



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00741/2019

THE IMMIGRATION ACTS

Heard at Field House
On 22nd July 2019

Decision & Reasons Promulgated
On 29th August 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR S A P
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Murphy, Counsel, instructed by City Heights,
Solicitors.

For the respondent: Ms S Cunha, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of Bangladesh, born in August 1980. He came to the United Kingdom on 20 June 2009 on a working holiday Visa. This was valid until 2 June 2011. He overstayed and was encountered by the respondent's staff on 13 December 2013. He was served with an IS151A advising him that he was liable to

removal. He remained in the United Kingdom and on 6 September 2018 made a claim for protection.

2. The basis of his claim is that he is at risk if returned because he is Gay. He said he became aware of his sexuality in his late teens when he had relations with his cousin.
3. The respondent did not accept his claim was true and had not established he was Gay. Reliance was placed upon section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 and the fact the appellant did not make his claim until after he was encountered and when preparations were being made for his return.

The First tier Tribunal.

4. His appeal was heard by First-tier Tribunal Judge Quinn at Hatton Cross on 18 April 2019. The appeal was dismissed.
5. The judge heard from the appellant and two other witnesses. The judge does not set out in any detail the evidence. The judge concluded he could live in Bangladesh as he had done before.
6. The appellant had claimed his uncle was an MP and was in a position to cause him difficulties. The judge referred to the absence of evidence to confirm this claim and rejected it.
7. The judge did not find the appellant to be a reliable witness and relied upon section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004. The judge rejected the appellant's claim that he was unaware he could claim protection earlier.
8. The judge then went on to find the appellant had not established he was Gay. In the alternative, by hiding his sexuality he would not be at risk in Bangladesh.

The Upper Tribunal

9. Permission to appeal was granted on a number of grounds, the strongest of which was considered to be the failure to apply the principles in HJ Iran and the absence of a clear findings as to whether it was accepted the appellant was Gay.
10. At hearing, Ms Cunha accepted there were material errors of law in the decision and that it needed to be remade. She referred to the absence of clear reasoned findings as to the appellant's sexuality. Furthermore, there was no proper consideration of the principles set out in HJ Iran.
11. In light of this concession I did not need to hear further argument from Mr Murphy.

12. I agree with Ms Cunha that the decision cannot stand. There is a lack of clear and reasoned findings. The judge rejects the appellant's claim to be Gay but there is no real analysis of the claim. Whilst a decision need not set out the evidence in any detail it should have a basic structure giving details of the claim made and the evidence produced so as to follow the assessment of same. Whilst the judge rejects the appellant's claim to be Gay there are no reasoned findings. The emphasis is upon the circumstances and delay in claiming protection. The judge applies a blanket notion that if the appellant did not reveal his sexuality he could be returned. There is no analysis as to why the appellant might not reveal his sexuality. The decision does not indicate an appreciation of the reasoning set out in HJ Iran. There is also no clear findings about the appellant's life in the United Kingdom and in particular in relation to Mr O'Connor.

Decision

The decision of First-tier Tribunal Judge Quinn materially errs in law and is set aside. The appeal is remitted back to the First-tier Tribunal for a rehearing.

Deputy Upper Tribunal Judge Farrelly.

Date 27 August 2019

Directions

1. Relist for a de novo hearing in the First-tier Tribunal at Taylor House excluding First-tier Tribunal Judge Quinn.
2. A Bengali/Sylhet interpreter is required, as advised by the appellant's representative.
3. The hearing should not last more than two and a half hours. The appellant's representative anticipated the appellant and one witness would give evidence.

Mr Murphy, Counsel, appeared for the appellant at the original hearing and is anxious if possible to attend the relisted hearing. He asked listing to check with his Chambers [~] to see if this can be facilitated.

Deputy Upper Tribunal Judge Farrelly.

Date 27 August 2019