



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2023-004582

First-tier Tribunal No:  
PA/55670/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

14<sup>th</sup> December 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

**Between**

**SART (BANGLADESH)**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A. Reza, on behalf of JKR Solicitors

For the Respondent: Ms H. Gilmore, Senior Home Office Presenting Officer

**Heard at Field House on 29 November 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

### **Introduction**

1. The Appellant appeals the decision of First-tier Tribunal Judge Herlihy (and hereafter “the Judge”) who, in a decision promulgated on 7 July 2023, dismissed the Appellant’s appeal against the Respondent’s decision to refuse his asylum and humanitarian protection claims (made on 18 November 2019) by way of a refusal decision dated 16 November 2021.
2. Permission to appeal was granted by Judge LC Connal on 13 October 2023.

### **Relevant background**

3. The Appellant claims to have entered the United Kingdom in 2007. It is his case that he previously lived in Bangladesh with his wife and five children.
4. The Appellant claims that at some stage in his life he became aware that he identifies as a gay man. He claims that he has had 50 to 60 casual relationships with men in the United Kingdom and that he became a member of an LGBT group Apanjon.
5. The Respondent disbelieved the Appellant’s claim to genuinely identify as a gay man and concluded that removal of the Appellant to Bangladesh would not breach any of the UK’s obligations under domestic or international law.

### **The decision of the Judge**

6. On the basis that there was no Presenting Officer, the Judge asked Mr Reza to take the Appellant through the adverse credibility points raised by the Respondent in the refusal letter; the Appellant’s oral evidence in response is recorded in the decision.
7. In her findings, the Judge concluded that the Appellant had not provided a consistent and plausible history which supported the narrative of being a genuinely gay man. The Judge also found that the Appellant had not submitted evidence to support his account which would have been reasonable for him to do so, (para. 19).
8. The Judge detailed the Appellant’s evidence in respect of his 50-60 casual relationships with men in the United Kingdom as well as more significant relationships.
9. In detailing the reasons why she found the Appellant’s claim to be lacking in credibility, the Judge also found that the Appellant had been inconsistent as to when it was that he had realised that he is gay. The Judge noted the discrepancies as highlighted by the Respondent: for instance, that in the Appellant’s screening interview he said that he had “become” gay since 2014 whilst in the UK which contradicted his claim to have had sex with a friend in Bangladesh and therefore to have discovered

his sexual orientation before coming to the United Kingdom in 2007, (para. 21).

10. The Judge also noted a material discrepancy between the Appellant's oral evidence in the hearing in which he claimed that having entered the United Kingdom to visit his nephew for a week he then moved to Hull to live with his male partner and continued a relationship with him for a period of two years. The Judge contrasted this with the Appellant's claim in the screening interview that he did not express his sexuality in the United Kingdom until 2014, (para. 22).
11. Similarly, the Judge noted the Appellant's evidence in the asylum interview record in which he said that his intention in coming to the United Kingdom in 2007 was so that he could see the country but realised that he could have free sex and so decided to stay - the Judge considered this to be inconsistent with the Appellant's claim that he could not remain safely Bangladesh due to his sexual orientation. The Judge also considered this aspect of the evidence to be inconsistent with the fact that the Appellant did not claim asylum until 2019, (para. 23).
12. In coming to that conclusion, the Judge also noted that the Appellant was encountered by the immigration authorities in the UK in 2014 but did not attempt to seek asylum at that time. The Judge also noted that the Appellant had only joined the LGBT organisation Apanjon after he had claimed asylum and the membership card produced showed that his membership had in fact expired, (para. 23).
13. At para. 24, the Judge highlighted the paucity of evidence, i.e. statements and/or oral evidence from witnesses to support the Appellant's claim. The Judge noted the Appellant's own evidence that he has colleagues who know he is gay but had not asked them to attend to give evidence. Equally there was no actual evidence from the LGBT organisation Apanjon; nor any evidence from his many friends in the UK. The Judge concluded that the Appellant's explanation for not asking such potential witnesses to come to the hearing was inconsistent with his claim to be living as an openly gay man.
14. The Judge also contrasted the Appellant's oral evidence at the hearing (that he had not told these people about the hearing out of embarrassment because it was a "hidden thing" and that he didn't want to put them through the hardship of coming to the hearing) was inconsistent with his claim to live as an openly gay person, (para. 24).
15. In considering the Appellant's claim to have had a same-sex relationship in Bangladesh, the Judge found that the Appellant had not credibly explained his realisation of his sexuality and that he had not provided an overall credible narrative, (para. 25).
16. At para. 26, the Judge also concluded that the Appellant would not have delayed claiming asylum for some 12 years in the UK if he genuinely

feared persecution from the Bangladeshi state due to his claimed sexual orientation.

