



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

Appeal Number: PA/06808/2019 (P)

**THE IMMIGRATION ACTS**

**Decided under rule 34  
On 24<sup>th</sup> June 2020**

**Decision & Reasons Promulgated  
On 09<sup>th</sup> July 2020**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**MT  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**DECISION AND REASONS**

1. Directions were issued by Upper Tribunal Judge Smith on 24 April 2020 indicating the provisional view, in light of the need to take precautions against the spread of Covid-19 and the overriding objective, that this case was suitable to determine whether there was an error of law in the First-tier Tribunal's decision and if so, whether that decision should be set aside.
2. The Appellant opposes the determination of these issues on the papers on the basis that the Appellant should have the opportunity, via his Counsel, to make oral submissions and respond to any questions or views the Judge may have, as would be the standard position. It is emphasised that the appeal is of the utmost importance to the Appellant and a remote hearing is suggested as an alternative.

3. The Respondent has made no submissions as to whether the error of law stage of this appeal could or should be determined on the papers, such that there has been no objection in proceeding with the provisional view of Judge Smith.
4. In my view, this is a case in which it is suitable for the issues of whether the First-tier Tribunal's decision materially erred in law and if so, whether the decision should be set aside, to be determined on the papers on the basis of the written submissions made. This is in light of the unprecedented circumstances surrounding Covid-19 and the need to take precautions to prevent the spread of the disease; is in accordance with the overriding objective for the Upper Tribunal to deal with cases fairly and justly in rule 2(1), (2) and (4) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and in circumstances where on the facts; there are comprehensive written submissions from both parties covering all of the relevant issues. Having regard to those written submissions, there are no further points upon which clarification is needed nor do I have any questions for either party. This decision has therefore been made under rule 34.
5. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Graves promulgated on 13 November 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claims dated 5 June 2019 was dismissed.
6. The Appellant is a national of Pakistan, born on 21 March 1996, who first entered the United Kingdom as a visitor in March 2013 at the age of 17, with a visit visa valid to 13 May 2013. The Appellant travelled with his father who he says returned to Pakistan a few weeks later, leaving the Appellant with family friends in the United Kingdom. The Appellant's younger brother arrived in the United Kingdom as a visitor in September 2015 and has also remained here illegally since. The Appellant has remained here unlawfully since 2013, making a claim for asylum in January 2019 after he was arrested and served with papers as an overstayer at an immigration visit on 16 January 2019. The basis of the Appellant's asylum claim is that he fears a risk of persecution on return to Pakistan as a gay man.
7. The Respondent refused the application essentially on the basis that the Appellant's claim was not credible, it was not accepted that he was gay and as such he would not be at risk on return to Pakistan.
8. Judge Graves dismissed the appeal in a decision promulgated on 13<sup>th</sup> November 2019 on all grounds. In summary, Judge Graves found the Appellant to be lacking in credibility, in particular because his claim was internally inconsistent and inconsistent with the evidence of the majority of his witnesses; such that it was not accepted that he was gay, nor at any risk on return to Pakistan based on his sexuality. The human rights claim was also dismissed on Article 8 grounds, in respect of which there has not been any further challenge.

