



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02981/2018

THE IMMIGRATION ACTS

Heard at Field House
On 6 August 2019

Decision & Reasons Promulgated
On 12 September 2019

Before

UPPER TRIBUNAL JUDGE GLEESON
UPPER TRIBUNAL JUDGE CANAVAN

Between

Q A S (PAKISTAN)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Paul Turner, Counsel instructed by Burney Legal Solicitors

For the respondent: Mr Tony Melvin, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. We continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties.

Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal refusing him international protection under the Refugee Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.
2. The appellant is a citizen of Pakistan and alleges that he is at risk on return because he is a gay man. The respondent disputes his sexual orientation, arguing that the appellant is not a credible witness.
3. The names of the witnesses and the appellant have been anonymised in this decision.

Background

4. The appellant was born in April 1988 and is now 31 years old. He came to the United Kingdom as a student with a Tier 4 visa in January 2011. That visa expired in January 2015. Before his student visa expired, the applicant made a human rights application for leave to remain which was unsuccessful and on which he was appeal rights exhausted on 16 June 2015. He did not embark but remained unlawfully in the United Kingdom.
5. On 6 December 2017, the appellant was encountered working illegally and was arrested. On 11 December 2017 he claimed asylum. There was an asylum interview and a referral to the National Referral Mechanism. On 15 February 2018, the respondent refused the asylum claim, giving the appellant a further in-country right of appeal.

First-tier Tribunal decision

6. First-tier Judge Samimi dismissed the appellant's appeal. The appellant appealed to the Upper Tribunal and we set aside the decision of the First-tier Judge on irrationality grounds: the Judge had made a *Mibanga* error in applying her finding that the appellant's evidence was not credible to reduce the weight given to the evidence of three corroborative witnesses whom she found to be witnesses of truth.
7. The appellant appealed to the Upper Tribunal and permission was granted.

Error of law decision

8. At a hearing on 16 April 2019, we set aside the decision of the First-tier Tribunal and ordered that the decision in this appeal be remade in the Upper Tribunal. We

therefore have no regard to the reasoning or conclusions of the First-tier Tribunal although we can take into account the evidence recorded in that decision.

9. That is the basis on which this appeal came before the Upper Tribunal for remaking of the decision in this appeal.

Upper Tribunal hearing

10. The evidence before the Upper Tribunal consisted of the Home Office bundle, the respondent's Country Information and Policy Note entitled *Pakistan: Sexual orientation and gender identity or expression* [July 2019], colour copies of photographs of the appellant and friends, said to have been taken at various nightclubs in London, and a 298-page bundle of documents filed by the appellant, which included his witness statement and those of his three witnesses, Mr A, Mr M and Mr K. All three witnesses and the appellant gave oral evidence at the hearing.
11. There are also letters of support from Ms SN, Mr N (said to be the appellant's former partner in Pakistan) and Mr H; a medico-legal report from Dr Juliet Cohen, Head of Doctors at Freedom from Torture (formerly known as the Medical Foundation), a psychological report from Dr Saima Latif, a Chartered and Registered Practitioner Psychologist and Associate Fellow of the British Psychological Society, and a country report from Ms Uzma Moeen of the Asian Legal Advice Service. The bundle includes other evidence to which we will refer where relevant.
12. The respondent has provided the Upper Tribunal with a copy of the up-to-date Country Policy and Information Note (CPIN) entitled *Pakistan: Sexual orientation and gender identity or expression* [July 2019] and we will have regard to that iteration of the CPIN, rather than the July 2014 version which appears in the appellant's bundle.

Appellant's evidence

13. The appellant adopted his witness statement dated 6 November 2018, prepared for the First-tier Tribunal hearing. In that witness statement, the appellant said he had grown up with his parents and four siblings, initially in an area in Jhelum in the Punjab, Pakistan.
14. The appellant had begun to be aware of his sexual preference for boys, not girls, in 2002 when he was about 14. The appellant felt 'very down and nervous' as he knew that what he felt was against Pakistani culture, religion and society. He knew it would be unacceptable to his family, so he did not tell them how he felt. He feared that if they found out, they would inform on him and he would be killed.
15. The appellant confided only in his best friend, Mr N, to whom he was attracted, and in May 2002, during the summer holidays, they began a relationship. The relationship continued until January 2010 and Mr N has written a letter in support of the appellant in these proceedings. Mr N's first supporting letter erroneously said their relationship began in 2003, but he later corrected that to confirm the appellant's account that it began in 2002.

16. The relationship was not without difficulties. The appellant shared a bedroom with his other four siblings: the family home had only two bedrooms. Mr N also lived in a small home and did not have a separate bedroom. The boys used to go to a hilly area which was quiet, where nobody normally went, and there they would engage in sexual activity. In September 2003 they were caught there by neighbours of the family, who beat both boys and then told their families what they had been doing.
17. The appellant's family reacted as he had expected: they also beat him and locked him in a room for a couple of hours. His mother let him out. The appellant was restricted from seeing Mr N for about six weeks after that. The family considered that the appellant's aberrant sexual impulses were an illness and that what he needed was a wife, after which he would recover and not be attracted to men any more.
18. Three years later, in 2006, when the appellant was 17 years old, he was sent to study for a mechanical engineering diploma at a boarding school in the Wah Cantonment (Wah Cantt) in Punjab. The appellant was able to return home often to his home in Jhelum and visit his family at least once a month there. He continued his relationship with Mr N: the families were more relaxed by this time about their friendship and they were allowed to hang out and eat together, and go to watch films together. They 'acted normal in front of our families' but the sexual relationship continued.
19. In August 2007, the appellant was watching an adult film with Mr N in a CD centre which had a private room at the back. They had watched many films together in that room and had learned by experience that nobody would come to disturb them in that room while the film was playing. They felt it was a safe place for their sexual activity, but on this particular occasion, they were discovered during that activity by 'some people' who took them to their families and also told the local Imam what they had been doing. This time, the appellant's family were very unhappy with him. They beat him up hard.
20. The appellant's sexuality was a religious and social problem for the whole family. The local Imam was his father's friend and the family had many discussions with him about what was to be done. The Imam took no public steps, but eventually in January 2008, a compromise was reached, with the Imam saying that the whole family would have to leave their home in the Jhelum area of the Punjab and move away to another city. The appellant's father could have formally disowned him but chose to move his family away instead. The family moved to Sargodha, and all its members had to find new schools and jobs.
21. The appellant continued to board at his educational establishment in Wah Cantt. He had a secret physical relationship with Mr D while he was there, but it was just for 'enjoyment' (casual sexual activity) and only for a few months. No one found out. At the end of his studies in 2009, the appellant returned home to join his family in Sargodha. While living there, he had an 'enjoyment' relationship with a cousin, Mr C. His cousin knew about the appellant being caught previously and they were very careful to find private places for their sexual activity. They were not caught and

nobody else in the Sargodha area knew of the appellant's sexual orientation at that time.

22. The appellant's family continued to consider that his homosexual orientation was a phase and that if he were to get married to a girl, he would stop wanting to have sex with men. They found him a potential wife in Pakistan (without consulting the appellant) from a family with a strong political wing.
23. The appellant was not pleased and he says he 'emotionally blackmailed' his mother into sending him to the United Kingdom to study. His brothers both had good educations and a good job, and he told his mother that he wanted the same. The appellant's family were not very happy about letting him travel abroad to study, but he thought that they might have hoped that if they agreed, he would listen to them and marry their choice of bride when he returned. The appellant's view was that he was leaving Pakistan to avoid the marriage, but that at the time he did not fear that he would be killed or suffer serious harm if he stayed.
24. The appellant got a visa, and came to the United Kingdom in May 2011 to study. Once in the United Kingdom, the appellant learned that it was legal to be openly gay here. He began to attend gay clubs and live an openly gay life. Unfortunately, he met some people while doing so who were from Sargodha. They told his family in Pakistan that the appellant was leading an openly gay lifestyle here.
25. In August 2011, the appellant met a man, Mr U, with whom he had a relationship in the United Kingdom, lasting until December 2013, when Mr U went back to Pakistan. They keep in contact, and Mr U now lives in Istanbul, Turkey.
26. On 20 December 2012, the appellant's family asked him whether he was leading a gay lifestyle in London, during a telephone conversation. The appellant admitted it. His family got really angry and broke all ties with him, saying never to call home again and that if they saw him, they would kill him. The appellant has not spoken to any of his family members since then.
27. In January 2013, a friend told the appellant that the appellant's father had lodged an FIR against the appellant on 12 January 2013 and published in a newspaper a notice that he was disowning the appellant. He considers that the family had to do this in order to allow them to continue to live a normal life in the local community and 'not face any struggle'.
28. On 2 October 2013, the appellant returned to Pakistan for a month, to see whether he could live there. He did not go home to Sargodha, but stayed in Rawalpindi and Lahore with friends.
29. On 18 October 2013, the appellant said that he was visiting Islamabad with a friend when someone called out 'catch him he is gay' and on turning around, he saw that they had been spotted by people whom he recognised from his home neighbourhood in Sargodha. The appellant and his friend went back quickly to their car and drove off: the Sargodha people tried to follow, but the appellant and his friend got away. The appellant went to the police and lodged a complaint: without family support, he

felt scared. He did not mention that the Sargodha people were pursuing him because of his sexuality, because homosexual activity is a crime in Pakistan and to do so would have seen him arrested and beaten up by the police.

30. The appellant returned to the United Kingdom on 2 November 2013 and continues to live openly here. He goes to gay clubs and bars for 'enjoyment', in particular to West Five (Disco Rani), Royal Vauxhall Tavern, Club Kali, Heaven, GAY Bar and Ku Bar. He feels safer in the United Kingdom than he would in Pakistan, where he now feels there is a real danger to his life were he to return. The appellant relied on unparticularised compassionate and compelling circumstances and asked for his appeal to be allowed.
31. That statement was not updated for the Upper Tribunal hearing. After the appellant had adopted it, Mr Turner asked him supplementary questions, seeking to clarify matters raised in the respondent's skeleton argument. The appellant gave evidence through a Punjabi interpreter. Mr Turner asked the appellant whether he had fabricated his account of being gay, and his history. He said that he had not: he was gay and this was his gay life.
32. Mr Turner asked why the appellant had not claimed asylum on arrival in 2011: he said he was scared, as he had heard on the news and the radio that the Home Office were deporting everyone, and he was afraid of being deported. Mr Turner asked the appellant to clarify when his relationship with Mr N began. He said it was definitely 2002 and that it was Mr N who had made the mistake by saying 2003, as he had since confirmed.
33. Mr Turner reminded the applicant that in his 2015 application, two years after the final rift with his parents, the appellant had said he was receiving £600 a month from his family to support his studies. The appellant said his solicitor had completed that application and he had made a mistake in not reading it through. He was not receiving any money from his family in 2015: when the Home Office arrested him, he was working, and if he had been receiving financial support from his family, he would not have been working. He had not mentioned being gay then because his focus was on completing his studies in the United Kingdom.
34. The appellant was asked about the discrepancy in his account in these proceedings as to where the sexual activity between him and Mr N occurred, whether it was at home (as Dr Latif's report stated) or in a hilly area. The appellant said he had told Dr Latif it happened in the hilly area and the mistake was hers. In his home area in Jhelum, the houses were small, and he lived with his parents and his four brothers and sisters.
35. The appellant's original home town was small, with only about 200 houses. He did not know how a photograph of him kissing a man had reached his family in Sargodha. He did not know who took the photograph.
36. In cross-examination, Mr Melvin challenged the appellant's account that he went to a co-educational school in Pakistan. The appellant pointed out that he had produced a certificate from the school saying that it was co-educational, and had given it to his

solicitor. Mr Melvin then asked about the first time that the appellant and Mr N were caught in the hilly area: had his parents explained the potential penalties for his actions? The appellant said they had. His mother had explained that sexual activity between men was not allowed in their religion. After that, his parents and brothers and sisters had kept a close eye on the appellant, and he had not been allowed to see Mr N for about six weeks. He was very scared. Both of them behaved as 'nice guys' in front of their families and won their confidence back.

37. After a time, the appellant told his mother he needed to collect some notes from Mr N, who was his classmate, and she allowed him to do so. The appellant's family were not watching him 24 hours a day and sometimes, if the appellant had secret feelings and noticed that he was not being watched, he would meet Mr N in secret places. Mr N's family felt the same about homosexuality as the appellant's family: they were also watching him. Whenever the appellant had feelings towards Mr N, they would go to a secret place.
38. The appellant and Mr N they were not caught again until the neighbours saw them in 2007. This time, the Imam was involved, and the appellant was badly beaten. He really needed to see a doctor or go to hospital, but his family did not take him because of the shame; his injuries were treated at home with some cream. Mr Melvin asked about the appellant's relationships with Mr Nasir and the two 'enjoyment' relationships he had in Wah Cantt and Sargodha. The appellant said that he had not told Mr Nasir about those relationships.
39. The appellant said that his parents chose Sargodha for their next home area after the family was forced out of their home town in the Jhelum area. He thought it was about 4 hours' drive away. The Imam in their Jhelum home town had told them that they could no longer live there, even though the appellant was not living at home but was at a boarding school in Wah Cantt. His family had to change jobs and schools: the appellant's behaviour had a significant impact on them.
40. Mr Melvin expressed surprise that with these difficulties, the family had supported the appellant's wish to come to the United Kingdom and study here. The appellant said that between the end of his studies in Wah Cantt in 2009 and coming to the United Kingdom in 2011, he was living at home in Sargodha with his parents but not working. Members of his family beat him and said bad things to him all the time, particularly when there were financial difficulties. The family were angry with him and thought they had spent enough on his education. He said it was principally his mother who had supported his wish for further study abroad, after he spoke to her in an emotional way, saying that all of his siblings except him were well-educated and doing well, with the appellant lagging behind.
41. The final breach between the appellant and his family was connected with the kissing photograph reaching them in Sargodha. The appellant did not know whether that picture was physical or electronic, or how they came to see it. His family just told him that now they had evidence of his homosexual activities in the United Kingdom. The evidence had reached the community in Sargodha and many

people there knew about his sexuality now. He still had no idea who sent or showed the picture to his family.

