



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

Appeal Number: PA/03045/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision and
Promulgated**

Reasons

On 13 April 2016

On 15 April 2016

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**H A
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr T. Wilding, Home Office Presenting Officer

For the Respondent: No appearance

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could

lead to contempt of court proceedings.

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The appellant appealed against the respondent's decision to refuse asylum and to refuse to recognise a right of residence under European law as an extended family member.
3. First-tier Tribunal Judge A. Kelly ("the judge") allowed the appeal in a decision promulgated on 17 February 2016. The judge noted the following concession made by the respondent's representative at the hearing:

"15. Mr Bassi conceded that if the Appellant is genuinely a practicing homosexual, then he would be at risk of persecution in Pakistan and therefore entitled to asylum. However, Mr Bassi maintained the respondent's position that the Appellant is not in fact in a genuine relationship with the Sponsor and is not genuinely of homosexual orientation."

4. The judge went on to consider the relevant law and evidence. She found the appellant and the sponsor to be credible and accepted that they were likely to be in a genuine relationship. Her conclusions were as follows:

"38. I have found on the balance of probabilities that the Appellant is gay as claimed. I have therefore gone on to consider how he would choose to live if returned to Pakistan. Whilst I suspect that the Appellant's natural inclination would be to keep his sexual orientation as private as possible and to attempt to be discreet about any gay relationships that he may have, I also find that the Appellant's sexual orientation and relationship with the Sponsor are already known by members of the Appellant's family in Pakistan and that there is a real risk that it would become common knowledge if he were to return to Pakistan. This is particular so as I have found the civil partnership between the Appellant and the Sponsor to be genuine and therefore a relationship that is likely to subsist even on the Appellant's return to Pakistan. I accept the Appellant's evidence that his father heard about the relationship from the cousin who stood surety for the Appellant in respect of his bail application. I also accept the Appellant's evidence that his relatives ascribe to Sharia law and may seek to harm him as a result of the shame that he will be perceived to have brought on his family. As a result, I find that even were the Appellant to attempt to be discreet about his personal life, he may nevertheless suffer persecution and be at risk of harm in Pakistan on the basis of information already known by certain family members.

39. Accordingly, having accepted the Appellant's claim to be a practicing homosexual and having considered the Home Office's Country Information and Guidance entitled "Pakistan: Sexual orientation and gender identity", I find that there is a real risk that he would be persecuted in Pakistan as a result of his sexual orientation and that he would be at risk of serious harm or even death. Indeed, during the appeal hearing, Mr Bassi conceded on behalf of the Respondent that if the Appellant were found to be homosexual then his asylum claim should succeed. ..."

5. The respondent did not seek to appeal the First-tier Tribunal decision allowing the appeal under The Immigration (European Economic Area) Regulations 2006. The application for permission to appeal was confined solely to the First-tier Tribunal's findings relating to the asylum claim. The respondent sought to appeal the decision on the ground that the judge misdirected herself in relation to a proper assessment of the principles outlined in *Hj (Iran) v SSHD* [201] UKSC 31 in light of her finding that the appellant would choose to live discreetly in Pakistan. The grounds also argued that the First-tier Tribunal failed to consider the availability of internal relocation.
6. First-tier Tribunal Judge Grimmett granted permission to appeal to the Upper Tribunal in the following terms:

“It is not arguable that the Judge erred with regard to the conclusion that his sexuality might become common knowledge as his family was aware of it and wished to do him harm. It is arguable that the Judge should have gone on to consider internal relocation in those circumstances.”
7. There was no appearance by or on behalf of the appellant at the hearing. The Upper Tribunal made enquiries with the legal representatives on record who confirmed that they were no longer instructed. I was satisfied that there was evidence to show that the appellant had been sent a notice of hearing. He provided no explanation for his absence. In the circumstances I was satisfied that I could proceed to hear the appeal in the absence of the appellant.
8. Mr Wilding acknowledged that the First-tier Tribunal Judge only granted permission in relation to the second ground of appeal. The first ground would, in any event, have been difficult to argue given the fact that the judge accepted that the appellant's sexual orientation had become known to his family and that he would be at risk as a result. He accepted that it was not arguable that the judge erred in failing to consider internal relocation in light of the clear concession made by the Home Office Presenting Officer at the First-tier Tribunal hearing i.e. if the appellant was found to be gay then his asylum claim should succeed.
9. The judge made clear and unchallenged findings that the appellant is gay and that his family were likely to know about the relationship. I find that she was entitled to rely on the clear concession made by the respondent's representative at the hearing. In light of that concession it was not necessary for her to go on to consider whether internal relocation was a reasonable alternative despite her finding that he was likely to be discreet about his sexual orientation.
10. I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law
The First-tier Tribunal decision shall stand

Signed  Date 13 April 2016
Upper Tribunal Judge Canavan