



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

Case No: UI-2024-002826

First-tier Tribunal Nos: HU/58668/2022  
LH/03713/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 1<sup>st</sup> of October 2024

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**RR**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr C Mupara, Direct Access

For the Respondent: Mr T Melvin, 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.**

**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. His date of birth is 24 September 1983.

2. The Appellant was granted permission to appeal against the decision of the First-tier Tribunal (Judge Hussain) to dismiss his appeal on asylum grounds against the decision of the SSHD dated 3 November 2022. The First-tier Tribunal (Judge Chowdhury) granted permission on 10 June 2024
3. The Appellant's immigration history is set out briefly in the decision of the judge. He came to the UK on 13 October 2010. On 27 July 2015, he made a claim for asylum which was refused. The Appellant appealed against the decision of the SSHD and his appeal was dismissed by the First-tier Tribunal (Judge Wylie).
4. The Appellant's evidence is that he is at risk on return to Pakistan as a result of his sexuality. He is at risk from his family and wider society. He relied on evidence concerning an incident in Pakistan when he was with his boyfriend in 2008. When in Lahore where they were approached by a group of people from "Tehreek Taliban" who had been informed by members of the public that they were seen kissing in the park. As a result, they were attacked and beaten, including being tied to a tree and set on fire with kerosene. He had not mentioned the incident to Judge Wylie or the SSHD. He said that he has scars from the incident which was supported by a report from Freedom of Torture.
5. The Appellant's evidence is that he has attended Pride events and is a member of KU Club.
6. The judge heard evidence from Zahed Khan, the Appellant's partner, who said that he had met the Appellant in 2013 in a coffee shop and they had become friends. He supported the Appellant's account that he is a member of LGBT and a frequent visitor of gay clubs and that he attends Pride events. The third witness, Farooq Al Shaik, gave evidence. His evidence was that he has known the Appellant for over two years and they are good friends.
7. The judge went on to make findings at paragraphs 36 – 58. The judge, with reference to the decision of Judge Wylie, stated at paragraph 42 that the Appellant applied for asylum in 2015 on the basis of his claim before him, namely that he could not reintegrate because of his sexuality, which would not be tolerated in Pakistan. It was accepted by the Appellant's representative at the hearing that the findings of Judge Wylie were the starting point. Judge Wylie had found that the Appellant was not credible. Judge Wylie said that the Appellant unable to give evidence of living as a gay man in the UK and although he was registered with various gay clubs, this had only been done three months before the Appellant claimed asylum. Judge Wylie did not attach weight to the Appellant's membership of organisations.
8. Judge Wylie found that the Appellant's efforts to volunteer for LGBT Foundation "appear to be no more than self-serving action to bolster his claim". Judge Wylie took into account that on the Appellant's account he had been living as an openly gay or bisexual man since 2012 and he would have expected him to have been able to provide evidence of his lifestyle over the years. Judge Wylie found that attendance at high profile events, which suggested an affiliation with the LGBT community took place after his claim and were self-serving. Judge Wylie attached weight to the Appellant's two previous applications for leave to remain where he did not mention his sexuality. The Appellant's evidence was that he wished to continue with his studies and return to Pakistan to continue his relationship with Shahzad and the judge observed that at this time the Appellant appeared to have no concern about returning to Pakistan. Judge Wylie was not satisfied that the Appellant was a bisexual man.

9. The judge directed himself that Judge Wylie's findings were his starting point and he went on to consider the evidence that was not before Judge Wylie. The judge said that the photographic evidence of the Appellant's volunteering for activities in support of the LGBT community were in substance no different from those before Judge Wylie and that they do not advance his case any further than that before Judge Wylie.
10. The judge noted that at paragraph 4 of his witness statement the Appellant claimed that having told his father that he was bisexual, he told the local community and authorities. The judge said that this was "highly implausible". The judge said "It simply does not make sense why the appellant's father who would have been embarrassed enough by knowing that his son is a bisexual, then inflict further humiliation and shame on himself by voluntarily telling the community". The judge also said that "quite why he would also tell the authorities I could not fathom".
11. The judge said that:

