



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

**Case No: UI-2022-005697**  
**First-tier Tribunal No:**  
**PA/53101/2020**  
**IA/02844/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 30 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**'MA' (PAKISTAN)**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Jones, Counsel, instructed by Farani Taylor Solicitors  
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

**Heard at Field House on 15 August 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. The reason for this is that the appeal relates to a claimed fear of persecution based on the appellant's sexuality.**

**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**

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of his protection claim.

## *Background*

2. The background to the hearing was set out by Judge Hussain, in a original decision whose findings I did not preserve, but elements of which are undisputed. In summary, the appellant was born on 25<sup>th</sup> August 1981 and is a national of Pakistan. He arrived in the UK on 5<sup>th</sup> February 2010 on a Tier 4 Student visa, which was valid until 31<sup>st</sup> March 2011. On 29<sup>th</sup> March 2011, he submitted an application for leave to remain as a student, which was granted on 15<sup>th</sup> April 2011, valid until 30<sup>th</sup> October 2012. On 4<sup>th</sup> April 2012, he submitted an application for leave to remain as a Tier 1 (Post-Study) Migrant, which was refused on 28<sup>th</sup> December 2012. The appellant appealed this decision, which was withdrawn on 16<sup>th</sup> April 2013 to enable reconsideration, resulting in leave being granted until 17<sup>th</sup> June 2015. In 2013 the appellant travelled home to Pakistan for three to four weeks, before returning to the UK. In 2014, he did the same, and on a final occasion in 2015, returning to the UK in May 2015, since when he has never left. The appellant married a Pakistani national who currently resides in Pakistan. His marriage, which took place in 2014, lasted until 2016, when he was divorced. There are no children from that marriage.
3. On 17<sup>th</sup> June 2015, the appellant applied for leave to remain based on a right to respect for his family and private life, which the respondent rejected on 18<sup>th</sup> August 2015. This was because the appellant had failed to meet the destitution criteria to qualify for a fee waiver.
4. On 24<sup>th</sup> August 2015, the appellant applied for a second time for leave to remain, which was refused on 23<sup>rd</sup> January 2016.
5. On 15<sup>th</sup> April 2016, the appellant applied a residence card as an extended family member of an EEA national, whom he has later confirmed was an uncle, which was refused on 5<sup>th</sup> October 2016. On 31<sup>st</sup> October of that year he submitted another application for a residence card as an extended family member, which once again was refused on 4<sup>th</sup> May 2017. On 5<sup>th</sup> October 2019 he submitted a human rights claim which was refused on 20<sup>th</sup> December 2019.
6. Finally, on 14<sup>th</sup> January 2020, the appellant claimed asylum, which the respondent refused in the impugned decision of 17<sup>th</sup> December 2020.
7. I have recited these various claims and dismissals in the context that it was not until January 2020 that the appellant then brought an asylum claim.

## *The Hearing*

### *The issues*

8. I identified and agreed with the representatives the issues in the case. The appellant's representative, Ms Jones, had previously confirmed that the appellant no longer sought to rely on, or claim that he feared persecution on the basis of actual or perceived political opinion, nor did he seek to resist removal on the basis of any ill-health.

9. Instead, there were two issues. The first was whether the appellant was a bisexual man. Second, if he were a bisexual man, by reference to the well-known authority of HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31, which I discuss in more detail in the legal section below, would the appellant nevertheless choose to live discretely in Pakistan, and would that discretion be motivated by a fear of persecution. Ms Jones accepted, on the one hand, that if the appellant were not bisexual then both his protection and human rights claims would fail. However, on the other hand, if it were found that he would be discrete and not because he feared persecution, the appellant nevertheless claimed that there would be very significant obstacles to his integration in his country of origin, Pakistan. Both parties accepted that if the appellant were an openly bisexual man, he would be a member of a 'particular social group'; there would be insufficiency of protection against persecution in Pakistan; and that internal relocation would serve no purpose because of societal attitudes towards anyone other than heterosexuals.

