



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

Appeal Number: PA/06262/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On: 21 February 2020**

**Decision & Reasons Promulgated  
On: 5 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**MR MKU**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Reza, counsel instructed by JKR Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Hobson, promulgated on 24 October 2019. Permission to appeal was granted by Upper Tribunal Judge Grubb on 7 January 2020.

Anonymity

2. Such a direction was made previously and is retained because of the sensitive nature of the claim which involves the appellant's sexuality.

### Background

3. The appellant, who is a national of Bangladesh, arrived in the United Kingdom on 4 April 2007 as a visitor. He then overstayed his visit visa and eventually claimed asylum on 25 May 2016. The basis of his claim is that he is a gay man who is open about his sexuality and would be at risk of serious harm from the Bangladeshi authorities because of his sexuality.
4. By way of a letter dated 26 May 2019, the Secretary of State refused the asylum claim raising numerous concerns about credibility issues, not least the timing of the appellant's claim for asylum. The respondent did not accept that the appellant is a gay man or that he would be persecuted if returned to Bangladesh.

### The decision of the First-tier Tribunal

5. The Judge heard oral evidence from the appellant and three witnesses, one of whom claims to have a casual sexual relationship with the appellant. The Judge found that the appellant was not a reliable witness for reasons set out in her decision.

### The grounds of appeal

6. The grounds of appeal were twofold. Firstly, that the Judge materially erred in drawing adverse credibility findings due to the late claim for asylum without having proper regard to C-148/13 to C-150/13, and secondly failed to make adequate findings or to explain what weight she gave to the evidence of the 3 witnesses who attended the appeal. In particular the Judge failed to explain why she gave no weight to the evidence of the appellant's claimed sexual partner.
7. Permission to appeal was granted on the basis that it was arguable that the Judge erred in law in assessing the appellant's credibility by failing to make any findings in respect of the evidence of 3 witnesses who gave oral evidence at the hearing in support of the appellant and also in his approach to the delay in claiming asylum on the basis of sexuality and the expression of sexuality in the UK following the CJEU decision in the case of A,B and C.
8. The respondent did not submit a Rule 24 response.

### Decision on error of law

9. At the outset of the hearing Mr Tarlow conceded that there was a material error of law and that ground 1 of the grounds was made out.
10. Three witnesses attended the appeal to give evidence in relation to the appellant's sexuality. One witness claimed to be in a casual sexual

relationship with the appellant and another claimed to have seen him at gay venues being intimate with other men. All three witnesses gave evidence that the appellant regularly attends meetings of 'Apanjon' which is a Bangladeshi LGBTQ association.

11. At [35] to [39] the Judge summarises the evidence of the witnesses as set out in their statements, oral evidence and cross examination. There is thereafter in the decision a complete failure by the Judge to consider or weigh this evidence in the round with the remainder of the evidence. The Judge does not refer further to the evidence and does not make findings on whether the evidence is accepted or rejected.
12. Mr Tarlow conceded that the Judge's failure to take into account this evidence when making his findings was an error of law. He also conceded that the error was material because this evidence was crucial to the assessment of the appellant's sexuality which is the central issue in the claim for asylum. On this basis of this concession, I do not go onto consider the remaining ground of appeal.
13. The error mentioned above suffices to render unsafe the decision of the First-tier Tribunal and I set aside that decision in its entirety.
14. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

## **Decision**

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

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at a venue either in London or Birmingham, with a time estimate of 2 hours by any Judge except First-tier Tribunal Judge Hobson.**

## **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: R J Owens  
2020

Date: 21 February

Upper Tribunal Judge Owens