



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

Appeal Number: PA124322016

THE IMMIGRATION ACTS

**Heard at Field House
On 25.7.2017**

**Decision and
Promulgated
On 27.7.2017**

Reasons

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
GA BLACK**

Between

**MR M K
ANONYMITY ORDER MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Chelvan (Counsel)

For the Respondent: Mr P. Duffy (Home office presenting officer)

DECISION AND REASONS

1. The appellant is a citizen of Iran and whose date of birth is 18.2.1984. He appeals against a decision before First-tier Tribunal Judge Abebrese (“FTT”) promulgated on 13.2.2017 in which he dismissed his asylum appeal. The appellant claimed asylum on the grounds that he faced persecution because of his sexual identity as a gay man and for political reasons. He claimed that he had been filmed while having sex with a man and the film was in the hands of the Revolutionary Guard. Further he claimed that he was at risk because his father had been executed because of his association with Kurds. He fled from Iran with only his bank card.
2. The appellant appeared before the FTT and was not legally represented. The issue to be determined was whether or not the appellant was gay (**HJ (Iran) v SSHD 2010 UKSC 31**). The appellant relied on his substantive interview and oral evidence. He was cross examined by the representative from the Home Office. The FTT found the appellant was not credible that he was gay or that there was a film of his sexual activity [21]. The evidence was recorded in two paragraphs at [19 & 20]. The FTT found the evidence to be vague, based on hearsay and unsupported [24].
3. The grounds of appeal for permission contend that the FTT failed to follow procedural requirements applicable to an unrepresented appellant as set out in Adjudicator’s guidance no 5 and that because he relied on sexual identity he ought to have been treated as a vulnerable witness following the Joint Presidential Guidance note no 2 of 2010. Secondly, the FTT failed to have regard to CG decisions on sexual identity in Iran (**RM & BB (Homosexuals) Iran [2005] UKAIT 00117**). The third ground contended that the FTT materially erred by finding that there was a lack of corroboration and reliance on hearsay [24].
4. Permission was granted on all grounds by FTJ Page.
5. At the hearing before me Mr Duffy conceded that there was a material error of law as argued in the third ground as to the FTT concluding that there was a lack of corroboration. Mr Chelvan submitted that the matter ought to be remitted to the First-tier Tribunal.

Discussion

6. I find that there were material errors of law in the decision and reasons which I set aside. It was not apparent from the decision (nor from the record of proceedings) that the FTT had given any consideration to the fact that the appellant was unrepresented and that he had not made a witness statement and whether or not it was in the interests of justice to adjourn the hearing. I find that there was an absence of reasons given by the FTT as to why it found that the appellant was not credible as to his sexuality. Some reference is made to the answers given in the substantive interview [21 & 22] but no reasons were given in support. It is clear that the appellant expressed some difficulty in expressing himself in terms of his sexuality [16]. There was no reference to the Guidelines to treat

witnesses as vulnerable. It was unclear the extent to which the reasons for refusal had been put to the appellant during the hearing and during cross examination. The FTT did not record whether or not the points raised in the refusal letter had been put to the appellant. Further as conceded by Mr Duffy the FTT erred at [24] by in effect requiring corroboration.

Decision

7. The decision is set aside. The appeal is remitted to the First-tier tribunal for hearing de novo (excluding Judge Abebrese) at Taylor House. I make an anonymity order.

Signed

Date 26.7.2017

GA Black

Deputy Judge of the Upper Tribunal

Direction Regarding Anonymity - Rule 14 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

Date 26.7.2017

GA Black

Deputy Judge of the Upper Tribunal