### The bundles and witnesses

10. I had before me a bundle running to 1,599 pages, many of which were duplicate documents and so I have referred to only a small number of them in reaching my decision. I focused on the witness statements, from witnesses who attended the hearing and gave live evidence on which they were cross-examined, and those who did not attend. I attached less weight to the statements of those who did not attend. I also reviewed photographs, to which I was referred, said to be of the appellant and a former partner, who I anonymise as 'S', and of the appellant at various social and political events, such as Pride.
11. The appellant gave oral evidence, as did his claimed current partner, whom I anonymise as 'M', who has already been recognised as a refugee. I heard evidence from 'NI', who has been a friend of the appellant since 2010. I also heard witness evidence from Matthew Naz Mahmood-Ogston, founder and executive director of the Naz and Matt Foundation, an LGBTQI+ organisation focusing particularly on those who suffer homophobia for cultural or religious reasons.
12. Finally, I heard witness evidence from somebody who was content to be identified publicly as 'Hiba', an openly trans women and a Pakistani national who also had been granted refugee status and has been a friend of the appellant since May 2022. M, NI and the appellant all gave evidence via an Urdu interpreter. They confirmed their understandings on each occasion with the interpreter and I was satisfied that there were no difficulties in interpretation.

### *The Law*

13. Paragraph 334 of the Immigration Rules states that the appellant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on the appellant to satisfy me that he falls within the definition of a refugee in Article 1(A) of the Refugee Convention. In essence, the appellant has to show that there are substantial grounds for believing that he is outside his country of nationality by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling, owing to such fear, to avail himself of the protection of that country. I have also considered section 8 of the Asylum and Immigration (Treatment of Claimants)

Act 2004, in particular, section 8(5). I raise this as the appellant was the subject of a number of earlier refusals of leave to remain before he claimed to be bisexual. I add, for completeness, that the changes brought in by section 32 of the Nationality and Borders Act 2022 in relation to the standard of proof do not apply, as the asylum claim predates NABA's provisions.

14. The case of HJ (Iran) is also relevant, because of the second issue of whether, even if the appellant were bisexual, he would live as openly bisexual in Pakistan. If he lived 'discretely', would this be because of a fear of the persecution which would follow if he were to live openly in Pakistan?

#### Findings of fact

15. I considered all of the evidence presented to me, whether I refer to it specifically in these findings or not.
16. I have turned first to the question of the appellant's credibility by reference to paragraph 339L of the Immigration Rules and also Section 8 of the 2002 Act.
17. I have assessed the appellant and his witnesses. I find them to be generally credible.
18. On the one hand, I accept the respondent's challenge that the applicant did not claim asylum until after many previous adverse decisions against him, despite having lived continuously in the UK since 2015. The appellant does not say that he was unaware of the right to claim asylum. Rather, he says that until 2020, he was without legal representation and was fearful that he if he claimed asylum that the Pakistani authorities would subsequently learn of his claimed bisexuality. Nevertheless, the appellant's delay in claiming asylum must damage his credibility.
19. However, I must consider all of the evidence in the round. The evidence broadly falls into two parts. The first part is the evidence which the respondent considered in the refusal letter of 2020, although this is, of course, substantially out of date. The respondent had analysed the appellant's answers at a screening interview and in a later substantive interview, the notes of which begin at page [466] onwards of the bundle. The respondent had analysed claims of two relationships before the appellant initially came to the UK. The first was with a schoolfriend and the respondent considered that the appellant's answers as to how he felt when he first knew he was attracted to the schoolfriend as being vague. It was also said that there was an inconsistency about when the appellant claimed to realise his sexuality, on the one hand claiming it was when he was 16 years old and on the other when he was later at college. The theme of the respondent being critical of what it regarded as a vagueness of the appellant's testimony continued, including how it made him feel about the society in which he was brought up, which he described as being frustrating. The appellant had also spoken about a relationship with a college friend, called 'R' and was asked about how that relationship developed. He spoke of them socialising, praying and playing together and it was unclear to the respondent how that developed into a relationship beyond a friendship. The respondent was also unclear as to why R felt safe enough to discuss the topic of sexuality with the appellant. Asked as to how he had kept the relationship between him and R secret, the appellant said that they were committed to one another and knew it was hard to do so in

Pakistan, but once again the respondent regarded the appellant's answers as vague.

