



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

Appeal Number: PA/14206/2016

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 28 February 2018**

**Decision & Reasons Promulgated  
On 23 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**A B  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr C Boyle, Solicitor

For the Respondent: Mr D Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge S P J Buchanan promulgated on 27 February 2017 in which he allowed the appeal against the respondent's decision made on 15 December 2016 to refuse his claim for asylum.
2. The appellant's case is that he is a gay man and faces persecution on return to the Gambia for that reason. He says that he became aware of his sexuality when he was aged between 12 and 14 and had started a relationship with a boy at school which then came to the notice of others despite having taken precautions against discovery and he was then

expelled from school. His mother's shop was vandalised and so he moved to Dakar, Senegal, where in March 2014 he was attacked whilst in company of another gay man because of their sexuality. He was detained and ill-treated and eventually fled to the United Kingdom via France.

3. The Secretary of State did not accept, for the reasons set out in the refusal letter, that the appellant is a gay man or that he would be perceived as such although [43] she accepted that members of the LGBT community in Gambia and Senegal may be persecuted and that persecution may be either state sponsored or state condoned. It was also accepted that a member of the LGBT community would not be able to live an openly gay lifestyle in Gambia and Senegal without fear of severe reprisals [47].
4. The judge heard evidence from the appellant concluding [7.11] to [7.14] and considered all the evidence that the appellant is a gay man and that his appeal be allowed on that basis. The judge rejected the respondent's challenges [7.12] and accepted the appellant's account.
5. It follows his findings the judge accepted that the appellant had been perceived to be gay and has suffered on that reason both in the Gambia and in Senegal.
6. The respondent appealed on the grounds that the judge, had failed to set out the approach in **HJ Iran [2010] UKSC 31** in particular failing to consider whether the appellant could live openly as a gay man on return.
7. On 28 June 2017 First-tier Tribunal Judge Page granted permission to appeal.
8. It is important to note in the context of the findings made by the judge in this case that despite trying to be discreet, the appellant's relationship with his friend first at school had come to the attention of a female friend – see paragraphs [6.5] and [7.5].
9. Two things follow from this. First, that despite trying to live discreetly the appellant had been perceived to be a gay man and had suffered ill-treatment as a result. Second, the attempt to live discreetly was out of fear. The appellant's evidence was "we didn't show to the outside world because we knew that it was not accepted in our community. We were very careful."
10. Whilst the judge does not set out the three step process identified in **HJ (Iran)** I am not satisfied that his error is material. That is because the appellant has already suffered ill-treatment on account of his sexual orientation which became known despite attempts to be discreet and there is no evidence of any particular change since that. It follows further that even were the appellant to attempt again to hide his sexuality by being discreet that he did so out of fear. Openly, in this context, is country specific and in this case it is clear that even discreet relationships where precautions were taken were unacceptable and resulted in ill-treatment.

11. Accordingly, I conclude that the decision to allow the appeal is sustainable on the basis of the findings of fact made by the First-tier Tribunal.

**Notice of Decision**

- (1) The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.
- (2) I maintain the anonymity decision made by the First-tier Tribunal.

Signed

Date 22 March 2018

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul