



IAC-TH-WYL-V1

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

Appeal Number: AA/02791/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
On 21st April 2016**

**Decision & Reasons Promulgated
On 25th April 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[S S]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C McGinley, of Gray & Co., Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies himself as a citizen of the Gambia, born on [] 1979. He has not applied for an anonymity order.
2. This appeal is against a decision by First-tier Tribunal Judge Debra Clapham, promulgated on 15th December 2015, dismissing the appellant's appeal against refusal of recognition as a refugee. His case was based on being a gay man from the Gambia.

3. The grounds are that the judge failed to give adequate reasons for such findings as were reached, and failed to answer the central and simple question: "Is the appellant gay?"
4. Permission to appeal was granted by the Upper Tribunal on the view that the judge did not make a clear finding of fact on the one key issue. The judge granting permission observed that the fact that the FtT found the appellant's account of his activities in the UK and in the Gambia lacking in credibility did not necessarily mean that it was implicit that he must therefore not be a gay man.
5. Mr McGinley pointed out that it had been conceded in the First-tier Tribunal by the Presenting Officer that the case turned on one point, and that if the appellant established that he is gay, his case succeeded. There had been ample evidence to enable the judge to reach a finding, including direct evidence from a witness who attended the hearing, and a number of written items in support, with which the judge failed to deal.
6. Mr Matthews acknowledged that a clear finding is lacking on the central issue in the case. He also accepted that there was some force in the point that the judge had not explained what she made of supporting evidence. He confirmed that the respondent did not seek to withdraw the concession that the case turns on whether the appellant establishes that he is a gay man from the Gambia.
7. The decision of the First-tier Tribunal errs in law and is **set aside**. No findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be re-made is such that it is appropriate to **remit the case to the First-tier Tribunal**. The members of the First-tier Tribunal chosen to re-consider the case are not to include Judge Clapham.



22 April 2016
Upper Tribunal Judge Macleman