42. Asked about his return to Pakistan in 2013, the appellant said he knew he could not return to Sargodha as his family had filed an FIR against him there. Sargodha was a big city with a population of about 600,000 people. The appellant had wanted to find out whether he could live in another city, away from his family and his previous problems. He had friends in Rawalpindi, Islamabad and Lahore, and he visited them, but in Rawalpindi he had a bad experience because he was attacked there. None of his friends from that trip had written letters of support: it had not occurred to the appellant to ask for letters. He had been unable to obtain a copy of the police report he filed after being chased in Islamabad by friends from his home area of Sargodha. The Sargodha people had recognised him, even though he had not seen them for five years.
43. Since arriving in the United Kingdom in 2011, the appellant had been going to different clubs but had not joined any LGBTI organisations here. He had many gay friends, but none to whom he was close. He had not asked any of them to give evidence before the Upper Tribunal, because he did not want to expose his immigration status in front of anyone. He had never discussed his immigration status, or that of his friends, with them.
44. In re-examination, the appellant confirmed the list of gay clubs in his witness statement, saying that he went clubbing every week or so; they would dance and drink at the clubs. He had attended Pride, which he said took place 6 July 2019.

Mr A's evidence

45. Mr A, also a Pakistani citizen, adopted his witness statement of 29 March 2018, prepared for the First-tier Tribunal hearing. Mr A did not give evidence in the First-tier Tribunal: this is the first time his evidence has been tested.
46. In his statement Mr A said that he had been part of a 3-person house share in Ilford, having moved in to the house in May 2011, the appellant taking a room in the house in June or July 2011. Each of them had a room to themselves. Mr A left the house in December 2012, and the appellant was still living there then. Over time, they moved from being housemates to friendship, sitting in the back garden having tea and chatting after work, and later, sometimes going out for meals. Mr A found the appellant to be gentle, nice, cooperative, friendly and caring.
47. The appellant had a friend, Mr U, who came often to the house to visit the appellant, beginning in the autumn of 2011. Mr U would come over two or three times a week, sometimes staying over in the appellant's room. Mr A asked the appellant to explain this friendship. The appellant was reluctant at first, but eventually told Mr A he was gay, explaining about the situation with Mr N in Pakistan, the steps his family had taken to separate them, but that he could not keep away from Mr N because of how he felt. While staying in the house, the appellant sometimes went out to gay bars.

48. After Mr A left the shared house in December 2012, the friendship continued. They would speak about once a week and meet a couple of times a month, in Wimbledon, and go out to eat. The appellant had told him about the attempted attack in Islamabad in October 2013. The relationship with Mr U ended in 2013, because Mr U returned to Pakistan. Mr A considered that the appellant was at risk in Pakistan from both his family members and people in general, because of his sexuality.
49. In answer to supplementary questions from Mr Turner, Mr A refuted the respondent's assertion that the appellant is not gay. Mr A said he lived in the same house as the appellant for over a year, that the appellant looked gay and had a male friend he went out with 'many times', and had gay activities. The appellant told Mr A some things, but some things he noticed himself because they were sharing a house.
50. In cross-examination, Mr Melvin asked more about Mr U. Mr A emphasised that he is not gay. Mr A said that Mr U was the appellant's friend, not his own friend. He thought Mr U was doing building work: he did not know Mr U's immigration status, nor did he know where Mr U lived. He did not know if Mr U was homeless or had anywhere else to stay.
51. Mr A was not related to the appellant, they were just friends. Mr A did not know any of the appellant's other friends. When they met, they did so alone. Mr A did not have any direct knowledge of the events in Pakistan about which the appellant had spoken to him.
52. There was no re-examination.

Mr M's evidence

53. Mr M adopted his witness statement of 29 March 2018. He is a Pakistani citizen and is in the United Kingdom on a spouse visa. He gave evidence in the First-tier Tribunal but there is nothing of substance in his evidence then which was not in the witness statement. Mr M's witness statement says that he met the appellant when they were both working at the Soho, London branch of Burger King: Mr M worked there from the beginning of 2012 until March 2013, and when he left the appellant was still working there. Mr M then managed a kiosk which belonged to a friend of his, but stopped working there in January 2018 because his wife was heavily pregnant with their child (born in February 2018) and he wanted to look after her.
54. At Burger King, Mr M mostly worked the same shifts as the appellant and he helped to train him on the job. They became friendly. Mr M found the appellant to be a nice, friendly person, easy to talk with and very helpful. He was not particularly ambitious: he just wanted a simple life, and was down to earth. They both lived fairly close together in Ilford, so at the end of their shifts they travelled in the same direction. Sometimes, perhaps two or three times a month, they would meet outside work. The appellant would come to Mr M's home for dinner with Mr M and the people he shared his home with. Once, they went shopping together in Oxford Street. After Mr M left Burger King, they stayed in touch by telephone, once or twice

a week, and would meet up two or three times a month as before, when the appellant was in the area.

55. Mr M suspected that the appellant was gay, almost as soon as they began working together. A man would come frequently to Burger King and pick the appellant up after work, and they would go out together, perhaps to Oxford Street. This happened three or four times a week: sometimes the man waited outside, and sometimes inside the restaurant. If his co-workers invited the appellant to go out with them after work, he would say he was not free as he was going out with that man.
56. After a month working in Burger King, the appellant admitted to his co-workers that he was gay and that he was in a relationship with the man who waited for him so often after work. He never really told Mr M what happened about that relationship. The appellant told Mr M that his family knew of his sexuality and had disowned him because they considered it a very shameful thing.
57. After the appellant left Burger King in 2013, the friendship continued. Mr M became aware that the appellant had been back to Pakistan to try to find another city in which he could live but that it had been impossible as it was too dangerous. Mr M also considered that the appellant risked physical punishment from his family, or even death, if returned to Pakistan. It is against the law to be gay in Pakistan and people generally would see him as a bad person, and either bully him or 'treat him like a mental person'.
58. Mr M was asked some supplementary questions. He said that he was from Pakistan. He was asked to comment on the respondent's position that the appellant was not gay; Mr M replied that the respondent's opinion was a matter for her, but that he would say what he knew. The appellant was definitely gay. Among the group of friends at Burger King, they had observed him and it was easy to tell that he was gay. Mr M was sure about that. The group at first used to tease the appellant about it. After a while, when they were all closer, the appellant told them the truth.
59. Mr M had worked with the appellant from 2012 to date. He was the appellant's line manager, the person who told him what to do, and they had become friends gradually. Mr M was a Muslim and would not invent such a story. The group had been 'pretty much sure' that the appellant was gay, as soon as they met him.
60. In cross-examination, Mr Melvin asked more about the other man. Mr M could not remember his name, nor had he seen the appellant with any other partner. Mostly when they met, the appellant came to Mr M's home, as he was 'getting busy' and meeting elsewhere was not convenient. They never discussed relationships; the appellant was not easy or ready to talk about it and the friendship was not on that level. Mr M did not want to know. Mr M felt shame even talking to the appellant about his being with a man. They both felt shy and did not discuss it.
61. When the appellant went back to Pakistan in 2013, Mr M and others suggested that he go and speak nicely to his family and see whether he could live separately from them, so that things could improve between him and his family. The appellant went

to a different city in Pakistan: he explained to Mr M that because of 'the gay thing' people could bully and hit a person, or 'throw bad words' at him. People did not feel shy doing that. The appellant came back really upset; he had tried to contact his family to sort something out, but they did not respond.

62. In re-examination, Mr M said that he remained in touch with the appellant, who had visited his home just a couple of months earlier. This was the second time he had come to Court to give evidence for the appellant.

Mr K's evidence

63. Mr K adopted his undated witness statement prepared for the First-tier Tribunal hearing. Like Mr M, he is a Pakistani citizen and a married man, here on a spouse visa. Mr K gave evidence at the First-tier Tribunal hearing, but the brief summary of that evidence in the First-tier Tribunal decision adds nothing to the oral evidence the Upper Tribunal has heard today.
64. Mr K worked at the Soho Burger King from 2009, leaving in March 2013. Mr K now works full time for a company called KM Security as a closed-circuit television camera operator. He started to work for them in June 2016. Mr K and the appellant worked together at Burger King for only 5 or 6 months, but they became, and remain, very good friends. Mr K found the appellant to be friendly, helpful and very easy to talk with. Their direction of travel at the end of the shift was the same. Once a week or so, they would go shopping in Oxford Street.
65. A man used to come often after work to see the appellant, and sometimes wait for him in the dining area. Mr K did not think anything of it: he thought they were just friends until the appellant told him, after about two or three weeks, that he was gay, and the man was his partner. The appellant and that man would go clubbing sometimes together after work.
66. Mr K was shocked at first when he learned that the appellant was gay. In Pakistan this was considered to be wrong. However, that particular Burger King was near Soho, with a notorious gay scene, and many gay men came there at night, so he was used to it and their friendship was unaffected.
67. After Mr K left Burger King, they stayed friends, speaking on the telephone about once a month. Sometimes Mr K would return to visit the Soho Burger King: he was working at Pret a Manger and they would meet in Barking for a catch up and a bite to eat. When Mr K bought his family home in Rainham, the appellant did some painting and decorating work for him.
68. The appellant told Mr K that his family in Pakistan had been very upset when they found out about his sexuality and that they were no longer on speaking terms with him. Mr K thought that if the appellant was returned to Pakistan, his family would kill him: he was sure that had Mr K been in a similar situation, his own father would have killed him. Mr K said that if people in general found out that a person was gay, they were at risk of being abused and raped; if religious extremists found out, you would surely be killed.

69. In answer to supplementary questions from Mr Turner, Mr K said that he did not think that the appellant would have invented an account of being gay. When they used to work together, and the co-workers went out with the girls, the appellant never went. He would say that he was not interested in the girls, and go out with his male friend. Mr K thought, though he was not certain, that the two of them lived together. Mr K himself was straight, but he said you 'could just tell' when someone was gay. At that time Mr K had been very slim and both men and women would give him their telephone number. The managers did not object, and taking the numbers politely was part of the service at that particular branch of Burger King.
70. Mr K had come to the Upper Tribunal to support his friend but he felt shy even talking about people being gay. He himself was now married. He was 100% sure that the appellant was gay. Mr K had never seen the appellant with a girl in the 8 years he had been in the United Kingdom: the appellant was always with the boys.
71. In cross-examination, Mr K said that he had no contact with the appellant's family and was not related to him. He had learned that the appellant had claimed asylum on the basis of being gay last year, in 2018, when his case was coming to the First-tier Tribunal. Mr K had not enquired about the appellant's immigration status before that, or where he worked. That was not his role: he should know these things about himself, not others. It was not a good thing to be gay in Pakistan and have a boyfriend instead of a girlfriend. Nor was it a good thing to smoke cigarettes. Mr K was 30 years old; his father had died the previous year and never knew that Mr K was a smoker.
72. Mr K was asked why in his statement he had not given the name of the appellant's friend (which he had remembered, somewhat inaccurately, in chief). Mr K said that he had only met that man a couple of times, and it was a long time ago. The appellant told Mr K that the man was his gay friend. They used to go off every day together after the appellant finished work. All of the co-workers were living in shared accommodation and he had concluded that they probably lived together. It was not something the appellant had ever said to Mr K. He did not know whether the appellant had ever lived with a man.
73. Mr K's life had changed now, and they lived a long way apart, because Mr K was in Essex and the appellant was in Harrow these days. The appellant called Mr K sometimes, and occasionally told him about his relationships. They kept up mostly on the telephone, but the appellant came sometimes to help with building work at Mr K's new home, and he also met him sometimes. 2018 had been a difficult year: Mr K's wife had cancer of the womb and they had not been able to have a child together. Mr K was very stressed now.

Mr N and Mr U's letters

74. The bundle contains two manuscript letters from Mr N, the appellant's claimed long-term partner in Pakistan. The first, dated 30 January 2018 confirmed that the appellant was Mr N's best friend and that at some stage in 2003 they began a relationship together. The last line of the letter is illegible. The second letter, dated 1

November 2018, says that the relationship began in 2002, not 2003, and ended in January 2010.

75. An email from Mr U, dated 3 February 2018, confirms that he was in a relationship with the appellant 'in near past' from August 2011 to December 2013 and that they 'used to spend time together'. Mr U says that 'For some reasons I had to leave the United Kingdom in December 2013. Currently I am living in Istanbul (Turkey)'.

Ms SN's evidence

76. A letter from Ms SN, who shares the same family name as the appellant's former claimed partner in Pakistan, says that she is a British citizen (a copy of her passport is attached) and that she found the appellant a nice, kind person, a social and helpful individual. He had no bad habits and had not been involved in any crime. She knew him to be a gay man living openly in the United Kingdom, who had been away from his family for a long time. His family had disowned him and that distressed the appellant.
77. Ms SN was shocked by his history in Pakistan but supported him morally and emotionally. He was able to tell her about his relationships. She confirmed that as a gay man in Pakistan, a Muslim country, the appellant would be unable to live his life openly and freely because of his sexuality, 'and will live his life in fear and distress'. She asked the Tribunal to allow his appeal and grant refugee status.
78. Ms SN gave evidence at the First-tier Tribunal, confirming that she met the appellant in December 2014 and that he had been very helpful to her family, looking after her father when he was ill. She had not met any of his gay friends or partners. The First-tier Judge considered her to be a witness of truth. Ms SN did not give evidence at the Upper Tribunal.

Mr HA

79. A letter from Mr HA, also a British citizen, said that the appellant was polite, calm and down to earth, and that he was living an openly gay life in the United Kingdom, attending gay clubs and bars. The appellant had told Mr HA of his family problems, which Mr HA found 'terrible and shocking'. He understood how difficult it must have been to survive in that terrible situation in Pakistan. It would be impossible for the appellant to live a safe and open life as a gay person in Pakistan.

Other documents

80. The appellant's bundle contains a photocopy of a purported newspaper advertisement by the appellant's father, saying that 'for reasons of disobedience and bad habits' he disowned the appellant from his fixed and movable property and would no longer be responsible for his 'promises, actions or transactions'. His father said that the appellant had 'disappeared since 15 January 2013'. There is no original copy of the newspaper in which this advertisement is said to have appeared.

81. The bundle also contains a number of photographs of the appellant in sparkly tops, with other men, apparently at clubs, and printouts of Facebook messages between the appellant and a Junior Officer in a cement company, living in Lahore, who shares the same first name as the appellant's former partner in Jhelum. Quite a lot of the posts are in what appears to be Punjabi. The only legible reference to risk is this post on 30 November 2011:

"I'm good. Y u say right here the situation is very dangerous. Many crises are seen but nothing wrong for people. And I studied in a university and it going in good way. My exams are on 13th of December. May Allah help me and all the other student. Please pray for me. ... How going your job?..."

82. There are also some messages with (clothed, formal) photographs of a man, who shares the first name of the appellant's claimed partner in the United Kingdom. There are indications of some voice messages, but otherwise the photographs are all more or less the same, except for some puzzling photographs of a wash basin, and a joke photograph of a beer lorry painted to resemble a beer can with the text 'my doctor said only one beer a day...so I ordered only one'. On 14 June 2017, the appellant posted his new telephone number. There are photographs of a staircase and a Lamborghini car, of the inside of a flat, some Eid Mubarak messages and more voice messages. The only remotely intimate post is on Tuesday 26 September when one party says 'How are you dear!!' and the other replies, 'How are you?', following which there is an exchange of telephone numbers for a third party. Apparently they were 'Fine'.
83. On the last page of the social media excerpts, there is a copy of the Facebook home page for West 5 Bar with posts about special events on 6 July and 9 March (presumably 2018).

Psychological report: Dr Saima Latif

84. Dr Saima Latif, BSc Hons, MSc, D.Hyp., DipFPsy (dist.) PhD CPsychol CSci AFBPsS MEWI BSCH (Assoc) is an independent Chartered and Registered Practitioner Psychologist, a Chartered Scientist, an Associate Fellow of the British Psychological Society. She describes herself as an Accredited Expert Witness. Her report is dated 21 February 2018.
85. Dr Latif's reported the appellant's history as she understood it. The appellant told her that his father was an accountant and his mother a home maker. He had a happy childhood until 2003, when his troubles began. He had achieved High School Matriculation and an FSC in a Mechanical Diploma, and worked in a school as a teacher for 6 months. Dr Latif described the first sexual incident between the appellant and Mr N as having taken place while they were in his bedroom at home in the Jhelum area, rather than in a hilly area as all the other accounts state.
86. Having reported the appellant's account and set out the relevant criteria in detail, Dr Latif's report made no attempt to relate the appellant's state of health to those criteria. The assessment at 11.0 and following says that she 'tried to gain as much self-report as possible with regards to any post-traumatic state and symptoms

following the events experienced by [the appellant]'. Dr Latif's professional opinion, based on the self-reporting evidence the appellant provided, was that the appellant had post-traumatic stress disorder (DSM-5 309.81), with co-morbid Major Depressive Disorder (DSM-5 296.32). She considered that in consequence his narratives and accounts at interview might present discrepancies as a result of retrieval difficulties, rather than fabrication. His account was considered to be consistent with the research evidence and on removal to Pakistan, Dr Latif's opinion was that he would be likely to experience 'further elevated psychological symptoms, which may lead onto more severe psychiatric disorders'.

87. Dr Latif considered that detention would aggravate the appellant's condition and that he needed to be treated as an Adult at Risk in Immigration Detention. Cognitive behavioural therapy (CBT) would be needed in the long term to assist his recovery.

Asian Legal Advice Service: Uzma Moeen's report

88. A letter dated 8 August 2018 from Uzma Moeen LLB LLM of the Asian Legal Advice Service purports to provide country evidence about the circumstances of gay men in Pakistan. The statement confirms that homosexuality is *haram* (prohibited) in Islam and an 'enormous sin' attracting the certain wrath of Allah. At [21] Ms Moeen explains the distinction between *tazir* and *hadd* punishments, with *tazir* punishments discretionary and subject to judicial supervision, but *hadd* punishments for 'transgression of God's limit' being strict and fixed, as set out in the Qur'an or various *hadiths*. Homosexuality is not specifically identified as requiring *hadd* punishment but it is *zina*, that is unlawful sex outside marriage, and aggravated by its male-on-male nature. No source for that statement appears in the report.
89. Ms Moeen set out section 377 of the Pakistan Penal Code and referred to the CPIN on *Pakistan: Sexual Orientation and Gender Identity* of April 2016. After setting out section 377 (carnal intercourse against the order of nature with any man, woman or animal), and referring to the *Offence of Zina (Enforcement of Hudood) Ordinance [1979]*, her report accepted that there as significant judicial discretion between a minimum sentence of two years and a maximum of life imprisonment. In addition, section 12 of the *Enforcement of Shariah Act [1991]* provided, rather vaguely, that 'effective legal and administrative measures shall be taken by the State to eradicate obscenity, vulgarity and other moral vices'. Prosecutions were rare, despite expressions of judicial revulsion towards homosexual practices.
90. Ms Moeen stated that in the current wave of religious extremism in Pakistan, gay men were seen as violating the dominant norms of Muslim faith and society. She explained the absence of case law as follows:

"41. ... It is no coincidence that there is no case law in Pakistan discussing the issue of homosexuality specifically. This is because there is no open recognition of its existence in Pakistan, and not even any specific mention of its punishment. Generally, sex is a taboo subject, as noted, and deviant forms of sexuality are covered in embarrassed silence. This is considered to be a matter too grave and too unacceptable to be discussed openly."

91. On 26 July 2011, the United States Embassy in Islamabad sponsored the country's first LGBTI Pride celebrations across the country. Almost all the Islamist groups held rallies opposing this United States-sponsored series of events, with Jamaat-e-Islami describing it as 'the worst social and cultural terrorism against Pakistan'. Reference was made to passages in the CPIN about the response of Pakistani society and the Organisation of Islamic Cooperation to LGBTI rights.
92. Ms Moeen acknowledged that Muslim gay men do live and exist in Pakistan, hiding their activity from view and fearing being targeted, victimised and/or persecuted if discovered. She considered the appellant's account to be plausible and that there as a very real possibility of an honour killing of the appellant, although 'there are no reported cases of the killing of a gay man or a gay couple which have been specifically identified as an honour killing as such'. Again, this assertion was not sourced. If returned to Pakistan, the appellant could only seek reconciliation with his family by accepting an arranged marriage and denying his sexuality (no source given). Ms Moeen confirmed that others would be embarrassed by knowing a person was gay; that families would try to marry off their son to 'sort things out' and that being openly gay was unacceptable. Ms Moeen speaks here from her own experience. She refers to 'normalisation' services run by Christians in Pakistan.
93. The Punjab Information of Temporary Residents Ordinance 2015 (the TRO) allows the police to collect data about tenants in rented houses or hostels, hotels and guest houses, giving the police a database of all such persons. The information was to be used by the police only for prevention, detection, investigation and prosecution of offences of terrorism and other offences under the Pakistan Penal Code 1860 but Ms Moeen stated (no source given) that those targeting the appellant could obtain his whereabouts by bribing a police officer. However, in 2016, Ms Moeen said that 38 property landlords and tenants had cases against them for violating the TRO by not passing the required particulars to the police; in 2017 there were further cases of the same offence (the statistics given are confusing and difficult to parse).
94. FIRs, wherever lodged, are passed to the police station in a person's home area, and if he registered elsewhere (for example under the TRO) to that area too. The Punjabi police were attempting to create a central database searchable in all police stations; at least some FIRs could be searched that way now. A person as not likely to appear on the Exit Control List until serious formal charges were framed against him. Until then, travel was not difficult. Ms Moeen did not consider that the appellant would have had difficulty leaving Pakistan when he did, even if a FIR had been registered against him or an arrest warrant issued. Only 'high profile offenders' were the subject of entries on the Entry Control List.
95. Ms Moeen was unable to authenticate the copy entry in a newspaper in which the appellant's father was said to have disowned him. She found the appellant's account plausible as advanced, for the reasons given in her report.

Freedom from Torture - Dr Juliet Cohen's medico-legal report

96. Dr Juliet Cohen MA MB BS Dip RACOG MRCGP FFFLM is a consultant at the Manor Hospital, Headington Oxford, Head of Doctors for the Medical Foundation's Medico-Legal Report Service and a consultant with the International Centre for Health and Human Rights. She is a Fellow of the Faculty of Forensic and Legal Medicine of the Royal College of Physicians.
97. Dr Cohen's report is dated 19 July 2018. She set out a history which was broadly that already given by the appellant above. There was a little more detail: his father was said to be a retired factory cashier and his mother a housewife. When the appellant's family said that they would be disowning him, the appellant told Dr Cohen that they said that 'if he came home they would hand him over to the extremists and let them do whatever they liked with him, or they would report him to the police and have charges laid against him', and that the family of the girl he was engaged to were also threatening to kill him if they caught him. His fiancée's family were related to a politician and the appellant was sure he would be able to find out what flight he was on when he returned and catch him that way: in Pakistan, 'a powerful person can do whatever they want to do'. In this version of the account, the friend the appellant met in Islamabad in October 2013 was his lover, Mr N.
98. The appellant had low mood and a number of lesions on his body, not all attributed to the abuse he suffered at his family's hands and those of local persons. 13 of the lesions, taken together, were significant clinical evidence of the assaults described, as per the Istanbul Protocol at [188]. Dr Cohen found no indication of fabrication, exaggeration or embellishment of the account. The appellant had some symptoms consistent with post-traumatic stress disorder but he did not meet the full criteria diagnostic of that disorder. He did meet the diagnostic criteria for moderate depression and anxiety. She did not consider his psychological condition to be fabricated (see Istanbul Protocol at [287]). The appellant needed specialist psychological therapy and a review of his anti-depressant medication to improve his sleep and mood.
99. That completes the evidence which the appellant placed before the Upper Tribunal.

Respondent's CPIN: *Pakistan: Sexual orientation and gender identity or expression* [July 2019]

100. The respondent's CPIN confirms that s.377 of the Pakistan Penal Code prohibits 'carnal intercourse against the order of nature' and at 2.4.3 says this:

'b) State treatment of LGB persons

2.4.3 Section 377 of the Pakistan Penal Code (PPC) does not explicitly refer to same-sex sexual activity, but 'carnal intercourse against the order of nature', which is punishable by a fine and/or imprisonment for a period of two years to life. The Offence of Zina (Enforcement Of Hudood) Ordinance of 1979 criminalises any form of penetration outside of marriage, but voluntary sexual acts between persons of the same gender are not covered by the provisions although they suggest that non-heterosexual

sexual acts that involve penetration could be prosecuted and sharia law provisions may punish same-sex sexual acts by death. There is no law prohibiting discrimination on the basis of sexual orientation ...

2.4.4 In practice, the authorities very rarely prosecute cases, but Sections 377 and 294 ('Obscene Acts and Songs') of the PPC has sometimes been used by police as a pretext to arrest, threaten to arrest, harass, intimidate and extort LGBTI persons, particularly men who have sex with men (MSM) and transgender women. ...'

101. At 2.4.6 the respondent assesses that there is in general no real risk of persecution by state actors. The risk to any individual is fact-specific. If the risk is from state actors (which is not asserted here) at 2.5.1 the CPIN says that there is no sufficiency of protection.
102. The appellant in these proceedings fears non-state actors. At 2.5.5 the respondent assesses that 'In general, the state appears able but unwilling to offer effective protection and the person will not be able to avail themselves of the protection of the authorities', noting that each case is fact-specific. At 2.6, the CPIN gives guidance on internal relocation. As one would expect, at 2.6.1 the report finds that there is no internal relocation if the person fears state actors.
103. At 2.6.2 and following, the CPIN says this:

'2.6.2 Where the person has a well-founded fear of persecution from non-state actors, decision makers must determine whether the person could relocate internally to a place where they would not face a real risk of persecution or serious harm and where they can reasonably be expected to stay. *Given that homophobic attitudes are prevalent throughout the country and state protection is not generally available there is unlikely to be any place, in Pakistan, to which an LGBTI person could reasonably relocate without making fundamental changes to their behaviour.* Each case must be considered on its individual merits. ...

2.6.5 It would not, in general, be unreasonable for a gay man, who has chosen to live discreetly due to social or religious pressures, to relocate internally within Pakistan. However, *internal relocation will not be an option if it depends on the person concealing their sexual orientation and/or gender identity in the proposed new location for fear of persecution.* [Emphasis added]

104. At 5.3.1, the CPIN references a report by the Canadian IRB and the BBC, that 'homophobia has wide social and religious sanction' and that discrimination and prejudice run deep in Pakistani society against sexual minorities. At 5.2.5, the 2019 IRB report is cited as follows:

'5.2.5 The IRB January 2019 report cited sources referring to MSM:

'AFP reports that, according to the president of NAZ, an LGBT organization in Pakistan, [translation] "90% of Pakistani men are MSM [...] simply because women are not easily accessible". Without providing further details, the CGRS [Office of the Belgian Commissioner General for Refugees and Stateless Persons] researcher cited in the [2017] EASO meeting report on Pakistan, indicated that "[s]ources stated that it is common for straight men to indulge in Male to Male sex (MSM) and there is general acceptance within [Pakistani] society for this particular act".'

105. At 5.3.4, the IRB noted that the gay community was ‘underground’ and that:

‘According to sources, sexual minorities in Pakistan are “deter[re]d] from acknowledging” or “reluctant to reveal” their sexual orientation or gender identity. According to a report by the European Asylum Support Office

(EASO) of the EU on an October 2017 meeting on Pakistan, citing a Country of Origin (COI) researcher from the Office of the Belgian Commissioner General for Refugees and Stateless Persons (CGRS), the LGBT community in Pakistan operates “behind closed doors” ...’

106. At 5.4 under the heading *Family Treatment* the CPIN says this:

‘5.4.1 According to research conducted by the IRB and reported in 2019 ‘As with many other issues, the extent of familial and societal discrimination and violence faced by lesbian, gay, bisexual, transgender and intersex (LGBTI) people tends to be inversely proportional to their socio-economic status.’⁶⁹

5.4.2 DFAT noted that people attracted to the same sex were often rejected by their families, could be ‘thrown out’ of home and forced into sex work. The same source noted ‘People identifying as LGBTI from wealthy and influential families in large urban centres face less discrimination and violence than poor people in rural areas. Nonetheless, even wealthy individuals face high levels of discrimination, and their families often force them into a heterosexual marriage to preserve the family’s reputation and social standing.’⁷⁰

5.4.3 The Director of the Neengar Society told the IRB, in January 2019, that

“individuals belonging to low socio-economic groups have limited access to justice, sexual and reproductive health rights and safety” and that out of 150 cases reported to their legal aid center, 135 “belonged to [a] low socio-economic class.”

107. That completes the evidence before the Upper Tribunal.

Submissions

108. For the respondent, Mr Melvin had provided written submissions as to the weight to be given to the medical evidence, and to the witnesses who gave evidence before us. He argued that the appellant’s co-workers would have had no direct knowledge of his orientation and that their evidence was hearsay. In oral argument, Mr Melvin said that the respondent would rely on the refusal letter and skeleton argument, and that the events in 2002/3, 2007, 2012 and 2013 should not be accepted.

109. It was not credible that the appellant would have been able to maintain his relationship with Mr N over such vast distances, nor that he would have continued two other ‘enjoyment’ relationships at the same time. The appellant was not working and had only limited pocket money to pay for transport. He relied on his written submissions about Dr Cohen’s evidence, the lack of analysis of the age of the scars and the appellant’s general lack of credibility.

110. The evidence of a photograph of the appellant kissing a man having reached Sargodha from the United Kingdom was not credible. There was no evidence, apart from the appellant’s assertion, to back it up and Mr Melvin described this element of

the account as 'preposterous'. Similarly, the Upper Tribunal should not accept the appellant's account of his difficulty in Islamabad in 2013: it was extremely unlikely that he would have run into people from Sargodha there. One of the witnesses said that the appellant tried to speak to his family while he was in Pakistan, which was a serious discrepancy. The appellant had not produced a copy of his own FIR field in Islamabad nor any evidence from the friend he was with, whether or not that friend was Mr N.

111. Mr Melvin turned then to the United Kingdom witnesses, who had not worked with the appellant for some time, and all of whom considered him to be gay. There was not much evidence apart from the photographs and their accounts (and that of the appellant) to support the appellant's account of going to gay clubs. He had not attended any LGBTI events or joined any LGBTI organisations. The Tribunal should consider carefully why the 2015 human rights application did not mention the appellant's sexual orientation. There was little evidence of gay sexuality in the last 6 or 7 years.
112. Mr Melvin referred us to various passages in the CPIN. He contended that the appellant's claim was fictional, made only to enable him to remain in the United Kingdom.
113. For the appellant, Mr Turner also relied on the CPIN. The key issue was whether this appellant was an openly gay man. He relied on *Chiver* and *Kasolo*. There were two strands to the appellant's claim, the first being his on-off relationship with another man in the small village in Jhelum area where he grew up, and about which he lied to his family. There were short, furtive meetings, with the appellant slipping away when he could. There were beatings. He relied on Dr Cohen's report.
114. The appellant had not sought to overstate his case. There had been some contact with his mother, but none with his father. Perhaps the maternal bond was stronger. Mr Turner accepted that there was not much evidence about the provenance of the photograph or how it reached the appellant's family.
115. When the appellant came to the United Kingdom he remained afraid of being returned, and that was why he did not disclose his sexuality. When he made his human rights claim in 2015, the solicitor filled in the form and the appellant merely signed it.
116. Mr Turner observed that Mr Melvin had not put to the appellant the respondent's case that he was lying about his sexuality. The appellant's evidence as to the date of Pride could be checked by the Upper Tribunal.
117. The appellant's account, that he had a relationship with Mr U while he worked at Burger King and that they went to gay clubs together was also unchallenged and should be accepted. The witnesses had known him for seven years and were transparently honest and credible witnesses, as the First-tier Tribunal had also found. Their perception was that they knew he was gay immediately; they answered questions even though they found them difficult, and had treated him as a friend despite his orientation. Mr Melvin had not suggested that the witnesses had lied to

the Upper Tribunal and Mr Turner invited us to find the three United Kingdom witnesses credible.

118. If the witnesses' evidence was credible, taken with what was known about Pakistan, the appellant's case was made out to the lower standard and he was a gay man who would be persecuted on return. The appeal should be allowed.
119. We reserved our decision, which we now give.

The test in *HJ (Iran) and HT (Cameroon)*

120. The question for the Upper Tribunal is that posed in *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 at [35] in the opinion of Lord Hope JSC, with whom Lord Rodger JSC, Lord Walker JSC, Lord Collins JSC and Sir John Dyson SCJ agreed. The *HJ and HT* test may be summarised as follows:

- (1) Is the appellant gay?
- (2) What will be his situation on return? There is specific reference to the CPIN for background information on the country of origin. Lord Hope said this:

“The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. *But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it.* If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be.” [Emphasis added]

- (3) The appellant cannot necessarily expect to live as freely and openly as he does in the United Kingdom. The focus is on what will happen in the country of origin.
- (4) If the appellant will in fact conceal aspects of his sexuality on return, why will he do so? If this is not at all because of a fear of persecution, international protection is not required. If he does so in part because he fears persecution, then having established the subjective fear, the Court or Tribunal must go on to consider whether it is well-founded.
- (5) If there is a well-founded fear of persecution in the country of origin, the appellant is entitled to asylum.

