



IAC-AH--V1

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

Appeal Number: PA/03824/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 March 2020**

**Decision & Reasons Promulgated  
On 24 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**PS**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Fripp, counsel instructed by Danielle Cohen Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Anonymity

1. Such a direction was made previously, and is reiterated below, as this is a protection matter and also because the appellant is vulnerable owing to his mental health issues.

Introduction

2. This is the remaking of an appeal against the decision of the Secretary of State dated 8 April 2019, refusing the appellant's protection and human rights claim.
3. In a decision dated 8 October 2019, I found material errors of law in the decision of the First-tier Tribunal promulgated on 24 June 2019, which dismissed the appeal on all grounds. While I set aside that decision, the findings of the First-tier Tribunal were preserved with the exception of the conclusions drawn regarding the availability of internal relocation and whether there were very significant obstacles to the appellant's integration in India.

### Background

4. The appellant arrived in the United Kingdom on 4 March 2011 as a dependent partner of his former wife. He remained in the UK when she returned to India and, ultimately, applied for asylum on 30 November 2015. It is the refusal of that claim that is the subject of this appeal. The appellant's protection claim is based on a fear that he would be killed by his family because he is a gay man. In addition, he applied for leave to remain owing to a relationship with his male partner.
5. The respondent refused that application by way of a letter dated 8 April 2019. The credibility of the appellant's account of being a gay man was challenged for reasons set out in the decision letter. The respondent did not accept that the appellant's relationship with his partner (RS) was genuine and subsisting. In considering whether there were any exceptional circumstances the respondent noted the appellant's mental health issues but concluded that his removal did not reach the high threshold of severity to breach Article 3 on this basis.

### The preserved findings of the First-tier Tribunal

6. At [35-47] of the decision and reasons the previous judge accepted the following aspects of the appellant's claim:
  - i. The appellant was from a village in India (which I will not identify);
  - ii. he was sexually abused by a relative from his teenage years until his early twenties and did not reveal this to anyone in his family until 2016;
  - iii. he had a discreet same sex relationship with a work colleague in India;
  - iv. he had diagnoses of depression and suicidal intent in 2017 linked to his sexual abuse and being pressured into marriage with his former wife;
  - v. he had engaged in same-sex sexual relationships in the UK including when he was still married to his former wife;

- vi. he had openly gay relationships in the UK including his present one with RS, which had become a committed relationship marked by full-time cohabitation since December 2018;
- vii. his sister in Canada and his mother (who spends extended periods of time in Australia with the appellant's brother) are aware of his sexuality;
- viii. his wider family has instigated the death of a female relative who was perceived to have dishonoured the family and the appellant had a genuine fear of being harmed and possibly killed by his brother or male relatives were they to discover his sexuality;
- ix. The appellant would be subjected to violence amounting to serious harm in his home area from his brother or male relatives if his sexuality became known to them;
- x. A material reason for the appellant living discreetly in his home area in the past was owing to a fear of persecution.

### The hearing

7. The hearing proceeded by way of submissions only, a detailed note of which appears in my note of the hearing and which I briefly summarise here. I have taken those submissions and all the documentary evidence before me in reaching my decision, including where not specifically mentioned. The parties were in agreement that the appellant had established that he had a well-founded fear of persecution for a Refugee Convention reason in his home area, that he had produced evidence regarding his mental health and that he was in an interracial same-sex relationship. The issues of country background were in contention as regards internal relocation and Article 8, in respect of 276ADE(1)(vi).
8. Mr Fripp clarified that the partner Rules in Appendix FM did not currently form part of the appellant's case because the couple had not been cohabiting for two years. Otherwise, he relied upon his skeleton argument, submitting, for the same reasons, that it would be unduly harsh for the appellant to relocate in India and that there were very significant obstacles to his reintegration. Those reasons included the appellant's mental state, his relationship and the general position for gay men as set out in *MD (same-sex orientated males: risk) India CG* [2014] UKUT 00065 (IAC), Dr Holden's expert reports and the background material.
9. Mr Lindsay made the following points. The Country Guidance case of *MD* remained good law. He also relied upon the CPIT responses of 22 November 2019 and 20 February 2020 to Dr Livia Holden's reports of 21 May 2019 and 9 December 2019. He accepted that there was a risk of some low-level discrimination, albeit insufficient to make internal relocation unreasonable. There was a large and robust LGBTI community in India, support from NGOs and in *MD* it was found that it was, in general, reasonable for a gay man to relocate. Dr Holden's report assumed that the appellant would be returning to India with his partner, whereas RS had

stated that he had no intention of uprooting. Mr Lindsay argued that even if the appellant returned with his partner, it would not be unduly harsh for him to relocate with his partner to a major city. In those circumstances, RS would be a source of support. There was treatment for mental health issues available in India and therefore this was not a significant and weighty factor.

