Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02519/2020

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 10 November 2020 *via Skype for Business*	**On 10 December 2020**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TM (PAKISTAN)
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr S. Whitwell, Senior Home Office Presenting Officer
For the Respondent: Ms A. Jones, Counsel, instructed by Connaught Solicitors

DECISION AND REASONS (V)

This has been a remote hearing which has been not been objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

The documents that I was referred to were the grounds of appeal, the decision of the First-tier Tribunal and bundle from before the First-tier Tribunal, the contents of which I have recorded.

The order made is described at the end of these reasons.

The parties said this about the process: they were content that the hearing had been conducted fairly in its remote form.

1. This is an appeal by the Secretary of State. For convenience, I will refer to the parties as they were before the First-tier Tribunal.

2. The Secretary of State appeals against a decision of First-tier Tribunal Judge Brannan promulgated on 29 July 2020, in which he allowed an appeal by the appellant against the decision of the respondent dated 2 March 2020 to refuse his claim for asylum and humanitarian protection.

Factual background and the decision of the First-tier Tribunal

3. The appellant is a citizen of Pakistan, born in December 1981. He arrived in this country in August 2011 as the Tier 4 (General) dependent partner of his then wife, such leave expiring on 29 October 2012. He and his wife divorced in 2012 after, he claims, she caught him engaging in sexual activity with another man. Thereafter, the appellant remained in the United Kingdom without leave, although attempted to regularise his status under the EEA regime, but that was unsuccessful: see the refusal decision dated 9 April 2014. On 10 May 2019, the appellant claimed asylum on the basis that he would face being persecuted on account of being a gay man in Pakistan. That claim was refused, and it was the appellant's appeal against that refusal decision that was under consideration in the proceedings below.

4. The judge directed himself in relation to the applicable legal framework concerning the determination of asylum claims, in particular claims based on homosexuality. It had been clarified with the parties at the hearing that the sole issue in the appeal was whether the appellant was gay. The judge allowed the appeal. Although the judge had correctly identified the relevant questions under HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 (see [14]), including the "why" question, it had been conceded by the Secretary of State that, if the appellant were able to demonstrate that he was a gay man, the appeal should succeed: see [15]. Before me, the Secretary of State does not seek to resile from that concession. Instead, she contends that the judge erred when reaching his findings that the appellant is a gay man, by failing to consider the evidence in the round, and by reaching inconsistent findings, such that the reasons given were insufficient. Permission to appeal was granted by First-tier Tribunal Judge O'Brien.

5. As this is a challenge to findings of fact reached by the trial judge, it is necessary to outline the judge's analysis and findings in some depth.

6. The judge analysed the appellant's case under two distinct strands: pre-2019 and post-2019, because the evidence concerning the two was "quite different": see [23].

7. The judge dealt with post-2019 first. The appellant's evidence in this regard concerned his relationship with a Mr U, whom he claims to have met at a gay club known as XXL, in 2018. Mr U is also from Pakistan and has been granted asylum status on account of being gay. Mr U had provided a letter to the respondent in support and gave evidence before the judge. The judge analysed the evidence concerning Mr U forensically, splitting it up into its constituent elements: see [25]. At [26], the judge noted that the respondent had not sought to challenge the fact of the appellant's claimed relationship with Mr U, whether in the asylum interview, or in cross examination. That was significant, noted the judge, because the hearing had been held on a face-to-face basis, at the request of the respondent, to ensure the best possible environment for the appellant's credibility, and those of his witnesses, to be analysed.

8. The judge gave reasons for rejecting some of the concerns raised by the respondent about the appellant's claimed attendance at the XXL club. See [34]. The respondent has not challenged this aspect of the judge's analysis. The judge also noted evidence from a Mr L, who is also gay, and has refugee status on that account. He noted at [39] that there was not only testimony from two gay men that the appellant is gay, one of whom claims to be in a relationship with the appellant, but there was also photographic evidence from gay pride events and dinners together.

