



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000597
(PA/00292/2021)**

THE IMMIGRATION ACTS

**At Manchester Civil Justice Centre Decision & Reasons Promulgated
On the 30th August 2022 On the 05 October 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**IA
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr J. Greer, Counsel instructed by Arshed Solicitors
For the Respondent: Mr A. Tan Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Pakistan born in 1990. He appeals with permission against the decision of the First-tier Tribunal (Judge Alis) to dismiss his protection appeal.
2. The only matter in issue before the First-tier Tribunal was a question of fact. Is it reasonably likely that the Appellant is gay?
3. The only question before me is whether, in reaching its conclusion that he is not, the First-tier Tribunal erred in law.

Background and Decision of the First-tier Tribunal

4. The Appellant entered the United Kingdom in 2010, in possession of a Tier 4 (General) Student Migrant visa. On the 16th January 2019 he was apprehended, and served with papers notifying him that he was an overstayer. He then claimed asylum. The basis of his claim was that as a gay man he faces a real risk of persecution in Pakistan for reasons of his membership of a particular social group.
5. By her letter of the 4th January 2021 the Secretary of State rejected the claim. She did not accept that the Appellant is gay.
6. At the consequent appeal before the First-tier Tribunal the Secretary of State expressly accepted that if the Appellant is gay, he requires international protection (concession recorded at paragraph 14 of the decision).
7. The Appellant's case on appeal was that he had come to realise that he was attracted to men whilst still living in Pakistan. He had been intimate with other men on a few isolated occasions, but once he was in the UK he was able to enjoy longer relationships and friendships with other gay men. He had been living in a room provided by his employer. Another man, Usman, had rented a room in the same house. He was from the same area of Pakistan as the Appellant and he was very religious. On a number of occasions he was critical of the way that the Appellant conducted himself in the UK but was unaware that the Appellant was gay. Then one day in May 2015 Usman confronted the Appellant and told him that he had seen him in the area of Manchester known as the 'gay village'. In August 2018 Usman returned to Pakistan. He contacted the Appellant and told him that he needed money. He told the Appellant that he had obtained intimate photographs of the Appellant and another man from the Appellant's phone. If the Appellant did not send him money, he would show these pictures to the Appellant's family. The Appellant had no money to give, and by September 2018 Usman had made good on his threat. The Appellant has lost contact with his family who he understands have sought the advice of a religious scholar who has issued a fatwa condemning him for homosexuality. His mother has stopped taking his calls.
8. The Appellant told Judge Alis that in November 2018 he had received a parcel from Pakistan containing copies of the photographs and the religious opinion. These had all been forwarded to the Home Office but had apparently been lost. In the absence of this evidence the Appellant called oral evidence from three friends in the UK, all Pakistani men who had been granted refugee status on the grounds that they were gay. MA was able to say that he had frequently seen

the Appellant in the gay village and had met him at meetings of LGBT+ support groups; MAM also knew him from bars in the gay village, and NS had had an on-off sexual relationship with the Appellant for a number of years. Written evidence was also provided by a Mr Luke Walker, who runs a LGBT+ support group in Stockport.

9. Judge Alis dismissed the appeal. He noted that the Appellant had delayed claiming asylum for several years, and that this fell to be weighed against his credibility in accordance with section 8 of the Asylum Immigration (Treatment of Claimants etc) Act 2004. There was a lack of corroborative evidence: the Secretary of State denied all knowledge of the documents purportedly sent to her in 2019. There was no credible or plausible reason why Usman would have been in the Gay Village to have seen the Appellant there, and the Tribunal therefore rejected this element of the claim as internally inconsistent. As for the Appellant's witnesses, the Tribunal accepted that they were his friends, and that they have each known him since early 2020. Although it is not said expressly, my reading of the decision is that the Tribunal drew adverse inference from the fact that these relationships all started around the time of the Appellant's substantive interview, leading the Tribunal to conclude that they were deliberately cultivated for the purpose of the claim.

The Grounds of Appeal

10. Permission was granted in unrestricted terms on the 31st January 2022 by Upper Tribunal Judge Keith. The grounds are:
 - i) No findings have been made on the evidence given by the witnesses, in particular no finding has been made on the evidence of NS that he and the Appellant have been having a sexual relationship for two years;
 - ii) It was an error of law to expect asylum claimants to corroborate their claims with the production of documentary evidence;
 - iii) The reasoning in respect of whether Usman would have been in Gay Village is perverse.

