



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

Appeal Number: PA/07322/2017

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

Promulgated

On 9 February 2018

On 8 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**SH (BANGLADESH)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Alison Harvey, Counsel instructed by Cranbrook Solicitors

For the Respondent: Mr S. Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-Tier Tribunal (Judge Skehan sitting at Hatton Cross on 31 August 2017) dismissing his appeal against the Secretary of State to refuse to recognise him as a refugee on account of his homosexual orientation.

The Reasons for the Grant of Permission to Appeal

2. On 21 November 2017 Upper Tribunal Judge King granted the appellant permission to appeal for the following reasons: *“The findings that the appellant is a gay man who will live discreetly in Bangladesh are properly open to be made. Such does not address the concern which lies at the heart of the asylum claim, namely a fear of his family and community, particularly coupled with a cultural expectation of marriage. No findings were made as to that risk or any consideration as to internal relocation.”*

Relevant Background

3. The appellant is a national of Bangladesh, whose date of birth is 5 January 1982. On 10 July 2003 he applied for a working holiday-maker visa. The application was refused, but allowed on appeal. The appellant entered the United Kingdom on a working holiday-maker visa on 6 June 2004. He overstayed, and was encountered working illegally at a restaurant in Ongar on 17 July 2014. He was identified as an overstayer. He was granted temporary admission and required to report. On 20 February 2015 the appellant applied for further leave to remain outside the Rules, and his application was refused on 27 March 2015 with no right of appeal.
4. On 21 October 2016 the appellant contacted the Asylum Intake Unit, and on 15 November 2016 the appellant claimed asylum as a homosexual.
5. He said that at the age of 15 he had had a sexual relationship with a man, ‘AK’, who lived in a neighbouring village. AK introduced him to a shop where he was able to purchase gay pornographic magazines. About two months after his relationship with AK had begun, his father saw him with the gay magazines and told him that he was taking the wrong path. He said that it was not acceptable from a cultural and community point of view, and their religion did not accept it. He understood that if he did not listen to his father, then his father would disown him (Q&A 38). The appellant was asked whether there were any other consequences. He said that his father would disown him, and he would not let him live, and he would chop him into pieces (Q&A 52). The appellant said that he conducted his relationship with AK in secret, and it had ended after about six months.
6. In 2016 he had become a member of the East London Lesbian and Gay Club, and he had also begun attending Pulse and Heaven gay nightclubs.
7. On 27 July 2017 the respondent gave her reasons for refusing the appellant’s asylum claim. It was not accepted that he was gay, due to the vague and uncertain nature of his account, and because there were credibility issues and inconsistencies within his evidence. On the issue of risk on return, it was considered that he would be able to return to his home area of Sylhet in Bangladesh and live as he had done in the past, as it was not accepted that he would be at any risk there. He was a healthy, well-educated male who had demonstrated his resourcefulness by leaving

Bangladesh and living in the UK for approximately 13 years. He could return to his previous home area, or he could choose to live elsewhere in Bangladesh.

The Hearing Before, and the Decision of, the First-tier Tribunal

8. Both parties were legally represented before Judge Skehan. In his subsequent decision, the Judge made the following findings:
 - (a) It was not reasonably likely that the appellant had had a sexual relationship with AK, although it was reasonably likely that he had had romantic feelings for AK that did not progress to a sexual relationship;
 - (b) The appellant had lived in the UK for approximately 13 years, and he had produced no evidence of any romantic or sexual relationship with a man during this time;
 - (c) The appellant was not living openly as a gay man in the UK;
 - (d) It was entirely possible that the appellant had chosen to hide his sexuality due to actual or perceived social or cultural pressures felt by him;
 - (e) The appellant felt unwanted pressure from his family to marry a woman.

9. At paragraph [60] of his decision, Judge Skehan considered the application of the test propounded by Lord Rodger in **HJ (Iran) -v- SSHD [2010] UKSC 31**. While the appellant had not had any sexual relationship with any man, the appellant might identify himself as gay. People who lived openly as gay in Bangladesh would be liable to persecution. He had not been provided with any evidence to suggest that the appellant would choose to live any differently in Bangladesh on return. He found that it would be most unlikely that the appellant, having never lived openly as a gay person at all, would decide upon his return to Bangladesh to live openly as a gay man and thereby be exposed to a real risk of persecution. He concluded that the appellant would in fact live discretely and so avoid any potential persecution. The Judge continued:

“I must go on to ask myself why he would do so. In considering the evidence set out above as whole, I conclude that he has throughout his life and would continue to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e.g. not wanting to distress his parents or embarrass his friends. For this reason, the appellant’s appeal should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them ...I have considered whether the material reason for the applicant living discreetly on his return would be a fear of persecution which would follow if he were to live openly as a gay man, and I have concluded that due to the fact that the appellant has lived discretely for 13 years in the UK where there is no fear of persecution, that a fear of persecution is not the reason for the appellant choosing to live discreetly. I accept that the appellant has faced unwelcome pressure to marry from his family however such social pressure does not amount to persecution.”

