



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

Case No: UI-2021-001163

First-tier Tribunal No: PA/01343/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 2 January 2024**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**Mr SMS
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms K Staunton of Counsel, Law Lane Solicitors
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

Heard at Field House on 13 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Ripley ('the judge'), promulgated on 23rd July 2021, dismissing the appellant's appeal against the Secretary of State's decision of the 31st January 2020 refusing his claim for asylum on the basis of his sexuality.
2. The appellant is a national of Pakistan born on 10th June 1987 who entered the UK on 7th October 2010 with entry clearance as a student valid until February 2012. The appellant asserts that the licence of the college, at which he was due to study was revoked shortly after he arrived. He failed to regularise his immigration status and on 22nd March 2016 the appellant was arrested; he claimed asylum on 20th April 2016. The appellant's asylum claim was treated as implicitly withdrawn on 12th November 2019 owing to his failure to attend an interview. The appellant maintained he was unaware of the interview, which was rescheduled and took place on 4th December 2019 generating a decision under appeal. The appeal was initially dismissed in March 2020 by First-tier Tribunal Judge Oliver but remitted to the First-tier Tribunal in November 2020, the Upper Tribunal being satisfied there was an error of law.
3. The appellant claimed to be a gay man who had his first intimate same sex relationship with a school friend and they were discovered together by the appellant's family and beaten on two occasions in 2006 and 2007. The appellant's family was informed by a family friend that the appellant was seen coming out of a gay club in the UK in 2012 and he was then threatened by his family. He did not claim asylum until 2016 because he asserts, he did not know about asylum.

The First-tier Tribunal decision

4. When considering the appellant's explanation that he did not know he could claim asylum until his aunt told him how to apply when she came to visit him in detention, the judge found there was no evidence from his aunt supporting that claim [27]. Additionally, there was no proper explanation why the appellant failed to pursue any further attempt to regularise his status or pursue his studies. After a purported aborted attempt with an agent, with whom he lost £3,000, he could have discussed his dilemma with his aunt, whom he claims helped him a lot prior to his actual claim [28].
5. In his witness statement the appellant also provided an alternative explanation saying that because he was free in the UK he forgot about his problems and focused on the positive but the evidence demonstrated that he had difficult financial circumstances and it was reasonable to conclude that his economic situation would have focused his mind on resolving his status. He also stated that he had poor health, but there was a lack of evidence that he was so ill that he was precluded from making an attempt to resolve his status [29].

6. He arrived in October 2010 but claimed he had difficulties in Pakistan before his arrival and “one of the reasons he came to the UK was that he could be free here”. He had entered the UK in 2010 his first same sex relationship in 2011 to 2012 and two of his partners were from Pakistan. It was reasonable to conclude that they would have discussed his predicament or that he would have learnt from other Pakistani gay men or his close friends, considering his immigration problem, that he was able to claim asylum on the basis of sexual orientation [30].
7. The judge considered the appellant’s explanation and considered the vulnerability, shame and stigma associated with being gay in certain cultures, but the appellant had not claimed he was so affected. The judge rejected his account [32].
8. The judge accepted that it was plausible that the appellant persuaded his family he had reformed and they agreed to sponsor his studies.
9. The judge found however, that there were discrepancies between the screening interview and his later evidence, such as the name of his said partners and some mistakes were corrected, but not others, by the representatives [35]. At [36] there were further discrepancies in the evidence as to what the appellant reported about whether Mr E had seen him kissing and those discrepancies were between his interview and his witness statements [36]. At [37] it was noted that the receipts did not show the appellant himself had attended gay clubs and similarly, although he had attended a gay pride demonstration, which was not only attended by those of the same sex orientation. The photographs of the appellant in a bar did not suggest evidence of the appellant’s sexual orientation [37].
10. The appellant referred to a drag queen but was unable to provide an explanation, when asked, as to what one was and there was an attempt to give an impression that he was familiar with aspects of the LGBTI culture, with which he had no familiarity. The appellant claimed he had many gay friends in the UK over ten years and had attended gay clubs and gay pride but still refers to his heterosexual friends as ‘normal’ but the judge went on to state:

“This is not a significant issue. Nonetheless, it would be expected that his gay friends in the UK would have commented on this way of describing his friends and he would have provided some explanation himself for why he used those descriptions, considering his eagerness to provide full evidence at the hearing rather than leaving it to his Counsel and myself to suggest his background may explain his language” [38].
11. The judge considered the evidence of Mr Y in the light of the rest of the available evidence. However, Mr Y identified a different venue of where conversation took place with the appellant and he could not recall when the relationships of his two previous partners had taken place. Further, Mr Y had provided a:

“very brief written statement which confirms that he was aware of the appellant’s sexuality, that they are good friends, that he is proud of the appellant’s courage to be open about his sexuality, that he takes the appellant out when the appellant is depressed and supports him financially”.

12. However, Mr Y stated in evidence that he was “not interested in the appellant’s personal affairs”. That, the judge found was contrary to the indication given in his short statement. Further, the judge found the witness’s evidence to be vague and largely superficial and he was not satisfied that it was reliable. Further, it was noted that the appellant had called only Mr Y as his only witness of his claimed sexual orientation despite “also claiming to have been regularly going to gay clubs, having gay friends and having had three longer relationships in the last ten years” [39].
13. The appellant failed to produce any witnesses despite the fact that the appellant did not claim that the relationships finished in difficult circumstances and further the appellant had stated that he:

“did not try to contact E and stated that he did not want G or A to think that he had an ulterior motive for his relationship with either of them. He simply stated in this message to each of them but explained that it would be helpful to have corroborative evidence of his relationships for the purpose of his appeal”.

The judge was not satisfied that “the appellant had given an adequate explanation for his failure to provide any written or oral evidence from any man that he identifies as gay that he claims he has met in the UK” [40].

14. Further, the judge found there was no evidence such as an old photograph of the appellant or evidence from a gay dating app or other online activity or other financial expense [41]. The appellant provided similarly worded declarations from his aunt and uncle but decided not to call either of them. The judge gave the decision some but little weight. The appellant had not provided anymore evidence in relation to PTSD and at page 57 the GP merely described him as having a “low mood” and noted that the appellant “has informed him that he is a gay man” [42].

Grounds of appeal

15. The grounds of appeal stated:
16. Ground (1). There were irrational conclusions in relation to the delay in claiming asylum and Section 8, that the judge had failed to have due regard to material factors:
 - (i) At [30] of the determination the judge referred to the fact the appellant had gay friends he lives close with but found it incredible that he would not have learned from these individuals there was a

prospect of claiming asylum. This overlooked and failed to engage with the submission made on his behalf that the relationships for the appellant with other gay men were short-lived and it was implausible against the low threshold that in short-lived relationships which did not develop, that they were discussing their future together and potential routes for the appellant to regularise his immigration status.

- (ii) The assertion that it was not credible that other friends or family would not have advised him about the possibility of claiming asylum is based on a common misconception that all lay members of the public are familiar with protection claims in the UK. It is likely that younger, educated members of the public will be aware of the asylum option as those who have some direct experience, but it does not follow that those were who the appellant confided in.
- (iii) The determination appeared to misunderstand the appellant's case. The appellant claimed asylum in April 2016 after having been detained in March. He was then released and it was not until October 2019 that his interview was scheduled. By this point the appellant had been released and if his claim was a falsity, it was open to him not to pursue it any further. The fact he did not indicates his claim was genuine.

