



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

Appeal Number: PA/06221/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 10th January 2018**

**Decision & Reasons
Promulgated
On 23rd February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**FK
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S Muquit, Counsel instructed by Connaughts

For the Respondent: Mrs. N Wilcocks Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was made by the First-tier Tribunal. As this a protection claim, it is appropriate that a direction is made. 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 his family. This direction applies amongst others to all

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

2. The appellant is a Bangladeshi national who appealed to the First-tier Tribunal (“FtT”) against a decision of the respondent dated 15th July 2017 refusing his claim for asylum. His appeal was dismissed for the reasons set out in the decision of First-tier Tribunal (“FtT”) Judge Asjad promulgated on 4th September 2017.

The decision of the FtT Judge

3. A summary of the appellant’s asylum claim is set out at paragraphs [3] to [10] of the decision of the FtT Judge. I do not repeat the account of events relied upon by the appellant in this decision. The Judge heard evidence in support of the appeal from [SH] and [AL], as noted at paragraph [2] of the decision.
4. The findings and conclusions of the Judge are to be found at paragraphs [16] to [27] of the decision. The Judge accepts, at [17] and [20], that the appellant has discharged the burden that rests upon him to establish that he is gay. The Judge notes at paragraph [21] that the issue therefore is whether the appellant would be at risk upon return to Bangladesh.
5. The Judge refers, at [22], briefly to the objective evidence, and in particular, to the test set out by Lord Hope in his judgement in **HJ (Iran) - v- SSHD [2010] UKSC 31**. Clearly, such appeals involve what is essentially an individual and fact-specific inquiry. Having found that the appellant is gay, at paragraphs [24] to [27] of his decision, the Judge addresses the second stage of the step by step approach suggested by Lord Hope.
6. At paragraph [24], the Judge records that it is not in issue that same sex relationships are illegal in Bangladesh. The Judge refers to extracts from the respondent’s Country Policy and Information note (“COI policy note”) that suggest that in general, LGBT persons in Bangladesh are not at real risk of prosecution under the law, and that in general, the societal

treatment of LGBT persons in Bangladesh, even when taken cumulatively, does not reach the level of being persecutory or otherwise inhuman or degrading treatment. The COI policy note emphasises that decision makers should consider each case on its facts, and that the onus will be on the person to demonstrate that they would be at risk from the authorities or from non-state actors.

7. At paragraph [25] of his decision, the Judge states:

“It is the Appellant’s case that he is at risk from his father. He relies upon an affidavit to say that his father has disowned him and brought shame to the family. The affidavit contains broad threats from ‘family members and community’. The Appellant has not reported the matter to the police as he claimed that there would be little point.”

The Judge then refers to an extract from the COI policy note that confirms that there are non-governmental organisations (NGOs) in Bangladesh who advocate for LGBT rights and the LGBT community and which may be able to assist the person to avail themselves of the protection of the state.

8. At paragraph [26] the Judge concludes as follows:

“I do not find that the Appellant has shown that in his particular circumstances state protection is not available. The Appellant has the option of moving to another part of Bangladesh where he would be able to re-integrate. He has friends in the UK who could assist him until such time that he has settled and as noted there are NGO’s in Bangladesh who could also assist him...”

The Judge goes on in that paragraph to refer to the COI policy note, which suggests that it would not, in general, be unreasonable or unduly harsh for a gay man who is able to demonstrate a real risk in his home area because of his particular circumstances, to relocate internally within Bangladesh. The COI policy note also suggests that Bangladesh is one of the world’s most densely populated countries, If an LGBT person’s family wishes to pursue and harm them in the place of internal relocation, their ability to do

so will depend on the reach of the family network, how persistent they are, and how influential.

9. At paragraph [27] the Judge concludes as follows:

“Internal relocation is a viable option for this Applicant. He has studied in the UK and has gained valuable qualifications that would assist him in finding a job in Bangladesh. He is aware of the culture and language and could adapt to living in a different area as he has adapted to living in the UK - a country with a different culture and language.”

