



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

Case No: UI-2024-002942

First-tier Tribunal No: PA/55957/2023  
LP/01161/2024

**THE IMMIGRATION ACTS**

**13<sup>th</sup> January 2025**

**Before**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**

**Between**

**WC (China)**  
**(ANONYMITY DIRECTION IN FORCE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A. Gilbert, Counsel instructed by Milestone Solicitors  
For the Respondent: Mr E. Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 7 October 2024**

**DECISION AND REASONS**

1. This is an appeal challenging the fairness findings of fact reached by First-tier Tribunal Judge Isaacs (“the judge”) in the course of dismissing the appellant’s appeal against the refusal of his claim for asylum, based on his fear of being persecuted in Malaysia, the country of his nationality, on account of being a gay man.

**Principal controversial issues**

2. There are four issues in these proceedings:
  - a. Ground 1: whether the judge’s findings that the appellant had fabricated his claimed UK-based relationship with A were procedurally unfair because certain matters were not put to him, the appellant, during cross-examination;

- b. Ground 2: whether the judge's approach to the lack of evidence from A was in error, in light of the appellant's evidence that his relationship with A ended upon A being abusive towards him;
  - c. Ground 3: whether the judge erred by failing properly to address the evidence of L, concerning the appellant's relationship with A;
  - d. Ground 4: whether the judge erred by failing to give sufficient reasons concerning his account of his prior, Malaysia-based relationship with S.
3. Those issues arise in the context of the appellant's appeal against the decision of the judge dated 21 April 2024, after a hearing on 15 April 2024, which dismissed his appeal against a decision of the Secretary of State dated 17 August 2023 to refuse the asylum claim he made on 26 November 2018. The judge heard the appeal under section 82(1)(a) of the Nationality, Immigration and Asylum Act 2002.
4. Permission to appeal was granted by Upper Tribunal Judge Meah by a decision dated 19 July 2024.
5. Mr Gilbert settled the grounds of appeal with a statement of truth. At the hearing in the Upper Tribunal, he handed up a copy of his detailed typed notes of the proceedings. Mr Gilbert also applied under rule 15(2A) for permission to rely on a witness statement from the appellant's solicitor, Alketa Shuli, dated 1 May 2024.
6. For the reasons set out below, I have reached the following conclusions:
  - a. The judge's approach to the appellant's evidence concerning A did not involve any unfairness;
  - b. It was rationally and fairly open to the judge to express credibility concerns about the absence of persuasive evidence from or about A, for the reasons she gave;
  - c. The judge did not err in relation to L's evidence;
  - d. The judge gave sufficient reasons in relation to the appellant's relationship with S; and
  - e. The statement of Ms Shuli did not satisfy the *Ladd v Marshall* criteria for admissions, and there were no exceptional circumstances justifying a relaxation of those criteria. Had I admitted the statement, it would have made no difference to the analysis, above.

### **Anonymity**

7. The First-tier Tribunal made an order for the appellant's anonymity. I maintain that order in light of the nature of the appellant's protection claim, lest the publication of this decision would expose him to a risk that the judge was entitled to find he would not face.

### **Factual background**

8. The appellant was born in 1991. On 26 April 2018, he arrived in the United Kingdom on a visitor's visa valid for six months. He claimed asylum in November 2018. His claim was on the basis that he was in a relationship with S, another man, from 2010 to September 2017. The relationship with S was conducted in secret. The appellant's visit to the United Kingdom was to see his friend J. J

introduced him to A, and the appellant's relationship with A began in 2018, and continued to 2020.

9. The Secretary of State rejected the appellant's case that he is a gay man, and rejected his claim to have had a relationship with either S or A. In relation to S, the appellant's claim lacked detail and was internally inconsistent. For example, the appellant claimed that his relationship with S was conducted in secret over a period of several years and included spending time overnight at each other's homes. That was inconsistent, considered the Secretary of State, with the claimed secrecy with which the relationship was conducted. As to the appellant's UK-based conduct, the appellant had given a vague account. He had not shared anything about his sexuality on social media, was not involved in LGBT activities, and the photographs relied upon by the appellant to demonstrate that he had gay friends did not take matters further. The photographs did not have any context, the people in them were unknown and the images themselves did not demonstrate the appellant's sexuality.