17. Ground (2) is a failure to have regard to material matters. The judge failed to have regard to:

- (i) The events in London where the appellant was caught leaving a gay club and kissing by his brother's friend A. The judge noted at [36] the appellant did not mention the kissing during his interview or in the corrective letter but instead raised it for the first time in his witness statement, indicating an inconsistency. The Tribunal failed to regard the appellant's account that he was told to give short answers during the interview process, the manner in which an interview is conducted is relevant. In the screening interview there was a wealth of authorities which warn against a set of reliance on his initial answers. The appellant submits similar precautions should be deployed by appellant's the evidence. He was told that he should keep his answers short during the substantive interview.
- (ii) The judge states the appellant decided not to call his aunt and uncle to give evidence but the affidavits they wrote said they did not feel comfortable attending court as it would mean going against their religion.

18. Ground (3) There were irrational findings made and inadequate reasons given, and excessive weight given to the appellant's use of the word 'normal'. At [38] the judge discussed the appellant's use of the word "normal when describing straight friends, although the judge indicated this was not a significant issue as the evidence, she had nevertheless gone on to hold it against the appellant. This was an arguable error. The use of the

term “normal” to describe his straight friends had been given far more weight than it deserved. The appellant originated from a society where his parents’ family friend and those generally around him view homosexuality as wrong, which can be no surprise. It is still instilled in his mind that heterosexuality is deemed to be the “norm”.

19. Ground (4), there were inadequate reasons for rejecting Mr Y’s evidence and irrationality, the judge had arguably given inadequate reasons for finding at [39] that Mr Y’s evidence was vague and superficial. The judge had recorded that Mr Y was well-aware of two of his partners and gave a largely consistent account of how he came to learn of the appellant’s sexuality but that Mr Y was not sure of the dates of these relationships should not take his evidence below the low standard and could not have been sufficient to rationally conclude that the other witness was not telling the truth.
20. Ground (5). There was a failure to make findings on the appellant’s relationship with U in Pakistan. It is submitted that the judge had failed to make findings in respect of the appellant’s relationship with Umair at [34] and [43] of her determination.

Rule 24 response

21. The Secretary of State filed a Rule 24 response opposing the appeal. In terms of the first ground, it was clear from [2], [15], [30] and [31] of the determination that the judge took into account both sets of submissions and had provided cogent reasons why the appellant’s explanation for the delay in claiming asylum was rejected.
22. In relation to the second ground, the challenge regarding the appellant’s failure to provide full answers to the respondent’s substantive interview was plainly wrong. The appellant relied on the case law of **YL (Rely on SEF) China [2004] UKIAT 00145** at [19] but the respondent submitted that the standard interview compared with the screening interview, as referred to in the above case, are to be distinguished. The screening interview is for the asylum seeker to set out their case in brief. For the substantive interview this is the opportunity for the asylum seeker to provide full details on their claim. The appellant was legally represented at the substantive interview and after the interview the appellant would have had an opportunity to report any errors or significant omissions and it is clear the appellant did not take this opportunity to clarify any answers to the questions in issue. So the assumption could be made the appellant was satisfied with the answers recorded.
23. Ground (3) was resisted. The appellant argued that the judge’s conclusions at [38] were irrational, provided inadequate reasoning and placed excessive weight on the “normal”, but the judge was entitled to make these findings of fact which were supported by legally adequate reasons. It did not mean by stating every aspect of the evidence that the

judge's conclusion was irrational or failed to provide adequate reasoning (see **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)**).

24. The fourth ground is resisted that the appellant argued that the judge failed to give adequate reasons of why Mr Y's evidence was rejected, but Mr Y's evidence did no more than repeat what he had been told, adding nothing of substance to the overall claim (see [39]).
25. On the fifth ground, the judge was plainly aware of the relation with U in Pakistan (see [3]) and the judge specifically noted the Presenting Officer's submissions the claim was not credible in the round.

