



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00741/2019 (P)

THE IMMIGRATION ACTS

**Decided under rule 34
On 27 June 2020**

**Decision & Reasons Promulgated
On 14 July 2020**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

S A P

(ANONYMITY ORDER MADE)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Bangladesh. He applied for asylum on the basis that he would be persecuted as a gay man if returned to Bangladesh, but his application was refused. He appealed this decision, but his appeal was dismissed by First-tier Tribunal Judge Baldwin, in a decision promulgated on 2 January 2020.
2. He appealed against this decision and on 7 February 2020 First-tier Tribunal Judge Landes granted him permission to appeal to the Upper Tribunal. An error of law hearing was set

down for 23 March 2020 but on 19 March 2020 his hearing was vacated as a result of the Covid-19 Pandemic.

3. On 28 April 2020 the President, Upper Tribunal Judge Lane gave directions about the future conduct of the error of law proceedings and said that it was his view that the error of law hearing could be heard on the papers. a material error of law in First-tier Tribunal Judge Grimmett's decision, to set aside her decision and remit the appeal to the First-tier Tribunal.
4. Counsel for the Appellant made further written submissions on 9 May 2020 and I extend time for the Appellant to do so in the light of the difficulties which have arisen in relation to the grant of legal aid as a result of the Pandemic. The Respondent lodged her skeleton argument on 14 May 2020. The Appellant replied on 20 May 2020.
5. Neither party objected to the error of law hearing being heard on the papers and both have provided me with detailed written submissions. Therefore, I have proceeded to decide whether there was an error of law on the papers, as it is in the interests of justice for there to be no further unnecessary delay in this appeal.

ERROR OF LAW DECISION

6. At paragraph 27 of his decision, First-tier Tribunal Judge Baldwin found that the Appellant was a gay man and that he had been in a relationship with his partner for around four years; despite the difference between their ages and cultures. He also accepted that a few friends knew about his relationship.
7. First-tier Tribunal Judge Baldwin placed significant weight on the fact that the Appellant's family did not know about his sexuality but failed to take into account the disclosures that he made to Ms Atas-Kelly, a consultant clinical psychologist, about being sexually assaulted by his grandfather when still a child and also his fears of being persecuted in Bangladesh by his uncle, who was an MP.
8. First-tier Tribunal Judge Baldwin failed to take these fears into account when he concluded in paragraph 28 of his decision that one of the reasons that he thought that the Appellant would be content to deny his sexuality in Bangladesh was that he had not introduced his partner to this uncle, as his partner, when he visited London.
9. He also failed to take into account the Appellant's mental health when assessing his activities in London and whether he regularly attended gay clubs. It was clear from the report written by Ms Atas-Kelly that the Appellant had said that he felt very anxious and that his social life was

mainly restricted to time spent with his partner. It was also clearly from the significant number of photographs in the Appellant's Bundle that many other people would have seen the Appellant and his partner together in public.

10. Furthermore, when considering whether it would be safe for the Appellant to return to Bangladesh, First-tier Tribunal Judge Baldwin did not take into account the fact that he would be seen with an older British man as opposed to a man of his own age and nationality, where friendship may be more expected. Neither did the Judge consider any of the objective evidence relating to Bangladesh and the risks faced by the LGBTI community.
11. In addition, in paragraph 29 of his decision, First-tier Tribunal Judge Baldwin conflated a proper consideration of whether there was a serious risk that the Appellant would be persecuted in Bangladesh with what appeared to be a human rights assessment.
12. For all of these reasons, First-tier Tribunal Judge Baldwin's decision contained material errors of law.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) First-tier Tribunal Judge Baldwin's decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Baldwin or Landes.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 27 June 2020