



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12755/2017

THE IMMIGRATION ACTS

Heard at Bradford  
On 15 May 2018

Decision & Reasons Promulgated  
On 21 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AR

(ANONYMITY ORDER MADE)

Respondent

**Representation:**

For the Appellant: Mr Diwyncz a Home Office Presenting Officer

For the Respondent: None

DECISION AND REASONS

Background

1. For the purpose of continuity with the determination in the First-tier Tribunal I will hereinafter refer to the Secretary of State as the Respondent and AR as the Appellant.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify AR. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to Contempt of Court proceedings.
3. The Respondent refused the Appellant's application for asylum or ancillary protection on 21 November 2017. His appeal against this was allowed by First-tier Tribunal Judge Drake ("the Judge") following a hearing on 16 January 2018.
4. In summary the Judge found that the Appellant had established he was bisexual who had been ill-treated and treated with hostility by his family [14, 20.1, 20.2] and third parties including a Muslim group [20.2, 20.4]. His friend has been ill-treated by the Muslim group [20.5]. The Judge found that he could not safely internally relocate [20.2, 20.6] if he identified as bisexual.

#### The grant of permission

5. Judge Brunnen granted permission to appeal (14 February 2018) only on the ground that it is arguable that the Judge did not adequately address the question of internal relocation from non state agents of persecution.

#### Respondent's position

6. The Judge did not adequately consider the fact that LGTB persons are tolerated by the state. The background evidence, however, supports the notion that this "does not necessarily extend to offering protection from harassment or discrimination from non state actors." They would however be prepared to offer protection from ISIS. Morocco is a large country. The Judge should have considered whether he could live freely as a bisexual. The failure to do so is a material error of law.

#### Discussion on error of law

7. The failure to consider whether the Appellant would live openly as a bisexual person in Morocco, and if not why not, was fundamental to the consideration of internal relocation. The failure by the Judge to consider that amounted to a material error of law. Accordingly, I set aside the decision.
8. Having heard from the parties I decided that it was appropriate to rehear the matter as the Appellant spoke excellent English, could give evidence on the points the Judge had not considered, and delaying the hearing when there was ample time to hear the evidence was not in line with the overriding objective enshrined in the procedure rules.

Evidence on rehearing

9. The Appellant said that while in Sheffield he has had sexual relationships with men he has met in gay bars. He would, however, hide his desire to have sexual relations with men in Morocco as the police would jail him, Muslim groups would harm him, and his family would abuse and beat him.

Discussion on error of law

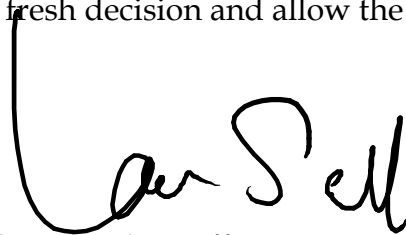
10. I accept it is reasonably likely the Appellant would wish to have sexual relations with men in Morocco as he has done so in the past where he was ill-treated, and he has done so here safely. I accept it is reasonably likely he would not do so even if he internally relocated for fear of ill-treatment from his family and Muslim groups as happened in the past.
11. The Respondent's Country Policy and Information Note on Morocco (July 2017) states (2.5.4) "Internal relocation will not be a reasonable option if it depends on the person concealing their sexual orientation and or gender identity in the proposed location for fear of persecution."
12. The Appellant should not be required to hide his sexuality out of fear of ill-treatment or persecution from which he cannot receive adequate state protection. That is the position here. The Appellant has established he has no internal relocation option. I am therefore satisfied he is entitled to be recognised as a refugee.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I substitute a fresh decision and allow the Appellant's appeal.



Signed:  
Deputy Upper Tribunal Judge Saffer  
15 May 2018