The Hearing

26. At the hearing Ms Staunton relied substantially on the grounds of appeal and in particular at ground (1) submitted that the judge should be careful not to be influenced by his own background whereupon I enquired where there had been a particular challenge in the grounds on the basis of cultural background. Ms Staunton confirmed that the appellant arrived in the United Kingdom on a student visa, studied for a short time and then had his sponsorship revoked. That was recorded by the judge at [9]. There was no discussion by the judge of the appellant having been advised on asylum although she accepted that his problems had commenced prior to him entering the United Kingdom. She submitted that it was irrational for the judge to make the conclusions that he did. She submitted that the last point in ground (1) was that the appellant's claim was in fact pursued despite the hiatus between 2016 and 2019 and she clarified that it was not just that the claim that was over so many years but she added the point that if he had known before 2016 he could have claimed asylum, he would have done so.
27. In relation to ground (2) and the discrepancies of the account outside the nightclub, which the judge recorded at [36], the point was that the appellant was told that he should keep his answers short and that was not noted or addressed by the judge. For example, at question 103 he was not asked any follow up questions and he was not challenged in the appeal about his assertion that he had to keep the answers short. It could be seen that at question 103 the interviewing was interrupted so the interpreter could have a break, but no further questions on that particular point were asked during the interview. There was a failure by the judge not to take into account that the appellant was not asked and was told not to go into details about his sexual activity during the interview. She appreciated this was a substantial interview but the judge should keep in mind the factors surrounding the interview and should have made a finding on that point.
28. In relation to the aunt's and uncle's declaration they had explained why they did not attend the court and there was a failure of the judge to take

that explanation into account and the judge should not have reduced the weight as she did. Both of those errors were material.

29. In terms of ground (3) and the use of the word “normal” I was referred to [38]. The judge’s approach was irrational and alternatively gave inadequate reasons. There was no evidence that the appellant would have had an opportunity to have his terminology corrected and it was irrational to come to the conclusion that the judge did.
30. In terms of ground (4), the approach to the evidence of Mr Y at [39] was unclear as to how it was consistent and there was no reasoning behind this conclusion and greater weight should have been given to Mr Y’s evidence.
31. At ground (5) the judge relied on his account of his past gay activity, both in Pakistan and the UK and it was not clear whether the judge was accepting that he did have a relationship with Umair in Pakistan.
32. Mr Lindsay resisted all the grounds and relied on his Rule 24 response. He submitted the reasons were entirely reasonable and legally adequate and the grounds were weak.
33. In relation to ground (1), on any view, there was a significant delay in this appellant’s claiming asylum. Section 8 of the Asylum and Immigration (Treatment of Claimants Act) 2004 mandates that delay is taken into account and the judge’s approach at [33] was entirely rational and adequate in reasoning.
34. The issue should be read in the context of the whole decision and additionally, particularly at [29] and [30]. There was no challenge to [29] where the judge found that the appellant would have had his mind concentrated as to his immigration status, owing to his financial difficulties and against that background it was reasonable that the appellant would have been aware at the possibility of claiming asylum. Although the judge made reference at [18] to the appellant’s short-lived relationships, at [39] there was a reference to the longer relationships and there was no challenge on this finding, thus this ground fell away. There was no indication of why the grounds submitted that if the appellant had mixed with younger people, then they would be more likely to know.
35. In relation to the third point of ground (1), the appellant was seeking to derive credit from delaying in making an asylum claim. He sought asylum belatedly and the judge was entitled to make the findings he did.
36. In relation to ground (2) the judge did have regard to the answers being short, as recorded at [18]. There was no authority to suggest that it was anything other than sensible for an interviewer to suggest that the interview answers should be focused. It was not helpful to the appellant’s case if the answers are lengthy and discursive. The appellant was quite clear that he needed to disclose all of his evidence and cautioned at the outset of the interview and asked at the end if there was anything else he

needed to say. Further, he was legally represented at the time. He clearly knew he had a case to make and did not correct the answers.

