



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

Appeal Number: PA/04550/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 May 2017**

**Decision & Reasons Promulgated  
On 08 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**MR FR  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Chelvan of Counsel

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure

to comply with this direction could give rise to contempt of court proceedings.

### **Background**

2. The appellant is a citizen of Pakistan who was born on [ ] 1981. He entered the United Kingdom on 17 November 2011 with a Tier 4 (General) Student visa.
3. He claimed asylum on 18 November 2015. On 22 April 2016 the respondent refused the appellant's application for asylum. The respondent did not accept that the appellant was homosexual and therefore did not accept that he would be at risk of persecution in Pakistan. The appellant appealed against that decision to the First-tier Tribunal.
4. In a decision promulgated on 29 December 2016 First-tier Tribunal Judge Turquet dismissed the appellant's appeal. The First-tier Tribunal did not accept the appellant's account and found that the appellant was not therefore at risk of persecution on return to Pakistan. The First-tier Tribunal also considered that the appellant did not satisfy the requirements of the Immigration Rules under Appendix FM or paragraph 276ADE. The appeal was dismissed on asylum, humanitarian protection and human rights grounds.
5. The appellant applied for permission to appeal against the First-tier Tribunal's decision and on 30 March 2017 First-tier Tribunal Judge Baker granted the appellant permission to appeal.

### **The hearing before the Upper Tribunal**

#### **Submissions**

6. The appellant filed a skeleton argument which amplified submissions made in the grounds of appeal. These were further amplified in oral submissions.
7. Ground 1 of the grounds of appeal assert that the First-tier Tribunal was aware of the history of sexual abuse claimed by the appellant but did not pay any regard to the Presidential guidance note on vulnerable witnesses. This led to material procedural unfairness.
8. Ground 2 asserts that the judge failed to consider the **Surendran (Surendran v Secretary of State for the Home Department (19197))** guidelines. It is asserted that these guidelines are to be applied when the respondent has failed to defend her decision. Where the respondent is not represented at a hearing the Tribunal can only raise matters in the decision which are not raised in the refusal letter with notice by raising any matters with the appellant and/or their representatives at the hearing. The grounds assert that there is not a

single reference in the decision to the **Surendran** guidelines being noted, let alone applied by the Tribunal.

9. The Tribunal exacerbates this approach by omitting to record the appellant's replies to the adverse credibility findings in the protection decision. These responses would procedurally act as a starting point to determine the approach of the Tribunal with respect to outstanding matters. There is a complete lack of recording in the decision of the appellant's response to the adverse credibility points in the decision, so that the clear omission to record those responses and use them to act as a starting point for further investigation where there is a vulnerable witness is procedurally unfair and unlawful. In his skeleton argument Mr Chelvan corrected this ground of appeal referring to paragraph 15 of the First-tier Tribunal's decision setting out: *'the Tribunal do record reference to: "In his witness statement the appellant gave more details of his claim and responded to the Reasons for Refusal"'*. During the course of oral submissions Mr Chelvan submitted that this reference to the appellant's reply is not in sequence and ought to have been identified following the recording of the respondent's case and that this amounted to a material error of law. The appellant had provided responses to the issues raised in the Reasons for Refusal Letter, however the judge recorded the appellant's case and then the respondent's case, and then moved straight into findings without, in essence, recording the appellant's responses as a reply to the respondent's case
10. Ground 3 asserts that the Tribunal's focus on the appellant's illegal status was a key finding in rejecting credibility. A number of paragraphs in the Tribunal's decision are referred to: paragraphs 1, 35 and 49 where it is asserted that the judge has materially erred in law by making an inaccurate finding that the appellant was in the UK unlawfully. The appellant refers to paragraph 49 where the Tribunal finds that "this would appear to indicate that he would have remained in the United Kingdom illegally". It is asserted that at paragraph 50 the finding that the appellant was a person of no credibility was based on the immigration history and that the Tribunal's personification of the appellant as an individual in the UK illegally based on a wholly inaccurate and misleading interpretation of the facts led to a material conclusion of no credibility and a fabricated asylum claim.
11. At the beginning of the hearing Mr Chelvan indicated that Mr Clarke accepted that the appellant was not in the United Kingdom unlawfully at the time of the application. I confirmed with Mr Clarke that that was accepted, to which he indicated that it was. Mr Chelvan submitted that from paragraph 34 onwards of the decision there is no recording of the evidence from the appellant at the hearing. He submitted that his strongest ground was that in assessing credibility the judge had made a material mistake of fact. As now accepted by the respondent, this was an error of law. The appellant was not illegally overstaying. He had leave to remain until 24 November 2015 and had made his asylum application on

