



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03729/2016

THE IMMIGRATION ACTS

Heard at Field House
On 19 February 2018

Decision & Reasons Promulgated
On 19th March 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

ST
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan, Counsel instructed by Hackney Community Law Centre

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Algeria and his date of birth is [] 1981. He made an application for asylum on the grounds of his sexuality which was refused by the Secretary of State on 4 April 2016. There is an unfortunate history to the case. The Appellant's appeal was dismissed by Judge of the First-tier Tribunal R Chowdhury on 24 November 2016. This decision was set aside following a finding that there was a material error of law. The matter came before another First-tier Tribunal Judge,

Judge M R Oliver, on 13 September 2017. I set aside Judge Oliver's decision, having heard submissions following the grant of permission in a decision dated 7 February 2018. I communicated the decision orally to the parties at the hearing on 15 January 2018.

The Error of Law Decision

2. The error of law decision reads as follows:-

- "7. At the hearing before me Ms Pettersen conceded that there was a material error of law in the decision of Judge Oliver for the reasons raised in the grounds which relate to the failure to engage with the evidence form N, the failure to consider Article 8 and the failure properly to engage with the threat from the Appellant's brother in Algeria.
8. I agree. Judge Oliver has effectively repeated the error that had been made by Judge Chowdhury relating to the Appellant's family in Algeria in addition to failing to consider evidence and properly consider Article 8. Mr Nathan's preference was for the matter to be remitted to the First-tier Tribunal. However, having considered the Practice Statement of 25 September 2012 and that the Appellant has already had two hearing in the FtT, I decided that the matter should be retained by the UT, which will go on to remake the decision after a rehearing.
9. I set aside the decision of Judge Oliver to dismiss the appeal.

Directions

10. The matter is listed before me on 19 February 2017. I made a direction as follows:
 1. In the light of the concession made that the relationship between the Appellant and his partner is genuine and the legal position in respect of homosexuality in Algeria, the Respondent is directed to clarify her position in respect of insurmountable obstacles to family life and family life generally continuing in Algeria within fourteen days of today's hearing."

3. At the start of the hearing before me on 19 February 2017 Mr Nathan raised two matters. First was the inadequate response by the Secretary of State to the direction I made. I indicated that the matter could be dealt with in submissions. The second issue was that of venue. The matter had been raised at the hearing before me on 15 January 2018. Mr Nathan referred to a recent court user meeting attended by a colleague of his who reported Chamber President stating that where an error of law has been found, appeals should be remitted to the First-tier Tribunal. It became clear to me that what was said at the meeting has not been properly relayed to Mr Nathan. This is at odds with the Practice Statement concerning the disposal of proceedings of 25 September 2012. There have been two hearings in the First-tier Tribunal. As I stated to the parties at the hearing on 15 January there is no need for a full fact-finding assessment to be made in the light of the Respondent having accepted the Appellant's sexuality. In addition, the evidence of RS, the Appellant's partner, was

not challenged by the Presenting Officer at the hearing before Judge Oliver who made positive findings.

The Appellant's Evidence

4. The Appellant's evidence is contained in his witness statement of 6 September 2017 which he adopted as his evidence-in-chief. He attended the hearing and gave evidence. His evidence can be summarised.
5. The Appellant was born and raised in a Sunni Muslim family. His parents are deceased. He was raised by his grandmother. He has nine siblings. One of his brothers, F, resides in the UK and is now a British citizen. When the Appellant was aged 13 he had a relationship with a boy and this continued for six months. When he was aged 15 he was violently and sexually assaulted by two men. He was taken to hospital and he reported the matter to the police. The police told him that he looked gay when he told them that the men had tried to rape him. He was told by the police that the men knew that he was gay and they suggested that the Appellant had wanted the attack to happen to him. They laughed at him and called him names like "atika" which is a derogatory term in Arabic for effeminate or gay men. When the Appellant was aged 19 he met a man, B. They had a relationship which they kept secret. He met another man after that relationship had come to an end.
6. He described his life in Algeria as being "very scary". He wanted to live openly. He applied for visitor visas to travel to France, Spain and the UK. He was eventually granted a visit visa to come to the UK. He came here in 2013 at the age of 32. He made a claim for asylum on 8 October 2015. He did not know that it was possible to claim asylum on the grounds of sexuality, but having made friends with other Algerian gay men, he was told that it was possible. He initially lived with his brother, F, but, moved out of his house in March 2015. He was scared that F would find out that he is gay. The Appellant wanted to live openly as a gay man. He was sick of hiding. He has been living openly as a gay man whilst in the UK, frequenting bars and nightclubs and expressing himself without fear. He has gay friends, he drinks alcohol and uses social media apps and gay websites. He was in a relationship with GM for approximately a year which ended in or around January 2016. They met at a gay bar in Marble Arch.
7. He met his current partner, RS, a British citizen, in early March 2016. He moved in to live with RS in late April 2016. They have grown close. They are partners and planning the rest of their lives together. RS has two adult daughters and in oral evidence the Appellant described visiting his daughter, K, and her two young daughters. The Appellant's evidence is that he does not want to hide his sexuality.
8. If he was to return to Algeria he could not be openly gay there, but he is now unable to hide his sexuality. He could not on return conceal the fact he is gay. He does not want to hide again. He wants to be himself. He would no longer be able to conceal his sexuality like he did before coming to the UK. He believes that should he return

to Algeria his brother, H, would track him down and kill him. H used to call him on his mobile and make threats. The Appellant has now changed his number. The calls continued after he moved in with RS in April 2016. The Appellant believes that he was seen with a man by someone in London who told H. H started to call him on his mobile, abusing him. He sent messages on Facebook and Messenger threatening the Appellant who then blocked him. H told the Appellant's best friend, N, who resides in Algeria, that should the Appellant return he (H) will kill him. H has threatened the Appellant. The Appellant has not heard from his brother, F, in the UK since H found out that he was gay.

9. The Appellant worked as a tennis coach in Algeria prior to coming to the UK. Life in Algeria was unbearable for the Appellant. There was tremendous pressure on him to get married and have children. He constantly had to lie and make up stories to conceal his sexuality. If he continued to live in Algeria he would have to marry a woman and hide his sexuality which he could not do. It would not be possible for him to live like that.

The Evidence of RS

10. RS gave evidence. He adopted his witness statement of 6 September 2017 as evidence-in-chief. He is a company director of a property management company. He owns his own property which is mortgage free. He has an annual income from a private pension of £23,000 per annum in addition to savings of £49,000. He has never claimed public funds. He met the Appellant in a gay pub in March 2016 and they started dating soon after this. The Appellant moved in to live with RS in April 2016 and they have been in a committed relationship since then. RS has two adult children, K and R. Both of whom have met the Appellant. RS described a visit to his eldest daughter's, K, and her two children (his grandchildren), the week before the hearing.
11. RS in oral evidence described a period of time when the Appellant received what he a "ridiculous" amount of telephone calls from his brother in Algeria and he listened to what seemed to be a tirade of abuse. RS managed to persuade him not to take the calls. When he received the calls it was as though the Appellant was "wilting". Eventually the Appellant changed his number and the abuse stopped but they have had endless conversations about this. RS stated that they have an established family life here with his two adult children and grandchildren. The Appellant is very anxious about having to return to Algeria for any period of time. It would be a "nightmare scenario for him". He fears that his family would harm him should he return. They could not live a normal life in Algeria without fear.

N's Evidence

12. The evidence of N is contained in a short note dated 11 February 2018. The witness's evidence is that he has known the Appellant since primary school and he knows his family well. On a day in the end of February or in March 2017 he met the

Appellant's brother, H, in front of his house after he finished work. H stopped him and said that he is aware that he is in touch with the Appellant. He insulted the Appellant and he told N that his friend in London saw the Appellant kissing a man. He said that if the Appellant returns to Algeria he will kill him. All the family know that the Appellant is gay.

The Law

13. The parties relied on background evidence and the country guidance case of OO (*Gay Men*) Algeria CG [2016] UKUT 65. The head note to OO reads as follows:-

1. *Although the Algerian Criminal Code makes homosexual behaviour unlawful, the authorities do not seek to prosecute gay men and there is no real risk of prosecution, even when the authorities become aware of such behaviour. In the very few cases where there has been a prosecution for homosexual behaviour, there has been some other feature that has given rise to the prosecution. The state does not actively seek out gay men in order to take any form of action against them, either by means of prosecution or by subjecting gay men to other forms of persecutory ill-treatment.*
2. *Sharia law is not applied against gay men in Algeria. The criminal law is entirely secular and discloses no manifestation, at all, of Sharia law in its application.*
3. *The only risk of ill-treatment at a level to become persecution likely to be encountered by a gay man in Algeria is at the hands of his own family, after they have discovered that he is gay. There is no reliable evidence such as to establish that a gay man, identified as such, faces a real risk of persecutory ill-treatment from persons outside his own family.*
4. *Where a gay man remains living with his family to whom he has disclosed his sexual orientation in circumstances where they are prepared to tolerate that, his decision to live discreetly and to conceal his homosexuality outside the family home is not taken to avoid persecution but to avoid shame or disrespect being brought upon his family. That means that he has chosen to live discreetly, not to avoid persecution but for reasons that do not give rise to a right to international protection.*
5. *Where a gay man has to flee his family home to avoid persecution from family members, in his place of relocation he will attract no real risk of persecution because, generally, he will not live openly as a gay man. As the evidence does not establish that he will face a real risk of persecution if subsequently suspected to be a gay man, his decision to live discreetly and to conceal his sexual orientation is driven by respect for social mores and a desire to avoid attracting disapproval of a type that falls well below the threshold of persecution. Quite apart from that, an Algerian man who has a settled preference for same sex relationships may well continue to entertain doubts as to his sexuality and not to regard himself as a gay man, in any event.*
6. *For these reasons, a gay man from Algeria will be entitled to be recognised as a refugee only if he shows that, due to his personal circumstances, it would be unreasonable and unduly harsh to expect him to relocate within Algeria to avoid*

persecution from family members, or because he has a particular characteristics that might, unusually and contrary to what is generally to be expected, give rise to a risk of attracting disapproval at the highest level of the possible range of adverse responses from those seeking to express their disapproval of the fact of his sexual orientation."

14. The following are the relevant paragraphs from OO:

"163. Several sources of evidence to which we were referred have discussed or emphasised the importance of appreciating that gay men in Algeria may well not identify themselves as such. Dr Seddon referred in his report this observation by Dr Zahed:

'He referred to many people not referring to themselves as 'gay' because of the extreme taboo in society - in fact, in Algeria, people who are homosexual do not generally consider themselves to be 'gay'; they might have a sexual relationship with another man but will not say they are 'gay'.'

Reinforcing this point, Dr Zahed referred to interviews he had conducted in France with refugees who are established and face no obstacle to living openly as gay men but choose not to because, according to Dr Zahed, of the

'high societal pressure: it is impossible for them to classify themselves as 'gay' 'because it is like a perversion'.

164. Ms Pargeter confirmed in her evidence that it is 'quite normal in Algerian society for young men to share accommodation' but she said that if it became known that they were living together as a homosexual couple:

'they would face severe social stigma and could find themselves chased out of the area. In such a scenario they would be vulnerable to harassment and attack'

although, as we have observed, she offered no example or illustration of that actually having occurred.

165. The view expressed by the US State Department Human Rights Report as updated on 3 April 2014 is that:

'... while some LGBTI persons lived openly, the vast majority did not, and most feared reprisals from their families or harassment from authorities'

although no information followed of the nature of such harassment. It is significant, therefore, that this evidence is an asserted fear of consequences rather than any evidence that such consequences in fact materialised.

166. This discussion of the reasons that might explain why, given the absence of any reliable evidence of gay men facing persecutory ill-treatment outside the family context, very few gay men choose to live openly as such, is informed, therefore, by a number of considerations. It is said that gay Algerian men, as a consequence of cultural, religious and societal views, do not generally identify themselves as gay, even if their sexual preferences lead them to prefer same sex relationships. It is said that even men with settled sexual preferences for same sex relationships may well continue to entertain doubt about their sexuality. Second, gay men recognise the

intense and deep rooted near universal disapproval of homosexuality that obtains in Algeria. Third, near universal adherence to and respect for established social and religious *mores* including the expectation that men of a marriageable age will marry and produce children leads gay men to choose to marry. This was explained in the 2014 Landinfo report that suggests that it may be misleading to speak of such marriages as being 'forced':

'In the light of religious views on marriage being a duty, one must assume that it is not uncommon for gay men to marry women, in order to hide their sexual orientation and escape the questioning and pressure from their families and social networks. The fact that gay people marry is not necessarily a response to direct or indirect pressure; given the fundamental role of marriage in Algerian society, as well as the respectability and significance that marriage and children provide, it is fully possible to wish to marry and have children, even if one's sexual preference is for people of the same sex'.

