



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-000741

First-tier Tribunal No: PA/55707/2022  
LP/00925/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 23 December 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**MMHR  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Uddin of Syed Shaheen & Partners  
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 31 July 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against a decision of First Tier Tribunal Judge Kudhail dated 14 September 2023.
2. The Appellant is a citizen of Bangladesh born on 11 October 1984. He made a claim for protection on 19 February 2020 claiming to be gay. The application was refused on 28 November 2022: in particular, the Respondent did not accept that the Appellant was gay.
3. The Decision of the First-tier Tribunal addresses the core issue in the appeal under the heading 'Sexuality': see paragraphs 21-38. The concluding paragraph in this regard, paragraph 38, is in these terms:

*"Overall, applying the lower standard of proof, I am not satisfied the appellant is gay for credibility reasons as identified above. I therefore dismiss the asylum appeal."*

4. The Decision proceeded to state, at paragraph 39:

*"The claim for humanitarian protection, and protection on the grounds of Articles 2 and 3 are dismissed for the same reasons. With respect of Paragraph 276ADE(1)(vi) I find that there are no very significant obstacles preventing the appellant's integration into Bangladesh for the same reasons. There was no standalone Article 8 claim advanced in this case."*

5. However, notwithstanding the apparent clarity of those findings, the next part of the Decision under the heading Notice of Decision stated:

*"The appeal is allowed on dismissed and human rights grounds."*

6. Moreover, in respect of the Fee Award the Judge wrote:

*"As I have allowed the appeal and because a fee has been paid or is payable, I make an award in the sum of £140.00."*

7. For the avoidance of any doubt I acknowledge that the fee award is not part of the formal Decision.
8. When the Decision was uploaded to the digital platform used by the First-tier Tribunal it was uploaded in such a way as to indicate that the appeal had been dismissed.
9. Notwithstanding the nature of the words used under the heading Notice of Decision, it is apparent that the Appellant understood that in substance he had failed to persuade the First-tier Tribunal of his case, and he made an application for permission to appeal. The application was refused in the first instance by First-tier Tribunal Judge O'Garro on 29 October 2023, but granted on renewal by Upper Tribunal Judge Hanson on 9 May 2024.

## **Discussion**

10. The reasons for the grant of permission to appeal, whilst recognising that other errors were also pleaded (e.g. see paragraph 2 of the grant of permission), are entirely focused on the lack of clarity of the section under the heading Notice of Decision. However, the grant of permission is not limited in any way, and as such it is necessary to consider all of the Grounds.
11. The first ground pleaded is that upon which permission to appeal was granted. I return to this issue below.
12. As regards the other grounds of challenge it seems to me that I can deal with these in short order:

(i) The First-tier Tribunal Judge's reference to the no longer applicable Refugee or Person in Need of International Protection (Qualification) Regulations 2006 does not constitute a material error of law because there is nothing therein in principle that runs contrary to the tests, standards, and methodologies to be applied in evaluating a protection claim, and there is otherwise no sustainable identification of any error of approach or misdirection as to the applicable legal framework.

(ii) There is no error in respect of the Judge's approach to the standard of proof. The Grounds criticise the Judge's use of the words "*a serious possibility*" at paragraph 16 of the Decision, and seek to draw a distinction with jurisprudence that refers to "*a real possibility or real risk*". There is no material difference. In this context Mr Terrell brought to my attention the use of the phrase "*serious possibility*" by Lord Justice Brooke in **Karanakaran**, recently cited with approval in **MAH (Egypt) [2023] EWCA Civ 216** – see paragraph 56.

(iii) There is no material error detectable in the Judge's observations at paragraph 24 in respect of a purported medical discharge certificate from Jahangimagar hospital. There is nothing objectionable to the Judge applying the principles of **Tanveer Ahmed**. Even if it were otherwise, I would not accept that any error of approach in this regard is material to the overall outcome of the appeal. At its highest it is evidence of injury; it provides nothing of the context in which any such injury was sustained.

(iv) The Grounds of Appeal plead that the Judge "*failed to assess witness statement of [the Appellant's] sister who testified the appellant as a gay person and his mental state*". However, the Judge clearly addressed the evidence of the Appellant's sister at paragraph 34. In my judgement the reasoning at paragraph 34 is adequate and sustainable. The criticism of such reasoning articulated in the Skeleton Argument prepared for the Upper Tribunal (albeit not by Mr Uddin) amounts in substance to a disagreement with the findings but does not sustainably articulate a specific error of law. Moreover, it seems to me inaccurate to characterise the inconsistency identified

by the Judge at paragraph 34 as “*slight*” (Skeleton Argument at paragraph 7). There is no error of law in this regard.

13. Necessarily, this throws the focus back on the wording used by the Judge in setting out the ‘Notice of Decision’ part of the ‘Decision and Reasons’.
14. In the premises, and notwithstanding the additional level of confusion provided by the fee award, it seems to me utterly unarguable that it was anything other than the intention of the Judge to dismiss the appeal on all grounds. The body of the decision offers no ambiguity in this regard.
15. However, the words “*The appeal is allowed on dismissed and human rights grounds*”, are plainly ambiguous” - even if, taking an overview, it is readily apparent that the Judge intended to write ‘The appeal is dismissed on protection and human rights grounds’.
16. There was some discussion at the hearing as to the extent to which the error apparent in the ‘Notice of Decision’ could be corrected using the so-called slip rule, and in particular whether the Upper Tribunal could make use of the of the slip rule to correct the Decision of the First-tier Tribunal. Further to such discussions, I invited both representatives to make further written submissions in respect of disposal of the appeal in the event that I were to find that the only error was in respect of the wording of the Notice of Decision (i.e. on the premise of the rejection of the other grounds of challenge). I am grateful to both representatives for the additional written submissions provided.
17. Further to this, I have had regard to the guidance to be gleaned from **Devani [2020] EWCA Civ 612** and **MH (review; slip rule; church witnesses) Iran [2020] UKUT 125 (IAC)**, and have also noted the doubts expressed in **Ali (permission decisions: errors; slip rule) Pakistan [2020] UK UTD 249 (IAC)** as to the limitations of rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to correct a clerical mistake, or other accidental slip or omission, pertaining to a decision of the first-tier Tribunal. In this context I am mindful that there are certain procedural safeguards that operate in the First Tier Tribunal process of amendment, and in particular that a corrected Decision might require to be re-promulgated - which then gives rise to an opportunity of seeking permission to appeal to the Upper Tribunal.
18. I have reached the conclusion that I should not amend the Notice of Decision of the First-tier Tribunal by use of rule 42. I am also firmly of the view that the Decision of the First-tier Tribunal cannot be left as it stands. In the circumstances in my judgement the appropriate course of action is to find material error of law and to remit the case to the First-tier Tribunal specifically for First-tier Tribunal Judge Kudhail to give consideration to making use of the power under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 to correct any mistake in the Notice of Decision. If such a correction is made the Decision should then be reissued.

19. As indicated above I recognise that this will give the Appellant a further opportunity to make an application for permission to appeal to the Upper Tribunal. However, no doubt the Appellant and his representatives will also recognise that if he merely repeats the Grounds pleaded thus far they will unlikely avail him in circumstances where I have rejected them in forthright terms.

### **Notice of Decision**

20. The decision of the First-tier Tribunal contains an ambiguity in the Notice of Decision amounting to an error of law.
21. Whilst it is not necessary to set aside the body of the Decision, and all findings of fact contained therein may be preserved, for good form's sake the appeal is to be remitted to First-tier Tribunal Judge Kudhail to give consideration to making use of the power under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 to correct the Notice of Decision to remove the ambiguity.

**I. Lewis**  
Deputy Judge of the Upper Tribunal  
(Immigration and Asylum Chamber)  
**10 December 2024**