9. The judge highlighted discrepancies across the evidence of the appellant and Mr U concerning when they first met. By way of explanation, the appellant said he was not good with dates, and Mr U said that his letter to the respondent had been drafted by a friend, to help with writing the letter in English: see [31]. At [40], when drawing together his analysis, the judge observed that there remained an inconsistency as to when they met, in these terms:

> "But the inconsistency on a key aspect of their claimed relationship, being when they met, cannot be overlooked. Mr U had given three different dates for when they met. The appellant has given two. I therefore find that they did not enter a relationship when they say they did. But that does not mean they are not in a relationship now. Both say they are. The respondent has never questioned either about their relationship to find out if it is genuine. She had both of their witness statements in advance of the hearing and could at the very least have cross examined them on this, if not investigated the relationship in advance of the hearing. At the hearing I was careful not to descend into the arena by cross-examining the witnesses on this key part of their claim – that is the role of the respondent in our adversarial system. Without their evidence being challenged, I find on the asylum standard of proof that the appellant and Mr U are in a relationship now."

10. That led the judge to a global conclusion on the appellant's post-2019 narrative, namely that he was in a relationship with a man, and that he was therefore gay. That, said the judge, disposed of the case. However, at that stage, he said that it was in the "interests of justice to consider also the pre-2019 situation for completeness".

11. The judge's pre-2019 analysis considers the reasons given by the respondent for rejecting the account given by the appellant of realising he is gay. During the appellant's asylum interview, the respondent had warned the appellant not to reveal details of any sexual experiences, as they would not be taken into account. The judge noted at [46] that that approach was consistent with that of the Court of Justice of the European Union in A, B and C v Staatssecretaris van Veiligheid en Justitie C-148/13 to C-150/13. However, the judge was concerned that the respondent's decision to disregard all details of the appellant's accounts of sexual activity potentially prevented the appellant from being able to rely on the foundation of his claim to be gay, which is based on him having had sex with other men on a number of occasions. The absence of an emotional narrative, as sought by the respondent during the asylum interview and as highlighted in the refusal decision, meant that the respondent was herself falling into the trap of testing against the very stereotypes which were prohibited by A, B and C, the judge held. Her search for an emotional narrative would be unlikely to be requested from a man claiming to be heterosexual, the judge observed. The result of that approach, found the judge, was that it was difficult to find the truth of the appellant's narrative: see [49].

12. The judge then outlined certain aspects of the appellant's case which he considered to be implausible; these included the likely inability of the appellant to have been able to access heterosexual online pornography in 1995, the fact that the appellant's claimed first sexual experience with another man was when he was aged 30, in this country, despite his claim to have realised he was gay some 14 years earlier, and general concerns about the implausibility of the appellant's claimed financial support from various gay benefactors. The judge said at [50] that the respondent could have examined the credibility of much of the appellant's narrative without having to go into detail about sexual practices. As a result, the judge said that he had to rely on his own plausibility-based concerns arising from the appellant's account.

13. At [59], despite the earlier concerns about the timing of the appellant's realisation that he was gay when compared to his first homosexual encounter, the judge accepted that it was reasonably likely that the appellant did realise that he was gay when he was 16 years old, and that he was content with that realisation while being scared from the repercussions.

14. The judge was candid about his concerns with the appellant's case. At [60], he noted inconsistencies between the appellant's account that the first person he revealed his sexuality to was a man he met in a Sainsbury's shop, whereas he also claimed to have been caught by his wife having sex with a man before then. At [65], the judge found that the appellant's account of when his family found out that he was gay was contradictory, and did not fit with the overall narrative of having divorced in 2012, and lived as a gay man since then without his family knowing either about the divorce, or his gay lifestyle. The judge rejected the suggestion that he had

lost all contact with his family; the appellant's failed EEA application was based on his cousin's wife. He had not lost all contact, found the judge.

