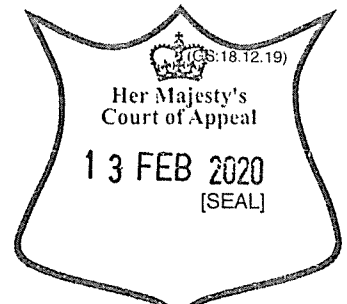




**IN THE COURT OF APPEAL, CIVIL DIVISION  
APPLICATION FOR A SECOND APPEAL**

REF: C5/2019/1999



**AN (BANGLADESH) –v– THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Decision on an application for a second appeal.** The Judge will not give permission unless he or she considers that (a) the appeal would i) have a real prospect of success; and ii) raise an important point of principle or practice; or (b) there is some other compelling reason for the Court of Appeal to hear it.

**ORDER made by the Rt. Hon. Lord Justice HENDERSON**

On consideration of the appellant’s notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal from the decision of the Upper Tribunal (Judge A M Black) promulgated on 27 June 2019

**Decision:** permission to appeal is granted.

**Reasons**

1. The grounds of appeal have a real prospect of success, on the basis that the FTT (Judge Boylan-Kemp) arguably erred in law in her approach to and understanding of (a) the principles stated by the Supreme Court in the case of HJ (Iran) v SSHD [2010] UKSC 31, [2011] 1 AC 596, particularly at [35] and [82], and (b) the guidance in the Respondent’s Country Policy and Information Note (Bangladesh: Sexual orientation and gender identity) version 3.0 (November 2017), and in her application of those principles and guidance to the undisputed facts, including the Appellant’s witness statement (upon which she was not cross examined).
2. If the FTT did err in law, the Upper Tribunal also erred in failing to correct those errors, although I accept that the issues were fully and carefully considered by the Upper Tribunal.
3. The test for a second appeal is met because (a) it raises important points of principle and practice relating to the treatment of lesbian women in Bangladesh, and (b) there is a compelling reason for the appeal to be heard in view of the possible severity of the consequences for the Appellant if she were wrongly returned to Bangladesh and (as may reasonably be inferred) chose to live there openly as a lesbian.



**Information for or directions to the parties**

**Mediation:** Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? No

**Pilot categories:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• All cases involving a litigant in person (other than immigration and family appeals)</li> <li>• Personal injury and clinical negligence cases;</li> <li>• All other professional negligence cases;</li> <li>• Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;</li> </ul> | <ul style="list-style-type: none"> <li>• Boundary disputes;</li> <li>• Inheritance disputes.</li> <li>• EAT Appeals</li> <li>• Residential landlord and tenant appeals</li> </ul> |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot? Yes/No (delete as appropriate)

If yes, please give reason:

**Non-pilot cases:** Do you wish to make a recommendation for mediation? No

FRIDAY 31ST JULY 2020

**IN THE COURT OF APPEAL**

ON APPEAL FROM THE UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)

PA/11081/2018

**BEFORE** MASTER MEACHER

**B E T W E E N**

AN (BANGLADESH

APPELLANT

- and -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

ON PAPER  
Appeal No.

C5/2019/1999

**HAVING REGARD** to the requirements of Section V1 of Practice Direction 52A to Part 52 of the Civil Procedure Rules;

**AND UPON** the Right Honour Lord Justice Henderson having granted the Appellant's application for permission to appeal on 13 February 2020 on the basis that the First Tier Tribunal arguably erred in law in the application of *HJ (Iran) v SSHD* [2010] UKSC 31, [2011] 1 AC 596 and if there was such an error, that error not being resolved by the Upper Tribunal on appeal;

**AND UPON** the parties confirming that none of the parties to these proceedings is a child or protected party

**AND UPON** the parties confirming that this appeal is not from a decision of the Court of Protection;

**AND UPON** the parties requesting that the Court allow this appeal by consent to the extent indicated below and without determining the merits of the appeal for the reasons set out in the attached Statement of Reasons;

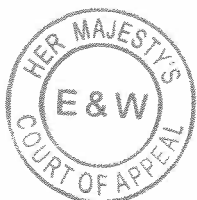
**AND UPON** the Court having considered the Statement of Reasons, being satisfied that there are good and sufficient reasons for allowing the appeal without determining the merits of the appeal;

**BY CONSENT, IT IS ORDERED THAT:**

1. The appeal is allowed to the extent indicated in paragraph [2] below.
2. The Upper Tribunal determination of 27 June 2019 be set aside and remitted to the Upper Tribunal to the extent indicated in paragraph [3] below.
3. The appeal is allowed to the extent that the Upper Tribunal determination of 27 June 2019 be set aside and the matter be remitted to the Upper Tribunal before a differently constituted Upper Tribunal to determine substantively (the First Tier Tribunal material error of law being agreed



ORDER AMENDED  
UNDER THE SLIP  
RULE UNDERLINED  
IN RED THIS 4<sup>TH</sup>  
AUGUST 2020





amongst the parties), the single issue of the country evidence relating to the second limb of Lord Rodger's binding guidance at paragraph 82 of HJ (Iran) v SSHD [2010] UKSC 31 with reference to the Respondent's most recent CPIN on Sexual Orientation, Gender Identity and Expression was published in April 2020.

4. The Respondent do pay the Appellant's reasonable costs of this appeal (C5/2019/1999), to be assessed by way of detailed assessment if not agreed.

*By the Court*

**FRIDAY 31ST JULY 2020**  
**IN THE COURT OF APPEAL**  
ON APPEAL FROM THE UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

ORDER

Copies to:

Upper Tribunal (Immigration and Asylum  
Chamber)  
Field House  
15 Breems Buildings  
London EC4A 1DZ  
Ref: PA/11081/2018

Government Legal Department  
DX 123243  
Westminster 12

Primus Solicitors  
7a Grandale Street  
M14 5WS  
Ref: 5024/K1

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\* This order was drawn by Ms A Marie Smith (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Ms A Marie Smith, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is