



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

Appeal Number: PA/08706/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 18th September 2017**

**Decision & Reasons Promulgated
On 29th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**HA
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Ofei-Kwatia, Counsel

For the Respondent: Ms Z Ahmad, Senior Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Andrew allowing the Appellant's appeal in respect of the Appellant's claim for protection by virtue of refugee status or humanitarian protection. The Secretary of State appealed against that decision and was granted permission to appeal by First-tier Tribunal Judge Lambert.

2. The grounds upon which permission was granted may be summarised as follows. It is arguable that the judge's reasoning is inconsistent or inadequate in respect of finding the Appellant credible on his account of being homosexual. I was not provided with a Rule 24 response from the Appellant but was addressed in oral submissions by his Counsel.

Error of Law and Re-making

3. At the close of submissions I indicated that I reserved my decision which I shall now give. I do not find that there is an error of law in the determination such that it should be set aside. My reasons for so finding are as follows.
4. The criticisms made by the Respondent in my view amount to a disagreement in terms of the findings made by the First-tier Tribunal Judge which were properly open to her. As noted by the judge in her determination at paragraph 15 the Respondent accepted that if it was found that the Appellant was openly gay he would not be able to return to Pakistan. The judge fully appraised the previous *status quo* in terms of the Appellant's previous failed asylum claim implicitly in accordance with *Devaseelan* principles (see *Devaseelan* UKIAT [2002] 000702 Starred). The judge noted that the Appellant had not claimed asylum when he first arrived and that his actions did not reflect those of a person fleeing persecution and also that the Appellant's previous claims were not believed in his failed appeal. The judge also noted that the Appellant's previous claim to have been in a relationship with a woman militated against him being gay as he now claimed but for fairly robust reasons the judge allowed the appeal.
5. In my view it is clear why the judge allowed the appeal based upon her analysis of the evidence before her. It may be that the judge's decision is shorter than the Respondent might have wished for but the reasons are adequate and intelligible sufficiently demonstrate that the judge reached a decision having taken into account all of the relevant factors, and reached a conclusion that was clearly open to her on the evidence before her.
6. Thus in my view the judge's decision could not be described as perverse or irrational and the findings are adequate in accordance with *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982.
7. In light of the above findings, I do not set aside the decision of the First-tier Tribunal.

Notice of Decision

8. The decision of the First-tier Tribunal is hereby affirmed.
9. The appeal to the Upper Tribunal is dismissed.

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

Deputy Upper Tribunal Judge Saini