## **The appeal**

9. The Appellant appeals on four grounds as follows. First, that the First-tier Tribunal materially erred in law in its assessment of the evidence of PM; rejecting his evidence because the other witness evidence had been assessed as unsatisfactory; which showed a failure to consider and assess all of the evidence in the round and relied upon a pre-formed view that the Appellant had manipulated witnesses such that the evidence was unreliable. Further, it was not a sufficient basis for the First-tier Tribunal to reject PM's evidence in its entirety on the basis of how many or which tribunal hearings he had previously given evidence in. Overall, this materially undermined the adverse credibility findings made against the Appellant.
10. Secondly, that the First-tier Tribunal materially erred in paragraph 37 of the decision relying on the lack of evidence from the Appellant about his realisation of his sexuality whilst also acknowledging that this is a personal matter against which there is no standard to measure it.
11. Thirdly, that the First-tier Tribunal materially erred in its approach to the Appellant's evidence in holding adverse to his credibility both the consistent and inconsistent parts of his evidence; and further that no reasons or examples are given of the Appellant's evidence being 'rehearsed'.
12. Finally, that the First-tier Tribunal materially erred in its approach to the evidence as to whether the Appellant was running a mobile phone business in the United Kingdom; failing to give any reasons as to why the evidence of two witnesses stating that the property found by the Respondent at the visit in January 2019 was theirs was rejected, particularly as against a lack of evidence from the Respondent as to the allegations contained in a minute from the visit.
13. Further to the directions sent on 24 April 2020, the Appellant made two sets of further written submissions on 7 May and 26 May 2020, the latter the Appellant's response to the written submissions from the Respondent submitted on 15 May 2020. I deal with the Respondent's submissions first and then the Appellant's response.
14. The Respondent opposes the appeal on all grounds and submits that there are no material errors of law in the decision of the First-tier Tribunal. In relation to the first ground of appeal, it is submitted that although paragraph 69 of the decision may give a prima facie impression that the evidence has not been considered in the round, it is not the only part of the First-tier Tribunal's reasons and when read as a whole, there is no error of law in the assessment of this evidence. The Respondent highlights the self-direction given in paragraph 33 of the decision to consider the evidence in the round and the reference back to the same in paragraph 64. Further, in paragraph 69, the First-tier Tribunal was evidently referring to evidence upon which PM made no comment, with his evidence not outweighing the numerous areas in which the Appellant's

evidence was unreliable. The Respondent submits that the inherent problem for the Appellant is that PM's evidence was not probative of the "internally inconsistent and contradictory" evidence of the Appellant or the other witnesses. The Respondent goes on to highlight some 11 examples of areas in which the First-tier Tribunal found inconsistencies and evidence which was not credible in the Appellant's claim and that PMs evidence did not touch on and could not assist to resolve.

15. Finally in relation to the first ground of appeal, the Respondent submits that the First-tier Tribunal was entitled to take into account PMs evidence of his advocacy in support of the Pakistani gay community and that his credibility was undermined by not being forthcoming about giving evidence very recently for the Appellant's brother at his appeal.
16. The Respondent submits that the second ground of appeal is misconceived as it conflates the quality of evidence with the absence of evidence. In paragraphs 37 and 38 of the First-tier Tribunal decision, having accepted that self-realisation is personal, it is noted that the Appellant was not able to describe his own process and further struggled to even understand the questions.
17. In relation to the third ground of appeal, the Respondent submits that it was open to the First-tier Tribunal to find, in essence, that the Appellant's claim was undone in cross-examination. It was open to the First-tier Tribunal to find the large number of inconsistencies in the Appellant's claim but also to find that there were some aspects that were consistent where the Appellant was familiar with his own written statements.
18. In relation to the fourth ground of appeal, the Respondent submits that this is wholly without merit given the Appellant's own evidence that he was working illegally and selling mobile phone products (recorded in paragraph 24 of the decision) and therefore open to the First-tier Tribunal to reject the Appellant's inconsistent assertions of his innocence and to reject the evidence of AH and RH.
19. In response, the Appellant submits in relation to the first ground of appeal that the First-tier Tribunal has erred in a structural way in the assessment of the evidence and the self-direction is insufficient when in substance it has not been followed. In particular it is emphasised that a witness does not need to address all parts of the claim or the evidence of other witnesses and in this case, PMs evidence went to the central issue of the truth of the Appellant's claim to be gay. The First-tier Tribunal dismissed PMs evidence as unreliable and manufactured before considering or assessing his evidence and without considering it in the round, considering whether PMs evidence displaced the conclusions already reached. If the First-tier Tribunal had approached the evidence in the correct way, that may have affected the weight attached to other evidence when the final conclusions were reached.
20. Finally, in relation to the first ground of appeal, the Appellant maintains that it was not a proper basis to dismiss PMs evidence on the basis of

advocacy or because he clarified his evidence about his attendance at appeal hearings.

