



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

Appeal Number: PA/02579/2016

THE IMMIGRATION ACTS

Heard at Field House

On 25th October 2017

**Decision & Reasons
Promulgated**

On 11th December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**PPN
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mannan, Counsel instructed by Linga & Co

For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS
(RESUMED HEARING-FINAL DECISION)**

1. An anonymity direction has previously been made and that shall remain.
2. On 8 September 2017, I had considered the appellant's application for an appeal against a decision of the First-tier Tribunal and I had concluded there was a material error of law. I had ordered that there be a resumed hearing. I had made directions to ensure that this case would be ready for hearing. Those directions included the following:

- (1) There should be a resumed hearing at the Upper Tribunal before me;
- (2) The appellant shall file and serve a bundle of documents for use at the hearing that should include any background material which is relied upon and which must be highlighted, either in a separate document with page numbers or by way of underlining;
- (3) The appellant shall file and serve a witness statement from each witness that he seeks to rely upon and which will witness statement shall then stand as the evidence-in-chief; and
- (4) The appellant shall file and serve a skeleton argument.

All of those documents were to be provided 21 days before the hearing, and I had also ordered that the Secretary of State was to reply with any background material highlighted in the same way, along with a skeleton argument, if relied upon, seven days before the hearing. The Appellant has not complied with those directions.

3. Mr Walker, a Senior Presenting Officer, sent a letter to the Tribunal under cover on 20 October 2017 stating that he had not received an up-to-date bundle or skeleton argument in readiness for the hearing from the appellant. Then yesterday afternoon there was a fax from Linga & Co, Legal Advisers, where it was said in part as follows:-

“... we find it imperative to point out that our client has not at all been co-operative with us in respect of the hearing. In addition, he has failed to put us in funds to deal with the matter and represent him at tomorrow’s hearing. Despite this, we are still acting for him in the interest of justice. Also, we do not wish to rely on any additional document. We place our sole reliance upon the trial bundle before the First-tier Tribunal.

We are positively certain that the Respondent has always had possession and sight of the said bundle, as we had previously posted the same to her. As such, the issue of preparing a new trial bundle does not even arise in the instant matter.”

4. I checked with Mr Mannan to make sure that the documents being referred to by the appellant’s solicitors were the ones that I had. The documents include a bundle going from page 1 to page 166, with the last item being a country report and a supplementary bundle going from page 1 to page 42 which ends with a report as well. Mr Mannan said that insofar as the case is concerned in relation to the risk on return the appellant would be at risk on return to the Philippines, that although time was given to the appellant’s solicitors to gather evidence the letter from the appellant’s solicitors made it clear that there was no such evidence. Mr Mannan said he had looked at the background material and that it had occurred to him that insofar as these issues are concerned the picture was sketchy and he

said he appreciated there was no firm evidence from the appellant to show the appellant suffered persecution, but he said his case was that the position was that it was mixed. He said the appellant may suffer persecution but that he would not be able to pinpoint anything specific, so all the material was in the public domain. He said there was discrimination in all fields and that there are a number of recommendations and he said he noted however that there were various laws in place, and he said he accepted that in many parts of the Philippines gay sex is an accepted part of life. He said he will leave it to me to make the decision.

