



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

Appeal Number: PA/04658/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 10 December 2019**

**Decision & Reasons Promulgated
On 24 December 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**[A D]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim (instructed by Murgul law)

For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the appellant in relation to a decision in the First-tier Tribunal by Judge Housego, promulgated on 16 September 2019, in which he dismissed the appellant's protection appeal.
2. The appellant is a national of Bangladesh who claimed to be entitled to international protection on account of his being a gay man from Bangladesh.
3. Permission to appeal to the Upper Tribunal was granted by a Judge of the First-tier Tribunal on the basis that it was arguable that the CPIN did not

suggest, as the judge concluded, that it was only those who are activist or otherwise “stood out” as LGBT who would be at risk. It was also arguable that, although the judge found that the appellant would not be open on return, that conclusion was not fully reasoned because, the judge said that he had felt it unnecessary to decide the point. It is also arguable that he did not give full reasons for his conclusion as to the fourth part of the HJ (Iran) test.

4. A brief background to the claim is that the appellant, born in July 1990, came to the UK in September 2000 with a multi visit student visa. His leave was extended until December 2015. In December 2016 the appellant was served with notification of liability to be detained and later the same month claimed asylum. That claim was rejected in December 2017 and in February 2018 his appeal was dismissed.
5. The appellant made a further application for asylum in September 2018 which was refused on 12 April 2019. That is the decision appealed to the First-tier Tribunal.
6. In his first appeal, dismissed in 2018, the First-tier Tribunal did not accept the appellant was gay.
7. Judge Housego however concluded, having heard evidence, particularly that the appellant had been residing in a same-sex relationship with a man in Cornwall for a considerable period of time, that the appellant was indeed gay. By the time of the hearing before Judge Housego that relationship had come to an end.
8. The appellant also claimed to have been in a relationship in Bangladesh and when he and his partner were caught, they were beaten. However, he was not attacked following that incident nor was he of any interest to the authorities.
9. Having accepted his sexuality, Judge Housego went on to consider risk on return. Judge Housego noted there had been no difficulties following his discovery in a same-sex relationship in Bangladesh in the past, although life had been uncomfortable.
10. At paragraph 61 of the Decision and Reasons the judge correctly identified the issue in the case was whether the appellant would choose to live as openly gay or discreetly in Bangladesh; whether there was a risk on return from family, state or non-state actors, and whether there is a sufficiency of protection or whether internal relocation would remove any risk.
11. Judge Housego considered the previous determination carefully and concluded, bearing in mind the lower standard of proof applicable, that a reappraisal in a holistic way, of all of the evidence led to a different outcome and his finding that the appellant is gay.
12. The judge noted at paragraph 73 that there were no prosecutions in Bangladesh and so no risk from the State to the appellant.

13. He noted at paragraph 74 that the appellant is not an activist and that his profile in the UK is very low-key. He therefore concluded that the appellant would not come to attention in Bangladesh if he returned, any more than he had before he left. He had not been persecuted in the year before coming to the UK and the judge found no reason why he would be persecuted on return. He found that attendance at UK Gay Pride marches did not indicate that he would be an activist in Bangladesh and that the objective evidence was that activists face persecution but not ordinary people who are gay.
14. The judge then considered the CPIN, which had been placed before him and noted that there were only two short paragraphs about LGBT people and those referred only to risk for activists.
15. The judge also dealt with the HJ (Iran) questions, setting them out at paragraph 86. Having concluded that the appellant was gay, the judge then repeated his finding that, for people such as the appellant, who was not an activist and who had suffered physical violence only once, when caught in the act of same-sex activity, but not thereafter either from society or the authorities, there was no well-founded fear of persecution.
16. I was referred to the relevant part of the CPIN report and agree with the grounds and my colleague in the First-tier Tribunal, who granted permission, that the judge has misunderstood the contents of the CPIN.
17. At 2.2.1 of the CPIN it is accepted that LGBT persons in Bangladesh form a particular social group within the meaning of the Refugee Convention.
18. At 2.2.2 it is stated that although LGBT persons in Bangladesh form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person faces a real risk of persecution on account of their membership of such group.
19. At 2.3.17 it is stated that in general an LGBT person who does not conceal their sexual orientation or gender identity may be at risk of treatment, which by its nature and repetition amounts to persecution or serious harm. LGBT rights activists and bloggers may be at greater risk due to their profile. However, each case must be considered on its own facts, with the onus on the person to demonstrate why their particular circumstances would put them at real risk from non-state actors.
20. It is not the case, therefore, that only activists or bloggers are persons at risk and it was necessary for the judge to go on to consider the other aspects of HJ (Iran) and in particular how the appellant would behave on return and if he would be discreet why that would be the case and he did not do so.
21. In failing to do so I find the judge made a material error of law. The Decision and Reasons therefore must be set aside.

22. Given that it is the judge's assessment of the facts on the basis of the CPIN that is the error and not his credibility or other findings of fact, there is no reason why the matter cannot be re-decided on submissions.
23. Both representatives agreed and Mr Bramble helpfully indicated that it was accepted that the appellant is a gay man.
24. In his submissions, Mr Bramble accepted that this was an appellant who had been openly gay in the UK, living in a same-sex relationship and who had previously been attacked in Bangladesh.
25. He acknowledged that openly gay men in Bangladesh would have a well-founded fear of persecution. In terms of whether this appellant would be open, the appellant had said that he would. However, Mr Bramble noted that he had been discreet in the past and his behaviour in the UK indicated that he was naturally discreet. He also acknowledged that, if I did not accept that the appellant would behave discreetly in Bangladesh, or alternatively would do so only because of fear of persecution, then the appellant is entitled to asylum.
26. I find that the way the appellant behaved when in Bangladesh previously, when he had not had experience of living in a country tolerant to same-sex relationships, he did behave in a discreet fashion. However, he has since had experience of living in the UK and living openly as a gay man. Not only did he have a relationship but lived with his partner in a same-sex relationship. I am prepared to accept the evidence that he gave that he would wish to live openly as a gay man in Bangladesh and the only reason he would not do so would be fear of persecution. That being the case, it is accepted by Mr Bramble that the appellant is entitled to succeed in his protection claim and is entitled to asylum as he meets the requirements for refugee status as set out in the Refugee Convention.
27. For all of the above reasons, I find that the First-tier Tribunal Decision and Reasons contained a material error of law in its conclusions. Having redecided the matter, I allow the appeal on asylum grounds.
28. Accordingly, the appeal to the Upper Tribunal is allowed.
29. Having allowed the appeal, I see no justification in making an anonymity direction and do not do so.
30. No anonymity direction is made.



Signed
2019

Date 23 December

Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.