



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005115

First-tier Tribunal No: PA/65311/2023
LP/02095/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16TH January 2025

Before

UPPER TRIBUNAL JUDGE HIRST
DEPUTY UPPER TRIBUNAL JUDGE BIBI

Between

MJ
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Atas, counsel instructed by MBM Solicitors
For the Respondent: Ms Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 9 January 2025

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. The Appellant appeals from the decision of First-tier Tribunal Judge Wyman dated 15 July 2024, dismissing his appeal on protection and human rights grounds.

2. At the conclusion of the hearing on 9 January 2025 the panel gave its decision that there was an error of law in the decision of the First-tier Tribunal, with reasons to follow. Our reasons are set out below.

Background to the appeal

3. The Appellant is a citizen of the Philippines born on 15 April 1988. He entered the UK in November 2014 on a Tier 5 charity worker visa; his leave was subsequently curtailed in April 2015. He claimed asylum on 6 May 2022 on the basis of his sexual orientation.
4. The Appellant's claim was refused on 2 December 2023. His appeal came before the First-tier Tribunal on 4 July 2024. The judge accepted that the Appellant is a gay man but found that he would not be at risk on return from the authorities or from non-state agents on account of his sexuality. The First-tier Tribunal dismissed the appeal on both protection and Article 8 grounds.
5. The Appellant sought permission to appeal on two grounds. First, he asserted that the judge, having accepted that the Appellant was gay and that there was discrimination towards LGBTQ people in the Philippines, had failed to incorporate those factors into her consideration of whether there were very significant obstacles to integration on return. Second, he asserted that the judge had failed to take into account material evidence, namely the objective evidence of discrimination towards homosexuals in the Philippines. Permission to appeal was granted on 4 November 2024 on both grounds.

The parties' submissions

6. In her submissions Ms Atas drew the panel's attention to the evidence contained from page 83 onwards of the Appellant's composite bundle, which had been included in the supplementary bundle before the First-tier Tribunal. That evidence included a number of reports, including a detailed 2012 report from the International Gay and Lesbian Human Rights Commission to the UN Human Rights Committee, a Human Rights Watch report, and articles detailing discrimination against LGBTQ individuals in civil society, with passages on which the Appellant relied highlighted in yellow. Ms Atas submitted that the judge's references to that material, at §§28 and 38 of the determination, did not accurately or fairly reflect the weight of the evidence, and further that the judge had erred by failing to consider discrimination as a factor in her consideration of whether there were 'very significant obstacles' to the Appellant's integration on return.
7. For the Respondent, Ms Lecointe submitted that the Appellant's grounds amounted to disagreement with the conclusions of the First-tier Tribunal. The judge had been entitled to draw the conclusions that she did based on the evidence presented to her; there was no CPIN on sexuality and no caselaw specifically on point. Although the judge had not referred to the impact of discrimination in her Article 8 consideration, she had considered the evidence when addressing the Appellant's protection claim. The Upper Tribunal should be slow to conclude that there was an error of law: *Volpi & Anor v Volpi* [2022] EWCA Civ 464 at [2].

Error of law decision

8. An appeal to the Upper Tribunal lies only where there has been an error of law. The First-tier Tribunal is a specialist tribunal of fact, and where the ground for appeal is that the first instance judge failed to give the evidence a balanced consideration, this court must be particularly cautious in its approach: cf the principles set out in *Volpi* at [2]. Bearing those principles in mind, we nonetheless conclude that the First-tier Tribunal judge erred in her approach to the evidence and to the question of whether there were ‘very significant obstacles’ to integration on return.
9. The decision makes a number of references, all in general terms, to the objective evidence provided by the Appellant. At paragraph 15, summarising the relevant legal framework, the judge stated “I have carefully considered all the evidence in the round...” and at §20 she confirmed that “I have carefully considered both the documentary and the oral evidence that is before me”. Paragraph 28 stated, in its entirety:

“The objective evidence states that it is not illegal to be gay in the Philippines and that there is no law that criminalises same-sex activities between adults.”

At paragraph 35, in the context of the protection claim:

“It is acknowledged that there is some discrimination within the Philippines – but this is different from persecution. There is no reason why the appellant would not be able to get a job or rent an apartment due to his sexuality.”

Paragraph 38 stated, in relation to sufficiency of protection:

“...The objective evidence confirms that the police force generally is able and willing to offer protection.”
10. Those references were not a fair summary or characterisation of the evidence before the judge. On the contrary: on a fair reading, the weight of the objective evidence provided by the Appellant was that although homosexuality was not criminalised in the Philippines, there was no law preventing discrimination on the basis of sexual orientation or sexual identity and LGBTQ individuals were subject to widespread and serious discrimination, homophobia and harassment, including in access to employment, housing and healthcare and the threat of arbitrary arrest and detention by the police. The judge was of course not bound to accept any of that evidence, nor to refer expressly to each and every document. She was however required to consider it at least in substance and give adequate reasons if she rejected it or did not consider it relevant to the Appellant’s case. Her failure to do so was an error of law which was material to her decision.
11. We consider that the judge also erred by failing to consider whether the Appellant’s sexual orientation, and consequent discrimination, were capable of constituting ‘very significant obstacles’ to his integration on return to the Philippines. This was a matter which was expressly raised as an issue under paragraph 276ADE and Article 8 at paragraph 20 of the Appellant’s skeleton argument for the First-tier Tribunal, and the Tribunal was therefore obliged to consider it.
12. The judge did not do so. Her consideration of ‘very significant obstacles’ was set out at paragraphs 42-46 of the decision in which she noted that the Appellant’s family were in the Philippines, the Appellant speaks Tagalog, and that he had spent his formative childhood and student years there. She did not refer to any

other factors. Again, the judge was not obliged to find that the Appellant's sexuality or consequent discrimination were very significant obstacles to his integration, but she was obliged to at least address the point. That failure was material to the outcome of the appeal.

13. We consider that the appropriate course is to remit the appeal to the First-tier Tribunal for rehearing of the human rights appeal only, there being no challenge to the Tribunal's conclusions on the protection appeal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The appeal on human rights grounds is remitted to the First-tier Tribunal for rehearing before a judge other than First-tier Tribunal Judge Wyman.

The finding of the judge at §25 of the decision that the Appellant is a gay man is preserved. No other findings are preserved.

L Hirst

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

10 January 2025