15. At other points, the judge explained why he did not accept some of the concerns of the respondent. For example, at [61], the judge explained why he did not consider it was inconsistent for the appellant to have informed only some of his friends that he was gay, whilst simultaneously being open about his sexuality in gay clubs. The judge held that:

> "It is quite credible that someone will have friends who they tell about their sexual orientation in the cold light of day while expressing that orientations during fleeting romances of the night. Furthermore, the clubs that the appellant describes himself as going to our [sic] clubs for gay men: one does not need to discuss one's sexuality there; it is evident by one's presence."

16. This led to a global conclusion at [68] that it was impossible to construct an alternative credible narrative of the appellant's life in the UK between 2012 and 2019. The judge specifically rejected the appellant's claim to have divorced his wife and 2012 because she found him having sex with a man, with his family in Pakistan not finding out the true reasons, and the fact of the divorce, until 2019. On the other hand, said the judge, he did not accept the respondent's submissions in relation to the appellant's feelings when he was 16. The judge found to the asylum standard that the appellant did realise that he was gay when he was 16.

17. Concerning section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the judge accepted the appellant's account of having not known that it was possible to claim asylum on that basis until he was informed by Mr U, after which point he claimed asylum promptly.

18. The judge's global conclusion at [74] was in these terms:

> "The appellant has a boyfriend. He is therefore a gay man. The respondent concedes this means he has a well-founded fear of persecution in Pakistan."

Submissions

19. There are two strands to the Secretary of State's submissions. First, she submits that by divorcing the pre-2019 and post-2019 analysis, the judge failed to consider the appellant's case in the round. That is significant, submits Mr Whitwell, in light of the credibility concerns the judge had concerning the appellant's pre-2019 narrative. In relation to the post-2019 narrative, the judge's concerns with the conflicting accounts given by the appellant and Mr U about when they met were not resolved with sufficient clarity, and led to the judge failing to provide sufficient reasons for his finding that the appellant was in a gay relationship with Mr U.

20. As to the judge's concerns with the respondent's expectation that the appellant would be able to provide some form of emotional narrative, the respondent was entitled to do expect the appellant to give an explanation in this regard, and that expectation was consistent with the approach set

out in her country policy and information note – *Pakistan: sexual orientation and gender identity or expression*, version 3.0, July 2019. It was irrelevant for the judge to focus on the fact that heterosexual people are not normally questioned about their own emotional journeys, given heterosexual orientation is rarely, if ever, an issue upon return to Pakistan.

21. In oral submissions, Mr Whitwell highlighted the following additional deficiencies in the judge's reasoning. He submits that the judge's finding, reached in isolation, that the appellant was gay based on the post-2019 material, removed from the judge's analysis the following four essential issues. First, the fact that the appellant did not reveal his sexual orientation before coming to the United Kingdom. Secondly, the fact that the appellant did not have any homosexual experiences prior to the age of 30, despite the judge's finding that he had been aware of his sexual orientation from the age of 16. Thirdly, the fact that the judge did not accept the appellant's case of having been caught while engaging in sexual activity with another man by his wife. Fourthly, the absence of pressure from his family in Pakistan to remarry for seven years. In light of those features, submits Mr Whitwell, the judge's finding at [41] that the appellant was in a relationship with another man and was, therefore, gay, was not sustainable.

22. The sequential way in which the judge analysed the evidence in the case failed to engage with an analysis conducted in the round, submitted Mr Whitwell. By the time the judge considered what took place before 2019, he had already found that the appellant was gay. That was a finding reached on the basis of an incomplete consideration of the evidence in the round.

23. The judge was said by Mr Whitwell to have failed to follow the approach advocated by gay rights organisations such as Stonewall, whereby the following features of an individual's sexual identity journey should be considered: difference; stigma; shame; and harm. Similarly, the judge failed to engage with the UNHCR guidelines on determining asylum claims based on sexual orientation. The judge even quoted a passage from the book of Leviticus at [47], concerning the prohibition on a man lying with another man, attempting to reconcile that with the New Testament teaching that one should love one's neighbour, which was wholly irrelevant to this case concerning the appellant's prospective return to a majority Muslim country.

