



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04738/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Manchester
On: 18th October 2017**

**Decision & Reasons
Promulgated
On: 25th October 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**NN
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Wilkins, Counsel instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan born in 1979. On the 30th November 2016 the First-tier Tribunal (Judge Herwald) dismissed her protection appeal. The Appellant now has permission to appeal against that decision, granted by First-tier Tribunal Judge Shimmin on the 15th February 2017.

Anonymity Order

2. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. The Appellant claimed asylum on the 13th December 2015, almost five years after she had arrived in the United Kingdom as a Tier 4 (General) Student Migrant. The basis of her claim was that she was gay. She said that a cousin of hers, with whom she had had a relationship, had been killed by her family for what they perceived to be her transgressions of their moral code, viz refusing to enter into a marriage that they had arranged. The Appellant herself had been forced into marriage. It came to the attention of the Appellant’s husband that something had happened between her and her cousin. He beat her and told her family. The Appellant’s father was very angry and she was afraid. She went to live with a friend for a period. In January 2010 the Appellant returned to the family home and reconciled with her family. Her father agreed to let her come and study in the United Kingdom. In 2015 it came to her family’s attention that she was having a relationship with a woman in the UK. Her father threatened that if she were to return to Pakistan he would kill her. The Appellant averred that as a gay woman she would not be able to live freely, even away from her family, in Pakistan. There would be an ever-present risk of persecution. Whilst in the UK she has joined a number of LGBT groups, has had a relationship and has been able to live openly as a gay woman.
4. The Respondent found there to be discrepancies in the Appellant’s evidence such that it could not be accepted. Protection was refused.
5. The matter came before the First-tier Tribunal. The Appellant herself gave evidence, as did a Ms Karen McCarthy of the Lesbian Immigration Support Group. I am told that a good number of other women from this group attended the hearing but were not called to testify. The Tribunal was asked to consider letters of support from two

other individuals. Mr Shahid Khan of the Queer Muslim Support Group, and a Mr Uddin who knows the Appellant because she attends a monthly group supporting Muslims who identify as gay.

6. The findings of the Tribunal are set out at paragraph 13 (a)-(hh). In sum the Tribunal gives numerous reasons for rejecting the Appellant's account of events in Pakistan. It is not accepted that she ever had a relationship with her cousin, that her husband believed her to be gay, that she had ever been forced into hiding whilst in Pakistan, that her family were as strict as she claims, or that they want to inflict 'honour' based violence upon her. The Tribunal was unable to place much weight on the evidence of Mr Uddin, because it found that he appears to assume that the Appellant is gay. Mr Khan's evidence could attract limited weight because it was untested and because he had made a remark about the Appellant being resistant to "free gender mixing". Ms McCarthy's evidence is considered at paragraph 13(bb):

"Ms McCarthy gave evidence on behalf of the Appellant, and although I found her evidence helpful, the issues really damaging the Appellant's credibility are simply so great that I cannot place such weight on Mr McCarthy's evidence, as one would have wished".

The appeal was dismissed on all grounds.

The Challenge

7. The grounds fall into two parts. First, it is submitted that the Tribunal made a number of errors in its approach to the question of credibility. I set out the particulars below.
8. Second, it is submitted that in its focus on that historical account the Tribunal lost sight of the central question to be determined: is the Appellant in fact gay? The Appellant had produced powerful evidence of her long-term involvement with various LGBT groups and association with other gay women. The Tribunal apparently rejected that evidence because it had already rejected her account in respect of Pakistan. Negative credibility findings were obviously relevant to the question of whether she was telling the truth about her sexuality, but could not be determinative of it. The evidence of her life in the UK required its own evaluation.

The Response

9. The Respondent accepts that there may be some errors in the assessment of credibility, such as mistakes as to fact. It is submitted that overall the Tribunal gave sufficient reasons as to why it did not

accept the account in respect of Pakistan to be true.

10. In respect of the second ground Mr Harrison emphasises how negative credibility findings – particularly where they are swingeing as this – could reasonably be thought to carry significant weight in the evaluation of whether the Appellant was in fact gay. Some of the credibility findings did go to the wider issue. He did however accept that the determination showed little consideration of the evidence of the supporting witnesses. Whether that was material was a matter for me.

Discussion and Findings

Credibility

11. The first point taken against the Appellant [at 13(e)] is the apparent contradiction between her assertion that she still considers herself a Muslim, and her acceptance of her own sexuality:

“On the one hand, the Appellant would have me believe that she is religious, and considers it would be a sin if she were indeed a lesbian....yet despite having found out she was a lesbian by the age of 13, she felt, she said “happy in myself” but could not share this with anyone”.

Ms Wilkins submits that this finding overlooked, or misrepresented, the totality of the evidence. The Appellant explained that although she felt happy as a child she had been aware that she could not share her feelings with anyone [at Q54]; she stated that her society had viewed her sexuality as shameful [Q99]; that in Pakistan it is considered sinful to even talk about it [Q199]; that she had also suffered from depression [Q149] and [at paragraph 44 of the witness statement]:

“I also continued to go to Imaan [a Muslim support group]. This is a very different group as it is very male dominated, but it’s important for me to go there, as I am a Muslim, and consolidating my faith with my sexuality is something that is very important to me, especially because of the way that I was brought up. I was brought up to think that homosexuality is wrong and not allowed, so the group helps me to understand that being a homosexual and a Muslim is compatible. This has helped me to gain self-acceptance and it helps me to understand that I am not alone and there are other people in my position, who are also Muslim....”

Mr Harrison conceded that this evidence does not appear to be reflected in the determination. Nor does the comment at 13(e) appear

to actually amount to a finding. If the Tribunal meant to indicate that being homosexual was fundamentally incompatible with being a Muslim this would certainly appear contrary to the evidence before it, not just that of the Appellant herself but of the various 'Queer Muslim' groups that she had attached herself to.

12. The second point made in the determination is that it would be implausible for the Appellant to have managed to hide the fact that she and her cousin were having an illicit relationship if they were living in a joint family system. Ms Wilkins submits that this was an error of fact: there was no evidence that the girls lived together in the family home. This error is established. The evidence was that the girls lived together at school. In the asylum interview (Q62) the Appellant says that they were in the same hostel at school, and that the relationship had become physical when they were away on a college trip. In her witness statement the Appellant explains that she boarded, and that she would meet her cousin only at school. They did not live in the same village at all: see paragraph 10 WS.
13. In respect of the third credibility finding the Appellant submits that the Tribunal failed to take relevant matters into account. At paragraph 13 (h) the determination rejects the Appellant's evidence that her husband was angry with her and had beaten her, on the grounds that this was inconsistent with the evidence that he had agreed to give her a financial settlement upon divorce. Ms Wilkins submits that one fact could not logically rule out the other. The Tribunal had omitted to consider the evidence that there had been a 'pre-nuptial agreement' that such a settlement would be paid. It is correct that this evidence was not considered. I would add that there is nothing inherently implausible in the Appellant having received a financial settlement, even in an acrimonious divorce. Whilst there may have been stipulations in this *nikah*, payment by the husband of the deferred dower upon *talaq* is standard practice, and a fundamental principle of Islamic family law.
14. The Appellant submits that the Tribunal went on to make an irrational finding at paragraph 13(j). There the determination describes it as a "mystery" how the Appellant could be in hiding if she were living with a friend. Like Ms Wilkins, I am unable to understand what the mystery might be - the point was that the Appellant was hiding from her family by living with her friend. I would not go so far as to describe this finding as irrational - it could for instance be a valid point if the friend was a good one well known to the family, and her house the first place they would look - that was not, however, the evidence, and clarification was not sought from the Appellant.
15. It is further argued that the Tribunal gave undue weight to a grammatical error in the evidence and in so doing took into account matters that were not relevant. It had been the consistent evidence of the Appellant that whilst living in the UK she had been in a

relationship with a British woman of African origin, but that this relationship had ended. In her oral evidence (given, not ideally, in a mixture of Urdu and English) the Appellant is recorded as having said that she is “in” a relationship. Of this evidence the Tribunal said [at 13(y)] : “this took me by surprise, for it was clear from all of the documents before me that although the Appellant claimed to have been in a relationship....that relationship had come to an end”. Ms Wilkins strongly objected to the adverse inference drawn. It was the clear evidence of both Appellant and Ms McCarthy (who had been supporting her) that the relationship was over. Ms Wilkins had not addressed the “grammatical error” in the Appellant’s evidence in re-examination since neither the HOPO or Tribunal had appeared to regard it as significant. No follow up questions, or questions in clarification, were put. It is perhaps unfortunate that this was not a matter clarified in re-examination. Counsel should be able to deal with any matters arising from a witness’s evidence without prompting from a Tribunal. I accept however that in the particular facts of this case Counsel could be forgiven for not appreciating that it was an ‘issue’. The Appellant very shortly thereafter in her oral evidence had confirmed that the relationship had finished in 2016. She had given detailed evidence about why it had broken down and that evidence was corroborated by Ms McCarthy (insofar as she was able). In those circumstances it was unfair to take the point against the Appellant without it being put to her that a discrepancy had arisen.

