



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002495

First-tier Tribunal No: PA/53082/2023
LP/00863/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 9 September 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

**QN
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Harvey, Counsel, instructed by Warren Grant Immigration
For the Respondent: Ms S. Cunha, Senior Home Office Presenting Officer

Heard at Field House on 27 August 2024

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

1. The Appellant is a citizen of Pakistan who, on 29 September 2020 claimed asylum on the basis of his sexuality. The Respondent refused his claim on the basis that it was not accepted that he was in fact gay and he appealed to the First-tier Tribunal. Before that Tribunal the only issue was whether he had demonstrated to the lower standard of proof that he was gay. By a decision dated 10 April 2024, First-tier Tribunal Judge Chana ("the Judge") concluded that he was not an accordingly dismissed his appeal.

2. Permission to appeal to this Tribunal was however granted by First-tier Tribunal Judge Turner on all grounds, and two further grounds which he identified in his decision of 24 May 2024.
3. The Judge did not make an anonymity direction in this case and did not explain why not. Given that the Appellant's claimed homosexuality, if known to the Pakistani authorities, could potentially give rise to a risk of harm to the Appellant on his return, it is a case even if ultimately found not to be well-founded, in which it is appropriate to make an anonymity order, which I do in the terms set out above.
4. Before me, Ms Cunha, who appeared for the Secretary of State, conceded, correctly in my view, that the first of the Appellant's grounds of appeal was made out. She therefore submitted that the appeal should be allowed, the Judge's decision set aside in full and the appeal remitted for redetermination by a different Judge of the First-tier Tribunal. Given this concession, I announced at the end of the hearing that I would allow the appeal and remit the case as suggested, for reasons which would follow. These are those reasons, which, given the Respondent's concession, I can set out relatively shortly.
5. The Appellant has been in the UK for a number of years, initially as a student. He overstayed and sought leave to remain as an extended family member of an EU national in 2018. That was rejected by the Secretary of State and the Appellant did not appeal. The relationship was with a woman and plainly this gives rise to questions (about which I express no view) in relation to his credibility given that his current claim is that he is gay, not bisexual. Be that as it may, it is relevant to note that the decision in relation to his 2018 application was not taken on the basis that the relationship was a sham, but rather on the basis that the evidence of the durable nature of the relationship was insufficient to discharge the burden of proof. The Home Office reached no conclusion on the genuineness or otherwise of the claimed relationship.
6. That is important because in her decision, the Judge stated, wrongly, at para. 4, that the Appellant's previous application was rejected "because the respondent considered the marriage as a marriage of convenience". This was repeated in para. 16 in the Judge's findings of fact. This is wrong in two respects: first, the Appellant had never claimed to have been married to his partner; and, secondly, as already noted, there was no allegation by the Respondent as to the genuineness or otherwise of the claimed relationship. (It is possible in principle for there to be a genuine relationship between two individuals but for their marriage to be one of convenience (i.e. entered into for the purpose of conferring an immigration advantage), but plainly the Judge here assumed, as will often be the case that the relationship was not considered genuine.) The application simply did not come up to proof, in particular as to whether it could be said that the relationship was "durable". By the by, the Judge also appeared, wrongly, to have considered that this was an application under the EU Settlement Scheme, which did not exist at the time of the Appellant's 2018 application.
7. In taking into account the Appellant's marriage of convenience, she took into account an immaterial factor. Alternatively, I am satisfied that the conclusion that the Appellant was found to be in a marriage of convenience was an error of fact within the meaning of E & R [2004] EWCA Civ 49. The Appellant's marital status plainly constituted an existing and established fact and it was not suggested that he was responsible for it. Moreover, it is tolerably clear that the Judge was influenced in her credibility findings by her erroneous belief that the Appellant

had been found to be in a marriage of convenience and it accordingly also played a material part in her reasoning. In those circumstances, the decision is vitiated by error of law and I set it aside.

8. That is sufficient to dispose of the appeal and I do not in those circumstances propose to address Ms Harvey's other grounds of appeal (or those identified by Judge Turner in granting permission). There is however one aspect of the Judge's decision which requires mention.
9. One of the Appellant's witnesses who gave evidence in support of his appeal was a trans woman, Claudia Coelho. That she is trans is made clear in paragraph 1 of her witness statement. Notwithstanding this, and the fact that the Judge in certain places refers to Ms Coelho as "she", in her decision, the Judge (as well as misspelling the witnesses' surname "Quoeto") states "*he* has been a host at Disco Rani since 2012. *He* welcomes people when they come to the club... *He* said that the appellant is engaging in a casual relationship with Mansoor... I asked the witness whether it is [sic] never crossed *his* mind that the appellant is pretending to be gay in order to regularise his immigration status in this country to which *they* replied that the thought never crossed *their* mind" [italics added].
10. As is set out in para. 19 of Chapter 12 of the Equal Treatment Bench Book ("ETBB"), it should usually be possible for a trans person to be referred to in their acquired gender. There may be exceptions to this, but none of those referred to in the ETBB apply here. It is not difficult to understand why this should be the case. A person's gender identity can be of profound importance to an individual and for a trans person being referred to by their birth sex may cause real distress. Moreover, referring to a trans witness by their birth sex is unlikely to foster an environment where they feel comfortable in giving evidence or feel like they have treated with respect. As well as being dictated by the ETBB, this also therefore seems to me to be covered by the Statement of Expected Behaviour issued by the former Lord Chief Justice and the Senior President of Tribunals in January 2023, which provides that "no-one should feel that they are 'less than' because of their differences, personal or professional background, judicial office or jurisdiction. Therefore, we should all: treat others...respectfully".
11. The Judge's use of non-female pronouns to describe Ms Coelho, and the apparently interchangeable use of different gendered pronouns (which may itself reasonably be perceived (whether correctly or not) as reflecting a view by the Judge that Ms Coelho's gender identity is not something worthy of respect), are to be regretted.

Notice of Decision

The decision of First-tier Tribunal Judge Chana dated 24 May 2024 involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal, to be determined de novo by a Judge other than First-tier Tribunal Judge Chana.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 August 2024