed in breach of Article 3 of the European Convention on Human Rights. Additionally, the Appellant said he relied on paragraph 276ADE(vi) of the Immigration Rules and on Article 8.

2. Permission was granted in this case by Acting Resident Judge Appleyard by way of a decision dated 25 August 2017 when the judge noted as follows:

“The Appellant is a citizen of Bangladesh and made application to the Respondent for international protection consequent upon a claimed fear of persecution by reason of his homosexuality. That application was refused and he appealed and following a hearing Judge of the First-tier Tribunal Devittie, in a decision promulgated on 3 August 2017, dismissed the Appellant’s appeal ‘on asylum grounds’... Nevertheless, the grounds are all arguable and particularly the assertion that the Judge has erred in dealing only with an asylum appeal when before him were also appeals in relation to humanitarian protection, paragraph 276ADE(1)(vi) of the Immigration Rules and Articles 3 and 8.”

3. The judge had concluded in his decision as follows at paragraph 9:

“I find in the light of the unsatisfactory features that I have identified, that the Appellant has failed to establish that it is reasonably likely to be true that he is a gay person. It follows that this Appellant does not have a well-founded fear of persecution in Bangladesh because of his sexuality. He has failed to establish that he is a gay person. I would accordingly dismiss this appeal.”

4. Mr Rees who appears before me today and who had also appeared before the First-tier Tribunal, drafted the grounds of appeal dated 11 August 2017. It is contended that there are material errors of law as follows:

“(1) The first ground of appeal is that FtT Judge Devittie has fallen into legal error in his decision in his having failed to address directly much of the Appellant’s case put before him. The judge has failed to deal with his Humanitarian Protection claim, his ECHR Art 3 claim, his para 276ADE(1)(vi) claim under the Immigration Rules as well as his ECHR Art 8 claim. For the judge has only made a decision on the asylum claim. Yet the judge has made an anonymity direction in relation to this case.”

5. In submissions before me today it was submitted that there was a proper challenge to credibility particularly at paragraphs 4, 6, 7 and 8 of the grounds.

6. Ms Pettersen relies on the Rule 24 reply which says in material parts that the judge did give detailed reasons why he did not accept the Appellant is gay, that the Appellant had been in the UK since 2009 and yet he waited until 2016 to mention his sexuality even though he could have mentioned it in 2013 when his Tier 4 application was refused. It is also said on behalf of the Secretary of State that although there does appear to be an omission in that the judge did not explicitly deal with Article 3 or humanitarian protection, in a case such as this the case would have fallen or stood with the asylum claim. Ultimately it was submitted that the

outcome would be the same and that the grounds themselves did not make any detailed challenge in respect of credibility and although it was accepted that the judge had Rules, the Appellant had only been here for eight years and there was no real evidence other than that he had some distant relative or relatives here. There was no real evidence of very significant obstacles. It was submitted that there was indeed an omy significant obstacles. It was submitted that there was indeed an omission by the judge. It was unfortunate but it was a case where it was unlikely to make any difference and any error therefore was not material.

7. I have to say I had much sympathy with that submission on behalf of the Respondent. The Appellant's grounds did not fully engage with the credibility aspects of the case. When in discussion this morning I asked Mr Rees to deal with these matters, in reality his submissions amounted to mere disagreement with various aspects of what the judge had found but I do hesitate because the omissions on the part of the judge are significant in relation to not making findings in respect of paragraph 276ADE, Article 8 and humanitarian protection. It is possible that the judge may ultimately have come to the same decision, namely to dismiss the Appellant's claim, but it is right to observe that it is not easy to be clear if he would have done so.
8. What I explored with the parties was whether I ought to remit this matter with the current findings to enable the omissions, to be dealt with by the same judge. Namely the paragraph 276ADE, humanitarian protection and Article 8 matters. In my judgment, however, there is just enough to enable me to conclude that the matter has to be remitted for a complete rehearing. That is because in my judgment the judge has failed to fully grapple with the issues in respect of risk on return relating to sexual orientation. The Appellant has provided some explanation for his delay in claiming asylum and the problems centred around "coming out. I have to say it has been a finely balanced decision.
9. In the end, I am just persuaded that there is a material error of law in the whole of the decision, including the protection claim. There will be a complete re-hearing. None of the findings shall stand.

### **NOTICE OF DECISION**

There is an error of law in the decision of the First-tier Tribunal.  
The decision of the First-tier Tribunal is set aside.  
There shall be a re-hearing at the First-tier Tribunal.

### **ANONYMITY**

Rule 4 of the Tribunal Procedure (Upper Tribunal) Rules 2008 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 their family. This direction applies both to the Appellant and to the

Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Abid Mahmood  
Deputy Upper Tribunal Judge Mahmood  
October 2017

Dated: 25<sup>th</sup>