The Hearing in the Upper Tribunal

10. At the hearing before me to determine whether an error of law was made out, Ms Harvey (who did not appear below) developed the arguments advanced in the grounds of appeal. She submitted that it was not open to the the Judge to base his conclusions on the fact that the appellant had lived discretely as a gay man in the UK. The Judge had not engaged with the appellant's evidence about the threat made to him in the past by his father, and his expressions of fear as to what would happen to him if he lived openly as a gay man in Bangladesh. Being forced to marry a woman against his will would be persecutory.
11. On behalf of the Secretary of State, Mr Kotas submitted that the Judge had not found the appellant to be a credible witness, and the findings which he had made when applying the test in **HJ (Iran)** were reasonably open to him on the evidence.

Discussion

12. In his closing submissions before Judge Skehan, Counsel for the appellant drew the Judge's attention to the section on internal relocation in the Home Office's Country Policy and Information Note on Bangladesh: "*Sexual orientation and Gender Identity*", dated December 2016. The section provides as follows:
 - 2.5.5 It would not, in general, be unreasonable or unduly harsh for a gay man (or a person who is perceived to be such) who is able to demonstrate a real risk in his home area because of his particular circumstances, to relocate internally within Bangladesh.
 - 2.5.6 Bangladesh is one of the world's most densely populated countries. If an LGBT person's family wishes to pursue and harm her/him in the place of internal relocation, their ability to do so will depend on the reach of the family network, how persistent they are, and how influential.
 - 2.5.7 Decision-makers must also take into account that the Supreme Court in the case of **HJ (Iran)** made the point that internal relocation is not the answer if it depends on the person concealing their orientation (or gender identity) in the proposed new location for fear of persecution.
13. It would have been open to Counsel for the appellant to run a case in the First-tier Tribunal that the appellant faced a real risk of persecution in his home area at the hands of his father and/or the local community, if he came out to them as gay; and to submit that internal relocation was not the answer as it would depend on the appellant concealing his sexual orientation in the proposed new location for fear of persecution by non-state agents in the new location.
14. However, Counsel did not do so. It is apparent from the Judge's manuscript record of proceedings that Counsel did not advance a case that the appellant faced a specific or elevated risk of persecution in his home area at the hands of his family or the local community. Counsel simply relied on paragraph 2.57 of the Guidance.

15. At paragraph 20 of his witness statement for the appeal, the appellant said:

“I cannot tell my family about my homosexuality, I am afraid. They will disown me, and that really scares me. My brother will not support me if he finds out I am homosexual and that is why I am still hiding the fact that I am gay from my family. “

In his closing submissions, Counsel for the appellant made express reference to the appellant’s fear of being disowned by his family if he came out as gay. Counsel did not submit that, in addition to having a fear of being disowned by his family, the appellant also had a well-founded fear of being murdered by his family.

16. At paragraph [4] of his decision, the Judge summarised the appellant’s claim as set out in his written evidence. The Judge said that the appellant’s explanation for not telling his family about his homosexuality was that he was *“afraid that they will disown him.”*
17. The grounds of appeal do not in terms challenge the accuracy of the Judge’s summary of the thrust of the appellant’s evidence. Having checked the record of proceedings, I am satisfied that the Judge has adequately addressed the case that was put to him in the First-tier Tribunal. The Judge was not asked to decide whether the appellant had an elevated risk of persecution in his home area from his father and/or the local community. So it was not incumbent on the Judge to make specific findings on aspects of the appellant’s evidence which might arguably have supported such a case, such as the appellant’s claim that his father had in the past threatened to chop him into pieces if he continued down the *“wrong path”* of homosexuality. Similarly, as the Judge was not asked to weigh up the potential risk to the appellant in his home area as against the potential risk he would face on internal relocation, there was no error on the part of the Judge in not drawing such a distinction in his findings.
18. I accept that forcing someone into marriage is capable of being persecutory. But it was not part of the appellant’s evidence or case before the First-tier Tribunal that there was a real risk of him being forced into marriage. The apprehended risk was of the appellant being disowned by his family if he came out as homosexual. If he came out as homosexual by way of an explanation for not entering into an arranged marriage, the consequences would be no different. On the appellant’s case, the risk was that he would be disowned by his family, not that he would be forced into marriage or chopped into pieces.
19. Ms Harvey also took issue with the following passage in the decision at paragraph [16]: *“Whether the appellant would be treated as gay by any potential persecutor is difficult to assess. Any potential persecutor is on a simple basis likely to consider men who have sex with men as gay, and men who do not have sex with other men as not being gay. Therefore, there is a real question mark as to whether or not the appellant would be perceived by any potential persecutor as gay. For the purposes of this*

test I assume that any potential persecutor would consider the appellant to be gay and therefore I continue.”

20. Ms Harvey submits that the Judge was thereby conceding that the appellant would have to take positive steps to conceal his self-identification as a gay person in order to avoid potential persecution. In fact that the Judge was saying the opposite. The Judge’s view was that the appellant was unlikely to be perceived as gay by any potential persecutor precisely because he was not a practising homosexual and he was very discrete about his self-identification as a gay person.
21. The Judge gave adequate reasons for finding that the appellant would live discreetly as a gay person in Bangladesh, and that a fear of persecution would not be a material reason for the appellant choosing to do so.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

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 or any member of their 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.

Signed

Date 17 February 2018

Judge Monson
Deputy Upper Tribunal Judge