



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003698

First-tier Tribunal Nos: PA/52002/2023
LP/03159/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 23rd of October 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MJ
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Reza, JKR Solicitors

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

Heard at Field House on 14 October 2024

DECISION AND REASONS

1. The parties were in agreement as to the outcome. Accordingly, my decision can be brief.
2. The appellant is a citizen of Bangladesh who claims to face a risk of persecution in Bangladesh on account of his sexuality. He is appealing against a decision of Judge of the First-tier Tribunal Veloso dated 20 June 2024.
3. The central issue before the judge was whether the appellant is gay as he claims, and as stated by multiple witnesses (including five who gave oral evidence at the hearing).
4. In para. 28 the judge characterised the evidence of the witnesses as being that they had met the appellant in different locations and “seen him being intimate with others”.

5. The judge did not believe the appellant or his witnesses, and found the appellant is not gay.
6. The appellant advanced three grounds of appeal. Permission was granted on only a part of one of the grounds, where it is submitted that the judge erred by failing to give adequate reasons for rejecting the evidence of three of the witnesses who gave oral evidence: ZH, SH and RH.
7. At the hearing Mr Reza helpfully took me to the witness statements of each of these three individuals. As Mr Reza emphasised, two of them (SH and RH) gave evidence that they had themselves had sexual relations with the appellant.
8. Mr Lindsay stated that he was bound to accept that the judge had not taken into account that SH and RH claimed to have had a sexual relations with the appellant. He conceded the appeal for this reason. He was correct to do so. The judge characterised the evidence of SH and RH as being that they had seen the appellant being intimate with others when in fact their evidence was that they had themselves been intimate with him. This is an important distinction, and the failure to appreciate it renders the assessment of the credibility of the appellant's account unsafe.
9. Both parties were of the view that the matter should that be remitted to the First-tier Tribunal to be made afresh by a different judge. I agree. As the assessment of the credibility of the appellant's account was based on a mistaken understanding of the evidence, it would not be appropriate to preserve any of the judge's findings of fact. Five witnesses gave oral evidence in the First-tier Tribunal and I would anticipate that further fact-finding is likely to be extensive. In these circumstances, it would be consistent with para. 7.2(b) of the Practice Statements to remit the case for a fresh hearing in the First-tier Tribunal. See *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 000 46 (IAC).

Notice of Decision

10. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside.
11. The appeal is remitted to the First-tier Tribunal to be made afresh by a different judge.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22.10.2024