5. He said in relation to the Secretary of State's application to adduce new evidence in respect of an interview that the appellant had had, he objected to that and I made it clear that I was not going to permit the new evidence provided by the Secretary of State in respect of what may or may not have been said by the appellant sometime ago in relation to his family in the Philippines. In the end, Mr Mannan said it was a mixed picture, but whether or not that mixed picture meets the threshold was the issue. The picture was muddled and that was the best that could be said. He said with respect to his instructing solicitors, despite the failure to file any further documentation there was not much more that they would have been able to say, in any event, even if they had complied with the directions.
6. Ms Pettersen in her submissions said she relied on the US State Department Report which had been highlighted. She said the Philippines is not a country where everyone is at risk simply because they are gay and she took me to various parts of the US State Department Report to show that the appellant would not be at risk. She also referred to parts of the appellant's bundle to show that those reports also showed that there is no significant or sufficient risk.
7. In reply Mr Mannan said that insofar as the US State Department Report is concerned he said the position in relation to discrimination was not so low that it could be discounted. It was very close to persecution itself. There was an absence of applicable law and policy in the Philippines. There was a danger of allowing the state to persecute individuals. He said ultimately, he accepted the picture was not clear-cut. He said however widespread discrimination verged onto persecution and said he appreciated that the appellant's side had been given an opportunity to put the evidence in, but he invited me to look at the wealth of reports and to come to my decision.
8. I had reserved my decision and I remind myself of the appropriate legal tests namely as this is a protection claim then it is the lower standard of proof which applies. The test is not a high one. The burden remains on the Appellant, but it is also for the Respondent to assist the Tribunal to ensure that no pertinent matters are left out of consideration. There has to be the most anxious scrutiny applied to this case as it is a protection claim. For

that reason, I shall refer in some detail to the background material, despite the limited submissions made to me on behalf of the Appellant.

9. Insofar as the findings are concerned I made it clear at paragraph 1 of my error of law decision that when Judge Ford had granted permission she had set out as follows:-

“The Appellant’s claim to be gay was accepted as was his claim to be at risk of violence from members of a gang from whom he had borrowed money. It was accepted that gang members had sought to extort monies from him by violence and that they may have referred to his sexual orientation by way of a form of blackmail. But his appeal was ultimately dismissed because of a lack of evidence to show the gang was operating countrywide in the Philippines and that the State was unwilling to provide him with protection. The Tribunal found that the Appellant had not previously suffered persecution by reason of his sexual orientation. It was accepted that he had previously had relationships with two women in the Philippines for social and cultural reasons ...”

10. It is necessary therefore for me to consider the background material. Within the appellant’s bundle of 66 pages there is a psychiatric report at pages 60 to 80 and I have considered that psychiatric report as an aid to considering the claim as a whole and in terms of credibility and the functioning of the appellant. I have made every allowance for the Appellant’s functioning and I am well aware of the duties in respect of vulnerable witnesses. The report is by Dr Gupta, he is a consultant psychiatrist, and the report is dated 21st July 2016. It refers to quite a significant history of the appellant including going back to the appellant recollecting the relationship with his grandparents when he was only just 12, the relationships with his mother, uncle and others. It deals with his education and training, and there is an important section at page 66 which deals with significant sexual relationships as a child. Indeed, it goes on to explain what the appellant’s travels had been, including when he lived in Saudi Arabia for a couple of years.
11. In the end it is said in the report that once the asylum claim was dismissed, the appellant has been experiencing an increase in perceptions of anxiety and it was said at page 75 that the appellant was suffering symptoms of a mental illness related to a chronic psychological stress with comorbid symptoms of a mixed anxiety and depressive disorder trauma related to experiences he has endured, appears to result in a reduced resilience and the associated stress of his asylum application being rejected may have precipitated his mental health problems. Recommendations are then made within that report which I have taken into account.
12. There is then a background report at page 84 of that bundle entitled “Being LGBT in Asia”, a Philippines country report. It is said that it is a

participatory review and an analysis of the legal and social environment for lesbian, gay, bisexual and transgender individuals and civil society. It is from 2014. The pages which are relied upon have already been highlighted but I have taken the whole of that report into account including in respect of the section at page 93 sub-heading “History and Overview of LGBT Rights in the Philippines” which says in part as follows:-

“Same-sex activity is not criminalised and sexual orientation is mentioned in various laws and the most important issue in terms of law is considered the lack of an anti-discrimination bill”

and then it says:-

“Contrast social attitudes towards LGBT people are complex with signs of acceptance, particularly among the young but questions of whether the acceptance is based on LGBT Filipinos conforming to stereotypes and occupational niches. At the same time LGBT Filipinos are still being murdered with 28 LGBT related killings in the first half of 2011. There is some LGBT representation on television and other electronic media. Religion plays a major role in the lives of Filipinos with the strong influences of the Roman Catholic Church. This affects LGBT people though a survey suggests Filipinos are generally accepting of LGBT people, even while the church opposes anti-discrimination policies and sometimes seeks to influence public policy in a negative way”.