121. At [36], Lord Hope said this:

“36. It should always be remembered that the purpose of this exercise is to separate out those who are entitled to protection because their fear of persecution is well founded from those who are not. The causative condition is central to the inquiry. This makes it necessary to concentrate on what is actually likely to happen to the applicant. As Lord Walker says in para 88, the inquiry is directed to what will happen in the future if the applicant is returned to his own country. An approach which disregards what is in fact likely to occur there in the case of the particular applicant is wrong and should not be adopted.”

122. At [110], Sir John Dyson put it even more emphatically:

“110. The Convention must be construed in the light of its object and purpose, which is to protect a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country". If the price that a person must pay in order to avoid persecution is that he must conceal his race, religion, nationality, membership of a social group or political opinion, then he is being required to surrender the very protection that the Convention is intended to secure for him. The Convention would be failing in its purpose if it were to mean that a gay man does not have a well-founded fear of persecution because he would conceal the fact that he is a gay man *in order to avoid persecution* on return to his home country.”

123. That is the basis on which we approach our analysis of the evidence in this appeal.

Analysis

124. The key question of fact is whether the appellant is gay, as he alleges. In reaching a finding of fact on the appellant’s sexual orientation, we have regard to all the evidence before us including the letters of support, the oral evidence of the appellant and his witnesses, and the medical and country evidence in the bundle. We treat the appellant’s three witnesses, Mr A, Mr M and Mr K as credible witnesses. Despite their discomfort in talking about gay sexuality, all of them gave straightforward evidence to the Upper Tribunal, which we accept.
125. We have not been able to place much weight on Dr Latif’s psychological report, which was not prepared with reference to the Istanbul Protocol, and appears to be based largely on ‘self-reporting’. It lacks rigour and save where it is corroborated elsewhere, we have not relied upon it. Similarly, Ms Moeen’s country report is mainly unsourced in relation to the matters on which the appellant seeks to rely. Mr Turner did not rely on it in his oral submissions and we have not been able to give it significant weight. We prefer and give weight to the summary of country evidence in the CPIN.
126. The serious harm the appellant says he suffered in the past is supported by the medico-legal report of Dr Juliet Cohen, prepared to the Istanbul Protocol standard. Dr Cohen is a very experienced writer of medico-legal reports and her opinion is carefully and cogently reasoned. Dr Cohen did not consider the appellant’s account to be a fabrication and in her opinion, 13 of his 21 body lesions were ‘significant clinical evidence’ of the assaults he had described. Unlike Dr Latif, she did not find that the appellant has post-traumatic stress disorder (though he had some of the symptoms) but she did find that he met the diagnostic criteria for moderate depression and anxiety. We give weight to Dr Cohen’s report.
127. There are some difficulties in the appellant’s own account of his history in Pakistan: the long distances asserted between the various places in his account, how he financed his visits to Mr N after he was sent away to school, and so on. We have

regard to the appellant's mental health difficulties and we consider that the core account is credible, to the appropriate lower standard.

128. The appellant's core account of events in Pakistan has been consistent throughout and the hearsay references to what he told his friends in the United Kingdom about it match his own account. We therefore accept that he was discovered with Mr N and beaten for his sexuality on two occasions in his original home in the Jhelum area, and also that his family were very angry with him in Sargodha and said bad things to him and beat him. We accept to the lower standard that he has been disowned by his family and has not been able to get in touch with them. If returned to Pakistan, he would have no immediate or extended family support.
129. We note that when the appellant began working at the Soho branch of Burger King, his two witnesses from that employment, who are now friends of his, became aware of the appellant's sexuality almost immediately, before he admitted it. That is significant on the question of risk on return because it indicates that other men from Pakistan perceived him without difficulty as being a gay man. Mr Turner for the appellant asked all three of his witnesses whether he was fabricating his account of his sexuality: all of them were positive that he was not, and that he was indeed gay.
130. Mr Melvin for the respondent did not explore this issue in cross-examination, although he did ask questions about whether the appellant's family had explained the consequences of his reckless actions in his affair with Mr N. Mr Melvin did not ask the appellant how he would behave if he returned to Pakistan, but we note that when he lived there before, and despite the difficulties it caused for his family members, the appellant both maintained a long-term relationship with Mr N, and had at least two 'enjoyment' relationships with other men.
131. Having found the appellant and his witnesses to be credible, we accept that the appellant is a man of homosexual sexual orientation, who has had gay relationships both in Pakistan and in the United Kingdom and that in the United Kingdom he lives an openly gay life, including going to gay clubs with his friends, and would wish to continue to do so on return. We find that the appellant would be likely to continue to lead an actively gay life in Pakistan, and that if he did conceal his sexual orientation there, he would be doing so for fear of persecution or serious harm, which means that we must discount any increase in safety which such concealment might bring him.
132. We have considered whether internal relocation is available to this appellant. We have regard to the passages from the CPIN and other international sources, set out at [102]-[107] above. The gay community in Pakistan is 'underground' because there are homophobic attitudes throughout the country and state protection is not generally available (CPIN 2.6.2). We note that, when he returned to Pakistan at the end of 2013 the appellant attempted to relocate within Pakistan, with the intention of being able to live there again, and that he also tried to reconnect with his mother, unsuccessfully. The appellant spent time then with friends in three major cities, but was recognised and chased in Islamabad by people from his home area, while out

with a male friend. We do not consider, on the facts of this appeal, that internal relocation would avail him.

133. We are satisfied that the appellant has a subjective fear of persecution in Pakistan. The only reason why the appellant might seek to conceal his sexual orientation in Pakistan, we find, is because of that subjective fear, driven by his past experiences and the homophobic nature of Pakistani society today. This is an appellant who has already suffered serious harm at the level of persecution in his home areas of Sargodha and Jhelum before coming to the United Kingdom, both from his family and from other non-state actors.

134. We remind ourselves that under paragraph 339K of the Immigration Rules HC 395 (as amended):

“339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”

135. There is a failure of state protection throughout Pakistan. We are not satisfied on the individual and country evidence before us that the respondent has shown good reasons to consider that the persecution or serious harm of this appellant which occurred in Pakistan before he came to the United Kingdom would not be repeated, even if the appellant were to relocate internally, because he would wish to live an openly gay life and is a man whom other men from his country easily perceive to be gay.

136. We find that the appellant’s subjective fear of persecution or serious harm is objectively well founded, both in his home area and elsewhere in Pakistan. He is therefore entitled to asylum, applying the test in *HJ and HT*.

DECISION

137. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law. We set aside the previous decision.

We remake the decision by allowing the appeal.

Signed 
Upper Tribunal Judge Gleeson

Date: 10 September 2019