### **Decision of the First-tier Tribunal**

10. In summary, the judge rejected the appellant's evidence that he had been in a relationship with A. In his screening interview on 1 February 2019, the appellant claimed that he did not have a partner in United Kingdom. That was inconsistent with the case he subsequently advanced that, at that time, he had been in a relationship with A. Similarly, in the appellant's Preliminary Information Questionnaire, supplied by the appellant's solicitors on 27 November 2019, there was no reference to the appellant's claimed relationship A. There was no evidence from A, or why he had not been approached in connection with the appeal. L, whose evidence was that he was in touch with A, gave inconsistent evidence about his contact with him. While the appellant's evidence was that he had destroyed all messages and traces of his contact with A following the breakdown of their relationship, it was not likely "on any standard of proof" that his solicitors would not have taken a witness statement from A as part of his claim for asylum. The judge said that she raised this issue with Mr Gilbert and asked him to explore it in re-examination, but the appellant's answers failed to address that issue.
11. The judge's summary findings in relation to A were as follows:

"21. In summary find it severely undermines the appellant's claim to have been in a relationship with A, that the appellant claimed asylum through solicitors in November 2018, but the first mention of A is in the asylum interview conducted in June 2022. Furthermore, the appellant has retained no documentary evidence of their communications and A has not provided a witness statement despite the fact that the relationship was ongoing for two years during the period of the appellant's asylum claim. He has given no satisfactory explanation as to why the evidence was not available. Even if he deleted it in 2020 when the relationship allegedly ended, it was available to both the appellant and his solicitors to retain from the time he made his asylum claim in 2018. I conclude that A has only been added to the appellant's account from the point he attended his substantive asylum interview in June 2022. I do not find it reasonably likely that the appellant has been in a relationship with this person called A at all."
12. The judge's finding on these issues is challenged pursuant to ground (1).

13. The judge heard evidence from the appellant's flatmate, QL, but considered that her oral evidence under cross-examination was inconsistent with her written evidence, and that that undermined her credibility as a witness. The judge had a range of credibility concerns about the evidence of QL (para. 24). They are not challenged by the grounds of appeal, and it is not necessary to outline them in any further depth.
14. In relation to the claim relationship with S in Malaysia, the judge found that the entirety of the appellant's evidence on this issue came from the appellant himself. At para. 29, the judge set out a number of inconsistencies and weaknesses in the appellant's evidence on this issue. I will attempt to summarise the judge's reasoning as briefly as possible, but it is necessary to do so in a little depth since the fourth ground of appeal challenges the judge's efficiency reasoning on this issue.
15. The judge's reasoning in relation to S was, in summary: (1) although the appellant claimed to have disclosed his sexuality to L, L made no reference of S; (2) there was no witness statement from L, and he did not attend the Tribunal to give evidence; (3) the photographs purportedly demonstrating S with the appellant in Malaysia simply demonstrated the appellant with another young man in a kitchen, and, since the plant's case was that the relationship was kept secret from every other person in Malaysia, the person taking the image could not have had any inkling that they were capturing an image of a gay couple, thereby underlining the lack of probative value the image had in relation to the claim relationship; (4) it was not credible that the appellant no longer had any traces of any communication with S over the claimed seven year period for which the relationship existed; (5) the appellant was not a credible witness, and had been prepared to lie about his homosexual relationships in order to bolster his claim. Thus, the claim relationship with S attracted no weight.
16. In summary, the judge concluded that the appellant had not given a credible account of his sexuality. He would therefore not be at a real risk of being persecuted in Malaysia on that account and would not face very significant obstacles to his integration in Malaysia or face unduly harsh consequences were he to return to Malaysia.
17. The judge dismissed the appeal.

