



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/05933/2018**

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre  
On 3 February 2022  
Remotely by Microsoft Teams**

**Decision & Reasons Promulgated  
On 09 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**MK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Bhachu instructed by Duncan Lewis Solicitors  
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.
2. The appellant is a citizen of Namibia who was born on 11 October 1991.

3. The appellant arrived in the United Kingdom on 20 February 2018 and claimed asylum. The basis of his claim was twofold: first, he feared returning to Namibia due to a property dispute with his brother; and second, the appellant feared returning to Namibia because he is a bisexual man and had previously suffered persecution as a result of his sexuality.
4. On 24 April 2018, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.
5. The appellant appealed to the First-tier Tribunal and, on 18 July 2019, Judge Phull dismissed the appellant's appeal. The appellant successfully appealed to the Upper Tribunal and, in a decision dated 12 February 2020, DUTJ Lewis remitted the appellant's appeal to the First-tier Tribunal for a *de novo* rehearing.
6. The remitted appeal was heard on 1 September 2020. In a decision sent on 30 September 2020, Judge Chohan dismissed the appellant's appeal on all grounds. First, she rejected the appellant's claim based upon a property dispute with his brother. Second, however, the judge accepted the appellant's account that he is a bisexual man and, in her words, "he was beaten as claimed". However, the judge found that the appellant could safely and reasonably internally relocate within Namibia. The judge also dismissed the appellant's appeal under Art 8 of the ECHR.
7. The appellant sought permission to appeal to the Upper Tribunal challenging the judge's finding in relation to internal relocation, under Art 8 of the ECHR and on the basis that the judge had failed to consider Art 3 and the appellant's claim based upon a deterioration in his mental health if he returned to Namibia.
8. On 13 April 2021, the First-tier Tribunal (DJ Shaerf) granted the appellant permission to appeal on all grounds.
9. The appeal was listed for a remote hearing at the Cardiff Civil Justice Centre on 3 February 2022. I was based in court. Ms Bhachu, who represented the appellant, and Ms Rushforth, who represented the respondent, joined the hearing by Microsoft Teams. The appellant also joined the hearing remotely.
10. At the outset of the hearing, Ms Rushforth conceded that the judge had materially erred in law on the basis of the grounds of appeal. Ms Rushforth accepted that the judge's findings in relation to risk on return, including sufficiency of protection and internal relocation could not be sustained. Further, she accepted that the Art 8 claim should be reconsidered by the judge re-making the decision.
11. I agree with Ms Rushforth's concession that the judge's decision contained a material error of law and cannot stand. It is set aside and must be re-made.

12. Following discussion with the representatives, I indicated that the appropriate disposal of the appeal was to remit it to the First-tier Tribunal in order to re-make the decision on asylum grounds (in respect of risk on return including internal relocation and sufficiency of protection) with the judge's findings made at paras 8-19 preserved.

### **Decision**

13. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. The decision cannot stand and is set aside.
14. The decision will be re-made in relation to asylum and under Arts 3 and 8 of the ECHR.
15. Having regard to the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of the appeal is to remit it to the First-tier Tribunal in order to re-make the decision. The decision to be re-made by a judge other than Judge Chohan or Judge Phull.
16. The outstanding issues, upon which factual findings must be made, in respect of the asylum claim encompass whether the appellant has established a real risk of persecution or serious harm as a result of his sexuality and, whether he would obtain a sufficiency of protection from the Namibian authorities and whether internal relocation is a safe and reasonable option.
17. Judge Chohan's findings in paras 8-19 are preserved including that the appellant is bisexual and was "beaten as claimed", although the judge did not make any explicit findings on the places where those beatings took place.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
8 February 2022