



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003609
PA/51696/2020; IA/00593/2021**

THE IMMIGRATION ACTS

**Heard at Field House (Hybrid Hearing)
On the 15 December 2022**

**Decision & Reasons Promulgated
On the 23 January 2023**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL G A BLACK

Between

MR E.M.G.

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Direction Regarding Anonymity - rule 13 of the Tribunal Procedure
(First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

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.

Representation:

For the Appellant: Ms P Yong (counsel)

For the Respondent: Mr S Walker (Home Office Presenting Officer) (attending remotely)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First Tier Tribunal (Judge Lawrence) (FtT) promulgated on 17.5.2022 in which the appellant's protection and human rights claims were dismissed.

Background

2. The appellant, a citizen from Kenya, claimed asylum on the grounds of his sexuality which was accepted by the respondent. He feared both State and non State actors. The FtT accepted that the appellant's uncle had threatened to blackmail him and expose his sexuality and that his former partner had been attacked and harmed [24]. The FtT concluded that the appellant would be able to relocate to another area in Kenya and there was a sufficiency of protection.

Grounds of appeal

3. In grounds of appeal the appellant argued that the FtT erred by failing to make material and specific findings as to risk on return in the context of accepting that blackmail by his uncle and the attack and harm to his former partner. The FtT further found that the appellant would be required to suppress his sexuality on return to Kenya (**HJ(Iran)**). The FtT failed to give proper consideration to expert evidence and failed to give proper reasons for preferring the background material. The assessment of Article 8 was flawed as the FtT failed to fully consider the extent to which there would be very significant obstacles on return to Kenya.

Permission to appeal

4. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Hollings-Tennant on all three grounds.

Submissions

5. I heard submissions from both representatives and Mr Walker conceded that the grounds were made out.

Discussion and conclusion

6. Having read the decision and reasons and heard the submissions, I am satisfied that the grounds of appeal are made out. The FtT failed to make specific findings of fact as to the risk on return to the appellant from his uncle and from the attackers of his former partner and the community. The FtT found that the appellant had given credible evidence and further accepted his sexuality and found that he would have to suppress his sexuality and live discreetly if returned to Kenya. The FtT's failure to make specific findings are material as to risk on return before the FtT. Further I am satisfied that the FtT failed to give adequate reasons for placing less weight on the expert evidence than the country material

relied on by the respondent. The approach by the FtT to the evidence was not balanced and appeared to accept much of the evidence taken in the respondent's refusal letter, contrary to the evidence before the FtT which included expert evidence. In considering Article 8 the FtT did not consider the fact that gay men suffer abuse and discrimination which are relevant to the consideration of whether or not there are very significant obstacles to integration in Kenya and proportionality under Article 8.

Decision

7. There are material errors of law disclosed in the decision which shall be set aside.
8. The Upper Tribunal considered the future disposal and directed that the appeal is remitted to the First-tier Tribunal at Taylor House (excluding Judge T. Lawrence) and that the findings made by the FtT are preserved.

Signed Date 19.12.22

GA Black
Deputy Judge of the Upper Tribunal

NO FEE AWARD

Signed Date 19.12.22

GA Black
Deputy Judge of the Upper Tribunal