24. These factors, submits Mr Whitwell, mean that the judge's decision was generally unclear, reached without a proper consideration of all matters in the round, and failed to disclose sufficient reasons for his findings.

25. On behalf of the appellant, Ms Jones submits that the Secretary of State is trying to overlook mistakes made by the presenting officer before the First-tier Tribunal, such as the decision not to challenge by way of cross-examination the existence, rather than the origins, of the appellant's claimed relationship with Mr U. The process before the tribunal is

adversarial, she submits, and it is for a party to put its case during the trial process. It is not possible retrospectively to attempt to advance a different case, in circumstances such as the present. She submits that the judge was clear that at no time was the fact of the gay relationship between Mr U and the appellant challenged before the First-tier Tribunal, and that the inconsistencies, taken at their highest, merely related to dates. It was significant, she submits, that the judge directed himself that it would be inappropriate to descend into the arena and perform the respondent's task for her. That led to a finding, to the asylum standard of proof, that the appellant was gay. Once the judge reached that conclusion, submits Ms Jones, the matters before 2019 were of less relevance.

26. To the extent that the Secretary of State now contends that the judge failed to give sufficient reasons, Ms Jones submits that it is clear from the judge's decision why the Secretary of State lost, and why the appellant one. The trial at first instance is the opportunity to establish facts, and it is not open to the Secretary of State to have another go at that process within the appellant framework.

Discussion

27. It is important to recall that an appeal to the Upper Tribunal lies on a point of law, not a point of fact. Findings of fact are not immune from being infected by errors of law. In R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982, the Court of Appeal outlined the following categories of errors of fact which may amount to errors of law:

> i) Making perverse or irrational findings on a matter or matters that were material to the outcome ("material matters");
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> ii) Failing to give reasons or any adequate reasons for findings on material matters;
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> iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters;
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> iv) Giving weight to immaterial matters;
>
> v) Making a material misdirection of law on any material matter;
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> vi) Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;
>
> vii) Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.

28. Applying the above criteria necessarily entails reviewing the decisions made by the judge below as to what was material to the issues in dispute, the weight to be ascribed to certain matters in relation to that ascribed to

other matters, and the overall approach to the entire body of evidence. As to how this tribunal should analyse those matters, the Supreme Court and Court of Appeal have given guidance as to the approach to be taken. The task calls for restraint on the part of the appellate tribunal, and deference towards the fact-finding judge.

29. In Henderson v Foxworth Investments Ltd [2014] UKSC 41; [2014] 1 WLR 2600 at [62], the Supreme Court held, with emphasis added:

> "It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. **What matters is whether the decision under appeal is one that no reasonable judge could have reached**."

30. In Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5, the Court of Appeal underlined the caution with which appellate tribunals should approach the task of reviewing findings of fact reached by trial judges. One of the reasons, said the court at [114.iv], was that:

> "In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping."

31. On the issue of the trial judge's assessment of the weight to be attached to individual pieces of evidence, the Supreme Court has summarised the jurisprudence on the issue in these terms. The principles, it said:

> "…may be summarised as requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached."

See Perry v Raleys Solicitors [2019] UKSC 5 at [52].

32. In UT (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1095 at [32], the Court of Appeal described the reasons given by the First-tier Tribunal for allowing an appeal as "tolerably clear", finding that the Upper Tribunal should not have overturned the decision.

33. In Simetra Global Assets Limited v Ikon Finance Ltd & Others [2019] EWCA Civ 1413, the Court of Appeal summarised some of the facets of the duty to give sufficient reasons in the following terms, at [46].