13. At page 94 under the sub-heading of “Current Overview – the Protection of the Rights of LGBT People in the Philippines” it says:-

“In educational institutions, it was found that LGBT people are subject to discrimination, bullying and abuse under the guise of academic freedom which allows educational institutions to create their own policies. Regarding health, HIV is the primary challenge that confronts gay men, other MSM and transgender women. LGBT individuals face challenges in employment, both on an individual level and as members of a community that is subject to discrimination and abuse. Discussions of family affairs and the dialogue relate to both LGBT persons of family members and LGBT persons with family, including partnerships and children. Examples were given of the need to protect LGBT youths from discrimination and abuse and for different Philippine institutions to be SOGI-sensitive in order to support LGBT family members. In the Philippines LGBT persons do not have the right to marry someone of the same sex. Adoption is allowed by a single LGBT person but not by two people who identify as a domestic couple. The realm of religion for LGBT people in the Philippines was discussed above, noting the strong influence of the Roman Catholic Church which can contribute to discrimination. At the same time dialogue participants are heartened by the growing number of LGBT led churches and case studies describe the gathering

of faith-based organisations in June 2013 on HIV and stigma and discrimination. Mainstream media is criticised in the way that it stereotypes gay men and limits representation of lesbians and transgender people. In the political realm, the LGBT political party Ang Ladlad has been unsuccessful to date in winning a seat in congress. Because of this the representation of LGBT issues is often made by heterosexual allies. Some local successes include anti-discrimination ordinances and a gay rights desk at a local Government unit”.

14. At page 1 of 3 under the sub-heading of “New Millennium” in the 2000s more LGBT organisations were formed to serve specific needs including sexual health, particularly HIV, psychological support, representation at sport events, religious and spiritual needs and political representation. However, the efforts of these organisations started to overlap each other. Various forms of media for and by LGBT people and programmes from mainstream media specifically targeting the LGBT community also started service in the 2000s. A major organisation formed this century was the LGBT political party Ang Ladlad which was founded by Remoto (one of the editors of the Ladlad anthology) on 21 September 2003. He had intended to represent LGBT Filipinos by winning a seat in the Philippine congress through the party list system. By mid 2013 the number of LGBT organisations from all over the Philippines and included human rights advocacy in their platforms numbered approximately 100.

15. Then at page 106 under the sub-heading of “Overview of LGBT Rights in the Philippines” it says under sub-heading of “Laws”:-

“Non-commercial private same-sex activity between consenting adults is not criminalised in the Philippines. The age of consent is set at 18, although contact with minors not under 18 is considered an offence if the minor consents to the act for money, gain or any forms of remuneration”.

16. Then at page 108, in the absence of national legislation, some ordinances in local Governments mandate protection from discrimination on the basis of SOGI; and at page 110 under the sub-heading of “Cultural and Social Attitudes” it is said:-

“The Pure Research Centre conducted a survey from 2 March to 1 May 2013 in 39 countries with 37,653 respondents. This survey showed that 73% of the Filipino respondents said that homosexuality should be accepted by society with an even higher percentage, 78%, of younger respondents in the 18 to 29 age group”.

and then page 113 there are now religious denominations established and/or headed by members of the LGBT community in the Philippines.

