



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09482/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 19th February 2019

Decision & Reasons Promulgated
On 29th March 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

**MR H S
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Wood, Immigration Advice Service(Manchester).
For the respondent: Mr Tan, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Iran, born in January 1995. He made a claim for protection on the basis he is Gay and was seen having sex with another man in his home country and fled out of fear. The respondent rejected his claim on the basis his account was not credible.

2. His appeal was heard by First-tier Tribunal Judge O'Hanlon at Bradford on 29 June 2018. In a decision promulgated on 17 July 2018 the appeal was dismissed. The judge did not find his account to be credible.
3. Permission to appeal was granted on the basis it was arguable the judge failed to conduct a holistic assessment and focused upon specific incidents. It was arguable the judge did not adequately analyse the detailed statement from the appellant in which he set out his awareness of his sexuality.

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4. The central issue in the appeal was whether the appellant really was Gay as he claimed. He said he had two Gay relationships in Iran. The 1st was with a schoolfriend, [V], who lived in the same street. He said they would go to his house and watch pornographic CDs and then have sex. He described how on one occasion they were very nearly caught when his grandmother came home unexpectedly. After that he began a relationship with Massoud. He claimed in November 2015 they were discovered naked and having sex in Massoud's family home whilst a Gay pornographic film was being shown. First-tier Tribunal Judge O'Hanlon did not find the incident with Massoud occurred and referred to the appellant's claim of an earlier incident with [V] as a reason for not believing the subsequent incident and the lack of precautions involved.
5. The grounds contend that the judge did not give reasons for rejection of his account with [V] and that there was limited engagement with the claim about his homosexuality in Iran.
6. Mr Tan accepts shortcomings in the decision about the claimed relationships in Iran. In light of this he did not oppose an error of law finding on this basis and the matter being remitted for a rehearing.
7. Mr Wood had appeared for the appellant in the First-tier Tribunal. He submitted that there was no engagement by the judge with the appellant's detailed witness statement.
8. The parties agree that this is a case where the decision of the First-tier tribunal must be set aside. No further written reasons are required. The requirements of subparagraph 40(3)(a) and (b) of the rules are met. I therefore set aside the decision of the First-tier Tribunal.

Decision.

The decision of First-tier Tribunal Judge O'Hanlon is set aside and the matter remitted for a de novo hearing in the First-tier Tribunal.

Deputy Upper Tribunal Judge Farrelly.
26th March 2019

Directions.

1. Relist for a de novo hearing in the First-tier Tribunal excluding First-tier Tribunal Judge O'Hanlon .
2. Anonymity is maintained
3. The appeal should be listed in MANCHESTER to convenience the appellant.
4. A Farsi interpreter will be required.
5. A hearing time of around 2 ½ hours is anticipated.
6. The appellant's representatives should prepare an up-to-date bundle and a skeleton argument.

Deputy Upper Tribunal Judge Farrelly.