> "First, succinctness is as desirable in a judgment as it is in counsel's submissions, but short judgments must be careful judgments. Second, it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered. Which points need to be dealt with and which can be omitted itself requires an exercise of judgment. Third, the best way to demonstrate the exercise of the necessary care is to make use of "the building blocks of the reasoned judicial process" by identifying the issues which need to be decided, marshalling (however briefly and without needing to recite every point) the evidence which bears on those issues, and giving reasons why the principally relevant evidence is either accepted or rejected

> as unreliable. Fourth, and in particular, fairness requires that a judge should deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it."

34. Simetra Global Assets Limited built upon a line of established authorities concerning the parameters of a judge's duty to give reasons. In English v Emery Reimbold & Strick Ltd. (Practice Note) [2002] EWCA Civ 605, Lord Phillips MR concluded his lengthy practice note judgment in these terms, at [118]:

> "…an unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the Judge has reached an adverse decision."

35. Finally, in Dover DC v CPRE Kent [2017] UKSC 79; [2018] 1 WLR 108 at [35], the Supreme Court cited and underlined a well-known extract from the speech of Lord Brown in South Bucks District Council and another v Porter (No 2) [2004] UKHL 33 at [36]:

> "The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. **The reasons need refer only to the main issues in the dispute, not to every material consideration.**" (Emphasis added)

36. It is also necessary for judges to consider the evidence in a case in the round. Although not particular to the asylum context, this is a principle which is often invoked in challenges to decisions in this jurisdiction. See Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367, at [24], per Wilson J (as he then was):

> "It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto."

37. Against that background, I turn to the Secretary of State's submissions. There is superficial force in the submission that the judge decided the evidence in the case in two distinct phases. Plainly, the judge considered the post-2019 evidence separately to the pre-2019 evidence; the question is whether he fell into error by doing so.

38. When one examines the findings the judge made by reference to the post-2019 evidence, namely the finding that the appellant is in a relationship with another man and that he was, therefore, gay, it is difficult to see how the scepticism the judge had concerning certain aspects of the pre-2019 evidence could have undermined that finding. Properly understood, the submission of the Secretary of State must be that the finding that the appellant's claimed relationship with Mr U was one that

was not properly open to the judge on the evidence before him, in light of the judge's concerns with the pre-2019 evidence.

39. That is a difficult submission for the Secretary of State to sustain, for at least three reasons.

40. First, the degree of restraint must be exercised by this tribunal when reviewing a decision made by the judge below. I do not have access to the whole sea of evidence in the same way as he did, having had access only to summaries of what took place during cross examination and the oral evidence. My exposure to the evidence that was before the judge may be described as "island hopping" at best.

41. Secondly, the Secretary of State did not seek to challenge in cross examination the claims made by both the appellant and Mr U that they were, at that time, in an ongoing sexual relationship. As submitted by Ms Jones, it is difficult for the Secretary of State now to contend that the judge fell into error by not finding against the appellant on an issue that was unchallenged below.

42. Thirdly, even if the judge did have significant credibility concerns with certain aspects of the appellant's pre-2019 account, those concerns were not such that no reasonable judge could ever find that, post-2019, the appellant was in an ongoing sexual relationship with another man, and, in light of the whole sea of evidence, that he was gay. It is trite asylum law that certain parts of a claim may be embellished or exaggerated, and that many genuine asylum claims lie at the heart of an exaggerated narrative. It was entirely open to this judge to find that the effect of the pre-2019 credibility concerns were not such as to undermine the post-2019 findings. In any event, Mr Whitwell's submissions concerning the pre-2019 narrative relied upon by the appellant were, in essence, complaints about the weight ascribed by the judge to the evidence in his overall assessment. It was a matter for the judge to consider the impact of the appellant's claimed lack of sexual experiences with other men before coming to the United Kingdom. Similarly, the judge's concerns around the appellant's claimed lack of contact with his family in Pakistan, and the impact of those concerns, were also matters of weight.