20. The respondent then analysed the claim of the appellant's relationship in the UK with S between 2012 and 2015. Once again, the respondent criticised the appellant's answers as vague, when he was asked about how he and S supported one another and S's qualities. It was said that more detail could reasonably be expected when the appellant claimed to have been in a relationship with him for three years. Whilst the appellant had submitted various photographs of the appellant attending venues and events associated with LGBTQI+ people, it was possible for anybody to attend such events. The respondent was also concerned that the appellant was inconsistent about how his family came to learn of his sexuality in 2019, on the one hand saying he was unaware who had told them, or on the other, that he believed a friend had told them but his relatives did not confirm this. The criticism once again was that the answers were speculative and vague.
21. The appellant described three relationships in the UK, the first with 'S', between August 2012 and February 2015, the second with 'IA' between September and December 2019 and the most recent, current relationship with 'M' since June 2023. Of importance, the appellant's relationship with M is corroborated by his friend, NI, who had also met S and the appellant at NI's home and had claimed to have known of the appellant's sexuality since 2013.
22. The appellant's friend, Hiba also confirmed in evidence that she had met 'M' and although she had not met 'S', the appellant had spoken to her previously about his relationship with 'S', when her friendship with the appellant first began.
23. Finally, in terms of the full picture on the prior claimed relationships with 'S' and 'IA', Mr Mahmood-Ogston also gave evidence about how the appellant had approached his charity, the Naz and Matt Foundation, through which people can apply for access to be given support. He described a vetting process whereby those seeking help are asked a series of questions and then invited to confidential and secure therapeutic discussions at secret locations. Mr Mahmood-Ogston said that the Naz and Matt Foundation is, on occasion, asked to provide letters of support and Mr Mahmood-Ogston indicated that he was particularly conscious that the charity's services may be sought by those who are not LGBTQI+, but instead wish to pretend as such. He confirmed that in the past, where the Foundation believed that somebody was not LGBTQI+, they would refuse further engagement and would decline any letter of support and there have been occasions on which this had happened. In contrast, in the appellant's case, whilst he was conscious that the appellant's credibility was a matter for this Tribunal, he described a process where the appellant, in common with others seeking assistance, was asked detailed questions (around in excess of 30 questions in number), which then formed the basis of his report at pages [57] to [61]. These included the appellant's description of being bullied in Pakistan (he was the subject of specifically identified homophobic slurs), feelings beyond normal friendship for a schoolfriend, F, his claimed relationship with R, with specific detail as to their having sex, and how the appellant was outed in 2019. I regarded Mr Mahmood-Ogston as a particularly impressive and careful witness, careful in the sense of not substituting his role for this Tribunal in assessing the credibility, but on the other hand describing detailed processes of having worked with the appellant for a number of hours on a number of occasions, including

outside formal settings and which did not lead Mr Mahmood-Ogston to doubt that the appellant was a bisexual man.

24. I turn then to the evidence of the appellant's claimed relationship with 'M'. On the one hand, there were certain differences, possibly in emphasis in how they enjoyed their social time together. The appellant said that they had gone to the seaside together. M, in his oral evidence, made no reference to this and could remember only playing cricket in the park on a couple of occasions and otherwise talking. However, as Ms Jones pointed out, 'M' did refer to going to the seaside trip in his witness statement. There was also said to be a difference in whether the appellant and 'M' regarded their relationship as being an 'open' one, in the sense of whether it was a non-monogamous relationship, but I regard the differences as not being real, and instead based on the witnesses' different understanding of what 'open' meant, ie. living openly as opposed to a non-monogamous relationship. Mrs Nolan also challenged what she said were inconsistencies about when 'NI' was aware that the appellant was bisexual. The appellant said this was in 2012, whereas 'NI' said this was in 2013, but I accept Ms Jones' point that the question of a year's difference in a matter of over a decade ago, does not in reality amount to any substantial difference in the evidence. I accept Ms Nolan's challenge that there was a limited number of photographs with 'S', but, once again, I do not regard this as fundamentally undermining the appellant's case.
25. Overall, I had the evidence of two men claiming to be in a committed relationship, testified as to by Hiba, who regarded the appellant as her best friend, corroborated by Mr Mahmood-Ogston in a careful vetting process, and where NI, who has known the appellant since 2010, and candidly was shocked by the appellant's sexuality, attested to the claimed prior relationship with 'S'.
26. Notwithstanding the respondent's concerns about the vagueness and some minor inconsistencies in evidence in the substantive interview, I am more than satisfied that the evidence in this case is compelling and notwithstanding the lateness of the appellant's claim of asylum, I find that the claimant is, as he claims, currently in a relationship with his male partner and is bisexual, as he claims.
27. I then need to make findings as to whether, if the appellant were to return to Pakistan, he would live openly as a bisexual man. The appellant has been reticent about his bisexuality whilst living in Pakistan, but since living in the UK has had a number of relationships and has become more and more open about his sexuality, including attending Pride events and in particular in accessing support from the Naz and Matt Foundation. His immediate unprompted oral evidence was not that he would conceal his sexuality, but that he would live openly as a bisexual man in Pakistan. Given that his closest friendship group is with those within the LGBTQI+ community and his need to access support services from the Foundation, I have little doubt that were he returned to Pakistan, he would feel compelled to seek out other members of the LGBTQI+ community and in doing so, would be compelling be open about what he regards as his true sexuality, namely as a bisexual man. In the circumstances, that would, I have no doubt, result in a genuine fear and well-founded fear of persecution. There would also be a real risk of serious harm to him for the purposes of Article 3 ECHR and would prevent any chance of reintegrating as an insider into that country, given societal norms and attitudes towards bisexual and other members of the LGBTQI+ community in Pakistan.