10. Mr Lindsay argued that the Holden reports conflated the experiences of all LGBT people with those of gay men and that the excerpts relied on from the Amnesty International report did not refer to gay men at all. He contended that the evidence of violence based on sexual orientation was insufficient, in a country as large as India, to show a substantial risk or that relocation would be unduly harsh. As for the case advanced under paragraph 276ADE(1)(vi) Mr Lindsay made reference to *Kamara* [2016] EWCA Civ 813 but otherwise adopted and relied upon his submissions made on the first head of appeal. The appellant would properly be able to reintegrate either alone or with his partner. He asked me to uphold the decision under appeal.

### Discussion

11. The burden is on the appellant to show there are substantial grounds to believe he meets the requirements of the Protection Regulations and that his return to India will cause the UK to be in breach of the 1950 Convention.
12. In considering whether the appellant has demonstrated that he ought not to be expected to relocate away from his home area in the Punjab, I have been guided by the relevant case law including *Robinson* [1997] EWCA Civ 3090; *Januzi* [2005] UKHL 5 and *AH* [2007] UKHL 49. The passages from the latter judgment are particularly instructive:

*"20. We are all agreed that the correct approach to the question of internal relocation under the Refugee Convention is that set out so clearly by my noble and learned friend, Lord Bingham of Cornhill, in Januzi and others v Secretary of State for the Home Department [2006] UKHL 5, [2006] 2 AC 426, at para 21:*

*"The 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."*

*As the UNHCR put it in their very helpful intervention in this case,*

*" . . . the correct approach when considering the reasonableness of IRA [internal relocation alternative] is to assess all the circumstances of the individual's case holistically and with specific reference to the*

*individual's personal circumstances (including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities). This assessment is to be made in the context of the conditions in the place of relocation (including basic human rights, security conditions, socio-economic conditions, accommodation, access to health care facilities), in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual could live a relatively normal life without undue hardship."*

*I do not understand there to be any difference between this approach and that commended by Lord Bingham in paragraph 5 of his opinion. Very little, apart from the conditions in the country to which the claimant has fled, is ruled out.*

- 21 *We are also all agreed that the test for internal relocation under the Refugee Convention is not to be equated either with a "well-founded fear of persecution" under the Convention or with a "real risk of ill-treatment" contrary to article 3 of the European Convention on Human Rights ..."*

13. I am also guided by the relevant findings in *MD*, as set out in the headnote:

- "e. It would not, in general, be unreasonable or unduly harsh for an open same-sex oriented male (or a person who is perceived to be such), who is able to demonstrate a real risk in his home area because of his particular circumstances, to relocate internally to a major city within India.*
- f. India has a large, robust and accessible LGBTI activist and support network, mainly to be found in the large cities."*

14. I place a moderate degree of weight to the reports of Dr Holden and accept that she is qualified to offer her opinion on the situation in India likely to face the appellant. I have also attached weight to comments made on behalf of the respondent, in the CPIT documents, which make some valid points regarding Dr Holden's reports.
15. The appellant relies upon two reports, dated 13 February 2017 and 21 November 2019 from Dr J Hajioff a consultant psychiatrist. There was no challenge on behalf of the Secretary of State to Dr Hajioff's expertise nor to his opinion and recommendations. Having carefully considered this report as well as the experience of the author, I can see no reason to reject its content and I attach a significant degree of weight to it because Dr Hajioff was cautious in his approach and had access to a range of documents including the decision under challenge and the appellant's medical records. In summary, when Dr Hajioff saw the appellant in 2017, this followed a serious attempt at suicide whereby the appellant took an