17. In the supplementary bundle the report at page 17 from The World Post with the headline “The dangers of being LGBT intolerant Philippines” notes on page 19:-

“Homosexuality is not criminalised and a handful of anti-discrimination ordinances both fall specifically protecting LGBT persons and more broadly worded decrees have been passed in some cities including Quezon City, Cebu City and Davao City in recent years. In another win in 2009 the Philippines lifted a ban that had prevented openly gay and bisexual men and women from serving in the military. Without the right to marry LGBT Filipinos are treated unequally in a whole host of ways in comparison to heterosexual married couples according to UNDBP/USAID report. There remains no clear rights for either spouse and same-sex or transgender heterosexual partnerships regarding hospital and prison visitations, making medical and burial decisions, transfer of joint properties, custody of children, insurance benefits and other privileges according to married and unmarried opposite sex couples”

The report continues. In addition, while a single LGBT person is allowed to adopt a child in the Philippines, two LGBT people who identify as a domestic couple cannot.

18. In the report human rights violations on the basis of sexual orientation submitted for consideration at the 106 session of the Human Rights Committee for the fourth periodic review of the Philippines of 2012 it is noted that state acts of violence against LGBT Filipinos is pervasive, police raids on LGBT venues occur regularly and without warrants. During these raids police regularly illegally detain, verbally abuse and extort money from clients. There are glaring instances of discrimination, marginalisation and exclusion of sexual orientation. The state has also been responsible for inciting homophobia. At page 35 of that report homophobia towards LGBT persons are very present within Filipino society creating a dangerous climate of hostility towards LGBT people. LGBT youths are often targeted by parents who upon discovering their child’s sexual orientation and/or gender identity feel compelled to inflict physical harm on them out of frustration, or an attempt to prevent their child from expressing their sexuality.
19. In the Philippines, Human Rights Report provided by the respondent which is from March 2017 and, therefore relatively recent, which I have taken into account in full, it is said in part as follows at page 34 under the heading “Acts of Violence, Discrimination and Other Abuses based on sexual orientation and gender identity”:-

“National laws neither criminalise consensual same-sexual contact nor prohibit discrimination based on sexual orientation and gender identity. Nineteen cities or municipalities have some version of an anti-discrimination ordinance that protects lesbian, gay, bisexual and

transgender but not intersex rights. Officials prohibit transgender individuals from self-reporting their gender on passport applications. Authorities print the sex assigned at birth as reported on the certificate of birth in the individual's passport. NGOs reported that the discrepancy between a transgender person's outward appearance and their identification documents has led to difficulties for transgender persons, particularly at airports. Transgender travellers have been harassed and even off-loaded for not appearing to match their official gender identity. NGOs seeking to protect lesbian, gay, bisexual, transgender and intersex individuals from discrimination and abuse criticise the Government for the absence of applicable law and policy. NGOs reported instances of discrimination and abuse including in employment, education, healthcare, housing and social services. The Rainbow Rights Project, a group of lawyers advocating for LGBT rights claim that LGBT human rights defenders, particularly in Muslim areas, experience pressure from community authorities to conduct their activities less openly because of increasing religious radicalisation. It is said the law prohibits discretion against persons with HIV, AIDS and provides for basic and social services for them. However, there is anecdotal evidence of discrimination against HIV AIDS patients".

20. At page 41 it was said that the Government had limited means to assist persons with disabilities in finding employment and the cost of filing a law suit or lack of effective administrative means of redress limited the recourse of such persons were protective where prospective employers violated their rights. In February, an HIV positive worker won a case against his employer for having been fired as a result of his HIV positive diagnosis. The court ordered the individual to be reinstated and received approximately \$12,774 in damages and back wages. Discrimination in employment and occupation occurred with respect to LGBTI persons. A number of LGBTI organisations submitted anecdotal reports of discriminatory practices that affected the employment status of LGBTI individuals. A 2014 UNDP study described cases of discrimination including the enforcement of rules, policies and regulations that disadvantage LGBTI persons in the workplace. For example, transgender women were told by recruitment officers that they would only be hired if they presented themselves as males by cutting their hair short, dressing in men's clothes and acting in stereotypically masculine ways. An LGBTI NGO also received reports of other direct discrimination including denial of employment, offers of less favourable employment terms and conditions, social exclusion in the workplace, denial of the same opportunities for equally qualified colleagues, harassment and abuse.
21. I have also taken into account the appellant's witness statement, his mother's witness statement and his sister's witness statement. To quote from his witness statement the appellant said as follows at page 9:-