Conclusions

28. On the facts established in this appeal, the appellant has a well-founded fear of persecution on the basis that he is a bisexual man who would live openly as such, in Pakistan. There are grounds for believing that the appellant's removal from the UK would result in a breach of his rights under Article 3 of the ECHR, based on a risk of harm because he is bisexual. Removal would also breach his right to respect for his private and family life for the purposes of Article 8 ECHR.

**Notice of decision**

29. The appellant's appeal on asylum grounds is upheld.

30. The appellant's appeal on human rights grounds by reference to Articles 3 and 8 ECHR is upheld.

Signed: J Keith

**Upper Tribunal Judge Keith**

Dated: **5<sup>th</sup> September 2024**

**ANNEX: ERROR OF LAW DECISION**



**IN THE UPPER TRIBUNAL  
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**THE IMMIGRATION ACTS**

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**UPPER TRIBUNAL JUDGE KEITH**

Between

**'MA' (PAKISTAN)  
(ANONYMITY ORDER MADE)**

Appellant

and

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

Respondent

**Representation:**

For the Appellant: Ms A Jones, Counsel, instructed by Buckingham Legal Associates

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 21 March 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. The reason for this is that the appeal relates to a claimed fear of persecution based on the appellant's sexuality.**

**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**



1. These written reasons reflect the oral decision which I gave to the parties at the end of the hearing.

## **Background**

2. The appellant appeals against the decision of a Judge of the First-tier Tribunal, Judge Hussain (the 'FtT') who, following a hearing promulgated on 24<sup>th</sup> August 2022, dismissed the appellant's appeal. I do not recite the full immigration history or the findings, as matters have now substantially narrowed since both that decision and the appellant's renewed application for permission. There had been grounds of appeal based not only on the appellant's claimed sexuality as a bisexual man but also because of his political opinion, and a claim under Article 3 ECHR based on medical grounds. Ms Jones confirmed to me today that the appellant no longer pursued his appeal on the basis of Article 3 ECHR on medical grounds, or the protection appeal based on political opinion. The sole basis on which the appellant now says that the FtT erred in law, in making his decision, was the FtT's assessment of whether the appellant is bisexual as claimed, and so is entitled to protection. I refer to the appellant's immigration history only to note Mr Tufan's point that the FtT reached his findings in the context of five earlier refusals of leave to remain before the appellant had claimed to be bisexual (see §§2 and 3 of the FtT's decision).
3. At §§6 to 29, the FtT recited the respondent's refusal letter at length, albeit as Ms Jones pointed out, the appellant's later focus in his claim was less on state persecution, and more on his claimed fear of persecution from non-state actors, and the lack of adequate protection or the practicability of internal relocation, in the appellant's country of origin, Pakistan. The FtT noted at §30 that no Presenting Officer had attended on behalf of the respondent, but the FtT had regarded it as appropriate to proceed with the hearing. The FtT recorded at §31 that three witnesses, the appellant, a claimed former partner, 'MS', as well as another friend, 'NI', adopted their evidence and were tendered as witnesses.
4. The FtT reminded himself of the law at §§54 and 56, as to which there is no challenge that the FtT misdirected himself. Rather, the appellant's subsequent challenge relates to the application of the law, in two aspects which I will come on to describe.