37. In relation to the evidence of the aunt and uncle, the approach was manifestly correct and clearly the judge did give weight to that evidence. It was not clear that it made sense for a witness to give written evidence, but against their religious backgrounds, not to give oral evidence. In those circumstances, it was difficult to give weight to the statements and the judge found correctly that it did not advance the claim.
38. In relation to ground (3), Mr Lindsay highlighted that at [17] the judge stated and acknowledged the appellant's response might be influenced by his cultural background but also at [38] the judge stated it was a not a significant issue.
39. What the judge was saying, is that he would have expected the appellant to be supplying the explanation himself. It was not even the appellant's own evidence that he took this approach because of his cultural background where he described his friend as normal, rather, it was the judge and Counsel who came up with that.
40. In terms of ground (3) that was just a disagreement on a properly reasoned decision and in terms of ground (5), the Rule 24 response set out the paragraph of the determination where the judge mentioned the relationship at [33] and [34] and the findings were properly made at [43]. It was accepted the judge's phrasing might have been clearer but there was only one way to read that determination, which is that he rejected the credibility of the appellant wholesale.
41. Ms Staunton submitted that it was irrational to conclude that because of his financial difficulties he would ask his friends about his immigration status. At ground (2), the judge did not make a finding that the appellant was told to keep his answers short. In relation to the evidence of the aunt and uncle, the judge states merely that the appellant decided not to call them. That was an incorrect basis.

Conclusions

42. At the outset I highlight that a challenge on irrationality grounds has to reach a very high threshold and in relation to the weight to be given to evidence, as the Court of Appeal said at [18] of *Herrera v SSHD* [2018] EWCA Civ 412, that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence, *Durueke* (PTA: AZ applied, proper approach) [2019] UKUT 197 (IAC). That is the case here for the following reasons.
43. It is important to read this decision as a whole and I have set out the key findings of the judge above.

44. In relation to ground (1), it is asserted that the judge overlooked the evidence that the appellant had relationships with other men which were only short-lived but is quite clear that the judge by contrast, took into account at [39] the appellant's *own* evidence recorded at [34] of his three longer relationships, and it was open to the judge to make observations on the sole calling of Mr Y whose evidence itself the judge found unhelpful.
45. In ground (1) overall it is important to note that this appellant, as the judge pointed out, maintained that he had difficulties in Pakistan owing to his sexuality well before he came to the United Kingdom. That was his case. As noted, this is an appellant therefore who came to the UK with existing problems, studied at a college and as the judge cogently found the appellant's immigration and financial circumstances would have concentrated his mind on his immigration status and it was open to the judge to consider that the appellant would have had opportunity of discussing claiming asylum prior to being detained in 2016.
46. The second point of the challenge made in ground (1) accepts that "It is likely that - with respect - younger/educated members of the public will be aware of an asylum option". This appellant had studied at a college with those of similar ages, post his alleged difficulties with his sexuality in Pakistan and as the judge recorded at [30], one of the reasons he wanted to come to the UK was that he could be 'free' here. A submission was made by the Home Office that it was not accepted that the appellant would not have heard of asylum until he was arrested and it was entirely open to the judge to find that considering the appellant was residing in the UK without any lawful status or access to funds, his mind would have been concentrated (a finding not challenged) and those who were close to him would have discussed his predicament with him. As the judge cogently states, it was not accepted that the appellant would not have learnt from other Pakistani gay men or his own close friends or his relatives that he was able to claim asylum on the basis of sexual orientation before he was detained in 2016. It is not a requirement that he has to have a relationship with those people whilst learning of the possibility of claiming asylum and indeed it was always the appellant's claim that he frequented gay bars and gay pride marches.
47. The third point of ground (1) takes the case no further. As noted in the decision, the appellant entered the UK in 2010 as an independent student and yet delayed his asylum claim for six years. The judge was obliged to take into account Section 8 and it was open to the judge to find the assertion that the delay, (bearing in mind he was not arrested until 2016 and only pursued his claim thereafter), did not indicate a genuine claim and to reject that the appellant was unaware of the asylum process.
48. To suggest that the judge failed to properly address the appellant's claim or did not understand it at [31] is not sustainable. The challenge suggested that if the appellant's claim was a falsity, he would not have pursued it further after 2016 and this showed he did not know about asylum. As the judge pointed out, however, delay up to 2016 damaged his

credibility and moreover there was an inadequate explanation for that delay to 2016, let alone the post 2016 delay.