17. The Judge went on to conclude that the Appellant had not established that returning him to Bangladesh would breach the Refugee Convention, nor Article 3 ECHR and also concluded for similar reasons that Article 8 ECHR would not be breached.

### **The error of law hearing**

18. I heard helpful submissions from both representatives. Mr Reza confirmed that his grounds did not amount to a discreet challenge to the fairness of the hearing but he did pursue the three grounds for which permission was granted.
19. In ground 1, the Appellant criticises the Judge for giving too much weight to his late claim for asylum and also asserts that he gave plausible reasons for not claiming asylum earlier which related to his religious and cultural background and it was not easy for him to open up to anyone about his identity in the UK.
20. In respect of ground 2, the Appellant asserts that the Judge placed too much weight on the Appellant's failure to bring supporting evidence and argued this was contrary to Kasolo v Secretary of State for the Home Department, 1 April 1996 and paragraph 203 of the UNHCR handbook.
21. As to ground 3, the Appellant also contends that the Judge gave too much weight to inconsistencies in his account which did not go to the core issue in his claim.
22. In response, Ms Gilmour asserted that the Judge had made legally adequate findings and did not materially err.

### **Findings and reasons**

#### *Ground 1*

23. In respect of ground 1 - the Appellant contends that he gave a reasonable explanation for the delay in his claim. The Appellant relies upon the Court of Justice's decision in A v Staatssecretaris van Veiligheid en Justitie (United Nations High Commissioner for Refugees (UNHCR) intervening) (Judgment) [2014] EUECJ C-148/13, ("ABC") which lays out guidance as to the assessment of cases in which a person claims to be gay and highlights that such disclosure might not be a linear or speedy process.
24. Firstly, there is no hint in the Judge's decision that she automatically treated the delay in this case as determinative of the Appellant's adverse credibility.
25. Secondly, I find that the Judge lawfully concluded that the Appellant had been materially discrepant/lacked credibility about when he had come to

the realisation that he is a gay man: see para. 25. There are clear differences in the Appellant's claim to have realised that he is gay, and the Judge was entitled to reject his evidence for the reasons she gave. The Appellant's assertion otherwise is mere disagreement.

26. The Judge's approach is therefore consistent with both ABC and the statutory requirements in s. 8 of the 2004 Claimants Act.

#### *Ground 2*

27. In respect of ground 2, I also find that the Judge did not materially err. The Court of Appeal said the following in MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216:

*"It was common ground before this Court that there is no requirement that the applicant must adduce corroborative evidence: see Kasolo v Secretary of State for the Home Department (13190, a decision of the then Immigration Appeal Tribunal, 1 April 1996). On the other hand, the absence of corroborative evidence can, depending on the circumstances, be of some evidential value: if, for example, it could reasonably have been obtained and there is no good reason for not obtaining it, that may be a matter to which the tribunal can give appropriate weight. This is what was meant by Green LJ in SB (Sri Lanka) at para. 46(iv)."*

28. This is not a case (like the facts in MAH) where significant features of the Appellant's core claim had been accepted: see para. 14. Equally in this case the Judge was assessing the absence of evidence from witnesses in the UK relating to events in this country. This is therefore a different evidential scenario than that referred to at para. 196 of the UNHCR handbook (as relied upon by the Appellant):

*"196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt."*

29. The Judge did not find that the absence of such evidence automatically undermined the core claim but considered whether the Appellant had given a reasonable explanation for the absence of evidence which could reasonably have been obtained. This was set in the context of a number of serious discrepancies in the Appellant's core evidence. The reasons given by the Judge for finding that no reasonable explanation had been given at paras. 19 & 24, set into the context of the other findings, are unimpeachable.

*Ground 3*

30. In my view there is nothing in ground 3. It is incorrect to assert, as the Appellant does, that the inconsistencies found by the Judge did not go to the core issue in the Appellant's appeal. It is very clear that the Judge found that there was discrepant evidence in respect of when it was that the Appellant first came to the self-realisation that he is a gay man: this is precisely at the very core of the Appellant's claim for international protection.

**Notice of Decision**

31. The Appellant's appeal is dismissed, and the decision of the Judge shall stand.

***I P Jarvis***

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

8 December 2023