"By far the biggest surprise in the appellant's evidence was his claim that in 2008 he was in a park with his then partner when they were seen kissing. This resulted in member of the public informing an organisation called Tehreek Taliban which is a banned. organisation. I have to confess that I could not understand how, members of the public outraged by his behaviour, were able to find ready to hand members of a banned organisation to come and punish the appellant. The appellant's claim was that he and his partner were tied up and set alight using Kerosene."
12. The judge said that:

"in light of the wholly incredible claim that the appellant happened to be in a park kissing his partner when members of the public were also able to draw attention to members of a banned organisation who would then go and inflict the punishment on the appellant that he had claimed."
13. The judge took into account that this aspect of the Appellant's case had not previously been raised in any previous application including his asylum claim in 2015. The Appellant said that he was afraid that the Home Office would reveal this to members of Tehreek Taliban. The judge said that he was "unclear as to why the appellant would take this view and asked him to explain what knowledge he had of the Home Office's connection with this organisation". The judge also asked the Appellant to explain what made him think that this organisation was active in the United Kingdom. The judge said that the Appellant "provided no sensible answer to these questions". The judge took into account the witness statements of the two witnesses but said at paragraph 54 "none of the witnesses had any first-hand experience of the Appellant being bisexual". He said that their evidence appears to be in the same vein as the witnesses who gave evidence before Judge Wylie.
14. The judge did not attach weight to the medical report. The judge found that whilst the Appellant could have suffered burns on his body, they were not inflicted by members of some banned organisation.
15. The judge said at paragraph 56 "having looked at the totality of the evidence the conclusion to which I have come to is that I would not be justified in reaching a conclusion different from Judge Wylie".

16. The judge went on to find that there were no very significant obstacles to integration and dismissed the appeal under Article 8 ECHR.

### **Error of law**

17. Having considered the oral submissions made by the parties, I was persuaded that the judge materially erred in law in respect of ground one. The thrust of ground is that the judge did not take into account the evidence that was not before Judge Wylie. The judge referred to the new evidence as further photographic evidence of the Appellant's volunteering activities. The judge said that the evidence was no different from that before Judge Wylie. I asked Mr Mupara to take me through the evidence which he said was not taken into account. He said the judge did not take into account the photographic evidence, evidence relating to the apparent volunteering for Pride London and of the Appellant attending events and evidence relating to the Appellant's social media profile.
18. I was referred to bundle D. At p. 26 there is a photograph of three men one of which is the Appellant. I was told that the picture was taken inside a gay club (KLUB). I was referred to p.30 which I was told is a picture of the Appellant and others inside KLUB. These pictures are not dated. I was taken to p.33 where there are three photographs. One is very similar if not the same as the picture at p. 26. I was taken to p.48 which shows three photographs. The middle photograph is a picture of a man outside KLUB. It is poor quality and the man cannot be clearly identified but I understand that it is said that it is the Appellant. There is another photograph of the Appellant and another man said to be outside KLUB. I was taken to p.50. There are two photographs on this page. One is of poor quality but said to be is the Appellant inside KLUB. I was taken to p.297 which is an email from KUno-reply@ku-bar.co.uk (KLUB) The subject of the e-mail is KU Pride is this weekend!. The e-mail does not show the recipient. It is dated 7 September 2021. It is a general flyer referring to events at KLUB.
19. I was then taken to documents that I was told the judge did not take into account relating to the Appellant's gay social media profile. I was taken to p.300. This is an e-mail from gaysocial.org to raheelraza2011@hotmail.com dated 21 November 2021. The e-mail is headed "hello raheel Raza" and it invites the Appellant to "friendly Friday drinks and karaoke". I was referred to p.31 which is an e-mail from the same organisation to the Appellant at his Hotmail address dated 24 November 2021. It is an invitation to the Appellant to a "gay pub crawl ...". There are two more such emails, one at p.302 dated 14 October 2021 and one at p.303 dated 2 November 2021. They have the same heading which refers to the Appellant's name, but they do not disclose the recipient. I was referred to p.54 which I was told shows the Appellant in a gay nightclub. Mr Mapara relied on p. 231 of bundle D which is a snapshot of the Appellant updating his profile on gay social.
20. Page 208 of the bundle is an e-mail from Tom Stevens, Pride in London (pride.in.London@r1.dotmailer-email.com). The e-mail is dated 10 February 2021 and the subject is "raheel, it's here: introducing our new look brand". It is a notice of a new logo. The recipient's e-mail is not shown. I was shown an e-mail at p. 212 from Pride in London internal comms (pride.in.London@r1.dotmailer-email.com). It is dated 23 March 2020. The recipient is not shown and the e-mail is addressed to "volunteers". It notifies a postponed event. I was referred to p. 214 which is an e-mail again from London internal comms. It is dated 6 March