overdose and cut his wrists with a sharp blade following which he was admitted, unconscious, to A&E and thereafter to a psychiatric unit, where he was kept for a week. Dr Hajioff diagnosed the appellant with a depressive illness in 2017, noting that he had lost weight, was withdrawn and failing to sleep. Following the recent examination, Dr Hajioff considered the appellant's mental state had improved and he was not depressed but he was of the opinion that the appellant continued to suffer from bouts of low mood and anxiety. Dr Hajioff noted that the appellant had begun biting his nails and slept for only a few hours a night, albeit with less frequent nightmares. Dr Hajioff put the improvements in the appellant's mental state down to firstly, the appellant having developed a stable relationship with RS since he last saw him and secondly, being in an environment more accepting of his sexuality. Nonetheless, the medical view was that the appellant was still in a "*vulnerable state*" and that there was a "*significant probability that there will be a deterioration in his mood with a recurrence of depression*" should he be removed to India. In particular, Dr Hajioff described the appellant as a gentle unassertive man who had told the doctor of the "*intolerable pressures*" which will be put on him in India to marry again. Dr Hajioff concluded his report by giving his opinion that the likely recurrence of depression would be accompanied by a "*significant risk of suicide*."

16. The appellant's personal history, as accepted by the First-tier Tribunal judge is relevant to the consideration of the availability of internal relocation. The appellant is a survivor of serious childhood sexual abuse by a relative which continued for a number of years. He was also forced into a marriage to a woman which ended in divorce in around 2012 when she returned to India without the appellant. The appellant met RS in late 2016, they have been in a committed relationship for over three years and have been cohabiting since 2018. It was common ground that RS would not accompany the appellant to India. In his witness statement, RS, who is aged in his sixties, explains that he wishes to remain in the UK in order to maintain his very close relationship to his son and grandchildren and continue earning a living. He does not wish to abandon his charitable work providing support for gay men, his political interests and his important role in the Liberal Jewish synagogue community. I accept that the unwillingness of RS to uproot does not mean that the relationship with the appellant would not continue if the appellant had to return to India. Nonetheless, while RS could visit India, he would not be in a position to offer the extent of the support he currently offers the appellant (as set out in credible detail in his statement) or help to prevent the significant risk of suicide mentioned in the psychiatric report. Furthermore, while during any visits, RS could be a source of support, I accept that their relationship is reasonably likely to be a source of danger in India owing to the fact that it is a same-sex, racially mixed relationship. On the latter point, I place weight on the first report of Dr Horden which states at [55]:

"the fact that the (appellant's) partner is British is likely to elicit unwanted attention to the couple if they will relocate to India. In my opinion, it is almost certain that they will attract the curiosity of their

neighbourhood and, if the nature of their relationship is found out, the mixed-race element of the couple is likely to aggravate the widespread reactions of repulsion, derision and violence described by this report.”

17. The test in terms of relocation is whether, considering all factors holistically, the appellant would be able to establish a relatively normal life in India, without facing undue hardship. At paragraph 20 of his witness statement, the appellant explains that he cannot “*see himself as being gay in (his) village or elsewhere in India.*” At paragraph 28 of the same statement, the appellant explains that has told only one friend in India of his sexuality and also states “*I do not feel that I could tell anyone else in India or that I could live openly as a gay man there.*” He describes at paragraph 16 of his statement that he remains under pressure from his family to marry and I find that pressure is likely to continue, remotely, if the appellant was in India away from his home area and that this would put him under increased mental pressure. The appellant previously concealed his sexuality in order to avoid persecution in his home area however, he ought not to be expected to do so in a place of relocation, in view of *HJ & HT* [2010] UKSC 31. I do not depart from the conclusions of *MD*, in headnote e. as to the general position for openly gay men, in that even if there was found to be a real risk of persecution in a home area, it was not unreasonable or unduly harsh to relocate to a major city. The fact is that the appellant genuinely believes that he will be unable to live openly as a gay man owing to his previous experiences and knowledge of life in his village and this mindset will effectively prevent him from being open about his sexuality, including being open about his relationship with his partner.
18. The appellant’s subjective fear of revealing his sexual identity is not entirely without foundation, indeed the USSD report 2018 on India says the following

*“Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity*

*On September 6, the Supreme Court decriminalized same-sex relations in a unanimous verdict. Activists welcomed the verdict but stated it was too early to determine how the verdict would translate into social acceptance, including safe and equal opportunities at workspaces and educational institutions.*

*Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons faced physical attacks, rape, and blackmail. LGBTI groups reported they faced widespread societal discrimination and violence, particularly in rural areas. Activists reported that transgender persons continued to face difficulty obtaining medical treatment. Some police committed crimes against LGBTI persons and used the threat of arrest to coerce victims not to report the incidents. With the aid of NGOs, several states offered education and sensitivity training to police.”*

19. While MD points to the large, robust LGBT community and the existence of support groups, the evidence at [170] of MD points to these groups being of an informal nature and there is no indication that the appellant could be reassured that they could protect him from mob or police violence were he able to attempt to live a normal life as an openly gay man in India, accompanied at times by his partner. While the respondent argues that the appellant could relocate to a city, the background reports do not suggest that societal discrimination and violence is limited to rural locations. Similarly, the appellant is unlikely to be encouraged to be open about his sexuality given the reports regarding the frequency of attacks on other minorities owing to caste, tribe, religion or gender-based crimes. The above-mentioned USSD reports as to the likelihood that a victim of mob violence would obtain justice as follows:

*“A lack of accountability for misconduct persisted at all levels of government, contributing to widespread impunity. Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under-resourced court system contributed to a small number of convictions.”*

20. The respondent’s CPIT refers to evidence that there are over 45 million gay people in India and the relatively low level of reported incidents of violence. This calculation assumes that they are all openly gay and that every incident is recorded. Dr Horden refers to the exclusion of international investigators from India, including the UN Special Rapporteur and I accept that it is unlikely that incidents are accurately counted.
21. There are aspects of Dr Horden’s report, based on reports in the public domain as well as her knowledge of the situation in India which put into perspective the environment likely to greet the appellant. Her report references a nuanced consideration of the position and fully acknowledges the decriminalisation of consensual gay sex. At the same time, she refers to quotes from mainstream politicians and organisations expressing negative views regarding the Supreme Court ruling, the silence of Prime Minister Modi regarding that ruling and that societal attitudes to homosexuality have not changed, notwithstanding the efforts of NGOs. Dr Horden’s view is that an interracial gay couple is likely to aggravate the situation owing to the perception that homosexuality is an *“import from the West,”* a view confirmed by the representatives of religious parties.
22. Dr Horden states that wealthy LGBTQ people could avoid discrimination and mob attacks by deploying wealth such as by living in gated communities. There was no evidence before me to suggest that the appellant and RS have that level of financial resources. In addition, the appellant cannot access family support owing to the risk of persecution as well as the pressure to remarry and he has just one close friend in India who is located in his village.



23. Assessing the appellant's personal circumstances in the context of the conditions in India for a gay man in an interracial relationship, I am satisfied that, overall, it would be unduly harsh to expect the appellant to relocate within India. In summary, his removal would put him in a position in which he would be in fear of being harmed, regardless of whether there is a real risk of persecution and owing to that fear he would conceal his sexual identity and thus not live a normal life. He continues to suffer from mental health difficulties which I accept will be exacerbated by his removal and lead to an increased risk of self-harm or suicide. The deterioration in his mental state is likely to reduce his capacity for successfully relocating and negotiating the well-evidenced difficulties for LGBT people in obtaining accommodation and employment. The availability of medical care in India is far from a complete answer to any deterioration in the appellant's state because it is not medical treatment in the UK which brought about an improvement in his symptoms but the loving support of a partner, a feeling of being accepted in the UK and for the first time in his life, the ability to live as an openly gay man. Given his partner's understandable reluctance to live in India and that he is still working, the appellant is unlikely to be supported by him in practical terms for the majority of the time following his proposed removal to India. In summary, it is not reasonable to expect the appellant to relocate in these circumstances.
24. As I have allowed the appeal on asylum grounds, there is no real need to address Article 8, however, I accept that the reasons provided above are also relevant to whether there are very significant obstacles to integration as required by paragraph 276ADE(1)(vi) of the Rules. I find that the appellant meets the requirements of the Rules and the appeal is also allowed on this basis.

### **Notice of Decision**

The appeal is allowed on asylum grounds.

The appeal is allowed on human rights grounds (Article 8).

### **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.

### **TO THE RESPONDENT**

**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed  
2020

Date 17 March

Upper Tribunal Judge Kamara