18 November 2015. It was submitted that the assessment of credibility was considered through the prism of an unlawful stay in the United Kingdom. Reference is made to paragraph 49 of the Tribunal's decision and it was submitted that it is clear that the judge was clearly considering that the appellant was in the UK illegally when making the finding that his credibility was damaged. In the grounds of appeal specific reference is made to paragraph 50 and the final sentence of the paragraph. It is asserted that the judge concludes in that paragraph that the appellant was a person of no credibility.

12. In ground 4 it is asserted that the Tribunal's treatment of the corroborative witness evidence is irrational and unfair. The appellant's former partner submitted a statement in support of the appellant's appeal. He is mentioned by the appellant in his asylum interview. The Tribunal found, in relation to W, that as someone who was claiming asylum on the basis of his sexuality it is consistent that he would be attending LGBT organisations, whilst for the appellant it rejects the appellant's attendance at LGBT community support groups such as the Naz and London Friend prior to his claiming asylum. This inconsistency and approach is irrational and grossly unfair. It is asserted that there are two points relied on by the Tribunal: firstly, a difference in address in the reply notice and claimed address, and the appellant's claim that he was unaware of the witness's employment history whilst they were in a relationship. It is asserted that there is no reference in the decision to either point being put to the appellant or the witness. The approach to the corroborative witness has been clouded by the Tribunal's approach to credibility. It was submitted that the use of the words "consistent with" in relation to W attending LGBT is supportive of the asylum claim.
13. Ground 5 asserts that the adverse credibility findings illustrate the lack of fairness. Reference is made to the findings of fact by the Tribunal that it was not credible that the appellant would have had sex at school, is not credible that the appellant's father only beat him once in 2006, that it was not credible that a 19 year old boy who had transgressed strict Islamic conduct would have been accompanied by a family member and forced to attend the Mullah and that no gay club bar membership card was available. It is submitted that in rejecting the evidence of the appellant regarding having sex at school this would exclude all claims for asylum where the narrative includes being caught by third parties engaging in sexual conduct outside the home. It is submitted that the finding of fact is both irrational and materially unfair. It is submitted that it is clear from the evidence at question 39 that following the beating by his mother, when his father next came from Dubai he hit him as well, and that the appellant does not date this as occurring in 2006. He faced this beating at the time when he was sent to the Mullah in 1998, referring to "not wanting to be beaten again by my father". In 2006 it was as a result of the discovery of A having sex with a child that resulted in A's father beating him and then his father beating him. This was not a single incident as held by the Tribunal. It is submitted that the Tribunal in rejecting as credible or

plausible that a 19 year old would have been accompanied by his cousin and forced to attend the Mullah ignores the context of strict Islamic values and applies a global north/UK analysis of the decision making process contrary to the case of **Kasolo v Secretary of State for the Home Department (13190)**. It is submitted that the Tribunal makes adverse findings on the basis that the appellant had not provided any evidence from any gay bar or club.