2020. It is addressed to “volunteers Imaan Fest on 11 April”. The recipient is not shown. In relation to Pride London, I was referred to p. 46. There are two photographs on this page. The top one is of the Appellant wearing a T-shirt which has written on it “fundraiser”. I was referred to p.47 which shows three photographs, two of which it is said show the Appellant attending Pride events. I was referred to evidence of training events in bundle C at p. 20. This is an e-mail to the Appellant from Pride headed “Pride in London” and to “hello Pride in London volunteer” the e-mail is dated 20 May 2023. The document goes on to mention the Appellant stating that he has an “upcoming shift”. I was referred to p.48. The top picture is said to show the Appellant at a Pride event. I was referred to p. 52. This shows the Appellant at a Pride event wearing a fundraiser T-shirt. Page 53 shows a picture of the Appellant in a Pride fundraiser T-shirt. There are a number of pictures said to show the Appellant at gay Pride event.

21. I take on board Mr Melvin’s submissions regarding the quality of the evidence. The photographs are undated and the Appellant is often seen wearing the same clothing and some of the emails are of a generic nature. I take into account that the Appellant may have signed up to websites so that that he will receive emails in his name and that the content of the emails is on the whole generic. I also have some sympathy with the judge because there was a 600 page bundle and considering the skeleton argument that was before him, the documents which I was taken to are not specifically referred to. However, I do not find that the evidence was adequately engaged with by the judge. While the judge correctly directed himself in relation to Devaseelan (Second Appeals -ECHR- Extra - Territorial Effect) Sri Lanka [2002]UKIAT 702. I find that the engagement with the evidence, at paragraph 49, is insufficient. The judge found that the evidence that was not produced before the Judge Wylie seemed to comprise further photographic evidence of the Appellant’s volunteering for activities in support of the LGBT community. However, the evidence went beyond this. The judge then said that the evidence does not advance the Appellant’s case any further than it did before Judge Wylie. This conclusion is inadequately reasoned.
22. Judge Wylie did not find the Appellant credible. At the first hearing the Appellant relied on similar evidence but this was found to pertain to the period of time after he claimed asylum and therefore self-serving. It is not clear that the judge appreciated that at the date of the hearing the evidence now relied on by the Appellant covered a more extensive period of time than that before Judge Wylie. While I accept that there is no need for a judge to set out each and every piece of evidence, in this case bearing in mind credibility was an issue, it was necessary for the judge to engage with this evidence in order to make informed findings of fact and resolve issues of conflict. I cannot conclude that had the judge not erred the outcome would have been the same.
23. It is not necessary for me to engage with grounds two or three. Ground one is made out and it amounts to a stand-alone material error of law. None of the findings of the FTT are sustainable as the error impacts on the credibility findings.

### **Remittal to the FTT**

24. I set aside the decision of the FTT to dismiss the Appellant’s appeal. Having canvassed the issue with the parties, I remit the matter to the FTT for a fresh hearing, taking into account the need for full fact finding assessment: AEB v SSHD [2022] EWCA Civ 1512.
25. The appeal will be re-heard at Taylor House not before FTTJ Hussain. An interpreter is required.

**Joanna McWilliam**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**30 September 2024**