16. Another matter troubled the Tribunal about that relationship. That was that the woman had been consistently described as black African, whereas in a communication from Pakistan the Appellant’s sister is said to have written “we know you are with a white woman”. The Appellant was specifically asked about this matter and she explained that this had been an assumption on her sister’s part, since she knew that the woman was British. That explanation is nowhere considered.
17. These credibility findings are all set aside for error of law: failure to take relevant evidence into account, failure to make clear findings, procedural unfairness, irrationality, material error of fact. The question is whether the cumulative errors in approach are such that the entire decision must be set aside. There are two points remaining in the reasoning which, Ms Wilkins concedes, were open to the Tribunal on the evidence before it. These were first, that the family history in the past few years is inconsistent with the account given, in particular the plausibility of a ‘strict’ family allowing their daughter to come to the UK to study, and her returning to visit her sick father even after suspicions were raised about her sexuality. Second, there was an apparent discrepancy arising from a visa application form completed by the Appellant (or on her behalf) in 2007, wherein she stated that she was being sponsored to come to the UK by her “husband”; the Appellant’s explanation that this should have read “sister’s husband” is rejected by the Tribunal. Whilst Ms Wilkins accepts that the Tribunal was entitled to draw adverse

inference from these matters, she submits that there were alternative and equally reasonable conclusions that could have been drawn, and that the overall findings could not stand in light of the multiple errors identified above.

18. In order to make that assessment I must deal with ground two. I have no hesitation in finding this ground to be made out. The evidence of the three witnesses was to the effect that the Appellant had been participating in LGBT discussion and support groups on a regular and frequent basis for well over a year. Their evidence spoke to her struggle to come to terms with her sexuality, to her “terror” of being returned to her family, to her enjoyment of being with other gay women, to her involvement with Pride and her growing confidence. Ms McCarthy confirmed that the Appellant had attended 12 specialist counselling sessions at her organisation during her breakup with her girlfriend, and was able to corroborate the Appellant’s own evidence about that period. None of that evidence is considered in the determination.
19. Paragraph 13(bb) of the determination (set out above) reveals an error in approach. The weight to be attached to Ms McCarthy’s “helpful” evidence cannot logically be *diminished* by that of the Appellant; a negative assessment of the Appellant’s evidence might *outweigh* that of Ms McCarthy, but that is not what is said. The Tribunal in effect rejects all of what is said by Ms McCarthy without giving reason other than that the Appellant’s evidence has already been found to be not credible.
20. In respect of Mr Khan the determination focuses on the comment that the Appellant has a “natural resistance to free gender mixing”. Of this the Tribunal says: “[Mr Khan] does not explanation (sic) how he reaches this conclusion, and I am not able to place such weight on his evidence as the Appellant may wish, given his absence and inability to explain that remark”. The comment is extracted, entirely out of context, from a long letter setting out Mr Khan’s personal involvement with the Appellant and well as his wider knowledge about Muslim homosexuals coming to terms with their orientation. I find there to be an error in the omission to consider his very pertinent evidence, and irrationality in the negative inference apparently drawn from the comment. The point that Mr Khan is making is that the Appellant, because of her upbringing, still finds it awkward to sit in a room with men who are not members of her family. He notes that in Pakistan there is a “strong sense of gender segregation” and that this has been something of a barrier to her opening up in the mixed sessions run by the Queer Muslim Support group. Set in its context the comment is plainly understandable and not at all cryptic as the determination suggests.
21. Similarly, Mr Uddin’s evidence is not given any substantive consideration. At the date that he wrote his letter he had known the

Appellant for well over a year. She was a regular attendee at his support group. In common with Ms McCarthy and Mr Khan, he noted that it had taken some time for the Appellant to feel comfortable in opening up but once she had established that this was a 'safe space' she had done so and was now actively contributing to that community. The Tribunal dispenses with this evidence on the grounds that Mr Uddin "appears to assume that the Appellant is a lesbian". I am unsure why such an assumption on his part could logically detract from his evidence. His evidence was that for some 14 months he had had regular interaction with this woman who presented as gay, and spent her free time in support groups discussing that matter in the context of her culture and religion. If he "assumed" that the Appellant was gay after being able to observe her relating that matter over a prolonged period that could only add weight to her case.

