



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04994/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 5th December 2017**

**Decision & Reasons
Promulgated
On 19th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR M.R.

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Miss Ahmad, Senior Presenting Officer
For the Respondent: Mr D Sellwood, Counsel

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

I hereby make an anonymity direction. As a protection claim, it is appropriate to do so.

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a First-tier Tribunal (Judge Andonian) which in a decision promulgated on 8th September 2017 allowed Mr M.R.'s appeal against the decision of the Secretary of State to refuse to grant him asylum and to refuse to revoke a deportation order made under Section 32(6) of the UK Borders Act 2007.

2. For the sake of clarity, throughout this decision I shall refer to the Secretary of State as “the Respondent” and to Mr M.R. as “the Appellant” reflecting their respective positions before the First-tier Tribunal.

Background

3. The Appellant is a national of Bangladesh born 22nd August 1986. In a decision promulgated on 8th September 2017, First-tier Tribunal Judge Andonian allowed his appeal against the decision of the Secretary of State dated 29th February 2016 refusing his claim for asylum and refusing to revoke a deportation order made under Section 32(6) UK Borders Act 2007.
4. The Secretary of State appeals with permission granted by Resident Judge Phillips dated 29th September 2017. In granting permission, RJ Phillips stated, with reference to the grounds seeking permission, that the FtTJ arguably erred by:
 - failing to take into account previous decisions relating to past appeals brought by the Appellant and which should have been the starting point of any consideration, in accordance with **Devaseelan**;
 - failing to give due weight to the public interest considerations in deportation appeals;
 - failing to take into account the “unduly harsh” principle when considering the best interests of the Appellant’s children;
 - giving undue weight to the corroborative evidence of the Appellant’s relatives as to his sexuality;
 - failing to take into account the principles of **HJ Iran [2010] UKSC 31**.

The FtT Hearing

5. The FtTJ noted the Appellant’s history of offending and set out the index offence of burglary, which had prompted the deportation order to be made. He noted that the Appellant said that he could not return to Bangladesh on account of his sexuality. The FtTJ said at [48] “I accept that the appellant is a bisexual” and accordingly allowed the appeal.

Error of Law Hearing

6. Before me Mr Sellwood appeared on behalf of the Appellant and Miss Ahmad for the Respondent. Mr Sellwood’s submissions were set out in a lengthy Rule 24 response which followed the lines of the grant of permission. In summary, he said, it was difficult to see why permission had been granted in this appeal. So far as the **Devaseelan** point was concerned the FtTJ had referred to both previous decisions at several points in his determination. Likewise it was clear that the FtTJ was aware of the seriousness of the index offence which had prompted the making of

the deportation order, because the comments regarding the Appellant's offending, made at [42], were ones that were open to him.

7. Mr Sellwood added that essentially the Respondent's challenge to the decision was a "reasons" one. Any "reasons" challenge faces a high hurdle. The legal duty to give reasons requires a brief explanation only of the central issues sufficient to show that the conclusions reached by the FtTJ were ones open to him. It was his submission that the FtTJ had given sufficient reasons when dealing with the evidence of the public interest considerations, the best interests of the children and the corroborative statements of the Appellant's brother and aunt. Finally the FtTJ had referred to the country background evidence at [47]. The decision should be upheld.
8. Miss Ahmad's submissions followed the lines of the grounds seeking permission, and did so by reference to the grant of permission. She emphasised that the core issue in this matter centred on the Appellant's sexuality. The Respondent did not accept this claim at all; the Reasons for Refusal letter of 29th February 2017 detailed why not. It was incumbent on the FtTJ to deal with the material points raised by the Respondent. This he had failed to do. It had to be kept in mind that the Appellant had made no mention of his sexuality until faced with the deportation order despite having had previous hearings. Further the FtTJ had not meaningfully engaged with **HJ (Iran) [2010] UKSC 31**.
9. Following the lines of the grounds, Miss Ahmad further submitted that it was not sufficient for the FtTJ to simply say that the Appellant's brother and aunt corroborated what he said. There were simply no reasons set out to support this conclusion. The same applied when it came to dealing with the seriousness of the index offence and the best interests of the Appellant's children.
10. Following submissions I reserved my decision which I now give with reasons.

Discussion

11. It appears to me that the central issue and the starting point in this appeal, revolves around the Appellant's asylum claim. That is the first matter that needs to be considered, because clear findings on whether or not the asylum claim is made out, impacts upon the other parts of the Appellant's claim.
12. The Appellant who is a citizen of Bangladesh, claims that he is bisexual and therefore at risk of persecution if returned to that country. The Respondent wholly disbelieves the Appellant's claim to his sexuality. That is the crucial issue in this appeal and it is on that issue that clear reasoned findings must be made by the FtTJ taking into account all the evidence before him.
13. The evidence which the FtTJ sets out relating to the Appellant's asylum claim is contained for the most part under a heading "*The appellant's*

evidence.” In [21], [24], [30] and [32] the evidence concerning the Appellant’s sexuality is interwoven with other evidence concerning the other factors in his appeal, namely the effect his deportation would have on his children and their wellbeing.