21. The Appellant maintains the second ground of appeal, submitting that the Respondent's reliance on paragraph 38 is misplaced as it deals with a different matter and the First-tier Tribunal has expected the Appellant to describe a struggle with his sexuality which not everyone necessarily experiences or is able to express.
22. The third ground of appeal is maintained as the First-tier Tribunal relied on both consistency and inconsistency in evidence to find that the Appellant was untruthful.
23. In relation to the final ground of appeal, the Appellant accepts that he had admitted to some buying and selling of mobile phone accessories; but that the witness evidence of AH and RH addressed the more serious allegations made by the Respondent which went beyond this.
24. In response to the note in the grant of permission that materiality of any error would be in issue, it was submitted on behalf of the Appellant that all of the grounds of appeal, individually and cumulatively were relevant to the assessment of credibility and the fact-finding process; which must be taken in the round.

### **Findings and reasons**

25. In the first ground of appeal, the Appellant challenges the findings in paragraph 69 of the First-tier Tribunal decision as showing a structural error of failing to assess the evidence in the round and dismissing the evidence of PM because the other evidence had already been found to be unreliable, because of his advocacy work and because he did not initially say that he had given evidence on behalf of the Appellant's brother. In considering this ground of appeal, it is necessary to consider further the structure and detail of the First-tier Tribunal's decision as well as what is said in paragraph 69 itself.
26. There is no dispute between the parties that in paragraph 33 of the decision, the First-tier Tribunal makes an appropriate self-direction to look at all of the evidence in the round; only as to whether in substance that has been applied. In paragraph 34 of the decision, the First-tier Tribunal identifies matters that are taken into account in the Appellant's favour, including his age at the time and the nature of his claim which can involve feelings of shame and cultural stigma and in paragraph 35 states the overall conclusion with reasons to follow. That conclusion is that taking into account the matters identified in paragraph 34, the documentary evidence and the witness evidence, the Appellant is not found to be a credible or reliable witness. The Appellant has not taken specific issue with the conclusion being stated here before the reasons nor suggested that this clouded or pre-judged any particular evidence before it was reached.

27. In paragraphs 36 to 53 of the decision, the First-tier Tribunal sets out in detail internal inconsistencies in the Appellant's claim, examples of where his claim was lacking in detail or was vague (where more detail could reasonably be expected) and where it was implausible. This lengthy section identifies a significant number of examples of such matters in the Appellant's claim looking at his own evidence and claim, and his claim as against the written evidence from his father in Pakistan. The decision then moves on in paragraphs 55 to 59 to consider one witness' evidence in detail and in paragraphs 60 to 62 considers the Appellant's brother's evidence. There is no express reference here (or until later in the decision) as to the evidence of the three remaining witnesses - PM, RH or AH; although their oral evidence was referred to in paragraph 30 of the decision as not being recorded in full in the decision but salient points referred to as needed.
28. The First-tier Tribunal then considers documentary evidence about Disco Rani and the inconsistencies in the Appellant's evidence relating to this in paragraphs 63 and 64 of the decision; followed by consideration of the factors in section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 in paragraphs 66 to 68.
29. The final reasons and conclusions are in paragraph 69 of the decision as follows:
- "69. I do bear in mind that the appellant's witnesses took the time to attend court and give evidence, and to allow their evidence to be tested under cross examination. However, I found the appellant's evidence, and that of his witnesses, to be internally inconsistent and contradictory. I found the evidence unreliable. I bear in mind that the evidence of [PM] was not in itself contradictory with that of the appellant, but having found that the evidence before me was manufactured, and the other witnesses were all unreliable, I do have real concerns that all of the appellant's witnesses were motivated by a desire to assist him with avoiding removal. Even if they were not, I also find that the appellant is capable of manipulating a witness, particularly in the case of [PM], who has also referred to having strong sympathies with members of the Pakistani gay community. I did also note that when asked about other hearings he had given evidence at, [PM] made no mention of [the Appellant's brother's] hearing and said he last gave evidence at a Tribunal hearing in 2008. He was then specifically asked if he had given evidence at [the Appellant's brother's] hearing, a few weeks previously, and only then said that he had done so. I therefore did not find the witness evidence to be sufficiently reliable to support the appellant's claim, or to outweigh the numerous areas in which the appellant's evidence was unreliable."*
30. Although the First-tier Tribunal does not expressly set out or assess the evidence of three of the Appellant's witnesses in any detail, including PM and focuses on the Appellant and two others, including the Appellant's

brother; that does not of itself indicate that their evidence has not been considered and assessed in the round; nor that findings made over the course of more than 35 detailed paragraphs of the evidence, focusing mainly on the problems with the Appellant's evidence prejudged the assessment of these witnesses, including PM.

