



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

Appeal Number: PA/09612/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2019**

**Decision & Reasons
Promulgated
On 25 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**AA
(ANONYMITY DIRECTION CONTINUED)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Reza of Counsel instructed by JKR Solicitors
For the Respondent: Mr L Tarlow of the Specialist Appeals Team

Anonymity Direction

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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings

DECISION AND REASONS

The Appellant

1. The Appellant is a Bangladeshi born in 1988. On 1 May 2012 he arrived with leave as a student, expiring on 16 May 2013. He made several subsequent applications for leave to remain, all of which were refused and in respect of which his appeal rights are long exhausted. On 19 December 2017 he sought subsidiary protection on the basis of his sexual orientation.

The SSHD's decision

2. On 14 July 2018, the Respondent (the SSHD) refused the Applicant's application for subsidiary protection. The SSHD accepted the Appellant is a gay man from Bangladesh and considered that as he had lived discreetly as a gay in Bangladesh and in the United Kingdom, it would be reasonable for him to relocate within Bangladesh. His claim based on his private life in the United Kingdom protected by Article 8 of the European Convention was also rejected.

Proceedings in the First-tier Tribunal

3. The Applicant appealed and by a decision promulgated on 19 December 2018 Judge of the First-tier Tribunal Harrington discounted the country expert report by Dr Inge Amundsen (the expert report) which the Appellant had filed and found that on return to Bangladesh the Appellant might experience discrimination and some harassment which would not amount to persecution. She dismissed the appeal on all grounds.
4. The Appellant sought permission to appeal on the basis that having accepted his sexual orientation, the Judge had erred in her assessment of the expert report and the background information about the LGBTQ+ community in Bangladesh and had failed to give adequate reasons to reject the evidence of the Appellant and his witnesses. On 24 January 2019 Judge of the First-tier Tribunal Gibb granted permission to appeal.

The Upper Tribunal Proceedings

5. The Appellant attended the hearing. I explained the purpose of and procedure followed at an error of law hearing. Other than to confirm his current address, he took no active part in the proceedings.
6. The Appellant had filed and served a copy of the decision of the Upper Tribunal in *MSA, PA/07096/2017* an unreported decision of Lord Matthews and Upper Tribunal Judge Jackson promulgated on 8 February 2019 in which Mr Reza had appeared. I referred Mr Tarlow, in particular, to paragraphs 71 and 72 of *MSA* in which the Upper Tribunal had found Dr Amundsen "is entitled to be regarded as an expert on human rights in Bangladesh, albeit with no specific expertise or background in LGBT issues".

7. I indicated that this alone was sufficient to justify finding that the Judge had made a material error of law in her decision. Mr Tarlow quite properly pointed out that in addition the Judge had failed to adopt the structured approach to the ascertainment and assessment of risk recommended in *HJ (Iran) v SSHD [2000] UKSC*
8. I informed Mr Reza for the Appellant that I did not need to hear from him and proposed to find the Judge's decision contained material error of law such that it should be set aside. I enquired if there was any objection to me re-making the decision, particularly in the light of the Respondent's acceptance of the Appellant's sexual orientation. Both representatives confirmed there was none. I announced that the Judge's decision should be set aside because it contained a material error of law and that the appeal is allowed for the reasons which would follow in this decision.
9. The reasons are that the Respondent has accepted the Appellant's claimed sexual orientation and that he is openly gay: see paragraph 30 of the Judge's decision. Having regard to the Upper Tribunal decision in *MSA*, I place reliance on the expert opinion of Dr. Amundsen. The evidence before the Judge was that the Appellant, if returned to Bangladesh, would not voluntarily be discreet as to his sexual orientation. Homosexual acts are illegal in Bangladesh where they are widely viewed to be in violation of the national culture. The expert report indicates that while the authorities may not often bring prosecutions against gay men, there is a widespread unwillingness on their part to provide a sufficiency of protection against the discrimination and violence frequently practised against openly gay men in Bangladesh.
10. The First-tier Tribunal decision contains an anonymity direction although it gives no reason why it is proportionate to the need for transparency in the Tribunal's administration of justice. This is a subsidiary protection appeal and on that basis and because the matter was not addressed at the hearing before me I propose to continue the anonymity direction.

SUMMARY OF DECISION

The decision of the First-tier Tribunal contains an error of law and is set aside.

The appeal of the Appellant is allowed on asylum grounds.

Anonymity direction continued.

Signed/Official Crest

Date 21. iii. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

I have allowed the appeal and so have considered whether to make a fee award. The foundation for the successful appeal was the expert report which was not served or filed until 29 August 2018 some five days before the First-tier Tribunal hearing. In these circumstances, it is not appropriate to make a fee award.

Signed/Official Crest

Date 21. iii. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal