



**Upper Tribunal
(Immigration and Asylum Chamber)**

PA/12350/2017

Appeal Number

THE IMMIGRATION ACTS

Heard at Field House
On 28th March 2018

Decision & Reasons Promulgated
On 5th April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

R I
(ANONYMITY DIRECTION MADE)

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr J D Knight (Legal Representative, Duncan Lewis & Co, Solicitors)
For the Respondent: Mr S Kandola (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Bangladesh. He applied for asylum on the basis of his sexuality which was rejected for the reasons given in the Refusal Letter of the 13th of November 2017. The Appellant's appeal was heard by First-tier Tribunal Judge Buckwell sitting at Taylor House on the 15th of January 2018. The appeal was dismissed in the decision promulgated on the 15th of January 2018.
2. The decision contains self directions at paragraph 56 and 60. In paragraphs 56(a) and (b) the Judge referred to the "real risk" of persecution of serious harm. In paragraph 60 in the first paragraph dealing with his findings and reasons the Judge stated that the burden was "the

balance of probabilities.” He then went on to make findings rejecting the Appellant's credibility dismissing the appeal on all grounds.

3. The grounds of application for permission to appeal focus on the wording in paragraph 60 and argue that the Judge applied the wrong standard of proof. Permission was granted by First-tier Tribunal Judge Baker on the 30th of January 2018.
4. At the hearing the Home Office acknowledged the difficulty with the decision. Although the Judge had identified the lower standard in paragraph 56 and referred to it again in paragraph 65 the placing of the wrong, higher standard, appears at the very start of the section of the decision headed “Findings and Reasons”.
5. The Appellant has to be confident the Judge has approached the assessment of the evidence correctly. The terminology in paragraph 60 fundamentally undermines that and as a result the decision cannot stand. Regrettably there is no option but to set the decision aside. Had the Judge not made the reference to the balance of probabilities in paragraph 60 there would have been no issue with the terminology used but as it stands the effect of the wording cannot be avoided.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The decision of First-tier Tribunal Judge Buckwell is set aside, the appeal is remitted to the First-tier Tribunal for re-hearing, not before Judge Buckwell.

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.)

Fee Award

In setting this decision aside and remitting it to the First-tier Tribunal for re-hearing I make no fee order which remains for the First-tier Tribunal dependent on the findings made on the remitted appeal.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 28th March 2018