



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12917/2016

THE IMMIGRATION ACTS

Heard at Field House
On 8th June 2018

Decision & Reasons Promulgated
On 26th June 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

HM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Asigo (R.O.C.K. Solicitors)
For the Respondent: Ms S Vidyadharan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This appeal is by the Appellant, a Ugandan national, who had applied for asylum on the basis that he is gay and will be at risk in Uganda. It does not appear to have been argued by the Secretary of State that if he is gay he would not be at risk in Uganda.

The issue before the First-tier Judge, Judge P-J S White, was whether the Appellant is gay, which was disputed by the Secretary of State. After a hearing on 21st December 2016 the judge promulgated his Decision on 6th February finding the Appellant is not gay and dismissing the appeal.

2. The grounds, which found favour with the judge who granted permission to appeal and with which I agree, argue that the judge's conclusion that the Appellant is not gay goes against the weight of evidence in front of him. The Judge's findings on the credibility of what took place in Uganda are less questionable. However, in terms of whether the Appellant in front of him was gay, the judge noted numerous letters of support and a number of witnesses. He found all the witnesses to be credible; they all believed the Appellant to be gay but notwithstanding that evidence, the judge found the Appellant is not gay. I find that that is an indefensible conclusion and against the weight of the evidence. I am thus left with no alternative but to set aside the Decision. I do not preserve any of the findings because I think it is right and proper that the whole matter be re-decided. The appropriate venue, given the number of findings to be made, is the First-tier Tribunal and so the Appellant's appeal to the Upper Tribunal is allowed to the extent that the matter is remitted to the First-tier Tribunal for a full re-hearing on all matters.

Notice of Decision

The appeal is allowed to the extent that the First-tier Tribunal Decision and Reasons is set aside in its entirety and the matter remitted to the First-tier Tribunal for a full rehearing.

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

Date 25th June 2018

Upper Tribunal Judge Martin