14. Mr Clarke submitted that the judge set out the appellant's evidence and looked at it in detail considering the medical evidence, but does not accept the appellant's account. Therefore it is not clear why the judge ought to have considered the appellant as a vulnerable witness. In any event, he indicated that the appellant has not been able to identify anything within the decision that would/could have been considered differently had he approached the matter in a different way.
15. He submitted that the judge has not considered the attendance or lack of attendance with the Mullah from a northern perspective. The appellant was supposed to be going to see the Mullah every week as a result of a very serious issue. He submitted that the situation and the events in Pakistan underpin the reasoning of the judge. Why did the Mullah not on any occasion go to the appellant's mother over the two years when he was waiting each week for the appellant to arrive?
16. With regard to the argument that there was no consideration of the **Surendran** guidelines he submitted that paragraph 19 of **MNM v Secretary of State for the Home Department 00/TH/02423** sets out clearly that a Tribunal must not get involved with the questioning of witnesses. He referred to paragraph 4 of the guidelines:
 

'4. Where matters of credibility are raised in the letter of refusal, the Special Adjudicator should request the representative to address these matters, particularly in his examination of the appellant or, if the appellant is not giving evidence, in his submissions. Whether or not these matters are addressed by the representative, and whether or not the Special Adjudicator has himself expressed any particular concern, he is entitled to form his own view as to credibility on the basis of the material before him.'
17. He submitted the judge was entitled to form her own view as to the credibility of the witness from all the evidence that was available. A judge can look at everything and form her own view on credibility and does not need to raise and put every piece of evidence to the witness. With regard to the argument that at paragraph 43 where the judge found that the statement in respect of living openly to be inconsistent with the account he has given of not telling anyone in the UK, that was dealt with in the Reasons for Refusal Letter at paragraph 30. Therefore, clearly this was an issue raised by the respondent regarding the inconsistency between the appellant's accounts. There is nothing new in this issue for the judge to have put to the appellant. With regard to the assertion that the judge ignored the photos and adopted the reasoning of the Secretary of State at paragraph 44 of the decision, he submitted that it is clear that the judge

was aware of the photographs and attendance at the LGBT, but found that the photographs appeared staged. This was a finding on the basis of the evidence that was before the judge and was not a complete unreasoned adoption of the Secretary of State's case. With regard to the NAZ letter at paragraph 47, the judge considered and took into account the letter. In the previous paragraph the judge had noted the recent access to the appellant's GP. Clearly the judge has taken all this evidence into account.

18. With regard to the third ground, the focus on the illegal status, Mr Clarke accepted that the judge had made a mistake but submitted that this was not material. In referring to paragraph 49 he submitted that the judge clearly made her findings without taking into consideration whether or not the appellant was in the United Kingdom illegally. The judge considered that to be irrelevant. The judge was considering the delay in the failure to make the asylum claim at that point and considered simply that his explanation that he had leave until November 2015 was not an adequate explanation. Similarly, at the end of paragraph 49 the judge was referring to the appellant's explanation regarding the suspension of the fast track process rather than his claim.
19. With regard to the corroborative evidence referred to in support of the appellant's claim, he submitted that the judge was correct and entitled to take into account that this evidence only came about, or only started a few months before the appellant's claim. With regard to the inconsistencies noted by the judge he referred to the answer at question 7 of the screening interview and submitted it was a clearly an inconsistent assertion that he came to the UK to claim asylum and the time taken i.e. June 2012 to 2014 after the appellant entered the United Kingdom to make his claim. The inconsistency in the account as to the reasons why he was late in applying for asylum was part of a changing story that the judge took into account in assessing credibility. With regard to the treatment of the corroborative witness, he submitted that the treatment was not irrational. The Tribunal made two points regarding the difference of the address and that he was unaware of the partner's employment history, but the judge looked at the evidence of the partner at paragraph 44 and the judge clearly indicates that she has considered the evidence of W together with all the other evidence in reaching the conclusion. The entirety of the reasoning set out in paragraph 44 is what led to the judge placing little weight on the statement or the evidence of W.
20. With regard to the fifth ground, he submitted that the judge was entitled to consider all the inconsistencies, that this was an evolving and changing chronology and a chaotic case. It is not just a single strand where the judge was simply looking at attitudes in Pakistan. The judge considered the appellant's own fear in light of his asserted account of what happened as to whether or not that would make it credible that he would have had sex at school and therefore it is both a subjective and objective range of factors that the judge took into consideration in arriving at that conclusion. With regard to the issue over the number of beatings he referred to the asylum interview and submitted that the grounds missed the point that