49. In relation to ground (2) and a failure to have regard to material matters, the appellant evidently had the opportunity to put his full claim at the time of his substantive interview. I was handed a copy of the substantive interview and this clearly states at the outset that:

“This interview is your opportunity to tell us your reasons for claiming asylum. It is very important you do not withhold any information you believe to be relevant to support your claim. I will help you by asking you questions so that we have the information we need to make a decision in your case.”

50. At the end of the interview the appellant was invited to add anything or to clarify the answers. The appellant gave a full answer at question 103 and albeit that the interpreter requested a break, that does not relieve the appellant of the responsibility for submitting his own evidence or corrections or additions, either at the interview or in the correction letter. The judge criticised the appellant for not mentioning “kissing during his interview or in the corrective letter and thus any queries over the interview do not assist”. The information given in his witness statement was criticised by the judge for referencing for the first time the kissing outside the club but it was open to the judge to find this was inconsistent with the information he gave in his interview and the corrective letter. That was evidence supplied by the appellant and the judge’s approach cannot be criticised.
51. The screening interview is for the asylum seeker to set out their case in brief. The substantive interview is the opportunity for the asylum seeker to state his case more fully, and the opportunity was clearly given to the appellant, to provide full details on his claim. The appellant was legally represented and also provided corrections. The appellant relied on the case law of **YL (Rely on SEF) China [2004] UKIAT 00145** at [19] but as the respondent submitted, the standard interview and the screening interview, as referred to in the above case, are to be distinguished and further there was not a comparison by the judge between the screening interview or SEF on the one hand and the substantive asylum interview on the other. The contrast as the judge noted here was between the appellant’s corrected substantive asylum interview and his *later* evidence. The judge’s approach did not contain a material error of law for remarking upon the inconsistency in the appellant’s claim.
52. That the judge decided not to call his aunt and uncle to give evidence does not detract from the observation of the judge at [42] that the appellant provided “similarly worded declarations from his aunt and uncle”. It is clear that the judge was thus aware of the contents of those statements and the reasons that they had given. The judge does not state he gives no weight to that evidence but gave, understandably, little weight to it and it is open to the judge to do so because of the absence of those

witnesses for whatever reason. It is not incumbent upon a judge to give more weight to the statements merely because the witness decides they will not attend because of their religious beliefs. Simply they were not open to cross-examination by the respondent and as such their evidence may unarguably and logically be given less weight by the judge.