The appeal before me

10. The appellant contends that the decision of the FtT Judge is infected by a material error of law. It is said that in the appellant’s bundle that was before the FtT Judge, contained a number of documents including other background material, including an article from the New York Times and from the BBC that provided evidence of a greater risk to homosexuals in Bangladesh. It is said that the Judge considered the COI policy note as if it were the only and definitive answer to the question of risk and internal relocation, and erred in law in failing to consider the other background material relied upon by the appellant at all. In his assessment of whether there is a sufficiency of protection for the appellant, it is said, the Judge had before him evidence of recent arrests of 27 people for homosexuality in Bangladesh, and the Judge needed to be far more cautious before accepting an assertion in the Home Office objective evidence that sufficiency of protection may be available via LGBT groups. The appellant claims that the Judge’s assessment of the risk upon return was therefore inadequate.
11. Permission to appeal was granted on 10th November 2017 2017 by FtT Judge Birrell. The matter comes before me to determine whether the decision of the FtT contains a material error of law, and if so, to remake the decision.

12. At the hearing before me, Mr Muquit submits that the Judge concluded, at paragraph [26] of his decision, that the appellant has not established that in his particular circumstances, state protection would not be available to him. He submits that the Judge reached that conclusion on the basis of the extracts referred to from the COI policy note, but the Judge failed to have regard to all of the evidence including an affidavit from the appellant's father that was to be found at page 85 of the appellant's bundle. Mr Muquit also referred me to the background material that is to be found at pages 130 to 148 of the appellant's bundle.
13. I reject the claim made by Mr Muquit that the Judge did not have a regard to the affidavit made by the appellant's father. In reaching his decision the judge plainly had regard to that evidence. It is referred to at paragraphs [13] and [25] of the decision. The Judge records, at [13], that in the refusal letter, the respondent had noted:

“The Appellant claimed that he told that his parents that he was gay in April 2016, when they told him to return to Bangladesh to get married. It was noted that it was his father who financially supported his application to extend his stay in the UK in 2016. This was at odds with the Appellant's claim that his father wanted him to return to Bangladesh to get married at the same time the application was being made. It was noted that the Appellant made no mention that his father threatened to kill him in his asylum interview. In his screening interview, the Appellant stated that his friend told his parents that he was gay, and later in his asylum interview he contradicted himself by stating that he himself told his parents the news. The affidavit threatening to kill the Appellant is written in English and the document is headed in Bengali. Little weight is attached to this document because of the inconsistencies regarding the problems with his family...”

14. At paragraph [19] of the decision, the Judge states:

“I accept that there was some inconsistency about how the Appellant's family were told about his sexuality and whether the Appellant told

them first or his friend did. That inconsistency was noted in the reasons for refusal letter and indeed continued during the course of the hearing. As it stands the matter remains unresolved...".

15. The affidavit in itself, is a curious document. The document, written in English and signed by the appellant's father attests to the relationship between the appellant and his family to be "*finished....because of his sexuality*". The affidavit states that "*due to the above factors my family members and the community of the area.... have decided to kill him if he comes back to Bangladesh because this is a wrong way from the preaching of Islam...*". It is not clear why, if as the appellant claims at paragraph [22] of his witness statement dated 21st July 2017, his father had told him that he is no longer his son, and he is ashamed to be his father, and that if he came back to Bangladesh he would kill him, the appellant's father would provide an affidavit in support of a claim for international protection. In any event, there is nothing in that affidavit that even begins to suggest that if the appellant were to relocate internally, the family has the reach and influence to pursue the appellant in one of the worlds most densely populated countries.
16. In reaching his conclusions the Judge refers to the Affidavit when considering whether the appellant is at risk upon return and can avail himself of protection from the authorities. The Judge states, at paragraph [25]: and states:

"It is the Appellant's case that he is at risk from his father. He relies upon an affidavit to say that his father has disowned him and brought shame to the family. The affidavit contains broad threats from 'family members and community'. The Appellant has not reported the matter to the police as he claimed that there would be little point...."

The Judge plainly had in mind the affidavit from the appellant's father when considering whether the appellant is at risk upon return.

17. I accept that the Judge does not expressly refer to the background material that is to be found in the appellant's bundle. In my judgement the failure to do so, does not betray an error of law in the decision, and in any event, is immaterial.

