



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/02572/2018

**THE IMMIGRATION ACTS**

Heard at the Civil Justice Centre, Manchester

Decision & Reasons Promulgated

On the 26<sup>th</sup> November 2018

On the 02<sup>nd</sup> January 2019

**Before:**

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

**Between:**

JRA

(Anonymity Direction made)

**Appellant**

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

Representation:

For the Appellant: Mr Mahmood (Counsel)

For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Smith promulgated on the 26<sup>th</sup> April 2018, in which he dismisses the Appellant's protection and Human Rights appeal, the protection claim being dismissed on the basis that he did not accept that the Appellant was gay.
2. Within the Grounds of Appeal it is argued, inter alia, that the Judge had not taken into consideration the Appellant's evidence that she was gay and account of the Appellant's witness (her sister) who confirmed it is argued both

in oral evidence and in her statement, that she believed that the Appellant was homosexual.

3. Permission to appeal has been granted by First-tier Tribunal Judge Scott Baker on the 4<sup>th</sup> June 2018 on the basis it was clear from the determination that the Judge had overlooked the evidence of the sister with nothing being set regarding what her sister said on the issue within her witness statement and at the hearing. He noted that the Appellant's sister had confirmed that she was aware the Appellant was a lesbian and that she had been beaten by her family as a result which was said to go to the core of the Appellant's claim.
4. Before me in the Upper Tribunal, Mr Tan agreed that in the decision of First-tier Tribunal Judge Smith, the Judge had failed to take account of the evidence of the Appellant's sister in determining whether or not the Appellant was gay. Mr Tan made reference to the fact that there was only limited mention of the Appellant's sister, and in that regard, I note that the First-tier Tribunal Judge stated at paragraph 27 that her sister's evidence was that she intended to return to Iraq, and the Judge noted further that the Appellant lived with her sister for the consideration of the Article 8 claim, but nowhere within the decision is there any reference to the sister's evidence regarding her belief that the Appellant is gay or the evidence that was given that the Appellant had been beaten by her family as a result. Mr Tan conceded that the Judge had not considered the sister's evidence in sufficient detail and that the consideration of the question as to whether or not the Appellant was gay did need to be conducted having taken account of all of the relevant evidence, such that he conceded that the decision contained a material error of law, such that the decision of First-tier Tribunal Judge Smith should be set aside in its entirety and the case remitted back to the First-tier Tribunal for re-hearing before a differently constituted Tribunal before any First-tier Tribunal Judge other than First-tier Tribunal Judge Smith.
5. In light of that concession, I do find that the decision of First-tier Tribunal Judge Smith does contain a material error in terms of his failure to consider all the relevant evidence in respect of the sister's evidence regarding the Appellant's sexuality, and in such circumstances, I do set aside the decision of First-tier Tribunal Judge Smith in its entirety and remit the case back to the First-tier

Tribunal for re-hearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Smith.

Notice of Decision

The decision of First-tier Tribunal Judge Smith does contain a material error of law and is set aside.

The case is to be remitted back to the First-tier Tribunal for re-hearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Smith.

I do make an Order for anonymity in this case given the nature of the protection claim. No record or transcript or note of these proceedings shall refer to or identify the Appellant by name or otherwise, or any members of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction can lead to contempt of Court proceedings.

Signed

Handwritten signature in black ink, reading "RFMcGinty".

Deputy Upper Tribunal Judge McGinty

Dated 26<sup>th</sup> November 2018