



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

Appeal Number: AA/01405/2014

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke-on-Trent  
On 15<sup>th</sup> July 2014**

**Determination Sent**

**Before**

**The President, The Hon. Mr Justice McCloskey**

**Between**

**T A**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

Appellant: Ms Anthony (of Counsel), instructed by French and Company Solicitors.

Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. At the outset of the hearing of this appeal, I explored the parameters and grounds generally. At this juncture, Mr McVeety, on behalf of the Respondent, conceded that the decision of the First-tier Tribunal (the “*the*”

FtT") could not be sustained on the basis that there had been a failure to give proper effect to the tests formulated by the Supreme Court in HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31. These tests, in the context of the present appeal, are as follows:

- (a) Is the Appellant gay?
- (b) Is it clear on the available evidence that gay people who live openly in Egypt will be persecuted?
- (c) In the event of returning to Egypt, will the Appellant conduct himself as a gay person openly or covertly?
- (d) If covertly, why would he chose to do so?

While the FtT, in tolerably clear terms, supplied affirmative answers to the first and second of these questions, no clear finding was made in respect of the third and the fourth was not addressed at all. Thus I accepted the Respondent's concession and ruled that the determination of the FtT be set aside.

2. I proceeded to remake the decision. No further evidence was adduced by either party. Ms Anthony, on behalf of the Appellant, invited me to find that, as a matter of probability, the Appellant, in the event of returning to Egypt, will conduct himself overtly as a gay man. This submission was based on, firstly, paragraphs 16 and 17 of the Appellant's witness statement. Furthermore, the record of proceedings confirms that the Appellant also gave oral testimony to this effect before the FtT and this was not challenged. Secondly, the determination of the FtT contains certain material findings. These were:

- (a) While the Appellant was still involved in a heterosexual marriage, he concealed from his wife a gay relationship.
- (b) Subsequently, the Appellant began to frequent gay clubs.
- (c) In doing so, he has engaged in gay sexual encounters.

I accept the submission that the decision of the FtT failed to engage with the evolution of the Appellant's sexual identity. Nor does it address the evidence of the Appellant, noted above. Furthermore, the Judge failed to address this issue in the context of a specific finding, in [48], that the Appellant "*.... is capable of acting independently and disregarding the expectations imposed upon him by virtue of his background, upbringing and culture*". None of the aforementioned findings was challenged by the Respondent.

3. I consider the evidence bearing on this discrete issue to be sufficiently consistent and persuasive to warrant a finding that, in the event of returning to Egypt, the Appellant will, as a matter of probability, conduct himself overtly as a gay man.
4. Having made this finding, it is necessary to address, and answer, the second of the HJ questions. I consider that the answer to this question is provided in the following passage in the determination of the FtT, at [77]:

*".... I am satisfied that a person in the Appellant's position may be at risk of persecutory treatment if he were to come to the attention of the authorities for reasons of his sexuality and could face persecutory treatment including torture if he were to be detained."*

In common with the other material findings of the FtT, there was no challenge by the Respondent to this discrete finding. When one grafts onto this the further finding which I have made immediately above, the conclusion that this appeal must succeed follows inexorably.

## **DECISION**

5. (a) The decision of the FtT is set aside.  
(b) The appeal is allowed on both asylum and human rights (Article 3 ECHR) grounds.

*Amund McCloskey*

THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER  
Date: 15 July 2014