## **The grounds of appeal and submissions**

5. In terms of the grounds of appeal in the grant of permission, I do not recite the full grounds of permission, because once again, Ms Jones confirms that the appellant now only wishes to rely on two aspects of it. The first is that the FtT had erred in his analysis of the appellant's delay in claiming asylum. She says that the FtT had asked the wrong question. Instead of asking whether the appellant had a genuine fear that if he claimed asylum in the UK, the respondent might disclose this to the Pakistan authorities, and this was why he delayed claiming asylum for many years, the FtT had asked whether such a fear was objectively reasonable. That error had undermined the remainder of the FtT's credibility assessment. The FtT's second error was to discount the witness evidence of MS, who had described his previous relationship with the appellant, on the basis that it was easy to make such uncorroborated claims, without the FtT providing adequate reasons for disbelieving MS, or the third witness, NI.

6. For the respondent, Mr Tufan argues that the FtT was entitled to consider the appellant's delay in claiming asylum, in the context of five previous unsuccessful applications for continuing leave to remain and only, at the last minute, claiming to be bisexual. Any distinction between an objective and subjective fear as a possible explanation for that delay, was not a real one, in the context of the facts. The FtT was entitled to describe the witness evidence of MS as amounting to bare assertions. There was a discussion about whether MS had been recognised as a refugee because he was gay. Ms Jones's instructions were that he had been. Mr Tufan's instructions were that he had made an asylum claim in 2015 which had been refused and certified and MS had made further submissions in 2021, which the respondent was still considering.

### **My Decision and Reasons**

7. I will not recite either the full grounds or the submissions except for where it is necessary for me to explain my decision. I am very conscious of not substituting my view for what I would have decided, for the FtT's decision. I am also very conscious of the danger of what is sometimes described as "island-hopping" between particular aspects of the evidence, (see Joseph (permission to appeal) [2002] UKUT 00218).
8. I turn first to the FtT's assessment of delay, by reference to Section 8. While the FtT refers to the 2014 Act, I take it to mean the Asylum and Immigration (Treatment of Claimants) Act 2004, and the FtT can be safely assumed to have made a typographical error. It is worth reciting the FtT's reasons, at §§58 to 61 of his decision:

- "58. The respondent has attacked the appellant's credibility, relying on Section 8 of the 2014 Act ... The appellant's explanation for the delay is set out above in a direct verbatim quote from his written statement. There he claims that he was fearful of telling the Home Office in writing that he was a homosexual because he feared that this information would be passed to his country's authorities by the Home Office. That claim lacks credibility in its entirety. First of all, it is not clear why, if the appellant feared that the Home Office would inform the Pakistani authorities of his bisexual orientation, how he overcame that fear in 2020, when he did apply for asylum. Secondly, there is no basis for making that assumption. In light of the history cited above, the appellant is someone who is no stranger to making applications and therefore, would have been aware (by enquiring with his legal representatives) that the Home Office does not share information about asylum claims with the claimant's country's authorities. Thirdly, there is absolutely no objective evidence that the authorities of Pakistan, acting on information given by foreign governments, go around persecuting individuals because they are homosexual.
59. I do not accept that the appellant has provided a reasonable explanation for why he delayed his claim and accordingly, I find that his credibility is deemed damaged.
60. I direct myself that a finding of deemed damage to credibility is not determinative of a claimant's overall credibility. In other words, the Tribunal still has to make an assessment of the appellant's claim, bearing in mind the deemed finding of a lack of credibility.
61. Taking the approach suggested above, in my view, the appellant's claim has no truth to it..."

