



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02677/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 31 July 2018

Decision & Reasons Promulgated  
On 21 August 2018

Before

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

Between

**M H  
(ANONYMITY DIRECTION MADE)**

Appellant

and

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

Respondent

**Representation:**

For the Appellant: Mr R Spurling, Counsel instructed by City Heights Solicitors  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. In a decision sent on 23 April 2018 Judge Graves of the First-tier Tribunal dismissed the appeal of the appellant, a national of Bangladesh, against the decision made by the respondent on 9 February 2018 refusing his protection claim.
2. The appellant advances three grounds, it being alleged that the judge erred in refusing to adjourn; in failing to address the psychological report assessment that the appellant would be at risk on return by virtue of being at high risk of suicide; and in failing to

weigh in the balance the third witness's evidence that the appellant attended LGBT groups and events.

3. I see no arguable merit in the first ground. The judge's treatment of the adjournment issue was set out in paragraph 9:

"At the start of the hearing Mr Murphy applied for an adjournment to obtain a second psychiatric or psychological report, to specifically address the appellant's memory and whether his mental health problems affected his ability to give consistent evidence about his experiences in Bangladesh. I refused that application. There was already a report from a Consultant Psychiatrist before me, that said that one of the appellant's reported symptoms of depression was 'diminished ability to think or concentrate', and this could be taken into account when assessing the evidence. The psychologist had been provided with a copy of the decision and relevant documents and so would have been aware of the reasons why the claim had been refused. There was no suggestion that the appellant was not mentally fit to give evidence. I put the hearing back to allow Mr Murphy further time with the appellant and asked him to address me on any steps that might be taken to ensure the hearing was fair and accessible for the appellant. On return to court in the afternoon, Mr Murphy suggested breaks for the appellant might be advisable, and breaks were offered. I suggested that the appellant take his time giving evidence and that answers and questions could be checked and with him if necessary. I did not observe any signs of the appellant being distressed or confused when giving evidence."

4. It is clear from the file that the grounds of appeal submitted in response to the respondent's decision contended, inter alia, that the appellant had memory problems (as well as other mental health problems) and his representatives had ample opportunity to obtain medical evidence prior to the hearing, which had already been adjourned once or to submit a supplementary witness statement going through any respects in which it was considered memory problems had affected his evidence-giving. In the above, the judge was entitled to take into account, in deciding whether to adjourn, that the psychologist's report addressed the appellant's memory problems in any event.
5. Turning to the third ground, if it had been relied upon on its own, I would not have found it sufficient to establish a material error of law because although the judge accepted the evidence of the third witness (see paragraph 38), whose evidence was that the appellant had accompanied him to LGBT groups and events, it was the appellant's own evidence that he had only attended group meetings sporadically and it was arguably open to the judge to consider that the appellant's attendances even if they occurred were contrived. That said, for the judge to state at paragraph 38 that [the witnesses'] evidence was based on his self-report to them (rather than at least in part on their own knowledge) regarding his involvement with the gay community, was incorrect, since the third witness's evidence was at least that the appellant had attended some gay community events with him.

6. I do consider, however, that the appellant's second ground identifies an outright error of law. The psychological report by Dr Brian Sreenan dated 7 March 2018 set out, inter alia, that the appellant was at high risk of suicide (see p. 6 of the report) and it was incumbent on the judge to assess whether in light of this evidence there would be a real risk on return of the appellant committing suicide; and to conduct that assessment applying the approach enjoyed by the Court of Appeal in **J**. The judge wholly failed to conduct such an assessment.
7. In light of my analysis, which includes concerns about the judge's treatment of the witness evidence, I consider it would be unsafe to seek to preserve any findings of fact. The case will be remitted to the FtT.
8. Given my decision it will be open to the appellant's representative to seek to obtain a further medical report addressing in more depth the appellant's memory problems. However, in light of submissions already made regarding the alleged impact of such problems on the appellant's ability to give consistent and coherent evidence, it is directed that the appellant's representatives produce within six weeks from the sending of my decision a detailed witness statement in which the appellant offers an explanation for each of the inconsistencies and vaguenesses in his evidence identified by the respondent in her refusal decision and by the FtT judge. Unless notified to the contrary, the FtT will proceed to list this on the basis that it will hear oral evidence from the appellant and his witnesses.
9. To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Graves).

**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:

Date: 7 August 2018

Dr H H Storey  
Judge of the Upper Tribunal