



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/03193/2019**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**Decision & Reasons  
Promulgated**

**On 2<sup>nd</sup> September 2019 & 18<sup>th</sup> November 2019  
On 26<sup>th</sup> November 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**MR K. A.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr T Hussain of Counsel, instructed by B Assured Law  
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

This is the appellant's appeal against the decision of Judge Forster made following a hearing at Bradford on 8<sup>th</sup> May 2019.

Mr Hussain commenced his submissions by stating that the judge had erred in his consideration of the previous judge's decision in 2011, failing to look at the evidence in the round and being unduly influenced by Judge Reed's conclusion that the appellant had manufactured his claim to be a gay man at risk on return to Pakistan. There is little merit in that submission. The judge correctly stated that his starting point was the decision of 2011 and then went on to say

that the facts on which the appellant now relies are different from those considered previously. He said in terms that he did not regard the issue of the appellant's sexuality as settled by the 2011 decision and that he had also considered the new evidence now put forward by the appellant. There is no error in that approach.

The appellant claims to be a gay man and five witnesses gave evidence on his behalf, in addition to himself, at the hearing. Although the judge gave reasons for not accepting the evidence of the appellant's partner, highlighting a number of discrepancies in her evidence, the judge also heard from three other individuals in person who attested to the relationship between the appellant and his partner, who is a transgender female. He also had letters from the manager of the Bradford LGBT Strategic Partnership and from another individual who is a group organiser at Equity, where the appellant attends on a regular basis.

The judge did not analyse that evidence. More importantly, he did not consider the evidence from the three individuals who attended the hearing, merely stating that he had to consider it with the appellant's own evidence, which he approached with caution because he had lied and was not a reliable witness.

Mr Diwnycz accepted that the judge had not given adequate reasons for his conclusions.

The judge fell into error by failing to analyse the evidence of the three witnesses who came to the Tribunal to state that they knew the appellant and his partner and to testify that they were in a genuine and warm relationship. It is not sufficient to deal with that evidence merely by stating that it should be disregarded because he found the appellant to have given unreliable evidence.

The decision is set aside.

### **Resumed Hearing**

1. At the resumed hearing I heard oral evidence from the appellant, from his partner T. I, and from five friends of theirs, A.A, M.M B, Z H and M.A. A.A runs a local LGBT group for men in Bradford and has done so for the past six years.
2. The appellant claims that he has been in a relationship with T.I who was born a male and is transgender since June 2012. They live a couple of streets away from each other, meet every day and spend part of the week nights together.
3. Mr Diwnycz asked both K.A and T.I a number of questions about recent activities which they enjoyed together and both gave consistent evidence. The evidence of their relationship was supported by the other witnesses from their own individual knowledge who came forward to give evidence today.
4. Mr Diwnycz did not seek to challenge any of the evidence which has been given and said that the position of the Secretary of State was that if the

relationship was accepted it followed that the appeal must be allowed in line with the concession in the reasons for refusal letter and the case law. If the appellant is as he says he is then a real risk on return is established.

### **Findings and Conclusions**

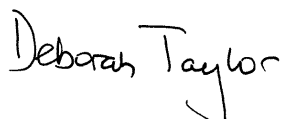
5. The evidence today has been wholly consistent and unchallenged.
6. I am satisfied to the required standard that the appellant is in a gay relationship with a transgender female and that the couple have been together for some seven years. This is not a relationship which could continue in Pakistan. T.I is a British citizen and in the process of changing her gender from male to female. According to the Home Office Pakistan Country Information and Guidance the Pakistan Penal Code criminalises any form of sexual contact outside the conventional understanding of heterosexual contact and whilst the authorities rarely prosecute cases, the police use the laws for harassment and extortion. The appellant is likely to either wish to live freely and openly as an LGBT person, as he has done in the UK or resort to concealment of his sexual orientation for fear that he would otherwise be persecuted.
7. The appellant's asylum application was originally refused by the Secretary of State because it was not believed that the appellant was gay, nor that he was in a subsisting relationship with a transgender female. This question having been resolved in the appellants favour, and in the light of the fact that no submissions were made that the appeal ought to be dismissed, it follows that it must be allowed.

### **Notice of Decision**

The original judge erred in law. The decision is set aside. It is remade as follows. The appeal is allowed on all grounds.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed  
Deputy Upper Tribunal Judge Taylor

Date 25 November 2019