the judge's reasoning was concerned about this developing and changing story. At question 7 the appellant was very specific that his father beat him in 2006 and that this was when the fear started. He was sent to his grandmother, but the judge finds the account inconsistent. The appellant failed to mention the problems with A in 2006. This was inconsistent with his witness statement at paragraph 13. There were many issues that the judge was concerned about. With regard to the evidence and membership of the gay bar, he submitted that this misrepresented the reasoning of the judge at paragraph 43. He submitted that the judge notes the claim that he lives openly and the judge's findings are not just about membership but about other people that he met there. He submitted that the judge was not requiring corroborative evidence but was looking holistically at what the appellant had not provided that could reasonably have been available.

21. In reply Mr Chelvan submitted that there was a global northern assessment contrary to the **Kasolo** case at a number of points in the First-tier's decision. He had provided corroborative evidence from W which the Tribunal rejected. He submitted that the expectation of the judge was that the appellant should have relationships, so the fact that he has not had any other relationships in a six month period means that he cannot be gay is completely ridiculous. He referred to **HM (Iraq) & Anor v Secretary of State for the Home Department [2011] EWCA Civ 1536** and submitted that the role of the judge is inquisitorial not adversarial.
22. I reserved my decision. In the event that I was to find a material error of law both parties indicated that they considered that the matter ought to be remitted to the First-tier Tribunal for full findings of fact.

## **Discussion**

### **Ground 1**

23. With regard to the first ground of appeal (that the judge had failed to treat the appellant as a vulnerable witness) this issue was not raised by the appellant's legal representative at the hearing. The appellant has not identified any specific issues with regard to the treatment of the evidence by the judge. Whilst a judge should take the point, if obvious, even if not raised by the legal representative, in this case the judge has rejected the appellant's evidence and therefore the appellant was not, in the view of the judge, a vulnerable witness.

### **Ground 2**

24. Ground 2 of the grounds of appeal assert that the judge has failed to record any of the appellant's responses to the adverse credibility points taken by the respondent and failed to consider the **Surendran** guidelines. The judge has set out in considerable detail the responses that the appellant made to the issues raised in the Reasons for Refusal Letter. These commence at paragraph 15 and go through to paragraph 18. These are lengthy paragraphs. Reference is made to the points raised in the

respondent's decision and in paragraphs 21 to 35 of the appellant's witness statement (which contain the responses to the respondent's decision letter). Although the skeleton argument makes a correction, and in oral submissions Mr Chelvan appeared to indicate that the point being made was that it was the sequence in which the First-tier Tribunal dealt with this issue, that was not a full retraction of what is set out with considerable force in the grounds of appeal. I have considered paragraphs 21 to 35 of the appellant's witness statement and it is clear that the judge not only has considered them, but has set out each assertion in some detail in the paragraphs I have referred to, i.e. paragraphs 15 to 18. The fact that these are set out in the section 'appellant's case' rather than being set out as a reply after the recording of respondent's case does not amount to an error of law. The judge was setting out in full the whole of the appellant's case. The judge refers at paragraph 19 to the appellant's skeleton argument. Clearly, that was provided for the hearing and gives a further indication that the judge was setting out in a comprehensive format the whole of the appellant's case. At paragraph 36 the judge records:-

"In coming to my decision I have to set down my findings in some sort of order. The order does not indicate that some considerations are more important than others. There are accounts given by the appellant himself in his interviews, statements and oral evidence... "

As indicated by the judge, there must be some order to a decision. There is no merit in this ground of appeal. Contrary to the assertions of the appellant the judge in this case set out in detail the appellant's responses to the issues raised by the respondent.