22. Having considered all of the submissions and evidence I am unable to accept the Respondent's submission that the surviving findings are sufficient to uphold the determination. Considered globally I cannot be satisfied that the errors I have found are immaterial. The decision must be set aside in its entirety.

The Re-made Decision

23. In remaking this claim I am required to answer three questions:
- i) Has the Appellant proven, to the lower standard of proof, that the events she described in Pakistan took place?
 - ii) Has the Appellant shown, to the lower standard of proof, that she is gay?
 - iii) Would an affirmative answer to either or both of the above place her at a real risk of serious harm in Pakistan today?

The Evidence: Pakistan

24. The Appellant's evidence is set out in the following documents:
- i) The Screening Interview Record dated 13th December 2015;
 - ii) Asylum interview record dated 14th April 2016;
 - iii) Witness statement dated 10th November 2016.
25. In respect of her childhood the Appellant has described how, at

the age of 13, she began to realise that she had no interest in boys – unlike her classmates. She was particularly close to her first cousin, A, who lived in another village but attended the same boarding school as her. They were best friends. In 2001 A confided in the Appellant that she did not like boys either. The Appellant described her relief at hearing that A felt the same way as her. She states that the relationship developed into a sexual one whilst the girls were away on a college trip. They were able to conduct their relationship without any suspicion at all: the other students knew them to be cousins and best friends so it was natural that they were close and would spend time together whenever possible. It was inconceivable to A and the Appellant that they would ever actually be able to live together or conduct their relationship openly. They made a pact that when they were both married they would continue to see each other secretly.

26. For a number of years the Appellant managed to avoid marriage. She received several proposals but managed to stall by making excuses. However when she reached thirty years of age the Appellant was unable to delay the inevitable. She was told about her marriage to a cousin the day before it occurred. This was in August 2009. In her asylum interview she describes her desperate sadness: how she was looking for something to end her life [at Q79]. Her mother advised her to “keep her mouth shut” and said that if she refused to go through with it, her father would kill her. She was therefore married and went to live with her husband in his village, also in Gujrat. The Appellant was never happy in her marriage, and her husband knew it. He started to accuse her of loving someone else, of having an affair. He would beat her and rape her on a regular basis.
27. Not long after the Appellant was forced into marriage, A’s family started putting pressure on her to also marry. She refused to go along with it. Her father was angry. The Appellant does not know what happened, or any of the details. All that she knows is that A refused to get married, and then she was killed. The Appellant believes that A was killed by her father. As far as she is aware the authorities took no steps to investigate the killing: the police will not intervene in a matter of “honour”.
28. A’s funeral was attended by various family members, including the Appellant and her husband. The Appellant was distraught – it was obvious to everyone how upset she was and how close she and A had been. At the funeral her husband came to her and told that they were going home. When they got back to their house the Appellant was confronted by her husband. He said “now I have found out that why you do not live like a good wife with me, why you misbehave, why you do not like me, it is because you are lesbian”. He beat the Appellant until she admitted that she had loved A. He took her back to her family’s house. Her mother was there – he told her mother that he was divorcing her and why. The Appellant’s mother cried and begged her to behave like a proper wife; she said that her father would want

to kill her. Because of the situation the Appellant left home and went to stay with a friend of hers, about half an hour away from her family home. Whilst she was living with this friend the Appellant applied for a visa to come to the UK.