31. In paragraph 69 of the decision, the First-tier Tribunal finds that PMs evidence was not in itself contradictory with that of the Appellant but, overall, it was not sufficiently reliable to support the appellant's claim. That must be read in the context of the significant number of examples of inconsistencies and problems with the Appellant's own evidence and even if PM was not inconsistent with that (or at least the limited parts of it on which his evidence touched), it begs the question of which parts of the contradictory claim it was not inconsistent with. Although not expressly put in this way by the First-tier tribunal, it is difficult to see how evidence, limited only to certain aspects of the detail of the claim, which is not inconsistent with an internally inconsistent claim can be of any significant positive weight. On any view, the evidence of PM could not affect the number of inconsistencies in the Appellant's own account or the damage to the Appellant's credibility caused by those and it can not be the case, as suggested by the Appellant that this is immaterial as the First-tier Tribunal may have drawn different conclusions on the Appellant's evidence or that of other witnesses if positive findings were made about PM in the round. The point is concisely put at the end of paragraph 69 that PMs evidence was not sufficiently reliable to support the Appellant's claim or to outweigh the numerous areas in which the Appellant's evidence was unreliable. I do not find the use of the word 'outweigh' in the context of this decision as indicating anything other than a balancing of all of the evidence taken as a whole and in the round - it is simply an assessment that there are more factors adverse to the Appellant's credibility and claim than positive. On the evidence before the First-tier Tribunal, that was plainly a rational conclusion open to it.
32. Further, the First-tier Tribunal reduced the weight to be attached to PMs evidence for two further reasons. First, that the Appellant was manipulating a witness such as PM in particular because he was sympathetic to the Pakistani gay community and had advocated on others behalf and secondly, because PM changed his evidence as to when he last gave evidence at a Tribunal hearing. This was not, as suggested by the Appellant a clarification, but a change in his evidence as to when he last gave evidence to admit, contrary to his first answer, that it was only a few weeks ago on behalf of the Appellant's brother. These were both legitimate reasons which the First-tier Tribunal was entitled to take into account when assessing the weight to be attached to PMs evidence.
33. For these reasons, I do not find any error of law on the first ground of appeal. When read as a whole, the decision of the First-tier Tribunal does not disclose any structural error in the assessment of the evidence before it; nor does it suggest that the self-direction to consider all the evidence in the round was not in fact followed. The First-tier Tribunal gave cogent and

very detailed reasons for the findings made as to the Appellant's credibility and that of the majority of his witnesses (I deal below with the evidence of RH and AH in the context of the fourth ground of appeal) showing that this was balanced and considered as a whole. The particular phrasing used in paragraph 69 of the decision does not, in context, identify an error of law.