167. The reality of the position is that there is no reason at all to doubt that there are in Algeria gay men who have left their family homes in order to escape intense family disapproval of their sexuality, whether that was expressed in persecutory terms or not. The absence of evidence of gay couples living openly as such leads to the inevitable conclusion that they choose to live discreetly. As Ms Pargeter observed, in practice, gay men 'can live together in Algeria' and it is 'quite normal for young men to share accommodation'.
168. The absence of reliable evidence of adverse reactions to gay men living away from their families of a type sufficiently serious to constitute persecutory ill-treatment demonstrates that the choice to live discreetly as a gay man is not generally driven by a need to avoid persecution. In living in a manner that does not require others to be confronted with open displays of the affection a gay couple have for each other such a couple are doing no more than what is demanded of a heterosexual couple. That two gay men do not volunteer the information that they are living together not simply sharing accommodation as friends but living together as sexual partners, gay men are acting discreetly to avoid social pressures of the type contemplated in *HJ (Iran) v SSHD* that does not give rise to a sustainable claim for asylum. Put another way, a gay man who did live openly as such in Algeria may well attract upsetting comments; find his relationships with friends or work colleagues damaged; or suffer other discriminatory repercussions such as experiencing difficulty in dealing with some suppliers or services. But none of that amounts to persecution.
169. We make one further observation in respect of this. There is evidence that gay men in Algeria do not identify themselves as being gay and continue to entertain doubts about their sexuality even if they have recognised within themselves a preference for same sex relationships. The evidence of the expert witnesses suggests that may be driven by the conditioning to which they have been subjected in growing up in a society that holds the fiercely negative views of homosexuality that we have discussed above. Plainly, a person who does not consider himself to be gay would not wish to inform others that he is. That may also be part of the explanation why Algerian

men do not seek to make known that they have a preference for same sex relationships. That may help to explain also the evidence of such men, whom one would normally refer to as 'gay' living in France who choose to live discreetly despite the absence of any risk at all of persecution should they 'come out' as gay.

176. It is conceded by the Respondent that where a gay man does face a real risk of persecution, which, when such occurs, is likely to be from his own family members, there is no sufficiency of protection available from the police or other state authorities.
177. There is a real risk of violent and persecutory ill-treatment of gay men from family members, motivated by the deep sense of shame and dishonour perceived to be brought upon the family as a consequence of it becoming known in the neighbourhood that there is within the household a gay son. There is a risk of that being the case throughout Algerian society but it is clear from the evidence that that is especially the case in the less affluent and densely populated neighbourhoods where, typically, values will be conservative and non-secular and households are under close scrutiny from neighbours. But once the gay son has left the family home and re-established himself elsewhere there is no real risk that family members will pursue him to that place of relocation, and so generally that risk of persecution can be avoided by the availability of a safe and reasonable internal relocation alternative.
181. That question, of whether there is a safe and reasonable internal relocation option, is a difficult and complex one in the Algerian context. Generally, there will be no real difficulty preventing relocation and there is no indication that disapproving family members have the means, inclination or reach to cause difficulties after relocation. But where such a person has established himself elsewhere in Algeria, as marriage is expected of all Algerian men, in pursuance of what is seen as an 'Islamic duty to procreate', it may well, sooner or later, become apparent that he has not adhered to the norms expected and that is likely to generate suspicion that he is a gay man.
182. There is no real risk of gay men being subjected to violence or other persecutory ill-treatment outside the family home, either at the hands of the authorities or by members of the public with whom gay men have to engage. There is an absence of reliable evidence of that occurring.
183. Very few gay men live openly as such in Algeria. Gay Algerian men, as a consequence of cultural, religious and societal views, do not generally identify themselves as gay, even if their sexual preferences lead them to prefer same sex relationships. Even Algerian men with settled sexual preferences for same sex relationships may well continue to entertain doubt about their sexuality. Second, gay men recognise the intense and deep rooted near universal disapproval of homosexuality that obtains in Algeria. Thus, Algerian gay men who have moved to France where, plainly, they face no obstacle to living openly as such, generally choose not to because they refuse to categorise themselves as gay, even though there is no persecutory disincentive to doing so.