29. After some weeks the Appellant was reconciled with her family. She promised that she would “leave all this” and asked for forgiveness. She said that her relationship with A had been a “childhood mistake” and assured them that she would get married again in the future. After some time of living at home her parents were reassured about her conduct. They had all ‘put it behind them’ when the Appellant broached the subject of her coming to complete her studies in the United Kingdom. She promised her father that she would return as soon as her degree was finished, and that she would marry as soon as she got back. She would be living with her sister and brother-in-law in Manchester, and attending college, so her father was content that she would be supervised. The Appellant opines that her father agreed in part because it would mean a lot to him to have a child with a UK university degree, but also because he did not believe that she would disobey him. After the Appellant came to the United Kingdom her family set about organising her second marriage.
30. At the Appellant’s interview it was put to her that the evidence she had given about her husband was inconsistent with her visa application form, in which she had named a different man said to be her ‘husband’. The Appellant explained that the form had been completed by an agent and that the error was not hers. The man named as her sponsor on that trip is in fact her sister’s husband, who lives in the UK. On appeal the Appellant has produced a copy of her sister’s marriage certificate, her sister’s passport, and her sister’s husband’s passport, which confirm that the man named in the visa application was indeed her brother-in-law.

The Evidence: UK

31. The Appellant arrived in the UK on the 4th April 2011. She moved in with her sister and started studying. In August 2015 she started attending the discussion groups run by ‘Imaan’. It was at this group that she met ‘M’, the woman who was to become her partner for approximately six months. After she met M she started spending the occasional night away from the house. Her sister started to become suspicious, particularly when she saw an expensive bottle of perfume in the Appellant’s room. In October 2015 matters came to a head when her sister confronted her: the Appellant admitted that she was having a relationship. Her sister was angry and told her that she was bringing shame on the family and that she had betrayed their trust after they had supported her. The Appellant’s sister told their father that she believed that the Appellant was having a relationship. The Appellant spoke to her father on the telephone. He was angry and

swearing at her and said that she had no respect. He told her to come home immediately and that he had got her engaged to another cousin; he said that the wedding will take place immediately upon her return. The Appellant herself states that she is in no doubt that her father will in fact kill her when she gets home. It was this series of events that led her to claim asylum in December 2015.

32. The Appellant's relationship with M ended shortly thereafter. M wanted the Appellant to move in with her but the Appellant was worried about her uncertain immigration status and felt that she would be bringing problems into M's life. They argued and broke up. They continue to see each other at the support group where they met. They are civil to each other but are no longer close.

33. I have been shown three letters from 'Imaan', a LGBTQI Muslim support group and its successor organisation 'Queer Muslim Support Group'. The first is dated 7th November 2015. The author, Mr Shahid Khan confirms that the Appellant has been attending monthly meetings since August 2015, and that although she has found it difficult because most of the other attendees are men, she has persevered and has attended events such as 'Pride' in Manchester. The second letter from Mr Khan is dated the 1st November 2016. It is in this letter that he makes the comment that caused the First-tier Tribunal concern. In the context of explaining the Appellant's involvement in the predominantly male group he says this: "she still has a natural resistance to free gender mixing". He goes on to explain that this "is an attitude that has been instilled in her by her culture. She has always expressed a desire for there to be more female members just so that she can feel more at ease". Mr Khan confirms that the Appellant continues to attend meetings of the group. In his final communication, in the form of an email dated 17th October 2017, Mr Khan explains that he is now able to confirm the Appellant's claims about her relationship with M. He had personally observed the rapport between the two women at meetings but had not mentioned it in his previous letters because the personal lives of attendees are not the business of facilitators. Furthermore the Appellant had not disclosed to anyone at the group that she had been in a relationship with M. More recently M herself told one of the other facilitators that she had had a relationship with the Appellant. Mr Khan therefore considered it appropriate that this information be passed on, with the Appellant's consent.

34. In her statement the Appellant explains that it has been important to her to spend time with other gay Muslims, people who have come to terms with their sexuality in the context of their religion. She was brought up to believe that homosexuality is wrong, but the people at Imaan have made her understand that it is compatible with being a Muslim.

35. The Lesbian Immigration Support Group have also written to the

court. In a letter dated 9th April 2016 Ms Nina Held, on behalf of the organisation, stated that the Appellant was referred to them in November 2015 by Imaan. The Appellant was initially vetted and then permitted to attend their monthly meetings. Ms Held saw the Appellant at these meetings and at the 2015 LISG Christmas party where she saw her relaxed and happy in the presence of other lesbians. Ms Karen McCarthy from the same organisation has written two letters, signed a witness statement dated 11th November 2016 and appeared to give oral evidence. She relates how the Appellant has spoken about her family at the regular meetings she has attended and how she appeared to be “terrified” of being sent back to Pakistan. Ms McCarthy comments on how the Appellant was initially uncomfortable discussing her personal matters but has now grown in confidence and clearly values being part of the group. Ms McCarthy confirms that to her knowledge the Appellant has attended two ‘Pride’ events in Manchester, one in 2016 and one this year. At the first parade she was so terrified of being seen and identified by other members of the Pakistani community that she wore a plastic face mask the entire day; this year she was unmasked and proudly wore her ‘LISG’ t-shirt. The Appellant herself describes the women she has met through LISG as being “incredibly kind and supportive”. She continues to attend the support group meetings and has also attended counselling sessions there to help her deal with the stress of her situation.