Discussion and Findings

11. Mr Tan was quite correct to say in his submissions that the First-tier Tribunal had to assess this case in the round, and that in its assessment was bound to take into account the lengthy delay in seeking protection and any matters which might be thought to detract from the Appellant's overall credibility, for instance the phantom

papers apparently sent to the Home Office, or arguable difficulties with the account of Usman's blackmail attempt. That is all true, but it is also correct to say that at the heart of this case was the evidence of four additional witnesses who averred that they truly believe the Appellant to be gay, and that they base that opinion on their personal observation of him, including in the case of NS, them having had sex on a number of occasions. That being the case it is striking that the decision contains no direct assessment of that evidence. The closest that the decision comes to such a finding is the observation, at paragraph 72 and 73, that the Appellant only came to know these friends around the time of his substantive asylum interview. If by that the decision intended to convey a belief that these friendships had been cynically cultivated by the Appellant to bolster this claim, that should have been said in terms. That is particularly so in the case of the sexual relationship with NS. I am satisfied that it was an error of law not to make a clear assessment of the evidence of the witnesses, including a finding on whether they themselves had been hoodwinked by the Appellant.

12. At paragraph 65 the decision says this:

"I found the Appellant's claim that Usman saw him in Manchester's Gay Village as lacking in credibility. No credible or plausible explanation was provided to explain why Usman would have been in the Gay Village. Given Usman's views on sexuality there would be no reason for him to have ventured into that area of Manchester and I therefore reject that aspect of his claim"

13. Ground (iii) contends that there was no rational basis for this finding. Perversity is a high test but I think in this case, I must find that it is made out. The Gay Village is not a cordoned off enclave. It is simply an area in the centre of town. It contains many buildings and businesses that are entirely unrelated to the LGBT + community: Usman could have been working or visiting one of these when he saw the Appellant. I would also note that given its location it is an area which he might plausibly have been passing through: for instance I take judicial notice of the fact that a person walking from Piccadilly Gardens tram stop to the Manchester Islamic Centre might walk directly through this area. I do not accept Mr Tan's submission that this was a peripheral finding, since it is apparent from the final sentence of the passage I cite above that it was at the centre of the judge's assessment of the account about Usman.

14. It follows that I need not address ground (ii) since the decision needs to be re-made. I simply observe in respect of the missing documents that the account of the Appellant's estrangement from his family is not central to this claim in any way. If he is not gay, he can go home. If he is, he cannot. That is the effect of the Respondent's concession in this matter, and that is the case whether or not the account of the blackmail, the family reaction or the fatwa are true or simply embellishments of a far more simple claim.

Anonymity

15. I have had regard to the Presidential Guidance Note 2022 No 2: *Anonymity Orders and Hearings in Private*. In light of the guidance at paragraph 28¹ thereof, I make an order for anonymity in the following terms:

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

Decision and Directions

16. The decision of the First-tier Tribunal is flawed for error of law and it is set aside.
17. The decision in the appeal is to be re-made in the First-tier Tribunal by a judge other than Judge Alis.
18. There is an order for anonymity.

Upper Tribunal Judge Bruce
30th

August 2022

¹ Paragraph 28 of the Guidance Note 2022 No 2: *Anonymity Orders and Hearings in Private* reads: In deciding whether to make an anonymity order where there has been an asylum claim, a judge should bear in mind that the information and documents in such a claim were supplied to the Home Office on a confidential basis. Whether or not information should be disclosed, requires a balancing exercise in which the confidential nature of the material submitted in support of an asylum claim, and the public interest in maintaining public confidence in the asylum system by ensuring vulnerable people are willing to provide candid and complete information in support of their applications, will attract significant weight. Feared harm to an applicant or third parties and "harm to the public interest in the operational integrity of the asylum system more widely as the result of the disclosure of material that is confidential to that system, such confidentiality being the very foundation of the system's efficacy" are factors which militate against disclosure. See *R v G* [2019] EWHC Fam 3147 as approved by the Court of Appeal in *SSH D & G v R & Anor* [2020] EWCA Civ 1001