184. The fact that there is very little evidence of gay men living openly in Algeria invites the conclusion that must be because the risk of persecutory ill-treatment likely to be attracted is such as to prevent that from happening. But the expert and other country evidence does not establish that, in fact, there is any real risk outside the family context of such persecutory ill-treatment being meted out to persons suspected as being gay. The expert evidence indicates that a gay man recognised as such is very likely to attract an adverse response from those by whom he is encountered as he goes about his daily business. But that adverse reaction is not reasonably likely be such as to amount to persecution, being on a range of responses from a simple expression of disapproval, mockery or name calling up to the possibility of physical attack. But there is simply no reliable evidence of the expression of disapproval being expressed in such circumstances generally being otherwise than at the lower end of that range of responses.
185. That gives rise to a conundrum. If there is no evidence of persecution of gay men who have escaped ill-treatment from family by relocating elsewhere, why is there no evidence of gay men feeling able to live openly? Alternatively, is the absence of evidence of physical ill-treatment of gay men due to the fact that there are no gay men living openly?
187. Underpinning these conclusions is recognition that Algerian society is governed by strict Islamic values which all citizens, including gay men, in practice respect, even if only for pragmatic reasons.
188. This gives rise to a compromise which in some senses is unsatisfactory but, as a matter of law, does not give rise to a right to be recognised as a refugee. Algerian society, including the state authorities, effectively tolerates private manifestations of homosexual conduct, both between young unmarried men and gay men who have established themselves away from the family home, provided there is no public display of it. Gay men choose to live discreetly not to avoid persecution, because there is no evidence that there is any, but because they recognise that the society they live in is a conservative one, subject to strict Islamic values, that is unable to openly embrace the existence of the practice of homosexuality, just as women are expected to submit to Islamic requirements such as being veiled and accepting other limitations upon their ability to act as they may wish to.
189. The evidence before us indicates that as a result of societal views and conditioning, Algerian men with a preference for same-sex relationships generally do not in fact regard themselves as gay men and so have no reason to identify themselves as such to others by conducting themselves in a manner that has come to be regarded as 'living openly' or discreetly. Therefore, choosing not to live openly as gay men is not due to a fear of persecution but other reasons to do with self-perception and how they wish to be perceived by others.
190. For these reasons, a gay man from Algeria will be entitled to be recognised as a refugee only if he shows that, due to his personal circumstances, it would be unreasonable and unduly harsh to expect him to relocate within Algeria to avoid persecution from family members, or because he has

particular characteristics that might, unusually and contrary to what is generally to be expected, give rise to a risk of attracting disapproval at the highest level of the possible range of adverse responses from those seeking to express their disapproval of the fact of his sexual orientation.”

15. Both parties relied on the Country Policy and Information Note Algeria, Sexual orientation and gender identity: Version 2.0 September 2017. For the purposes of this decision I will summarise points made in paragraphs cited from various sources:

“The law criminalises public and consensual same sex sexual relations by men or women with penalties that include imprisonment. Society punishes gay and lesbian persons by marginalising them. The legal framework strengthens the fear and shame surrounding homosexuality and supports religious, social, and familial-based prohibitions about sexuality in general and ‘deviant’ sexual behaviour in particular. Despite the constitutional guarantee of the right to non-discrimination, lesbian and gay, bisexual and transgender persons continue to be subjected to discriminatory acts that marginalise them even more. Activists said that the government did not actively punish LGBTI behaviour but it was complicit in the hate speech propagated by conservative, cultural and religion-based organisations some of which associated LGBTI individuals with paedophiles and encouraged excluding them from family and society. Accessing health services could be difficult for members of LGBTI community because medical personnel often treated LGBTI patients unprofessionally. LGBTI persons face strong societal and religious discrimination. While some lived openly the vast majority did not and most feared reprisal from their families or harassment from authorities. For several years the country’s gay and lesbian community has organised to claim its rights through a network of associations. Demobilisation has been efficient in a number of tests and relied in part on the internet and digital social networks. Because of criminalisation it is impossible to create an organisation or space openly dedicated to gays and lesbians in Algeria. However, in the last several years, two main associations have emerged.”