36. Finally I have been shown the letter from Shoab Uddin dated 30th October 2016. Mr Shoab is one of the facilitators of the monthly LGBT Muslim support group. His evidence echoes that of LISG and Imaan: the Appellant was initially withdrawn and nervous but with the support of friends that she has met through these groups she has grown in confidence as an ‘out’ gay woman.

37. At the asylum interview the Respondent put it to the Appellant that she had not joined any of the LGBT groups she now claims membership of until after her student visa expired. The Appellant agreed that this was true. She said that as long as she had a student visa she wanted to rely on that, rather than thinking about her “shameful sexuality matter”. Although she does not personally feel shame she knows that her society and family do. She was concerned about the impact on her sister in Manchester in particular; the thought it might provoke her brother-in-law into divorcing her in order to distance himself from this “shame”. He is a respected and religious man. If she could have avoided returning to Pakistan by carrying on her studies, she would have. She was however faced with no choice, because all of the colleges were closing down and her family were threatening her.

My Findings

38. Although I have sought to make clear findings on each of the three questions posed above I make clear that I have not done so on a discrete basis. I have considered the evidence holistically. In particular I have weighed all of the evidence pertinent to the questions [at paragraph 23 (i) and (ii)] above in the round in reaching the answer to each.
39. I begin by making some general observations about credibility. I found all of the witnesses who appeared before me, Mr Khan, Ms McCarthy and the Appellant herself to have given their evidence in a straightforward and unhesitant manner. Although the Appellant obviously found it difficult giving her evidence (she broke down in tears after she had finished her testimony and was comforted by some of the many supporters that she had brought with her) I found her evidence to be clear and helpful. I have read all of her statements and interview records carefully. I found her account to be consistent at its core. She has now given live evidence on two occasions, has been extensively interviewed and has sworn to a detailed witness statement. I am satisfied that her evidence has remained generally consistent throughout; where there have been discrepancies these have been satisfactorily explained.
40. I note that the Respondent's bundle contains what are said to be two emails sent to the Appellant from her sister in Pakistan. Ms Wilkins placed no reliance on these documents and nor do I. I have no means of knowing whether these messages have actually emanated from an email account in Pakistan, or if they did whether they are actually from members of the Appellant's family. Self evidently the author was not present so that their evidence could be tested. I have therefore placed no weight upon them.
41. The Respondent has centred her case on what are said to be implausibilities in the account. It has variously been said that it is implausible that the Appellant could have secretly conducted a relationship with A, that her parents would have her back after she left home to live with a friend in late 2009, or that they would have allowed her to come to the UK to complete her studies. I am mindful that caution should be exercised when assessing whether matters such as this – so closely connected to the personal dynamics of the family in question – are 'implausible'. Individuals are rarely driven by single motivations, and behaviour can often appear contradictory, or even hypocritical. It is for instance the case that a great number of girls from "conservative" or "religious" families in Pakistan are educated to degree level, even where there is no expectation at all that they would embark on a career, and where that suggestion would be frowned upon. I have nevertheless held the Respondent's concerns at the forefront of my mind when evaluating the evidence. Similarly I have given some weight to the chronology. The Appellant arrived in this country in 2011 when on her account, her cousin had already been murdered by her family. She did not claim asylum then, but

rather waited four years until her student visa expired and on her own admission she was unable to renew it. That is a matter that has weighed against her in the overall balancing exercise.

Question (i): Has the Appellant proven, to the lower standard of proof, that the events she described in Pakistan took place?