### **Submissions**

18. Ground 1 challenges the judge's approach to the evidence of the appellant in relation to A. Mr Gilbert submitted that it was unfair for the appellant to be penalised on account of having not mentioned the relationship with A until the substantive asylum interview because he was not asked why he had not mentioned matters until then in the substantive asylum interview, or under cross-examination. He submitted that it was therefore unfair for the judge to say, at para. 19:

"...he [the appellant] has not been able to explain why the solicitors did not mention A as part of his application up to the time of his asylum interview."
19. In support of this ground, Mr Gilbert handed up his detailed typed notes of the proceedings before the judge. I will not set out the detail of the note here; it is available to the parties, and my copy is on the tribunal's electronic file. I will refer to the salient aspects of it in the course of conducting my analysis, below. Mr Gilbert submitted that the judge's analysis strongly suggested that the

appellant had been asked specifically why he did not mention the existence of A at an earlier point, whereas, in fact, the appellant was not invited to give an explanation concerning that issue. Had he been provided with that opportunity, he would have explained that he was acting on legal advice.

20. It was in that respect that Mr Gilbert sought to rely on the statement of Ms Shuli. The statement of Ms Shuli provides (amended to reflect the anonymity order in force):
- “1. I am a solicitor of Milestone Solicitors with conduct of WC’s appeal matter.
  2. The Appellant’s 27 November 2019 PIQ was completed on the basis his relationship with A was not a partnership akin to a spousal relationship, because it was not capable of being recognized under the Immigration Rules (being less than 2 years duration).
  3. The Appellant had been informed by Milestone Solicitors that his relationship with A was not meet the definition of ‘partner’ under the Immigration Rules before he was interviewed on 1 February 2019 in his asylum screening interview.
  4. Evidence was not sought from directly from A without the Appellant’s consent, because the Appellant was a victim of domestic violence of A. Our approach to proofing corroborating witnesses was to await the asylum interview before taking evidence, which is why witness evidence was not gathered before the relationship breakdown.
  5. This evidence was not supplied earlier only because these issues were neither raised or relied on by the Respondent.”
21. Mr Gilbert also submitted that it was unfair for the judge to reason, at para. 19, that “I find it inconceivable that [the appellant’s] solicitors would not have advised him to retain evidence of his relationship with A (or indeed take file copies of such evidence, or file notes) which was ongoing for two years after he first consulted them.” That, submitted Mr Gilbert, was analysis which stemmed from questions which were not expressly put to the appellant, and in relation to which the appellant would have been able to provide a satisfactory answer had he been given the chance: see the statement of Ms Shuli.
22. Moreover, Mr Gilbert submitted that the judge failed adequately to address why the appellant should have been expected to obtain evidence from a violent abuser, A, from whom he had been separated for some time. That was the complaint under ground 2.
23. Pursuant to ground 3, Mr Gilbert submitted that the judge failed expressly or sufficiently to deal with the evidence of L. The evidence of L was that he knew A and had seen the appellant with him. L was an important witness, yet the judge failed to ascribe the significance to his evidence that she should have done.
24. In relation to ground 4, Mr Gilbert submitted that the judge gave inadequate reasons in relation to the evidence that was before her in her reasoning at para. 29 concerning the appellant’s claimed relationship with S in Malaysia, summarised above.
25. For the Secretary of State, Mr Terrell submitted that the judge’s overall analysis combined to reach a central conclusion which was that the appellant’s claim for asylum had been invented. On the face of the appellant’s screening interview, conducted on 1 February 2019, the appellant had said, in terms, that he did not

have a partner. That was plainly inconsistent with the account that he later gave in his substantive asylum interview. Fairness did not require the judge to intervene with questions of her own in that context, nor otherwise prevent her from ascribing significance to such a flagrant inconsistency. The judge addressed the evidence in round and reached overall findings of fact which were both open to her on the evidence she heard, and which were reached fairly.