25. Although it is asserted that the judge failed to take into account the **Surendran** guidelines no specific evidence is referred in ground 2 that was relied upon by the judge that had not been put to the appellant. There are however two points said to be relied upon by the judge in respect of the corroborative witness's evidence that were not put to the appellant. These are that there was a difference in the address and the appellant's claim that he was unaware of the witness's employment.
26. In **MNM** paragraph 6 of the **Surendran** guidelines, as annexed to that decision, provide:

6. It is our view that it is not the function of a special adjudicator to adopt an inquisitorial role in cases of this nature. The system pertaining at present is essentially an adversarial system and the special adjudicator is an impartial judge and assessor of the evidence before him. Where the Home Office does not appear the Home Office's argument and basis of refusal, as contained in the letter of refusal, is the Home Office's case purely and simply, subject to any other representations which the Home Office may make to the special adjudicator. It is not the function of the special adjudicator to expand upon that document, nor is it his function to raise matters which are not raised in it, unless these are matters which are apparent to him from a reading of the papers, in which case these matters should be drawn to the attention of the



appellant's representative who should then be invited to make submissions or call evidence in relation thereto. We would add that this is not necessarily the same function which has to be performed by a special adjudicator where he has refused to adjourn a case in the absence of a representative for the appellant, and the appellant is virtually conducting his own appeal. In such event, it is the duty of the special adjudicator to give every assistance, which he can give, to the appellant.

27. The judge does note the difference in address (as set out below) and I accept that there might have been an explanation available if this had been put to the appellant or W. I do not consider that this was 'relied on' by the judge as asserted. However, even if it were relied on it was only one of very many factors that the judge took into account. With regard to the lack of knowledge of W's employment the judge was entitled to make an adverse credibility finding. This appears to have arisen during the course of evidence. The judge analysed the evidence as presented setting out (paragraph 44):

"...I note that he said in interview that W lived in Willesden and that he had only been there to visit and had not stayed for a full night. When the appellant's reply notice was completed on 16 September 2016 the address for W was given as London NW2 3DA, although W said that he had been living in Bedford for four months. He also said that he had been living with his girlfriend since April, five months before September. They have had an Islamic marriage and their baby is due in December. He is a self-employed taxi driver and before that was working at some grocery shops in Bedford. I note that the appellant, when asked about W he said that he did not know if he was working during their nine months relationship. I do not find it credible that if they were in a relationship that he would not know what his partner did..."

28. The judge considered the evidence in detail and noted very many inconsistencies. It is not the role of the judge to put each and every inconsistency to the appellant in the absence of a representative of the respondent. The Tribunal was not bound, as a matter of natural justice, to point out all the inconsistencies and evidence that he considered was not credible. I do not accept Mr Chelvan's submission that **HM (Iraq)** is authority for the proposition that the role of a judge, in the absence of representation of one party, is inquisitorial. In that case the court did not need to decide the issue.

### Ground 5

29. It is appropriate at this stage to consider ground 5. It is asserted that a number of adverse credibility findings illustrate a lack of fairness. These were, that it was not credible that the appellant would have had sex at school, is not credible that the appellant's father only beat him once in 2006, that it was not credible that a 19 year old boy who had transgressed strict Islamic conduct would have been accompanied by a family member and forced to attend the Mullah and that no gay club bar membership card was available.

