



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

**Appeal Number IA/00169/2020  
(PA/50652/2020)**

**THE IMMIGRATION ACTS**

**Heard at George House, Decision & Reasons Promulgated  
Edinburgh On 9 March 2022 On the 30 March 2022**

**Before**

**UT JUDGE MACLEMAN**

**Between**

**SHOHAG RANA**

Appellant

and

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

Respondent

*For the Appellant: Mr S Winter, Advocate, instructed by Andrews Immigration Solicitors*

*For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer*

**DETERMINATION AND REASONS**

1. This determination is to be read with:
  - (i) The respondent's decision dated 22 June 2020.
  - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
  - (iii) The decision of FtT Judge O'Hagan, dated 31 July 2021.

- (iv) The appellant's grounds of appeal to the UT, stated in the application for permission:- (1) treatment of evidence from Ms Gordon, (i) - (ii), and (2) treatment of evidence from Mr Martin, (i) - (v).
  - (v) The grant of permission by the FtT, dated 7 October 2021.
  - (vi) The respondent's response under rule 24, dated 1 November 2021.
2. On ground 1, Mr Winter submitted that at [39] the FtT fell into an error of the type exemplified in AR [2017] CSIH at [34] of rejecting supportive evidence for an *a priori* reason, and of excluding it from the overall assessment. The Judge said that Ms Gordon was "a very supportive friend" and was "trying to assist the appellant" but she gave no reason for rejecting her evidence other than "significant discrepancies and contradictions" in the appellant's evidence.
  3. On ground 2, Mr Winter submitted that the FtT failed to arrive at any clear conclusion on the evidence of Mr Martin, saying at [35] that he was "an unreliable witness", due to a discrepancy over whether he and the appellant met in person 3 times or 5 times, but at [37] that while Mr Martin "may have genuine feelings for the appellant" their relationship was "not genuine" on the appellant's part.
  4. Mr Diwnycz adopted the rule 24 response, but accepted that the FtT erred in the two respects highlighted in submissions for the appellant. He also accepted that although the FtT correctly identified various discrepancies and contradictions in the evidence, it could not be said that the same conclusion had to follow after excision of its errors.
  5. Those concessions were correctly and fairly made.
  6. The hearing proceeded to the remaking of the decision.
  7. Updating statements and further materials, including communications between the appellant and Mr Martin (who were both present) were admitted into evidence.
  8. Mr Diwnycz had no questions for Mr Martin in cross-examination.
  9. There was no interpreter present. Mr Winter advised that the appellant's English was not adequate for purposes of cross-examination. Mr Diwnycz did not seek adjournment to another date. He relied upon the discrepancies and weaknesses in the appellant's account, as identified in the refusal decision and in proceedings to date, and submitted that the appeal should be dismissed. He confirmed that the respondent's position throughout has been that the appeal stands or falls on whether the appellant is gay.
  10. Mr Winter accepted that there were discrepancies in the evidence over dates, times, number of meetings, and so on. He submitted that any doubts were outweighed by the substantial body of evidence from a

number of witnesses, covering several years, of the appellant's gay identity.

11. The evidence of Ms Gordon is not only that the appellant has told her he is gay, first confiding in her some years ago, but that she was aware of him sharing a bedroom with another man. (She explains in her statement why she was not present again on this occasion.) Mr Martin has given consistent evidence that he and the appellant are in a gay relationship. The discrepancy over the precise number of their meetings does not suggest to me that the relationship is invented. Ms Gordon and Mr Martin have gone to some trouble to give oral evidence. A number of other witnesses, living far from the hearing centre, have provided written evidence that they have known the appellant well for some years in his local community and that they are aware he is gay.
12. The respondent has identified inconsistencies in the appellant's own account, but nothing which undermines his supporting witnesses. The respondent has pointed to no major deficiency in the evidence which shows that he is not likely to be truthful about his sexual identity. I find it unlikely that he has orchestrated a widespread deceit.
13. On the whole evidence, it is (at least) reasonably likely that the appellant is gay.
14. The decision of the FtT is set aside. The decision substituted is that the appeal, as brought to the FtT, is allowed on protection grounds.
15. No anonymity direction has been requested or made.



9 March 2022  
UT Judge Macleman

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#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is “sent” is that appearing on the covering letter or covering email.**