26. Mr Terrell also submitted that the advice of Ms Shuli was poor advice; it is surprising that she sought not to capture evidence relating to the appellant's relationship with A when he first instructed milestone solicitors, in 2019. At that stage, the relationship with A had not broken down. Moreover, her statement does not say that the appellant was given advice not to mention A at the time of the screening interview, but rather only at the time the Preliminary Information Questionnaire was completed, on 27 November 2019, some nine months later. To that end, the criteria for the admission of the statement of Ms Shuli as summarised in *E v R* [2004] EWCA 49 at para. 66 were not met.
27. The matters which Mr Gilbert submitted has not been addressed that the hearing before the First-tier Tribunal had, in fact, been explored adequately, Mr Terrell submitted. Mr Gilbert's transcript demonstrates that the judge explained her concerns at the hearing, thereby giving the appellant and Mr Gilbert the opportunity to address her on precisely the issues that she is now said to have failed expressly to address. There was no unfairness in those circumstances. In relation to the evidence concerning L and QL, the judge gave sufficient reasons. It is trite law that not every factual facet of the evidence in the case needs to be explored expressly, and the judge gave sufficient reasons, in a manner that was open to her, on the evidence before.

### **The law**

28. It was held in *AM (Fair hearing) Sudan* [2015] UKUT 656 (IAC) that:
- “Fairness may require a Tribunal to canvas an issue which has not been ventilated by the parties or their representatives, in fulfilment of each party's right to a fair hearing.”
29. In relation to cross-examination, the authorities requiring adverse points to be put to a witness are well-established. In *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201 Green LJ summarised the position in light of *TUI v Griffiths* [2023] UKSC 48, at para. 36. Having concluded that it was unfair for a conclusion about an appellant's dishonesty to be reached in the absence of cross-examination on the issue, Green LJ held:
- “The recent judgment of the Supreme Court in *TUI* reinforces the above conclusion. The Court, at paragraph [42], cited with approval paragraphs [12-12] of *Phipson on Evidence 20<sup>th</sup> Edition* (2022), as follows:
- ‘In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases ... In general the CPR does not alter that position.
- This rule serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on

a particular important point, he will be in difficulty in submitting that the evidence should be rejected.”

30. The principles concerning appeals against findings of fact are well known. See, for example *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at para. 114.

### **Recording of the hearing before the First-tier Tribunal**

31. The appellant’s solicitors had not applied for a formal transcript of the hearing before the judge, nor had they applied for directions for the recording to be made available to be listened to in advance of, or at, the hearing before me. Such directions should have been sought before the hearing in order to make any recording available before the hearing in this tribunal. Mr Gilbert’s note was not served on the Upper Tribunal (or, it seems, the Secretary of State) before the hearing. This was a procedurally unsatisfactory state of affairs. The note should have been included with the application for permission to appeal, and the Secretary of State should have indicated whether she objected to the appellant’s characterisation of what took place at the hearing, as a matter of fact, well in advance of the hearing in the Upper Tribunal pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. That would have been consistent with the approach envisaged in *Abdi v Entry Clearance Officer* [2023] EWCA Civ 1455 at para. 24, and would have avoided Mr Gilbert potentially assuming the prohibited hybrid role of advocate and witness, contrary to the guidance given in *BW v Secretary of State for the Home Department* [2014] UKUT 00568 (IAC) at para. 5(iv):

“The roles of advocate and witness are distinct, separated by a bright luminous line. An advocate must never assume the role of witness. This conflict may be avoided if, for example, the facts bearing on the judicial aberration in question are undisputed. Otherwise, the appellate advocacy function must be relinquished to another representative.”

