



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

Appeal Number: AA/05354/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 3 December 2015**

**Determination Promulgated
On 29 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MANSALI SUSSO
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the appellant: no appearance

For the respondent: Mr S Kandola, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department and the respondent is a citizen of Gambia born on 14 August 1976. However, for convenience, I refer below to Mr Susso so as the appellant and to the Secretary of State as the respondent, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The Secretary of State appeals with permission to the Upper Tribunal against the determination of First-tier Tribunal Judge Abebrese promulgated on 7 October 2015, allowing the appellant's appeal against

the decision of the respondent made on 8 March 2015, in which she refused the appellant's claim for asylum, humanitarian protection in the United Kingdom.

3. Permission was granted by Designated First Tribunal Judge McClure stating that it is arguable that when the Judge at paragraph 11 states that he finds that the appellant's account is credible both from the subjective point of view and an objective point of view he did so without supporting that by reference to the evidence.
4. The First-tier Tribunal allowed the appellant's appeal and made the following findings. The Tribunal finds that the claims of the appellant in relation to his fear of being persecuted on the basis of being a member of a particular social group, in that he is gay to also be credible. The Tribunal finds it credible that the appellant states that he had never prior to him arriving in this country been in a gay relationship in the Gambia. Since coming to the United Kingdom he gave evidence that he has found himself more attracted to men than women. The Tribunal finds it credible that the evidence that he gave in his witness statement which was reiterated in his evidence at the hearing that he did have two relationships with women whilst in the United Kingdom and that as a result one of those relationships being an abusive one, he no longer became attracted to women.
5. The evidence that he has been into serious relationships in this country with two men namely Kevin and Chris is also found to be credible. The credibility of the appellant's claim is supported by the impact of the revelation that was made in Norwich in the newspapers on Wednesday, 26 December 2012. In this article his sexual orientation was revealed and this has now become widespread within the Gambian community in Norwich and beyond. The appellant fears that because of hostility which has been shown by the Gambian authorities towards homosexuals that he fears he would be persecuted if he were to be returned to Gambia. The Tribunal finds it credible that the objective evidence from the Gambia criminal record which has been approved by the government in October 2014 states that those found to be homosexuals would be arrested and detained in custody and tortured and killed.
6. The Tribunal as indicated above has been a finding that the appellant on the evidence that he has provided subjectively shows that he is indeed gay. Furthermore, the Tribunal does find that the objective material which has been provided indicates that if he were to be returned to Gambia that he would indeed be persecuted on the basis of his sexual orientation.
7. The respondent in her grounds of appeal states the following which I summarise. The Judge failed to give reasons or adequate reasons for findings on material matters. The appellant claimed to be at risk due to an imputed political opinion and because of his claim sexual orientation in that he claimed to be gay. Neither claim was accepted by the Secretary of State. In the case of **Budhathoki (reasons for decisions) [2014] UKUT**

00341 (IAC) the Tribunal stated at paragraph 14 that “it is, however necessary for the First-tier Tribunal Judge to identify and resolve the key conflicts in the evidence and explain in clear in brief terms there reasons for preferring one case to the other so that the parties can understand why they have won or lost”.

8. The Judge’s determination is devoid of any analysis of the evidence and provides no explanation for why he found the appellant credible in respect of either of his claims. At paragraph 12 and 13 are no more than list of a series of positive credibility findings without any explanation as to how the findings were reached.
9. At the hearing neither the appellant nor his legal representatives attended. I satisfied myself that the appellant and his representatives, Stewart & co Solicitors were properly served with the hearing notice on 16 November 2015. As no explanation was on record for why the appellant or his representatives did not attend the hearing, I heard brief submissions from the Secretary of State and proceeded with the appeal.

Findings as to whether there is an error of law

10. The Secretary of State in her refusal letter sets out many adverse credibility findings for the appellant and his evidence. The Judge in the determination did not take into account the respondent’s case at all and did not resolve the conflict between the appellant’s case and the respondent’s case which he was duty-bound to do.
11. The Judge fell into material error because it is evident that he only took into account the appellant’s case and found him to be credible on both limbs of his claim without analysis of the evidence. The Judge took at face value the appellant’s claim that he had two relationships with women whilst in the United Kingdom and that as a result one of those relationships being an abusive one, he no longer became attracted to women. The Judge did not properly evaluate whether an abusive relationship with a woman leads a man to become a homosexual.
12. The Judge also took at face value and stated that the appellant’s evidence was credible that he had relationship with two men in this country. He and did not set out the evidence for why he found this evidence credible and whether the two men had attended the hearing to support the appellant’s appeal.
13. I am ultimately satisfied that there is a material error in the determination of First-tier Tribunal Judge in that he has failed to give reasons for why he found the appellant credible in light of the respondent’s refusal letter pointing out many aspects of the evidence which went to the lack of the appellant’s credibility.
14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision in its entirety. In the

circumstances, I am of the view that the proper course of action to take in this appeal in accordance with section 7. 2 (b) (i) the Senior President's Practice Statement of 25 September 2012 is remit the appeal to the first-tier Tribunal. The appeal requires judicial fact-finding and should to be considered by the First-tier Tribunal.

15. The decision in this appeal will be remade in the First-tier Tribunal by any Judge other than by First-tier Tribunal Abebrese on a date to be fixed.

Decision

The appeal is remitted to the First-tier Tribunal.

Signed by

Mrs S Chana
A Deputy Judge of the Upper Tribunal Judge

Date 16th day of December 2015