43. Mr Whitwell's reliance on Mibanga is therefore misconceived. Mr Justice Wilson's emphasis in that case was on the need for a judge to survey all "relevant" evidence before reaching a conclusion. Here, the judge identified as a central issue for resolution the question of whether the appellant's claim relationship with Mr U was genuine. He took into account the photographs that were before the tribunal which displayed a range of different life situations in which the appellant appeared to be within the company of other LGBT persons, for example at pride marches. The relevant evidence in relation to the judge's findings on the post-2019 issue were considered in the round, carefully, before the judge reached his conclusion that the appellant is gay due to his relationship with Mr U at [41]. That was an approach open to the judge.

44. For the above reasons, I find that the judge did not fall into error through dividing the analysis of the appellant's case into two distinct phases.

45. Mr Whitwell contends that the judge failed to take into account the so-called *difference, stigma, shame and harm* approach to analysing sexual orientation claims. That methodology, which Mr Whitwell did not seek to expand upon before me, nor address how it would or should have influenced the judge's decision, had not been the subject of submissions before the judge below. Neither, it seems, at the judge expressly been invited to consider the UNHCR guidelines. I accept Ms Jones' submission that in this adversarial context, it is not now open to the Secretary of State to complain that the judge failed to consider something that would have been to her benefit in circumstances when she had the opportunity to invite him to do so, yet did not. The judge was plainly live to the risk of "descending into the arena" (see [40]), yet quite rightly chose to resist any temptation to do so. The judge's analysis of the appellant's relationship with Mr U was forensic, careful, and insightful. He reduced the appellant's claims concerning the relationship to three central propositions: see [25]. He analysed the inconsistencies concerning the dates, considered the respondent's objections based on her analysis of the answers given by the appellant during his asylum interview, and looked at the remaining evidence in the case. This was precisely the task which lay before the judge, and one which the judge approached in a manner open to him. Another judge may have focussed on the appellant's emotional journey to the realisation that he was a gay man, which is the focus of the UNHCR guidelines at [62], but that is not to say that this judge reached a finding of fact that was not open to him on the evidence.

46. The concern of this tribunal is not whether the judge reached the "correct" answer, but rather whether he took into account all relevant considerations, gave sufficient reasons, and arrived at findings which were rationally open to him on the evidence. In performing that assessment, great deference must be paid by this appellate tribunal to the judge as trial judge. Nothing in the submissions of Mr Whitwell demonstrates that the judge approached and irrational decision, or failed to give sufficient reasons. The reference to Leviticus and the New Testament sought to encapsulate in a trite proposition complex theological issues, but the overall point made by the judge was clear, in the context; he was rejecting the respondent's reliance on the absence of an "emotional" narrative as an irrelevant factor, which was a concern that was open to the judge. It is plain why the judge reached his findings concerning the post-2019 issues. It cannot be said, and nor did Mr Whitwell seek to submit, that the judge's finding concerning the post-2019 evidence was a finding that no reasonable judge could have reached on that evidence. For the reasons set out above, and consistent with the authorities on when an appellate tribunal may interfere with a finding of fact reached below, it was a finding rationally open to the judge on the evidence.

47. It is clear why the appellant succeeded before the First-tier Tribunal. The concerns of the Secretary of State are disagreements of weight, with

which the Upper Tribunal has no role in interfering. The reader of the decision is left with a tolerably clear understanding of why the judge allowed the appeal; the judge was satisfied that the (unchallenged) evidence of the appellant and Mr U concerning the existence of their relationship was sufficient to demonstrate that the appellant is a gay man. It was not necessary for the judge to deal with every single point, and he dealt with all compelling points in a manner consistent with the task upon him as the primary tribunal of fact.

48. I find that the judge reached a decision that was open to him on the evidence and did not involve the making of an error of law in doing so.

49. I maintain the anonymity order made by the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law such that it must be set aside.

This appeal is dismissed.

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 their 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 Stephen H Smith Date 11 November 2020

Upper Tribunal Judge Stephen Smith