9. I agree with Mr Tufan's submissions on this first ground that the FtT has not fallen into the trap of merely conducting an assessment based on whether the appellant's fear, however subjectively genuine, was not objectively justified. What the FtT did was to consider whether the appellant actually had such a genuine fear, which had caused the delay in the claim, and also to consider whether it was objectively justified. As Mr Tufan reiterated, the appellant had the benefit of legal advice and would have been aware, on seeking advice, that the respondent did not share information about asylum claims. Ms Jones also accepted that the FtT had not erred in treating delay as determinative, but the FtT had considered delay as one factor. Having considered the FtT's analysis in context, I conclude that the FtT did not err in law in his analysis of delay.
10. However, I come on to the second ground, and the FtT's assessment of MS's evidence. The context is that there was no Presenting Officer at the FtT hearing. Crucially, MS and another friend, NI, had been tendered and adopted their witness statements. I am conscious that it is not the function of an FtT in these circumstances to adopt an inquisitorial role, but in the absence of a Presenting Officer, the FtT should form their own view of a witness's credibility (see MNM (Surendran guidelines for adjudicators) Kenya\* [2000] UKIAT 5). Merely because MS was tendered to give evidence, did not oblige the FtT to accept that evidence. There is no challenge on the ground of perversity. The issue here is whether the FtT's reasons for disbelieving MS were sufficient. The FtT stated at §62:
- “62. ....despite claiming to be in two different relationships in this country, there is very little evidence that he [the appellant] has here led an open life. For example, there is no evidence that he has cohabited with the witness [MS] with whom he is supposed to have been in a relationship from 2012 to 2015. [MS] deposed a statement which I have read. It contains bare assertions which are easy to make. There is no supporting evidence from which I could reasonably conclude that the two were in a homosexual relationship. It would have been helpful to have received [MS's] own statement to the Home Office to see whether there was any reference to his relationship with the appellant”.
11. I am conscious, on the one hand, that I should be very careful about ascribing an error of law based on the adequacy of explanation, and I am also conscious of Mr Tufan's point that the assessment of credibility was not only on this point but on a variety of factors, for example, an assessment of photographs, at §63. However, I conclude that the FtT's reasons fell into error. First, as Ms Jones pointed out, the appellant had never claimed to have lived with MS. Rather, he had so simply claimed to have been in a relationship with him from 2012 to 2015, which MS also claimed. Second, and having myself reviewed MS's statement in the FtT bundle, MS describes the circumstances of meeting the appellant and the duration of their relationship. The FtT's reference to bare assertions may be said to be a criticism about the lack of detail about the relationship between 2012 and 2015, but the FtT goes on to say that there is no supporting evidence from which he could reasonably conclude that the two were in a homosexual relationship. That clearly imports a requirement of corroboration. It is also unclear whether the FtT explored with MS at the time, why there was an absence of other forms of evidence. If that was a concern of the FtT, that is something which the FtT could fairly be expected to have raised and asked the appellant's representative to address. Instead, what the reader of the FtT's decision is left with is a witness statement of a witness who is tendered to give evidence; who affirms their evidence as being true; who is not cross-examined; who has described, in broad outline, the nature of the relationship, with dates and the circumstances of meeting his claimed partner; and whose evidence is disbelieved in its entirety.

To do so in this case because of the lack of corroboration is an error of law (see §84 of MAH (Egypt) v SSHD [2023] EWCA Civ 216). To describe formally adopted witness evidence as a bare assertion, without indicating what is missing, is also an error. It begs the question of what more the witnesses should have said, by way of oral evidence; or if oral evidence was not sufficient, why it was not sufficient.

12. The FtT's assessment of the appellant's claim is therefore unsafe and cannot stand. It is appropriate that I set aside his decision.

### **Disposal of Proceedings**

13. I am required to consider how the matter should be disposed of. I canvassed with the representatives and both were content that I retain re-making in this Tribunal. §7.2(a) of the Senior President's Practice Statement did not apply because there was no suggestion that the appellant had been deprived of a fair hearing. Ms Jones also invited me to consider that the issues were now very narrow, namely the claim that the appellant is a bisexual man. The extent of any judicial fact finding was limited (§7.2(b)). Mr Tufan agreed with Ms Jones that I should I retain re-making in the Upper Tribunal.

14. The following directions shall apply to the future conduct of this appeal:

- (a) The Resumed Hearing will be listed at Field House on the first available date, time estimate 3 hours, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.
- (b) The appellant shall no later than 4pm, 21 days before the Resumed Hearing date, file with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. This shall be in hard copy and electronic format. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.
- (c) The respondent shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than 4pm, 14 days before the Resumed Hearing date.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside. Remaking will be retained in the Upper Tribunal.**

**The anonymity directions continue to apply.**

**J Keith**

Judge of the Upper Tribunal

Appeal Number: UI-2022-005697  
First-tier Tribunal Number: PA/53101/2020

Immigration and Asylum Chamber

**30<sup>th</sup> March 2023**