53. In terms of ground (3) and the challenge on the basis of irrational findings, inadequate findings or excessive weight to the appellant's use of the word normal, I find is not sustainable. First, the judge's approach can hardly be described as irrational as the reasoning logically flows and is based on relevant and material facts. It is a matter for the judge as to what weight to give the evidence **Herrera**, and the judge clearly took into account that the appellant originated from a society where his parents and family and those around him view homosexuality as wrong. Not only did the judge state that the description by the appellant of his heterosexual friends as "normal" was not a significant issue, but the key point is, as the judge states, in the last sentence of [38], is that it would be expected that that the appellant himself would have provided some explanation of why he used those descriptions considering his eagerness to provide full evidence, rather than leaving it to his Counsel or indeed to the judge to suggest that his background may explain the language used by the appellant. That was the difficulty with the appellant's language. The judge gave adequate reasons for his finding, given to the appellant's language, which I repeat was not considered to be a significant issue.
54. Turning to ground (4), again the charge of inadequate reasons and irrationality was given to the judge's treatment of Mr Y's evidence. It is asserted that the judge gave inadequate reasons for finding Mr Y's evidence vague and superficial and that his evidence "could not have been sufficient to rationally conclude that the witness was not telling the truth".
55. Paragraph [39] should be considered carefully; not least the judge states that he considers Mr Y's evidence in the light of the rest of the available evidence, which has been examined above. The judge acknowledged that Mr Y knew the names of the appellant's claimed last two partners, but indeed could not recall when those relationships took place. As the judge identified, Mr Y provided only a very brief written statement which confirmed that he was aware of the appellant's sexuality and that they were good friends and that he was proud of the appellant's courage to be open about his sexuality and Mr Y takes the appellant out when the appellant is depressed and supports him financially, but as the judge was entitled to factor in, for Mr Y then to proceed, as the judge records, to say that he [Mr Y] was not interested in the appellant's personal affairs was a sharp contradiction with his witness statement and the judge was indubitably entitled to find that there was such a contradiction and thus that the witness' evidence was undermined. That was in addition to finding the witness's evidence to be vague and largely superficial. As the judge explained, if the witness had been "good friends" with the appellant

and supported him as asserted, the declaration that he was not interested in his personal affairs was a difficulty in the evidence. It was thus open to the judge to find that he was not satisfied to the lower stand that the witness's evidence was reliable.

56. It is also relevant that the judge noted that Mr Y was called as the appellant's only witness of his claimed sexual orientation despite also claiming to have been regularly going to gay clubs and having gay friends and having three longer relationships in the last ten years. I have made reference to this above.
57. I find ground (5) that the judge did not make findings on the relationship with U to have no merit whatsoever. The judge recorded the asserted relationship with U in Pakistan at [3] and that the appellant maintained that, as the judge recorded at [30], that the appellant had had same sex relationships in Pakistan, and that one of the reasons he wanted to come to the UK was that he could be free here. However, the judge stated categorically at [43] onwards that she did not find the appellant's evidence to be credible and that she was not satisfied that the appellant had established to the lower standard that he was gay and that refers to any of his relationships - U included. The judge fairly accepted at [43] that the relationship with U was not undermined by internal inconsistency or implausibility as asserted by the Secretary of State because at [34] the respondent had raised numerous and somewhat repetitive issues for disputing the relationship and the judge further accepted that there was nothing intrinsically implausible about the appellant persuading his family he had reformed and they therefore agreed to sponsor his studies, but at the same time keeping an eye on him when he moved to the UK. That said, it is clear that the judge went on to find she did not find the appellant's account in relation to U within the context of his whole claim to be credible. As the judge states taking a balanced approach at [43], having considered Section 8 of the Treatment of Claimants Act and the evidence overall:

"I find there are inconsistencies in relation to the 2012 incident and there is an inadequately explained lack of corroborative evidence of his sexual orientation that should be available to the appellant if he indeed was in same sex relationships and was attending gay clubs regularly as he claims. I am not satisfied that the limited documentary evidence the appellant has provided, together with the limited nature of the evidence provided by his witnesses adequately assists the appellant to establish to the lower standard that he is a gay man. I do not accept as credible the account the appellant has given for the delay in his claiming asylum and I find that the appellant's credibility is further damaged as a consequence of the operation, Section 8 and his failure to apply for asylum earlier."

58. In the light of my observations above, I also find that the points made by the Secretary of State in the rule 24 notice and those made by Mr Lindsay have force. I note that Mr Lindsay submitted that the judge's phrasing

could have been more elegant but overall, I find the judge gave sound and rational and adequately reasoned findings for dismissing the claim and the First-tier Tribunal decision shall stand.

Notice of Decision

The appeal of the appellant is dismissed, and the decision of the First-tier Tribunal will stand. The appellant's appeal remains dismissed.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber
31st December 2023