32. After the hearing, I arranged to listen to the recording of the First-tier Tribunal hearing for myself, out of an abundance of caution, and with a view to inviting the parties to make an appointment to attend Field House to do the same, in order to verify the contents of Mr Gilbert’s note. The recording is several hours’ long. Unfortunately, however, it is incomplete at the crucial point. Mr Gilbert’s note (and the first part of the recording) reveals that Mr Gilbert experienced some difficulties with capturing the cross-examination of the appellant being conducted by the presenting officer, and asked for a break, just as cross-examination concerning A commenced. The judge granted the request and directed that the recording be stopped. That was at about 11.55AM. Unfortunately, the recording was not recommenced until after lunch, once the appellant’s cross-examination had concluded, with the result that the key part of the hearing during which Mr Gilbert contends that the appellant was unfairly not cross-examined about certain topics has not been recorded.
33. Mr Gilbert’s note did not capture everything that took place in those parts of the hearing that were recorded. It captured the much of gist of what took place. I make no criticism of Mr Gilbert for the quality of his note insofar as that is what it purports to be; as a note, it is perfectly satisfactory. Counsel can hardly be expected to record more detail than Mr Gilbert did.
34. It follows that, in relation to the disputed parts of the hearing, this tribunal only has Mr Gilbert’s note and the judge’s own record of what took place at the hearing as summarised in her decision. I will therefore resolve the grounds of appeal by relying exclusively on Mr Gilbert’s note of the hearing, as he invited me

to. While that approach is less than ideal (and is built on the foundations of a poor display of procedural rigour on the part of the appellant's legal team and a potential blurring of the lines between the role of advocate and witness on Mr Gilbert's part), it nevertheless takes the case on the basis that Mr Gilbert invites me to find it, and resolves the appellant's grounds of appeal on the basis of his case as argued in this tribunal.

### **Ground 1: a fair hearing before the judge**

35. There are, of course, limitations to the extent which even a formal transcript can recreate the atmosphere of first instance trial. See *Fage UK Ltd v Chobani UK Ltd* at para. 114:

“iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).”

36. Those considerations apply with greater force when the best record of what took place to challenge the summary of a hearing in a judgment is an informal note prepared by counsel.

37. Against that background, turning to the substance of ground 1, I find that the judge's findings concerning A involved no unfairness to the appellant. I reach this conclusion for the following reasons.

38. First, the Secretary of State expressly rejected the appellant's account of having been in a relationship with A in the decision of 17 August 2023 refusing the protection claim. Under the heading “Material facts I do not accept”, the author of the letter stated:

“You had a relationship with A in the UK”.

39. The decision reasoned that the appellant's UK-based account was vague. It added that the UK-based photographs the appellant relied upon featured unknown people and did not demonstrate his sexuality. The Respondent's Review before the First-tier Tribunal dated 2 April 2024 relied on the refusal letter in its entirety (para. 6).

40. The appellant could therefore have been in no doubt, well in advance of the hearing, that the respondent's position before the hearing was that his account of his relationship with A was rejected.

41. Secondly, the credibility of the appellant's claimed relationship with A was clarified at the outset of the appeal before the judge as a disputed issue. The judge expressly noted that the Secretary of State disputed the appellant's account of having been in a relationship with A in the UK. Again, the appellant was plainly on notice that his evidence in that respect would be under scrutiny.

42. Thirdly, according to Mr Gilbert's note, during cross-examination the appellant was challenged on a number of bases about his relationship with A. The note reveals robust challenges advanced by the presenting officer. For example:

a. In relation to A, the appellant was “*just making it up, aren't you*”;

b. Having stated that the photographs relied upon by the appellant as depicting him with A could have been photographs of the appellant with anyone, and that no identification evidence of A had been provided, the



presenting officer asked the appellant, “*how does this court even know that A exists?*”;

- c. The presenting officer put to the appellant that his relationship with A commenced in 2018, yet he did not claim asylum until 2020 and had apparently not told A of his claim for asylum at all. That was because it was “*not true is it?*”;
- d. The appellant was cross-examined about having said that A would not have wanted to help him advance an asylum claim and so did not know about the appellant’s claim, and later saying that A *did* know that he had claimed asylum, but that A did not want to help him, despite knowing. It was put to the appellant that he was changing his story, solely for to support the claim for asylum;
- e. The appellant was not in touch with A “because there is no A and you made it up for the benefit of your claim”;
- f. The appellant had made up the claimed relationship with A.

