



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

Appeal Number: PA/07947/2016

THE IMMIGRATION ACTS

Heard at Birmingham

On 25th August 2017

**Decision & Reasons
Promulgated**

On 20th September 2017

Before

UPPER TRIBUNAL JUDGE KING TD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[MG]

(ANONYMITY DIRECTION MADE)

Claimant/Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer

For the Claimant/Respondent: In person

DECISION AND REASONS

1. The claimant is a citizen of Ghana born on [] 1978. He entered the United Kingdom in 2012 as part of a team for the London Olympics. He did not return but rather claimed asylum on the basis of his sexual orientation. That claim was refused by the respondent in a decision of 17th June 2016.

2. The claimant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Juss on 17th February 2017. In a decision of 7th March 2017 the appeal was allowed.
3. The Secretary of State for the Home Department seeks to appeal against that decision on the basis that it is obvious from it and from the findings made by the Judge, as expressed within it, that it was the intention of the Judge to dismiss the appeal. For some reason however paragraphs 19 to 24 of the determination have been inserted in a different font and relate to an altogether different appellant (claimant), namely one from Libya. It is clear that when the Judge indicates that he allows the appeal, it is in the context of the Libyan and not in the context of the claimant himself.
4. Permission to appeal to the Upper Tribunal was granted on that basis and the matter comes before me.
5. It is entirely clear from paragraphs 1 to 18 that the Judge, having heard the claimant, does not believe him in any way. In essence the claimant says that he faces discrimination and brutalisation and mistreatment because of the fact that his sexual orientation has been revealed. The Judge does not accept that and came to the conclusion that the Government of Ghana would not have sponsored him to come to the Olympics had that been the case, particularly having regard to the attitude of the Government towards homosexuality.
6. Although the claimant was suffering from HIV it was not considered that treatment for that condition was available in Ghana, such that he could return.
7. Thus it is entirely clear from those paragraphs that the Judge was minded not to grant the appeal. However, paragraphs 19 to 24 are clearly entered in a different font, and indeed make it clear that they are referable to a Libyan. Indeed, paragraph 22 when considering Article 8 rights makes reference to the person who is the subject matter of those particular few paragraphs to have a wife and children and that clearly does not relate to the claimant in any way at all.
8. Clearly, therefore, I find that when the Judge indicates at paragraph 23 that he allows the appeal it is in relation to the Libyan that is referred to in paragraph 19 and not to the claimant.
9. Although it is understandable that mistakes are made with cutting and pasting, it does denote a lack of anxious scrutiny to the case in hand that such an obvious error remained unchecked even upon the signing and promulgation of the decision.
10. It is clearly a defective determination and reaching no stated conclusions in relation to the appellant.
11. Mr Kotas on behalf of the Secretary of State invites me to remit the matter back to the original Judge for the Judge to correct the determination. The

claimant objects to that course of action on the basis that it is quite apparent from the nature of the determination and the obvious lack of checking of that determination before being issued, that the Judge failed to give anxious consideration to his case and to maintain an accuracy of decision making.

12. It seems to me that it is important that justice is to be not only done but seen to be done and the criticism of lack of anxious scrutiny is one that is borne out in the circumstances of this determination. It is important that the appellant feels that he has had a fair hearing and that correct details of his case and situation have been noted.
13. In the circumstances therefore the decision of Judge Juss shall be set aside. The matter shall be remitted to the First-tier Tribunal for a re-hearing of the facts.
14. In order not to further delay proceedings I asked the claimant what further evidence, if any, he would be relying upon, upon the re-hearing. He presented a medical report of 16th August 2017 from the Leicester NHS and an article from the website dated 25th July 2017 on same-sex marriage as an abomination. Copies of those matters have been made and are in the file. The claimant indicated that apart from that all matters were ready for a re-hearing.

Notice of Decision

15. The Secretary of State's appeal before the Upper Tribunal is allowed. The decision of First-tier Tribunal Judge Juss is set aside. The matter will be re-heard by the First-tier 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 18 September 2017

Upper Tribunal Judge King TD