30. It is submitted that in rejecting the evidence of the appellant regarding having sex at school this would exclude all claims for asylum where the narrative includes being caught by third parties engaging in sexual conduct outside the home. The finding of fact is both irrational and materially unfair. The appellant argues that the judge adopted a global north/UK analysis. The judge, after setting out the appellant's account, considers the evidence:

37. "...He made no mention of having problems with the authorities or of being in fear. When asked at question 38 what it had felt like being caught and then expelled from school because of his sexual orientation, he said all his locality were looking down on him in an insulting manner. 'I felt awful about what was happening to me.' Given the background evidence and the latest country guidance, which indicates inter alia that same-sex sexual acts are illegal in Pakistan, homophobic attitudes are prevalent in Pakistan, there is widespread and systematic discrimination against LGBT persons including harassment and violence, which might in individual cases amount to persecution, I find the appellant's answer, which indicates that he is going out and about and that the community know about his sexuality yet the only problem is that they look at him in an insulting manner is inconsistent with the background evidence. In the event that his sexual relationship with S was known about in the public domain, I find it unlikely that he would go out and about. If he did, I find it likely that he would have suffered more than insulting looks. He did not mention being worried about being arrested.

38. I find the appellant's answers in interview about how he came to realise his sexual orientation and how he had felt about it to be unconvincing. When asked about his first relationship, he merely said that he went to his friend's house, watched a porn film and then had sex. There was no account of either boy having feelings for the other or having discussed their sexuality. When asked what he personally believed about being a homosexual, he said 'I enjoyed being a homosexual', which is a very simplistic answer. When asked what he was told about homosexuality by his family, school and society, he said that he had not known much about it and that it was only after coming to the UK that he heard more about it however his desires were more towards boys. When it was put to him that the Home Office would want to know about the emotions he felt, he said that he had felt a tightness and pressure inside him knowing that society was not accepting it. He then said that A had raped him and continued to do this every week until 'I also started feeling that I had a homosexual partner and so we were both conducting sex together'. He had also said that he got a lot of pleasure and excitement by indulging in homosexual sex. He did not mention having any feelings for his sexual partners.
39. The appellant's accounts of his problems in Pakistan in respect of his sexuality have been inconsistent and unconvincing. In his asylum interview he stated that he came to realise about his sexual orientation, when he was 15 years old and in class with S. This would have been in 1996/1997. The Principal had called his mother. He said in his asylum interview that they had sex at S's house and at school. I do not find it credible in light of the attitude towards same sex relationships, that they would have indulged in sex at school. ... "

31. The judge's finding in respect of the credibility of the appellant engaging in sexual conduct at school was made in the context of all the factors set out in the above paragraphs. In **Y v SSHD 2006 EWHC 1223** the court held that a decision maker was entitled to regard a claimant's account as incredible by drawing on his own common sense and his ability as a practical and informed person to identify what was and was not plausible but as held at paragraph 27:

"27 ... he must take care not to do so merely because it would not seem reasonable if it had happened in this country."

32. It is important to view events from an appellant's point of view in the context of the conditions in the country from which he comes. The judge specifically referred to the background evidence and country guidance case law. In this case the judge took into account in particular the conditions in Pakistan, specifically attitudes towards homosexuality in assessing the credibility of the appellant's account.
33. It is argued that the judge erred in finding that the appellant was beaten by his father on one occasion only. This is not the finding of the judge. What the judge found lacked credibility was that the appellant's father had not returned from Dubai in an 8 year period:

"39. ...When asked when his fear began, he said in 2006. His father had been in Dubai and came back and beat him up. After 2006 he became increasingly more scared. However at question 39 he said that his mother beat him up, after S's father had beaten him, and that when his father next came on a visit, he beat him up. Given that he said that his relationship with S finished in 1998, I find that his father would have visited before 2006, a period of eight years, given that Dubai is not far from Pakistan."