43. Fourthly, Mr Gilbert’s note records the judge as later intervening to clarify who the people depicted in the photographs relied upon by the appellant were. That is significant, since the appellant’s case was that some of the images depicted him with A; this intervention demonstrates that the judge was concerned to scrutinise this aspect of the appellant’s case, drawing on the themes identified under cross-examination. As part of her clarificatory questions, the judge asked by there were no photographs, text messages or social media messages between the appellant and A. Again, this identified for the benefit of the parties at the hearing that the judge had concerns about the claimed relationship with A. That is a factor relevant to the fairness of the hearing.

44. Fifthly, in her clarificatory questions, the judge asked the appellant to confirm when he first saw a solicitor about claiming asylum. On the material before me, the appellant could have been in no doubt that the judge had significant concerns about the chronology of the appellant’s claim for asylum and the corresponding evidence. No unfairness arose on that account, therefore.

45. In answer to the judge’s question, according to Mr Gilbert’s note, the appellant said that he claimed asylum in November 2018, and that he approached his solicitors at that stage. The judge then asked if the solicitor had taken any copies of messages or day to day communication with A at that stage. That was a sound and valid concern; the appellant’s evidence was that the relationship with A broke down during the Covid-19 pandemic (that is, in 2020). If, as the appellant claimed, he had approached a solicitor in connection with the asylum claim significantly before then, it was significant that the solicitor had not sought to capture the evidence that was in existence *at that time*. That was a perfectly valid concern.

46. The judge invited Mr Gilbert to address this issue under re-examination. Mr Gilbert’s note says that the judge said:

“...my concern is this gentleman made this claim based on being a gay man, takes no evidence and is claiming he deleted everything on breakup given this claim was created in 2018 when they had just started their relationship, may be a matter for rep to raise re-examination.”

47. On this issue, the judge said at para. 19 that Mr Gilbert's re-examination of the appellant did not address this fundamental issue. On the material before me, the judge was eminently entitled to reach that conclusion.
48. It is in this respect that the statement of Ms Shuli is relevant. I accept Mr Terrell's submissions that it does not satisfy the *Ladd v Marshall* criteria for admission for the reasons I will set out. Ms Shuli's evidence was that the appellant had been "informed" that the relationship with A would not meet the definition of "partner" under the Immigration Rules, and for that reason the details pertaining to A were not included in the Preliminary Information Questionnaire.
49. I find that advice to be very surprising. The appellant was not making an application under Appendix FM of the Immigration Rules. He was claiming asylum based on his sexuality. His claimed relationships with other men would be highly relevant to that assessment, even if they would not satisfy the criteria to be classed as a "partner" elsewhere in the Immigration Rules.
50. I also consider that Ms Shuli's statement that "our approach to proofing corroborating witnesses was to wait [until] the asylum interview before taking evidence..." is also surprising. I cannot see any basis upon which a responsible solicitor would decline to seek evidence that would, on the face of it, be highly relevant to a claim for asylum until such a late stage. It may be that Ms Shuli's recollection of the advice she gave was incomplete, since the advice would have been given nearly six years before the statement was signed, and it has not been accompanied by an attendance note or any copy of the advice given in writing. Whatever the reason for that advice and approach, I note that Mr Gilbert concedes in the grounds of appeal that the advice was "erroneous": see para. 11 of the grounds. I agree with that characterisation.
51. In any event, even if Ms Shuli did give that advice, taken at its highest it does not address the situation that obtained when the appellant completed the screening interview, in February 2019. Ms Shuli's evidence only goes to the Preliminary Information Questionnaire, which was not completed until nine months later, in November 2019. The position remains that, at the time of the screening interview in February 2019, when asked whether he had a partner, the appellant answered "no" to all questions pertaining to having a partner. At Part 4.1, he expressly stated "I do not have gay partner in the UK. I did have gay partner in Malaysia." Accordingly, several months before he was apparently given "erroneous" advice by Ms Shuli (to adopt the terminology of Mr Gilbert), the appellant said, in terms, that he did not have a partner in the UK. There is no suggestion in the evidence of Ms Shuli that the appellant was acting pursuant to her advice at that stage, meaning that her statement takes matters no further in relation to what the appellant said at the screening interview.
52. Applying the *Ladd v Marshall* criteria, I decline to admit Ms Shuli's statement:
- a. First, it was evidence that could have been obtained with reasonable diligence for use before the First-tier Tribunal. The Secretary of State rejected the appellant's claim to have been in a relationship with A. He declared in his screening interview that he did not have a gay partner in the UK. He maintained that position in the Preliminary Information Questionnaire. By the time of the appellant's substantive asylum interview, the appellant's case had changed, and he said that he had been in a relationship with A at the very times he had previously claimed not to have been in a gay relationship. A reasonably diligent preparation