14. The judge’s findings are apparently set out in [44] to [46]. This is under a heading “*Asylum Claim*”. I take this to be the judge’s analysis of the evidence relating to the asylum claim.

15. He sets out at [44]:

“Insofar as the appellant claimed to be a homosexual is concerned (sic) or rather a bisexual, I heard his evidence. This was corroborated by his brother to whom he had confided. It was also corroborated by his aunt. I could not detect any major discrepancies between the evidence of the appellant’s brother and aunt and that of the appellant in relation to their knowledge of his homosexuality or bisexuality. They both confirmed that the appellant had brought shame upon his parents who did not want to see him. They both confirmed however that they understood him and had taken a different view. His parents do not know that they, the aunt and the appellant’s brother see him on a regular basis and that he lives with his aunt.”

16. I find that the foregoing paragraph is a comment upon the evidence but I see no clear findings made.

17. Mr Sellwood in his submissions said that the FtTJ had given sufficient reasons for accepting the evidence provided by the Appellant’s brother and aunt. I disagree. On a proper reading of the decision, what the judge records amounts to saying that the Appellant’s claim to be bisexual was accepted by his brother and aunt because he (the Appellant) had told them so. They confirmed that the Appellant had brought shame on his parents who did not want to see him. However, it is wholly unclear from the FtT’s decision as to how they came by this knowledge; that is whether the Appellant had told them so, or if they had discussed the situation with the Appellant’s parents directly. In the absence of clear findings, I find force therefore with Miss Ahmad’s submission that the FtTJ made an improper evaluation of this evidence.

18. This in turn brings me to [45]. Part of the Appellant’s evidence concerning his sexuality (evidence that was presumably brought to reinforce his claim) is that in the past he had sexual relations with a man called “Joseph” whilst in prison and a man called “Mark” in Cardiff, had attended a Mardi Gras gay festival, and was attacked by a prisoner at Morton Hall. I can see no findings made by the FtTJ on the credibility or otherwise of this evidence. The judge simply goes on in [46] to set out the Appellant’s explanation for not disclosing his sexuality to his parents at the time of his deportation hearing in 2014 but later telling them when they wanted to arrange a new marriage for him. In assessing this evidence the judge concludes “there is nothing incredible about that.” I find this is simply insufficient to show the reasoning process which led to his conclusions. I

say this keeping in mind that only brief reasons need to be given to render a decision sustainable. Even brief reasons however must show an engagement with the evidence put forward.

19. It follows therefore that I find the judge has not adequately explained why he accepted the core of the Appellant's account. This is simply because I find that there is insufficient analysis to show why he accepted parts of the Appellant's evidence, and no analysis at all on other parts of the evidence.
20. I find this constitutes a material error in the decision, and one which is capable of affecting the whole of the decision.
21. For the sake of completeness I consider it right to deal with the grounds that the FtT failed to give due weight to the public interest and failed to take into account the "unduly harsh" principle when considering the interests of the Appellant's children.
22. The Respondent criticises the decision of the FtT by saying that there is failure on the part of the judge to deal with the seriousness of the Appellant's offending and the best interests of the two children. The Respondent points out that the judge's reasoning in [42] is deficient on these points and I find merit in that criticism.
23. When talking of the index offence it is hard to follow the FtT's logic on why he reached the conclusion he did when, after setting out what the offence **was not** rather than what it was, he says at [42], "I do believe therefore that there is a private life that the appellant has in this country."
24. Likewise, so far as the best interests of his children are concerned, I find no evidence has been put forward to show why the Appellant's deportation would be unduly harsh on his children. Mr Sellwood submitted that the FtT dealt with the best interests point at [38-40] and [42]. Once more he submitted that there were sufficient reasons given for the judge's conclusions. I disagree. As far as I can see what the judge recorded simply amounted to saying that the children could not leave the UK as they are British citizens and live with their mother. She would not allow them to travel to Bangladesh to see him. That appeared to be the sum total of the judge's findings. I see no meaningful analysis showing why he reached his conclusion in [42] that the Appellant "should be given a chance to develop his relationship with his children" nor why he said at [43], "neither do I think in the long run it would be in the best interest of the children" (for the Appellant to be deported). This is said keeping in mind that the Appellant does not at present even have contact with his children.
25. I do not find it necessary in view of my findings above to look at the **Devaseelan** point, nor whether the principles of **HJ Iran** were properly considered. Those matters can be considered at a fresh hearing. The parties agreed that in the event I decided to set aside the decision for legal error, which I do, then it would be appropriate for this appeal to be remitted to the FtT for a fresh consideration.

26. I agree with the parties that the appropriate course in this matter is to remit this appeal to be reheard in the FtT. This is on the basis that I am setting aside the FtT's decision in its entirety. This means that the extent of judicial fact-finding necessary for the re-making of the decision is extensive and it is therefore fair to remit the appeal.

Notice of Decision

The Secretary of State's appeal is allowed to the extent that the decision of the First-tier Tribunal involved the making of an error of law. The decision is set aside and remitted to the First-tier Tribunal (not Judge Andonian) for a fresh decision to be made.

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
2017

C E Roberts

Date

18 December

Deputy Upper Tribunal Judge Roberts