



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002791

First-tier Tribunal No: PA/54147/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

MSH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Jorro

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 14 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the decision of Judge Abebrese (the Judge) in the First-tier Tribunal (FtT) who heard the case on 5 May 2022. In the determination the Judge dismissed the appeal. The appellant sought, and was granted, permission to appeal to the Upper Tribunal.
2. The appellant is an adult national of Bangladesh. He entered the UK in, he says, July 2019 and claimed asylum on 29 October 2019 on the basis that he feared persecution in Bangladesh as he is an openly gay man and cross-dresses.
3. The respondent refused the claim on the basis that it was not accepted the appellant had proved that he is a gay man, or that he would be perceived as a gay man if removed to Bangladesh.
4. The Judge found the appellant was inconsistent in his evidence regarding his sexual orientation. The Judge found that the appellant had not proved he is a gay man and went on to dismiss the appeal.
5. Permission to appeal to the Upper Tribunal was granted, finding as arguable grounds of appeal that:
 - a. The Judge failed to take into account the appellant's evidence in his witness statement in assessing apparent inconsistencies in the asylum interview;
 - b. The Judge does not appear to have taken into consideration the evidence of a witness whose evidence goes to the appellant's credibility;
 - c. The Judge appears not to have taken into consideration the medical evidence in the bundle and how that might impact on the appellant's credibility.
6. Before me, Mr Terrell for the Home Office outlined that the respondent no longer opposed the appeal. He conceded that the Judge had not taken into consideration the material in the way that should it have been.
7. I have considered the FtT decision and reviewed the evidence that was before the Judge. The Judge does refer to the appellant's witness statement but does not go on to analyse it against the asylum interview and how it impacts on the appellant's credibility. The medical evidence includes evidence on the appellant's psychiatric condition within the context of his claimed sexual orientation and is plainly deserving of explicit consideration in order to achieve an overtly fair decision. I come to the conclusion that the determination gives appearance of not according the case the depth of analysis it was deserving, at least in relation to the appellant's witness statement and the medical evidence. This amounts to an error of law. The argument in relation to the evidence of a witness not having been taken into consideration is less persuasive.
8. Both parties submitted that the case should be remitted to the FtT. I agree that the extent of the fact-finding necessary – the appellant's credibility is the heart of the case – is such that the case should be remitted to the FtT. I remit the case with no findings of fact retained.

Notice of Decision

9. The decision of the First-tier Tribunal is set aside for material error of law.
10. The case is remitted to the First-tier Tribunal.
11. No findings of fact are retained.
12. I take into consideration the need for open justice, the rights of the appellant under art 2 and 3 (in particular) of the ECHR, the issues live in this case, Rule 14 of the UT Procedure Rules and Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private. I conclude that an anonymity order is necessary in this case and make such an order.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 January 2024