of the appellant's case would have sought to address this flagrant inconsistency head-on.

- b. Secondly, Ms Shuli's evidence would not have had an important influence on the result. It did not address the fact the appellant did not mention his relationship with A in the screening interview and said nothing about the evolution of the appellant's case during the period from November 2018 until the substantive interview, and the subsequent appeal before the First-tier Tribunal. Moreover, the fact that the appellant reported to his solicitors that he was in a relationship with A from November 2018 provided no independent support for that assertion. While it could be said to demonstrate a degree of consistency, it would be no more than that and, in the context of the remaining evidential landscape, could not have been said to have had an important influence on the result, not least because of what the appellant did not say that the screening interview, which would have been the obvious point at which to report the claimed relationship with A, which was allegedly extant at that time.
- c. Thirdly, the evidence is not apparently credible. The advice was erroneous, and Ms Shuli may have misremembered the advice that she actually gave when compiling her statement. The statement was not accompanied by an attendance note or any contemporaneous documentary record of the advice given at the time, as one would expect in circumstances such as this.

53. Sixthly, there is no obligation on the judge to put every contour and facet of their prospective reasoning to a witness. Judicial findings of fact are not subject to a condition precedent that they must have been aired fully and precisely in court in the form of a running commentary or similar by the judge. It is sufficient that the issues have been identified by the parties in advance, and that the findings are reached in relation to an issue which was identified as a disputed issue between the parties, under the judge's supervision. In any event, this judge expressly raised with the parties the very issue that Mr Gilbert submitted that she failed unfairly to ventilate. No unfairness arose.

54. In conclusion on this ground, therefore, I find that the appellant was fully aware of the need to demonstrate the credibility of his claim to have been in a relationship with A. His evidence was inconsistent. The judge was entitled to express credibility concerns on the basis that she did, for the reasons that she gave.

## **Ground 2: no error in the judge's other findings concerning A**

55. As part of her analysis of the credibility of the appellant's claim as a whole, the judge was entitled to ascribe significance to the total absence of any documentary evidence in relation to A. While the appellant's case was that the relationship had become abusive, the judge was entitled to view with a degree of scepticism his evidence that there was no documentary evidence whatsoever relating to the relationship. That was a finding the judge reached in the context of her broader credibility concerns arising from the appellant's changing account in relation to A. At the times when the appellant, on his own case, was in contact with A and remained in relationship with him, the appellant did not mention A at all. It was only when the relationship had allegedly come to an end that the appellant mentioned it at all, on the footing that he had, by then, deleted all evidence of the relationship. The judge was entitled to view that chronology with suspicion.

56. Moreover, on the appellant's own case he had not expunged all documentary evidence pertaining to A, since he adduced photographs purportedly demonstrating them spending time together. There was thus a degree of internal inconsistency to the appellant's own position concerning the deletion of materials pertaining to A.
57. I therefore find that nothing in the judge's findings amounted to the judge unreasonably or unlawfully expecting the appellant to have reduced relationship evidence from an abusive partner.
58. Mr Gilbert submitted that Ms Shuli's statement should also be admitted as evidence of the fact that the appellant had told his solicitors about A as early as 2018. For the reasons given above, Ms Shuli's statement does not satisfy the *Ladd v Marshall* criteria, and there are no other exceptional circumstances to admit it to impugn the judge's findings of fact. This amounts to no unfairness to the appellant; to the extent he now seeks to pray in aid his previous consistent statements (if that is what they were) to Ms Shuli or Milestone Solicitors in support of his claim for asylum, it remains open to him to make a fresh claim on that basis (see para. (3) of the judicial headnote to *Akter (appellate jurisdiction; E and R challenges)* [2021] UKUT 272 (IAC)).