34. In any event, for the very detailed reasons given by the First-tier Tribunal for the adverse credibility findings made against the Appellant; even if the evidence of PM had not been assessed in the round as alleged, it could not have been material to the outcome of the appeal. As the Respondent identified and as set out above, the First-tier Tribunal identified a substantial list of inconsistencies (internal and against the other witness and documentary evidence), vague parts of the account and implausible parts, the majority of which were not addressed or touched upon by PM and upon which no other findings could have been reached; on the individual aspects of the evidence or on the main question as to the Appellant's sexuality.
35. The second ground of appeal is that the First-tier Tribunal weighed against the Appellant an absence of evidence of any struggle or realisation of his sexuality. The First-tier Tribunal set out in paragraph 34, 36 and 37 the background context to the nature of an asylum claim based on sexuality for a person who comes from a country where it is not in accordance with religious or societal norms and where the Appellant claims it puts his life at risk. Whilst it is true that not every person will face a personal struggle or have any particular experience about the realisation of their sexuality, which is recognised by the First-tier Tribunal as inevitably personal, in the context of an asylum claim it is more likely that a person experiences something in relation to the realisation of their sexuality that they can articulate and therefore reasonable to expect them to do so.
36. In paragraph 37 of the decision the First-tier Tribunal states that the Appellant was unable, even when specifically asked, to identify any such experience, process or realisation and in paragraph 38, on a related point, was unable to even understand the question about starting a sexual relationship with another boy let alone explain or give any detail about doing so, despite the context in Pakistan which made such actions dangerous. Although separate, these two matters are clearly linked both in terms of time and in terms of the Appellant's own self-awareness and evidence about his sexuality. As the First-tier Tribunal found, it would be reasonable to expect the Appellant to have given more detail about the realisation that he was gay and his first relationship in Pakistan; even without any particular benchmark being available to assess such matters which are inherently personal. The point is, the Appellant offered little detail and was vague in his answers on these first two matters in his claim and the First-tier Tribunal did not err in law in taking this into account. In any event, as above, this was one small part of much more extensive reasons given for the adverse credibility findings made.



37. The third ground of appeal is that the Appellant was found not to be credible both because of consistency and inconsistency in his claim and that it is an error for the First-tier Tribunal to rely on both. There is no merit at all in this ground of appeal. The First-tier Tribunal identifies a significant number of inconsistencies in the Appellant's account, both internally and against the other evidence which are self-evidently damaging to his credibility (and not challenged in the grounds of appeal specifically), even taking into account the factors initially identified by the First-tier Tribunal such as the Appellant's age and nature of his claim. In paragraph 44 of the decision, the First-tier Tribunal gives clear and cogent reasons as to why specific parts of the Appellant's evidence which were consistent were also adverse to his credibility as follows;

*"44. While there were some aspects of the appellant's evidence that were consistent, I found the degree of consistency to be troubling and was suggestive of his evidence having been rehearsed or self coached. He plainly knew the contents of his various statements and accounts, but when asked for details of specific events out of order at the hearing, he had difficulty answering the question directly, without reciting what was in his statement, which included details not relevant to the question."*

38. This paragraph in particular clearly identifies why, although the Appellant was in parts of his evidence consistent, that was not in fact in favour of his account being credible because of the nature of the evidence that was consistent and how it was given (in terms of, for example, reciting his statement including irrelevant details). There is no error of law in the First-tier Tribunal considering in detail the Appellant's evidence which was consistent as well as that which was not and reaching conclusions on the weight to be attached to both.
39. The final ground of appeal relates only to one reason as to why the Appellant's credibility was further damaged by section 8 of the Immigration and Asylum (Treatment of Claimants, etc) Act 2004; the others being the delay in making a claim for asylum, giving a false identity to immigration officers and only claiming asylum after his arrest and detention when faced with removal. The Appellant has not challenged those other reasons and the First-tier Tribunal were required to take them into account as damaging the Appellant's credibility under section 8.
40. The single matter in dispute is as to whether the Appellant was working illegally, or further, whether he was engaged in money laundering from running a business. Although there may be significant differences between the two in terms of criminal penalties, it is in any event adverse to the Appellant if he was working illegally, something which he admitted but later contradicted in his evidence. This issue is dealt with expressly in paragraph 67 of the decision, with weight attached the Appellant's own admission of working illegally. Whether or not he was doing more than this is at best marginal in the context of applying section 8 and in the context of the decision as a whole, is wholly immaterial. It is clear from paragraph 68 of the decision that the adverse credibility findings from the

application of section 8 would not be capable of undermining a wholly credible claim, but in this case, this is not a claim which was considered credible at all; the section 8 factors only further damaged the Appellant's credibility. In the absence of one factor of section 8 not being applied, it was inevitable that the outcome in the appeal would have been the same for the reasons given by the First-tier Tribunal and identified already above. For these reasons, there is no error of law on the fourth ground of appeal and even if there was, it would not be material to the outcome of the appeal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

### **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 G Jackson

Date

24<sup>th</sup> June 2020

Upper Tribunal Judge Jackson