



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

Appeal Number: PA/00974/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 February 2020**

**Decision & Reasons Promulgated  
On 11 February 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**DK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms McCarthy

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was born in 1999 and is a male citizen of Albania. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 21 December 2017 refusing his application for international protection. The First-tier Tribunal, in a decision promulgated on 31 October 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the outset of the initial hearing, Mr Jarvis, who appeared for the Secretary of State, told me that the respondent had misgivings regarding the decision of the First-tier Tribunal. He recognised that there was a

tension between the judge's finding that the appellant is not homosexual as he claims and the finding at [55] that the appellant and his friend K are 'special friends and may even have a crush on each other'. It was unclear whether the judge believed that such a 'crush,' albeit between what she described as immature young men, could constitute a genuine homosexual relationship. Mr Jarvis did not refer to the judge's alternative findings as regards internal flight. However, I consider that there is substantial merit in the grounds concerning the issue [21-23] and, in light of the position adopted by both advocates, the internal flight alternative will need to be looked at again following findings as regards the appellant's true sexuality and how this may impact upon his ability to return to his home area of Albania or to relocate.

3. Ms McCarthy, who appeared for the appellant, shared Mr Jarvis's concerns. In addition, she submitted that the judge had misunderstood the evidence of the appellant's foster mother. The judge should place substantial weight upon her findings regarding an evening which the appellant claims to have spent with K and whether the foster mother was a was not present. The appellant asserts (the Mr Jarvis did not seek to argue with that assertion) that the foster mother's evidence was that she had not eaten a meal with the appellant and his friend and that the discrepancies/failure to recall past events identified in the evidence by the judge at [43] did not exist.
4. The judge has carried out an extremely thorough analysis of the evidence and issues in this case. However, I find that I agree with both representatives that the judge's reasoning is unclear in places and that she has placed weight upon her own misunderstanding of part of the appellant's evidence. I told the parties that I intended to set aside the decision. The appeal is returned to the First-tier Tribunal for that tribunal to remake the decision following a hearing *de novo*. None of the findings of fact shall stand. In the light of the complexity of the evidence adduced in this appeal, the appellant's representatives are directed to serve on the respondent and to file at the Tribunal a paginated, consolidated bundle of documents.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*. The appellant's representatives are directed to serve on the respondent and to file at the Tribunal a paginated, consolidated bundle of documents no less than 10 days before the First-tier Tribunal hearing.

Signed

Date 7 February 2020

Upper Tribunal Judge Lane

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.