



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/10030/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 18th May 2016

**Decision &
Promulgated**

On 6th June 2016

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SUKHDEV SINGH
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent/Claimant: Ms P Yong, Counsel

DECISION AND REASONS

1. I shall refer to Mr Singh as the Claimant. His appeal to be allowed leave to remain here was allowed under the Immigration Rules and Article 8 ECHR by First-tier Tribunal Judge Moller in a decision promulgated on 29th October 2015.
2. Essentially the judge found that the Appellant was homosexual and that there would be very significant obstacles to his integration in India; it was concluded that he succeeded under the Rules and also Article 8 ECHR.

3. The Secretary of State lodged grounds of application. The first ground was that the judge had relied in essence on the perceived risk it is said the Appellant would face on return due to his sexual orientation. In those circumstances it was incumbent on the judge to consider the country guidance of **MD (same-sex oriented males; risk) India CG [2014] UKUT 65** and the judge had not done that. Given that the judge was relying on the Claimant's sexuality as an obstacle to integration he should have engaged with the decision in **MD** and considered the issue of relocation outside of the home area. Furthermore India had a large and accessible LGBTI activist and support network.
4. Permission to appeal was duly granted with Judge Parkes pointing out that the absence of family support or friends were problems routinely faced by individuals who go and live in a new place and could not be said to be very significant obstacles. Furthermore it was difficult to see how the Appellant would have lost all cultural ties to India after less than eight years in the UK particularly when he had requested an interpreter for the hearing.
5. Solicitors acting for the Claimant lodged a Rule 24 notice it being said that what was in issue was whether his sexuality had caused a severance of cultural, social and family ties in India. Reference was made to **MD**.
6. For the Secretary of State Mr Walker relied on the grounds. The option of internal relocation was clearly an important one and the judge had failed to consider that. Given what was said in **MD** there was a clear error in law with no need to remit this appeal to the First-tier Tribunal and I should therefore set the decision aside and dismiss the Claimant's appeal.
7. For the Claimant Ms Yong indicated that the appeal had never been put on asylum or Article 3 grounds and was always under Article 8 grounds. Although the judge had not referred to **MD** she had looked at whether there were significant obstacles to the Appellant returning there and had accepted the evidence of the Appellant who had given credible evidence on all key points (paragraph 74). Unlike the Appellant in **MD** the Claimant had no support from anyone in the UK. As noted at paragraph 174 of **MD** support from and LGBT network would be unlikely to be available for more than six months. It is noted at paragraph 192 that circumstances for gay persons in India must be a relevant factor in the determination of an Appellant's Article 8 rights even if the Article 3 threshold was not met.
8. If there was an error of law because of the failure to mention and consider **MD** then Ms Yong argued that the appeal should be sent back to the First-tier Tribunal as there was a psychological report which the Appellant was about to produce and that would be material evidence which the Tribunal should have the ability to consider.
9. I reserved my decision.

Conclusions

10. Country guidance cases are, by definition, authoritative and binding and not to refer to a relevant country guidance case is usually a material error

in law. The judge found that there would be very significant obstacles to the Claimant's integration in India as he no longer had social, cultural or family ties there; the reason for this is that he intends to live openly as a homosexual man and had no continuing connection to life in India and no support. The judge says nothing about Article 3 which was not argued before her and it can be taken that whatever difficulties the Appellant faced in India they did not reach the high threshold of Article 3.

11. Given that the judge was relying on the Appellant's sexuality as an obstacle to integration she should have considered whether this applied to India as a whole and not only certain parts of India namely the Appellant's home area. Head note (e) of **MD** says that it would not, in general, be unreasonable or unduly harsh for an open same sex orientated male who is able to demonstrate a real risk in his home area because of his particular circumstances to relocate internally to a major city within India. By implication the judge found that the Appellant would not be able to return to his home area because of his lack of ties there but what she should have done was to go on and consider there would be very significant obstacles to his returning elsewhere in India - which the judge simply did not do. By failing to refer to what was said in **MD** in any way the judge materially erred in law and the decision must therefore be set aside.
12. In my view fairness demands that the Appellant be allowed to give evidence on the issue of relocation which is central to the outcome of the appeal. I am therefore persuaded to send the matter back to the First-tier Tribunal and given the material errors in the decision I have concluded that none of the factual findings should stand.
13. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the cause to the First-tier Tribunal.

Notice of Decision

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
15. I set aside the decision.
16. I remit the appeal to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date: 6th June 2016

Deputy Upper Tribunal Judge J G Macdonald