



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

Appeal Number: PA/04504/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21<sup>st</sup> February 2018**

**Decision & Reasons Promulgated  
On 26<sup>th</sup> February 2018**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**MJ  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr N. Ahmed, Counsel instructed on behalf of the Appellant

For the Respondent: Mr Wilding, Senior Presenting Officer

**DECISION AND REASONS**

**1.** The Appellant is a citizen of Pakistan.

**Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

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. This direction applies both to the Appellant and to the Respondent.

Failure to comply with this direction could lead to contempt of court proceedings.

- 2.** The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 22<sup>nd</sup> June 2017, dismissed his claim for protection.
- 3.** The Appellant's immigration history is set out within the determination at paragraphs 1-5, and in the papers before the Tribunal, namely, that the Appellant had applied for entry clearance as Tier 4 (general) student. He arrived in the United Kingdom on the 17<sup>th</sup> June 2012. He was subsequently granted leave to remain until 6<sup>th</sup> June 2015 however his leave was curtailed to expire on the 15<sup>th</sup> August 2014.
- 4.** On the 25 January 2016 the appellant was named as dependent in an asylum claim made by MW. The basis of his claim for protection related to his sexual orientation as a gay man. It was asserted that this appellant was the partner of MW. The application was refused by the Secretary of State on 28 July 2016. He lodged an appeal against that refusal and it came before the First-tier Tribunal. Both MW and this appellant gave evidence at that hearing.
- 5.** In a decision promulgated on 27 February 2017 his appeal was dismissed.
- 6.** In the intervening period, the appellant applied for asylum in his own right on 17 October 2016. He attended a substantive interview on 24 March 2017. A decision was made refusing that application on the 31<sup>st</sup> of March 2017 and the Appellant appealed to the First-tier Tribunal.
- 7.** He appeal came before the FTT on the 9<sup>th</sup> June 2017 and in a decision promulgated on the 22<sup>nd</sup> June 2017 his appeal was dismissed.
- 8.** The judge set out his findings and conclusions at paragraphs 22 - 45. It was common ground before the tribunal that if the judge had found the appellant's account of his sexual orientation to be true, that the respondent accepted that he would be at risk persecution or serious treatment and harm if returned to Pakistan (see paragraph 22).
- 9.** Thus the issue was credibility. At paragraph 23 the judge made reference to the earlier determination of the FTT relating to the appellants claimed partner MW and stated that the determination "remains determinative of the matters in his appeal unless and until it is overturned by the Upper Tribunal." The judge stated that the findings made by the FTTJ "are my starting point insofar as they relate to MW."
- 10.** At paragraph 24 he summarised the decision of the FTT namely that he had found MW to have fabricated his account of his sexual orientation; that he was not in a relationship with MJ(the appellant) and that the evidence given by both of them was "contrived and fabricated". The FTT had heard from both MW and MJ.

- 11.** At paragraph 25 the judge stated that the findings made by the FTT were “capable of being transposed into this appeal. They are my starting point in my consideration of the appellant’s case” (applying *Devaseelan*).
- 12.** He concluded that he did not find it at all likely that the appellant would be perceived as being homosexual in Pakistan and was “not satisfied that is established to the low standard that he faces a real risk of persecution or serious harm in Pakistan.” Thus the judge dismissed his appeal.
- 13.** The Appellant sought permission to appeal that decision and permission initially refused but was granted by the Upper Tribunal Judge McGeachy on the 1<sup>st</sup> December 2017 as follows:

“The grounds of appeal assert the judge in the first-tier has erred in his application of the *Devaseelan* principles and that he had not looked at the facts of this case afresh. Taking into account the fact that the Upper Tribunal set aside the decision in the appeal PAXxxxx, I consider that it is clearly arguable that the judge in this case erred in the way that he placed on the decision which has now been set aside.

I therefore grant permission to appeal.”
- 14.** It is common ground between the parties that the appellants claimed partner MW sought permission to appeal the decision of the First-tier Tribunal which was granted and at a hearing at before an Upper Tribunal panel on 19 October 2017 they set aside the decision of the FTT and remitted it for a fresh hearing. That is to take place on a date in 2018.
- 15.** There is no dispute between the advocates that the decision of the FTT involved the making of an error of law based on the grounds. Mr Wilding on behalf of the Respondent conceded that that in view of the litigation history that the findings on credibility were unsafe ( having been set aside) and that the correct course was for the decision to be set aside and to be remitted to the First-tier Tribunal. There is a date already listed and this appeal should be linked and heard on the same day.
- 16.** I am satisfied that the judge erred in law by dismissing the appeal and in particular by applying the *Devaseelan* principles in rejecting the appellants claim and that of his partner on credibility grounds. Whilst both the appellant and MW had given evidence before FTT J which had been rejected and his appeal was subsequently dismissed, however, the Upper Tribunal had granted permission to appeal against that decision and subsequently set aside that decision on 19 October 2017 on the basis that not all the evidence had been properly considered. Consequently as the judge in this appeal heavily relied on the determination of the previous Judge the findings were not independent from those earlier findings and therefore could not be properly or safely relied upon.
- 17.** I am satisfied that the concession was correctly made and that the FTT’s decision is vitiated by an error of law and his decision shall be set aside. As to the remaking of the decision, both advocates were in agreement that

the matter should be remitted to the First-tier Tribunal to be reheard and linked to the appeal of MW.

**Decision:**

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the appeal is remitted to the First-tier Tribunal.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

*SM Reeds*

Signed

Date: 22<sup>nd</sup> February 2018

Upper Tribunal Judge Reeds