



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

Appeal Number: DA/02573/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 December 2015**

**Decision and Reasons  
Promulgated  
On 13 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE STOREY**

**Between**

**MR JEVON AKEIM DANIEL RIGGAN**

Appellant

**and**

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

Respondent

**Representation**

For the appellant's: H Foot of Counsel instructed by Wilson Solicitors LLP  
For the respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a citizen of Jamaica. On 6 December 2013 the respondent refused to revoke a deportation order made against him in December 2011 in light of his history of criminal convictions. On 1 May 2015 First tier Tribunal Judge Braybrook dismissed his appeal. The appellant challenges that decision on the basis of lengthy grounds and seven were identified and amplified. It is unnecessary to identify any of these save for ground 1, which contends that the judge failed to make

findings on the issue of potential Article 3 risk to the appellant if he were excluded under para 339D of the Immigration Rules. Three things are beyond doubt. First, the appellant did raise before the First tier Tribunal Article 3 grounds claiming he would face risk on return by virtue of his homosexuality. Second, (which I will expand on in a moment) the First tier Tribunal failed to address this issue satisfactorily. Third, on 23 September 2013 Upper Tribunal Judge Chalkley stated that the finding made by a previous tribunal that the appellant was homosexual and in a relationship with a Mr T was “preserved”. In respect of this last matter Mr Jarvis confirmed that the respondent did not seek to go behind that finding.

2. As regards the First tier Tribunal judge’s treatment of the Article 3 basis of claim, the only paragraph where this is addressed is para 25. There is more than one difficulty with this paragraph. First of all, it appears in part to be a continuation of the judge’s separate assessment of whether the appellant met the requirements of the Immigration Rules relating to private life under Article 8, rather than the issue of risk on return under Article 3. Second, insofar as it identifies any reason for rejecting an Article 3-based claim, it is formulated in terms of the benign reaction of the appellant’s family in the UK, not of his family or wider community in Jamaica. The closest the judge came to addressing the latter context was to append to his observation that UK family members had shown little hostility, the observation that “[t]here was no explanation why his immediate family in Jamaica would not respond in a similar way”. The unsatisfactory nature of this treatment of this part of the appellant’s claim was compounded by the fact that in the decision by UTJ Chalkley it has been emphasized that there had been a failure by the earlier tribunal decision with which he was concerned to consider the applicability of the country guidance given in DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica [2005] UKAIT 00168. (Also relevant of course should have been the decision in SW (lesbians – HJ and HT applied) Jamaica CG (2011) UKUT 00251 (IAC) at least insofar as it addressed attitudes towards homosexuality in Jamaica generally.
3. Both parties agreed with me that for the above reason on its own the First tier Tribunal had materially erred in law and that its decision should be set aside.
4. Having heard from the parties I decided further that the appropriate course was to remit this case to the First tier Tribunal. It will be a matter for the next tribunal to determine the precise scope of the appeal, but I would direct (1) that the appellant be able to argue the ground seeking to challenge the exclusion decision; (2) that the tribunal must address the issue of risk on return based on the appellant’s homosexuality (whether this is confined to Article 3 or also engages international protection will be dependent on the outcome of the decision on the exclusion ground; (3) that the appellant be able to argue the Article 8 grounds but this must be done by reference to the Immigration Rules at the date of hearing; (4) in order to assist the next tribunal both parties

are to adduce skeleton arguments setting out in succinct manner the principal points relied on and in the case of the appellant careful attention should be paid to reducing the ambit of the Article 8 grounds relied on previously. For example, it is not open to the appellant to argue that his Article 8 case should be considered outside the Immigration Rules. He is a foreign criminal who falls under provisions in Part 8 of the Rules that have been determined by the Court of Appeal to represent, so far as Article 8 is concerned, a complete code.

5. Subject to compliance with Tribunal directions which will follow in due course, it will be open to the parties to adduce further country of origin evidence relating to male homosexuals in Jamaica.
6. For the above reasons:

The First tier Tribunal materially erred in law and its decision is set aside.

The case is remitted to the First tier Tribunal to be heard by a judge other than Judge Braybrook or Judge Chambers or Judge Brenells or Mr A F Sheward, these four all being First tier judges who in one way or another have been involved previously in the appellant's appeals.

Signed

Judge of the Upper Tribunal

Date: