



**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Number: PA/07508/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 June 2019**

**Decision & Reasons  
Promulgated**

**On 8 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**KA**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Reza, Solicitor, JKR Solicitors

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Moore (“the judge”), promulgated on 14 February

2019, in which he dismissed the appeal on all grounds. That appeal arose from the Respondent's decision of 6 June 2018, refusing protection and human rights claims made by the Appellant on the basis of his sexual orientation.

### **The Judge's Decision**

2. The judge heard evidence from the Appellant and three witnesses and set out their evidence and submissions at [9] to [17]. The judge was plainly not impressed by the Appellant's evidence and that of the witnesses called on his behalf attesting to his sexuality. The judge noted inconsistencies and implausibilities in the Appellant's and witnesses' evidence which he found was vague and lacking in detail. Accordingly, the Appellant failed to establish his claim to be gay and the appeal was dismissed on all grounds.

### **The grounds of appeal and grant of permission**

3. The grounds assert that the judge erred in adopting an unsustainable approach to the evidence of the witnesses'; that his assessment of the documentary evidence was erroneous and that he erred in concluding that the Appellant's delay in disclosing his sexual identity undermined his credibility.
4. Permission to appeal was granted on a renewed application to the Upper Tribunal on 29 April 2019.
5. The Respondent in a Rule 24 reply opposed the appeal.

### **Decision on error of law**

6. I have considered the submissions made by both representatives. While Mr Kandola said all he could to defend the judge's decision and, whilst I do not accept all of what was said by Mr Reza; several grounds are without merit, I am just persuaded that the judge erred in his consideration of the witness evidence. I say, just, because the judge clearly identified a number of troubling features to the evidence and unsurprisingly Mr Kandola sought to sustain the decision on these grounds, but the judge's adverse view was clearly influenced by the evidence of the witnesses and I cannot be satisfied that the decision read as a whole is safe in the circumstances.
7. The judge heard evidence from three witnesses. All three gave material evidence relevant to the issue of the Appellant's sexuality.
8. The judge considered their evidence at [28] and [29]. While the judge noted that witness SA and RH were friends with the Appellant, socialised together, frequented gay bars, were members of gay organisations and further that the Appellant and RA had twice had sex together, the judge rejected their evidence on the following basis:

“However, both [SA] and [RH] state that they have never been to the Appellant’s home, or the Appellant to either of their homes, and that they know little about the Appellant’s family or his past life. Moreover, there is no evidence of a single message (such as by text, WhatsApp or Messenger) passing between them. When this was put to [RH] he said that he and the Appellant mainly spoke on the phone and although they occasionally sent messages, these were not intimate. However, the messages would not have to be intimate in nature to support the Appellant’s case, and could have, for example, have established, the Appellant making social arrangements with [RH] and [SA], or enquiring after each other’s well being and/or social life.”

As regards [MA’s] evidence, I have noted above the discrepancy between his account of his reaction to discovering the Appellant is a gay man and the account the Appellant gave in his asylum interview. I also note that, despite the Appellant living with him, he could not name any of the LGBT organisations that the Appellant says he is member of [~] nor did he know the days of the week on which the Appellant attended the meetings of those organisations. I also find it surprising that [MA’s] wife has never enquired why the Appellant’s parents have apparently ceased all contact with Appellant, when until May 2017 they were trying to force the Appellant to return to Bangladesh and get married. ... ” (sic)

9. The concern that I have with this analysis is that some of the judge’s reasoning does not adequately reflect or is contrary to what is stated by the witnesses in their written testimony.
10. First, it is apparent that the judge partly formed his adverse view on the basis that neither the Appellant, SA or RH had visited each other homes. There was an explanation however before the judge from witness MA, with whom the Appellant resides, as to why SA and RH had not been to their home. In his witness statement MA said that he never met any of the Appellant’s boyfriends and that he was not allowed to bring any of them to his home. I am not satisfied that the judge adequately addressed this evidence which does not comfortably sit with the judge’s adverse view taken on account that SA and RH had not been to the Appellant’s home. Moreover, it does not appear as submitted by Mr Reza that an explanation was sought from RH or SA for that matter as to why they had not been to the Appellant’s home ([13] and [14]), and this appears to be a concern raised by the judge which the witnesses did not have an opportunity to address at the hearing leading to a degree of unfairness.
11. Second, I accept that it can be inferred from the witness statement of MA that whilst he permitted the Appellant to live in his home, he did not necessarily approve of him being gay and his evidence (written and oral) did not indicate that he took any interest in the Appellant’s life as a gay man. In the context of the evidence therefore there appears to be no evidential basis for concluding that the names of

the clubs frequented by the Appellant or the meetings he attended would necessarily be known by MA. It can be inferred from what the judge said at [29] that he was of the view that these matters would or should have been known to MA, but in my judgement there was no evidential basis for that view.

12. In summary, I am satisfied that the judge erred in relation to his approach to the witnesses' evidence. I am not satisfied that the judge's treatment of the evidence of the witnesses was adequate and that he took proper account of their evidence in reaching his conclusions.
13. I have considered whether the error of approach is material in this case. It is quite true that the judge made several findings against the Appellant, but having said that, if the witnesses' evidence had been accepted, it clearly provided support for the Appellant's claim to be gay and was capable of affecting the outcome of the appeal. I thus find the judge's error is material in this regard.
14. The above I consider is sufficient to render the decision unsafe. It is not therefore necessary to traverse the other grounds raised in the grounds of appeal. In light of the above I set aside the judge's decision.

### **Disposal**

15. Both representatives were agreed that if I were to find a material error of law this appeal would have to be remitted to the First-tier Tribunal for a complete re-hearing. Having regard to the nature of the error I deem it appropriate to take this course of action.
16. The appeal is therefore remitted to the First-tier Tribunal.

### **Notice of Decision**

I set aside the decision of the First-tier Tribunal.

I remit this appeal to the First-tier Tribunal for rehearing on all issues by a judge other than Judge Moore.

### **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: 20 June 2019

Deputy Upper Tribunal Judge Bagral