34. I accept that the appellant's account (although one has to 'read into' what was said in the asylum interview and in his witness statement in order to discern this) is that he was beaten by his father in 2006 and in 1998. However, I do not consider the judge's (understandable) error to be material given the overall findings of the judge and the number of inconsistencies and lack of credibility in the appellant's account.
35. It is argued that the judge erred in finding it not credible that a 19 year old boy who had transgressed strict Islamic conduct would have been accompanied by a family member and forced to attend the Mullah. The judge made the following credibility finding:

"40. The appellant claims that his relationship with A started in 2000 and that this was after his mother had started to send him to see the Mullah. The account in respect of A was that his mother had asked A to take him to the Mullah as she was not available and on the second occasion instead of taking him to the Mullah had taken him to his home and raped him. This went on every week. In the event that his mother had arranged the meetings with the Mullah after the S incident in 1998, I find it unlikely that they were still continuing two years later. In the event that he was continuing in 2000 but stopped going to the

Mullah because A was taking him home, I find that the Mullah would have informed the mother. If the appellant were being raped, I do not find it credible that he would have continued going with A. In 2000 he would have been 19 and of an age when he would be able to make his own way to appointments and too big to be forced into going with a cousin.”

36. The appellant’s description of the judge’s finding is not accurate. The judge found it incredible that the Mullah would not have contacted the appellant’s mother when the appellant failed to attend the arranged meetings that were, by the appellant’s account, to have been taking place on a weekly basis over a 2 year period. This is a finding that, on the evidence, was open to the judge.
37. The appellant argued that the judge’s adverse finding on the basis that the appellant had not provided evidence of membership from any gay bar or club was irrational.

“43. The appellant said in his statement that when he came here he wanted to be alive, be himself in respect of his sexuality and also be free. He stated that the Home Office were aware of the fact that it was a crime in Pakistan if he were found to have any homosexual relationship and that it was only a matter of time, as he lives openly in the UK, that he would be found to be a homosexual. I find this statement in respect of living openly to be inconsistent with the account he has given of not telling anyone in the UK in his community about being gay. The people he lives with do not know. Only U and W respectively knew of their relationships with him. Although he says he met U in a gay club, he has provided no supporting evidence of club membership or from other people he met there. He has provided no evidence from any gay bar or club, despite now having been in the UK for five years. He could not remember U’s other name in his interview, although he has given the name M in his witness statement. I do not find that he gave a satisfactory explanation for saying in interview I only knew him as U. Given the length of time he claims to have been in a relationship (June 2012 to December 2014) I find it reasonable to expect him to have evidence of the relationship for example birthday cards and photographs. If they met in a gay club, which they both frequented, I do not find it credible that nobody knew about the relationship except them.

...

48. Although the appellant has been in the UK since 2011 there is no supporting evidence of attendance at gay clubs or LGBT organisation or even a Gay Pride March until 2015 just a few months before he claimed asylum. Apart from W no witness came to support his case at the hearing. There is little evidence of the appellant taking advantage of the liberal attitude towards homosexuals in this country and of the gay scene in London. For the above reasons the appellant has not satisfied me on the lower standard of proof that he is a homosexual.”

38. It is clear that the judge was not focused simply on 'membership' of a gay club or bar. The adverse findings were made in the context of all the evidence set out in the above paragraphs and were ones that were open to the judge.

### Ground 3

39. The appellant asserts that the Tribunal's focus on the appellant's illegal status was a key finding in rejecting credibility. In paragraph 1 the judge notes that the appellant's leave was curtailed on 24.12.2013 and in paragraph 35 finds he did not claim asylum, until November 2015 'when he was without leave'. It has been accepted by the respondent that this is an error. In fact the appellant had valid leave at the time he made his asylum claim. The issue is therefore whether that error was material. I do not accept the appellant's submission either that the First-tier Tribunal 'focussed' on the incorrect finding about the appellant's status or that it was a key finding in rejecting credibility. The judge's focus at paragraphs 49 and 50 were on the belated claim for asylum not on the lawfulness of the appellant's status in the UK at the time he claimed asylum. The judge recorded:

"49. The appellant did not claim asylum until November 2015. As stated before he claimed in his screening interview that he came to the UK to claim asylum. However in his asylum interview he then said that he did not know much about it. In March 2014 U told him about asylum and said that he should apply, when his visa ran out. The appellant did have a visa until November 2015 however it was curtailed because his sponsor's licence was suspended. He got another CAS and was then told by the Home Office that he had to do another English test. **Whether or not he thought he had leave until November 2015**, I do not find that this **explains why he failed to make an earlier asylum** claim, especially as he said he came to claim asylum. I note that in his statement he said that, when the UKLGIG told him that the Home Office had suspended the fast track process, he took immediate steps to claim asylum. This would appear to indicate that he **would have** remained in the United Kingdom illegally.[emphasis added]

50. I find that the appellant made efforts to obtain evidence for an asylum claim based on him being homosexual before making his claim. He provided evidence of visits to his GP from September 2015, of attending Naz from June 2015 and of attending London Friend from October 2015. I find his behaviour falls under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and that his credibility is damaged. In **TP (Credibility) Zimbabwe [2004] UKIAT 00159** the Tribunal stated:-

'The adjudicator was, in the circumstances of this case, fully entitled to have regard to the immigration history of the appellant and in particular the precise circumstances in which the claim for asylum was belatedly made and to conclude from all this that the appellant was a person of no credibility.'

40. It is clear from the above passages that the judge was considering the explanations in respect of determining whether the delay in claiming

asylum adversely affected his credibility under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The judge was required to take into account explanations for the delay. The judge clearly considered that it was immaterial whether or not he had leave as even if he did have leave it did not explain the 4 year delay, especially as he said he came to the UK claim asylum. The error of law in finding at paragraph 35 that the appellant did not have valid leave when he claimed asylum was neither the focus nor a key finding in respect of credibility. It was not a material error of law.

#### Ground 4

41. It is argued that the Tribunal's treatment of the corroborative witness's evidence is irrational and unfair. In essence the argument is that in finding that it is consistent with a claim for asylum that W would be attending LGBT organisations it was irrational to reject the appellant's attendance at LGBT community support groups. I have dealt above with the difference in address and the lack of knowledge of the employment history.

"44. The appellant has provided photographs of himself with W, whom he said he started having a relationship seven to eight months before the hearing. There are also photographs of him attending LGBT events. Many of the photographs appeared staged. He said in his asylum interview that they met at a UKLGIG meeting. He described the relationship as being on and off and not consistent. ... He also said that he had been living with his girlfriend since April, five months before September. They have had an Islamic marriage and their baby is due in December... I note that at the time of the claimed relationship, Mr W was waiting for his asylum decision, which was granted in March this year. This is the same time it is claimed that the relationship finished and his girlfriend was pregnant. As someone who was claiming asylum on the basis of his sexuality I find it consistent that he would be attending LGBT organisations...

42. The judge simply noted that it was consistent with a claim for asylum on the basis of sexuality that a person would be attending LGTB organisations. This does not indicate that the judge considered that this was a factor that would determine whether as a matter of fact that a person was homosexual. The judge, in paragraph 48 of the decision, as set out above, considered that *'Although the appellant has been in the UK since 2011 there is no supporting evidence of attendance at gay clubs or LGBT organisation or even a Gay Pride March until 2015 just a few months before he claimed asylum.'* There is no irrationality or unfairness in the judge's treatment of W's evidence. The judge was entitled to take into account the very recent attendance when evaluating the appellant's evidence of attending LGTB organisations as probative of the appellant's claim.

43. There was no appeal against the First-tier Tribunal's findings on Human Rights.
44. There were no material error of law in the First-tier Tribunal decision.

**Notice of decision**

There were no material errors of law on the First-tier Tribunal's decision. The decision of the Secretary of State therefore stands.

Signed P M Ramshaw

Date 7 June 2017

Deputy Upper Tribunal Judge Ramshaw