18. The article published in the opinion pages of the New York Times dated 30 June 2017, refers to the murder of two prominent members of Bangladesh's LGBT community, Xulhaz Mannan and Mahbub Rabbi Tonoy on 25th April 2016. The article claims that Mr Mannan was murdered "*.. because he had fostered a powerful vision of visibility around Bangladesh's marginalized L.G.B.T. communities and published Bangladesh's only L.G.B.T. magazine, Roopbaan.*". The article confirms that one arrest has been made but no trial has begun. The article goes on to state that with "*an election approaching at the end of next year, the persecution of Bangladesh's L.G.B.T. community is likely to get worse. In late May 2017, 28 L.G.B.T. men were arrested when they gathered for a party. A paramilitary force publicly identified them as homosexual. Meanwhile, the ruling Awami League has started to align itself with homophobic, fundamentalist Hefazat-e-Islam....*". The BBC news article relied upon by the appellant also concerns the death of Mr Xulhaz Mannan. That article notes that "*..Since February last year suspected militants have killed several secular or atheist writers and members of religious minority groups...*" and "*..The two men were murdered two days after a university teacher was hacked to death by suspected Islamist militants. So-called Islamic State (IS) claimed responsibility - but the Bangladeshi government insists there is no IS presence in the country.*". The BBC report also states that "*..BBC Bengali Service editor Sabir Mustafa said staff at Roopbaan, a magazine and activist group for Gay, Bisexual and Transgender (LGBT) community that had not been condemned by the government and received some support from foreign embassies, had been careful to protect their identities but had not believed their lives were at risk.*". The Guardian report that appears at page 140 of the appellant's bundle, again focusses upon the killing of Xulhaz Mannan.

19. The appellant also relied upon an Article from the Washington Post from 19th May 2017 and the Independent, that appears at pages 143 to 148 of the appellant's bundle concerning the arrest of 27 men. There are conflicting claims as to whether the men were arrested for drug offences or for 'homosexuality'.

20. The deaths of Xulhaz Mannan and Mahbub Tonoy on 2th April 2016 are in fact referred to in the COI report, at 6.1.6 to 6.1.8. At 6.1.8, the COI policy note states:

"..Reuters reported on 18 May 2016 that 'Home Minister Asaduzzaman Khan said no one involved in the killings [of Xulhaz and Mahbub] would be spared...' But the Minister also urged people to respect religious sensitivities, telling reporters "I request everyone to express views moderately. We have learned that Xulhaz was an editor of an LGBT magazine and used to work to protect the rights of gay people. It is not in line with our society."

21. The appellant here does not have any particular profile. In my judgement, the Judge of the FtT properly addressed the second stage of the examination as to the situation upon return that was referred to by Lord Hope in **HJ (Iran)**. The Judge considered what the appellant was likely to face upon return to Bangladesh. The Judge was entitled to consider the matters set out in the COI policy note to provide the background. Although the Judge did not refer to the articles provided by the appellant in the appellant's bundle, the killings that are referred to in those articles are in fact referred to in the COI policy note. The Judge properly noted, at [24], that , same sex relations are illegal in Bangladesh, but went on to consider, in light of the background material, whether the appellant was at real risk of prosecution under the law. The question for the Judge was how the applicant, looked at individually, will conduct himself if returned, and how others will react to what he does. There is nothing in the applicant's individual case that begins to show that he would be at risk upon return. In my judgement it was open to the Judge to find that the appellant has not established that state protection is not available to him. Similarly, it

was open to the Judge to find that internal relocation is a viable option for this appellant for the reasons given by the Judge.

22. Having carefully considered the decision of the F&T Judge, I am entirely satisfied that it was open to the Judge to dismiss the appellant's appeal for the reasons set out in the decision. The decision does not disclose any error of law and I dismiss the appeal.

Notice of Decision

18. The appeal is dismissed.

19. An anonymity direction is made.

Signed Date 12th February
2018

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

There can be no fee award.

Signed Date 12th February
2018

Deputy Upper Tribunal Judge Mandalia