42. In considering the ‘historical’ element of the claim I have considered the Appellant’s evidence in the context of the country background material. That evidence is not in contention. In the Respondent’s Country Information and Guidance Note *Pakistan: Sexual orientation and gender identity* (Version 2.0 April 2016) it states that same sex relationships are illegal in Pakistan, by virtue of the provisions against “carnal intercourse against the order of nature” in section 377 of the Penal Code, and the Offence of Zina (Enforcement of Hudood) Ordinance of 1979 [at 2.3.3 CIG]. There is widespread societal discrimination and homophobia. It is very rare for homosexual relationships to be conducted openly, and virtually unknown outside of a few pockets of upper middle class, western-educated Pakistanis. Harassment and violence are most commonly inflicted within the family [at 2.3.4]. Lesbians in Pakistan are described as “invisible” by sources who contributed to a report prepared for the Immigration and Refugee Board of Canada (IRBC) which concluded that lesbians are invariably forced to get married by their families. Although women can live together this would not be as openly intimate partners [at 7.3.1].
43. There is nothing in that background information that is inconsistent with the Appellant’s account. I note further that the Appellant is from the rural Punjab, the province with the highest reported rates of “honour” based violence in the country: see KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 (IAC), and the Respondent’s February 2016 Country Information Guidance Note *Pakistan: Women fearing gender based harm / violence* [at 2.4.10 & 8.3.6]. There were, for instance, 362 “honour” killings in the Punjab in 2014; approximately one per day. The Punjab also has the highest rates of sexual violence against women [8.2.4 & 8.2.6] and domestic abuse is prevalent. This evidence too is consistent with the Appellant’s account, in particular that her husband considered it appropriate to beat and rape his wife, and that her uncle considered it acceptable to murder his own daughter.
44. In light of that evidence I am unable to say that there is anything inherently incredible in the Appellant’s claims to have conducted a secret relationship, to have suffered forced marriage, to have endured harassment and threats by her family when they came to understand that she might be gay, or in the claim that her cousin was murdered by her own family for a refusal to marry in accordance with their wishes. All of that is plausible.

45. I have attached weight to this, and to the fact that the account has remained consistent at its core. I have further attached weight to the Appellant's evidence about her relationship in this country, which tends to add weight to her claim to have previously had a gay relationship.

46. I have considered whether any of the points raised by the Respondent, in submissions and in the refusal letter, can outweigh that evidence. Applying the lower standard of proof I do not consider that to be the case. I was, in closing submissions, asked to assess with particular scrutiny the claim that her father allowed her to come to the UK to study after she had caused scandal - at least within the family - by leaving her husband and being the subject of rumours about her relationship with her cousin. It was said to be "not credible" that he would have done so: as a controlling and strict father he would not have permitted the Appellant to travel to a western country. I have given that submission careful consideration, but I cannot find the evidence to be "inherently incredible" or even implausible. That is because there are many explanations for it. He may have been confident that she would be chaperoned by her sister and brother-in-law in Manchester; he may, as the Appellant contends, be keen to accept the kudos that a British-educated child would bring; he may have wanted the Appellant to achieve that qualification as a means of mitigating for her very late and failed marriage; he may have wanted her out of the way of any further scandal; he may himself have refused to accept that she would disobey him again. In those circumstances I do not accept that this point can outweigh the otherwise cogent evidence advanced by the Appellant. Accordingly I find the historical background of the case to be proven to the lower standard.

Question (ii): has the Appellant shown, to the lower standard of proof, that she is gay?

47. I accept and find as fact that the Appellant is gay. I do so for the following reasons:

- i) The Appellant has given detailed and compelling evidence about her realisation that she was gay, her struggle with that fact in the context of her cultural background, and her reconciliation with her faith. For instance, at her asylum interview she described how depressed she was until she starting receiving support from Gay-Muslim groups: "after talking to them, I feel I am not committing any sin" [Q42].
- ii) The evidence supports her contention that she had a lesbian relationship in the UK with a woman from

Djibouti, 'M'. The Appellant names this woman as her partner in her screening interview in December 2015 [at 1.19]. In her asylum interview she explains that she met her in August 2015 at a meeting of the support group 'Imaan'. They talked and exchanged numbers, and after a couple of weeks met outside of the group to have coffee. Later they met for dinner, and subsequently the relationship became physical. M had suggested that they get married, have children and live together, but the Appellant was too afraid of her family to agree. By late 2015/early 2016 they had split up. This evidence is corroborated by Mr Khan, who witnessed the "rapport" between the two women, and who attests that M spoke with his colleague and confirmed the relationship. It is further confirmed to some extent by Ms McCarthy who spoke of how at the time the Appellant's face would "light up" when she talked about her partner.