16. The parties in the context of Article 8 also relied on R (on the application of) Agyarko v Secretary of State for the Home Department [2017] UKSC 11.

Findings and Reasons

The Protection Claim

17. Having had the benefit of hearing oral evidence, I find the Appellant and RS are entirely credible. This is the third time that they have given evidence. (Judge Oliver found RS to be a credible witness and there is no reason to depart from this conclusion). Their evidence is consistent with each other and internally. I find that the Appellant is at risk of persecution or serious harm from his family, specifically his brother H, should he return to his home area.
18. I find that the Appellant would not be at risk of persecution or serious harm should he relocate to another part of Algeria. Whilst I accept the Appellant has a subjective

fear should he relocate, it is not objective and it is not supported by the country guidance case. I have gone on to consider whether relocation would be unreasonable or unduly harsh applying the test set in Januzi v Secretary of State for the Home Department [2006] UKHL 5 at [21] approved in Secretary of State for the Home Department v AH (Sudan) & Ors [2007] UKHL 49. The House of Lords approved the test for assessing internal protection set out in namely that "[t]he decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so." It held that this test "was one of great generality, excluding from consideration very little other than the standard of rights protection which an applicant would enjoy in the country where refuge is sought". In assessing whether internal relocation was unreasonable or unduly harsh under the Refugee Convention, it was not correct to require that an applicant show that there would be a breach of his rights under Art 3 of the European Convention on Human Rights in the area of proposed internal relocation.

19. On a practical level relocation is possible. The Appellant is a young man without health problems and he worked prior to coming to the UK. He would be able to live independently in Algeria. However, whether relocation is reasonable should be considered in the context of the Appellant's sexuality and how he would live on return to Algeria. He has been here since 2013 and whilst that may not be a significant period of time, the manner in which he has chosen to live here, openly as a gay man, is significant. Whilst he lived in Algeria his evidence, which I accept, was that he lived discreetly as a gay man and this fits in with what is stated in the case of OO about the general situation.
20. I find that the Appellant fully identifies himself as a gay man. I find he has no doubts that he is gay. I am satisfied that his circumstances are unusual for a gay Algerian man because he has lived openly in the UK and he would, on return, continue to do so, finding it intolerable to live discreetly, and therefore the general situation about gay men in Algeria choosing to live discreetly does not apply to him. The common thread which ran through the appellant's oral evidence was that he is unable to hide anymore and conceal his identity. Living openly, will not lead to persecution. However, what is clear from OO and the Country Policy and Information Note, which postdates it, is that there is a great deal of discrimination against gay men. It can be reasonably inferred that discrimination increases in seriousness, should a gay man decide to live openly which, on the whole according to OO, Algerian men do not. This Appellant would, giving rise to attracting disapproval at the highest level of the possible range of adverse responses from those seeking to express their disapproval. If this Appellant would live more discreetly than he claimed on return to Algeria that would not arise from respect for social mores and a desire to avoid attracting disapproval, it would out of genuine fear of adverse responses. It would be unreasonable or unduly harsh to expect the appellant to relocate in these circumstances.

21. In addition, I accept that the Appellant has a subjective fear of his brother and is genuinely very fearful that he will find him and kill him. This may not be rational (his evidence that his friend N would tell his brother of his whereabouts was surprising bearing in mind that it can be reasonably inferred that N would be aware that this information would put the Appellant at risk); however, what came very clearly through the evidence is that he is very scared and extremely anxious and genuinely believes that H will track him down and kill him should he return.
22. Although there would be no practical difficulty preventing relocation and no evidence that the Appellant's brother would have the means or inclination to cause difficulties, I conclude, considering the Appellant's personal circumstances, his perception of risk and his intention to live openly as a gay man, that relocation would be unreasonable and unduly harsh. He falls within the category of gay men identified at [6] of the headnote in *OO*.
23. In these circumstances the appeal is allowed on asylum grounds.

Notice of Decision

The appeal is allowed on asylum grounds.

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

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 their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Joanna McWilliam*

Date 16 March 2018

Upper Tribunal Judge McWilliam