### **Ground 3: sufficient reasons in relation to Mr L**

59. Pursuant to this ground, Mr Gilbert submitted that the judge's reasons in relation to Mr L were insufficient. The judge's primary analysis in relation to Mr L was at paras 17 to 18, and (in her discussion of the photographs of the appellant and A together), at para. 20. At para. 18, she identified an internal inconsistency in Mr L's evidence concerning when he had last seen A.
60. Mr Gilbert submitted that that was an insufficient basis upon which to reject the evidence of Mr L, and that there was insufficient analysis of the remaining aspects of his evidence.
61. I disagree. The principle that reasons must be sufficient has been oft stated: see, for example, *South Buckinghamshire District Council v Porter (No 2)* [2004] UKHL 33 at para. 36. The judge's reasons in relation to Mr L meet those criteria; the reader of the decision is able to understand why the judge rejected the evidence of Mr L.
62. This is a disagreement of weight. The evidence of Mr L was that he knew A, and that A had introduced the appellant to him, Mr L, as his partner. The photographs allegedly depicting the appellant and A had been spoken to by Mr L (see para. 20); Mr L was thus a witness whose opinion was that the appellant and A were in a relationship together. Against that background, the judge was entitled to regard an inconsistency in the evidence of Mr L as one facet of the reasoning she adopted in rejecting the appellant's claimed relationship with A, as part of her analysis in the round.
63. The reader of the decision is readily able to tell why this aspect of the appellant's case was rejected; the appellant's account of being in a relationship with A was not mentioned at the outset of his claim for asylum, when it should have been, and the appellant's evidence under cross-examination when challenged that A was a fabrication was unpersuasive. The appellant's reliance on Mr L did not take matters further because, despite purportedly being in contact with A, Mr L was inconsistent in relation to when he had last seen him. Those factors were all relevant to the judge's analysis, and consistent with the

cross-examination of the appellant which contended that A was a creature of fiction. The judge's reasons were sufficient.

#### **Ground 4: no error in relation to relationship with S**

64. This ground challenges the four reasons the judge gave for rejecting the appellant's claimed relationship in Malaysia with S. Mr Gilbert submitted that the judge's reasons were inadequate. I disagree.
65. The reasons given by the judge were plainly sufficient. There had been no witness statement from a Mr Lee, who the appellant had claimed to have disclosed the relationship to. A photograph of the appellant with a young man in a kitchen in Malaysia took matters no further for the reasons given by the judge, summarised above. There was no evidence of any communications with S, and it was not credible (as the appellant had claimed) that he had simply expunged all records of contact with S generated over a seven-year period. There is nothing inadequate about these reasons. They were all open to the judge. The appellant's challenge to them is nothing more than a disagreement of fact and weight not demonstrating the presence of an error of law.

#### **Conclusion**

66. I conclude by adopting the closing remarks of *Volpi v Volpi* [2022] EWCA Civ 464 at para. 65:

"This appeal demonstrates many features of appeals against findings of fact:

- i) It seeks to retry the case afresh.
- ii) It rests on a selection of evidence rather than the whole of the evidence that the judge heard (what I have elsewhere called "island hopping").
- iii) It seeks to persuade an appeal court to form its own evaluation of the reliability of witness evidence when that is the quintessential function of the trial judge who has seen and heard the witnesses.
- iv) It seeks to persuade the appeal court to reattribute weight to the different strands of evidence.
- v) It concentrates on particular verbal expressions that the judge used rather than engaging with the substance of his findings."

67. This appeal is dismissed.

#### **Notice of Decision**

This appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of an error of law.

**Stephen H Smith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 December 2024**