“57. All Filipinos look down upon homosexuality. They see it as a crime. Someone once threatened me saying that I’d rather die than to live as people in the Philippines don’t accept people like me. I’ve been threatened in a similar way several times. We have a close-knit community. Gossip spreads like a bushfire. After my initial the fact that I was gay was exposed to an extent.

58. After all the years and past incidents I’m sure everyone knows my reality back home. Even if I am reluctant to admit it openly there are instances like in 1998/1999 that I admitted it grudgingly because people keep badgering and teasing me about it. I don’t remember how and to who, but I have to get away from the nuisance. Mostly with my lady friends when we gossip and chatter about our male friends, it just slips out at times.”

22. Mr Mannan explained in his submissions that this was a case based in relation to the protection claim only, no Article 8 issues were relied upon and there were no separate humanitarian protection or Article 3 aspects that were raised before me. However, I bear in mind the manner in which I have to consider the appellant’s case against the background to the expert report which had been provided. Of course, I am aware of the medical cases and the way in which the House of Lords and the European Court dealt with the case of **N** and the way in which the Court of Appeal dealt with medical cases in **GJ**. As I say, Mr Mannan advanced no separate case based on such issues in any event.
23. As indicated in my error of law decision, I am aware of the important decision of the Supreme Court in **HJ (Iran) v Secretary of State for the Home Department** [2010] UKSC 3. I have specifically taken into account the judgments of Lord Hope and Lord Rodger at paragraphs 35 and 82.
24. In my judgment it is quite clear that there will be no reason for the Appellant to live discreetly. The background material shows, like many parts of the world including here in the United Kingdom, that there is a level of discrimination against gay persons. The fact that there is discrimination does not mean that there is persecution or ill treatment. I have cited the background material in some detail in this decision. It is quite clear to me that there is a relatively good level of acceptance of gay persons and that the Appellant will be able to live his life in the Philippines without any real risk to him. As discussed during the hearing, there is the availability of permit-free travel across the country and so internal relocation away from any of the risks from the gangs will not be a difficulty for this Appellant. That was the retained finding previously in any event and I see no reason to go behind it. Indeed no evidence or submission was adduced that I should. Moving within the country is a reasonable option. The Appellant is a relatively fit young man. He has been industrious here in the United Kingdom and will in my judgment will be able to be as industrious in the Philippines. I have noted his psychiatric background but in my judgment the availability of treatment in the Philippines, if he

requires further treatment, coupled with support from his family and friends will be sufficient in my judgment.

25. Discrimination is not the equivalent of persecution. That is clear from the case law, but I have looked carefully to see if in *this particular case* whether with the Appellant's psychiatric background, the previous findings, his sexuality and the background material might place the Appellant at risk to the lower standard of proof.
26. In the end the Appellant decided not to give evidence before me. Doing the best, I can with the written evidence and have carefully considered the case law and background material, I conclude that there is no sufficient basis upon which the appeal can be allowed. The Appellant will always be at risk of discrimination as the background material shows. That is not the same as persecution or ill-treatment. The case law makes it clear that there has to be something much more than discrimination to enable his claim to succeed. The Appellant will be able to live freely and openly in the Philippines as a gay man, despite that discrimination. All of the material shows that he will be able to do so. The Appellant did not present any sufficient evidence to show he would not. His decision not to give oral evidence or to comply with the directions to show otherwise fortifies me in my view.

Notice of Decision

The appeal is dismissed on all grounds.

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 his 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. A Mahmood

28 10 2017

Deputy Upper Tribunal Judge Mahmood

