



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00544/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9<sup>th</sup> July 2018

Determination Promulgated  
On 12<sup>th</sup> July 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

SK

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J Bond, instructed by Rainbow solicitors LLP  
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as S K. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. First-tier Tribunal Judge Seelhof dismissed SK's appeal against the decision to refuse his international protection claim for reasons set out in a decision

promulgated in February 2018. Judge Seelhof accepted SK's claim that he was gay and that he feared his family but did not accept that his father/family had such 'reach' as to be able to find him if he were to move away from his home area in India.

2. Permission was sought and granted on grounds that it was arguable:
  - (i) That there is a national ID card system in India and, if SK relocates elsewhere, he would have to give his unique ID number to be able to access services or open a bank account and this would facilitate a search for him by his family;
  - (ii) That it does not follow that SK's lack of any political knowledge means that his father does not have the political connections to trace him; and
  - (iii) That the judge erred in not assessing the case on its own facts in deciding whether *MD (same-sex orientated males: risk) India CG* [2014] UKUT 00065 (IAC) should be distinguished.
  
3. As identified by Ms Bond at the commencement of the hearing before me, the real issue in this appeal was whether the national ID card system in operation in India was such as to render the potential relocation of SK elsewhere in India than his home area, unduly harsh because he was at risk of being traced by his family who, it was accepted by the First-tier Tribunal Judge would cause him serious harm if they located him.
  
4. Ms Bond readily acknowledged that the background country material that was before the judge had not dealt explicitly with the national ID system but nevertheless urged me to find that the existence of such a system was in the public domain and should therefore have been taken into account by the First-tier Tribunal judge in reaching his decision. Although I indicated at the hearing that I could not readily accede to her submission I nevertheless on subsequent consideration accept that the existence of a national identity system may well exist and that some form of registration may well be necessary to obtain access to services. But that is a long way from accepting that if SK has to obtain a national ID card (and there was no particular evidence about how he would go about that), that act of obtaining such a card or subsequently using it would lead to his family being able to trace his whereabouts. Even if there were an openly searchable database, again a matter on which there was no evidence put to the First-tier Tribunal, the set-up of that data base is not known. Is it by state, by city or by name? It is also not known, or at least there was no particular evidence other than assertion, how SK's family would know he had returned to India and would thus know to search for him. The evidence before the First-tier Tribunal was, from SK, that to open a bank account ID would have to be presented and that would be checked and thus his family would find out.
  
5. Although SK gave evidence to that effect, there was nothing before the First-tier Tribunal to support that evidence. In the absence of such evidence, which if that is the case could be obtained through country material or an expert on the ID system in India, it would not have been open to the First-tier Tribunal judge to depart from *MD* to the extent of being able to find that it would be

unduly harsh for SK to relocate or that there was a reasonable likelihood of his family being able to trace him through the ID system.

6. It may be that there is now evidence that could lead to a departure from *MD*. But that evidence was not before the First-tier Tribunal. It is correct that the First-tier Tribunal judge did not deal with SK's evidence that he could be traced through an ID card. But given the evidence that was before the First-tier Tribunal, it would have made no difference to the outcome of the appeal. Any such error by the First-tier Tribunal Judge is immaterial.
7. In so far as the second ground is concerned, the judge reached findings that were open to him. SK did not have any political knowledge and had no, or insignificant knowledge, of his father's political activities. To extrapolate from that that his father had such connections as would enable him to trace SK is not credible, even if he knew that SK had returned to India. There is no error of law.
8. The final ground relied upon falls given the failure to sustain an error of law in the internal relocation findings.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside the decision. The decision of the First-tier Tribunal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 9<sup>th</sup> July 2018



Upper Tribunal Judge Coker