- iii) There is significant corroboration of her claims to be openly gay from Mr Khan, Ms McCarthy and Mr Uddin, all of whom speak to her long term and frequent attendance at Muslim support groups and attendance at Manchester's Pride event.
- iv) There is no countervailing evidence of any significant weight. The Appellant claims that she was married to a man, and whilst in another context this might reasonably be held to raise questions as to claimed homosexuality I am satisfied that in this case it does not. That is because in common with most girls in Gujrati villages the Appellant was betrothed in an arranged marriage. She had no or little say in the matter, and describes it herself as a "forced" marriage. The fact that the marriage lasted so short a period would tend to indicate that there was something fundamentally wrong with it. As Mrs Aboni recognised in her submissions, she would have been struggling to point to any evidence indicating that the Appellant was *not* gay, and for that reason it was an assertion that she was prepared to accept.

Question (iii): Would an affirmative answer to either or both of the above place her at a real risk of serious harm in Pakistan today?

- 48. I begin by applying the tests set down by the Supreme Court in HJ (Iran) and HJ (Cameroon) [2010] UKSC 31.
- 49. The Appellant has established, and the Respondent now accepts, that she is gay.

50. I must assess what the position of gay women in Pakistan is, with reference to the country background information. Some of that has been set out above and need not be repeated. In summary, the uncontested evidence is that gay women are “invisible” in Pakistani society, because of the overwhelming societal expectation that women will marry men and have children, because of religious and cultural hostility towards homosexuality, and because “unnatural” carnal intercourse is prohibited by law. One result of this invisibility is that there is very little specific evidence on the ill-treatment of women because they are gay. This is, however, perhaps the paradigm case of an absence of evidence not constituting evidence of absence. The CIG (cited above) notes that lesbians are most likely to be subject to violence from within their own families, and in that context there is plenty of evidence about the ill-treatment of *women*. The Appellant’s family have framed her expression of her sexuality not as a positive assertion of her identity, but as the rejection of all acceptable social mores. They have repeatedly stressed the need for her to marry, and so to conform to those ‘normal’ expectations. It is her failure to do so which brings their perceived “shame” upon her. One needs look no further than the facts of this case to see the risks she faces: murder, forced marriage, rape.
51. HJ requires me to consider whether the Appellant would in fact live as an openly gay woman should she be returned to Pakistan. I have absolutely no doubt at all that she would not. The Appellant might have a degree but she is not one of the urban elite of Pakistan, whose society is closed and western educated, and for whom escape – should it become necessary – is straightforward. She is from a village in Gujrat. There would simply be no space – cultural, political, social – for her to express her identity.
52. I must now ask myself why the Appellant would not be ‘out’ in Pakistan. She has been living an outwardly homosexual life in this country. She has enjoyed a relationship and has for the past two years been an active member of a number of gay support groups. Mr Khan, Mr Uddin and Ms McCarthy all spoke of her increased confidence and happiness in living an out life. When asked in evidence how she would act if she were returned to Pakistan she said that she would have to hide her sexuality. People there do not accept it; her family would kill her; the law prohibits it. I do not doubt the reasons she gives. She would hide her sexuality because of a fear of persecution. There is no country background material before me to indicate what fate might befall a Gujrati girl who openly declared that she was gay. In light of the country background material on women, and on Pakistani society generally, I would postulate that it would most likely be “honour” based violence inflicted by her immediate family, or failing that, mob justice.
53. The coda is this. This appeal would have been allowed even if I had not been satisfied that the ultimate HJ criterion had been met. If

the Appellant had told me that she would suppress her identity in order, for instance, to save her parents hurt, she would still be going home to face persecution. That it is because it is extremely likely that she would be forced into marriage. Forced marriage is persecution. In the context of this Appellant's background it would involve multiple violations of the Appellant's core rights as protected by Article 3 ECHR (a real risk of rape and sexual assault), Article 4 (forced labour), Article 5 (deprivation of liberty), Article 8 (personal integrity) and Article 12 (the right to marry and found a family, and the choice inherent therein).

Decisions and Directions

54. The decision of the First-tier Tribunal contains material errors of law and the decision is set aside.
55. The decision in the appeal is re-made as follows:
"The appeal is allowed on protection grounds.
The appeal is allowed on human rights grounds"
56. There is a direction for anonymity.

Upper Tribunal Judge Bruce
23rd October 2017