



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

Case No: UI-2024-003399
First-tier Tribunal No:
PA/58805/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 23rd of January 2025

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

**FA
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs L. King, instructed by Adam Khattak Solicitors
For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 22 November 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 appeals with permission against the decision of First-tier Tribunal Judge Walker dismissing his appeal against the respondent's decision to refuse his protection claim.
2. The appellant was granted anonymity before the First-tier Tribunal because he has made a claim for international protection. Having taken into account Guidance Note 2022 No.2: Anonymity Orders and Hearings in Private, I am satisfied that it is appropriate to continue that order because the UK's obligations towards applicants for international protection and the need to protect the confidentiality of the asylum process outweigh the public interest in open justice in this case.
3. The appellant is a citizen of Pakistan born in Pakistan in 2000. On 4 October 2021, he entered the UK with leave to enter as a student, and on 17 June 2022 (not 17 June 2023 as stated in the refusal decision), he claimed asylum on the basis of his sexual identity as a gay man. The respondent interviewed him about his asylum claim on 26 September 2023, and on 3 October 2023, she refused it. The respondent accepted that the appellant would be at risk of persecution if he were a gay man, but she rejected his claimed sexual identity on credibility grounds.
4. The appellant's appeal came before Judge Walker at Columbus House on 17 April 2024. The Judge noted that the parties agreed that the only issue in the appeal was whether or not the appellant was gay [11]. The Judge then proceeded to summarise the contents of the appellant's witness statement of 27 October 2023 [12], the account he gave at his asylum interview on 26 September 2023 [14-18] and his evidence at the hearing [22-27]. The Judge set out her reasons for rejecting the appellant's credibility at [36-42]. She was not satisfied that he was gay, and she dismissed the appeal.
5. The appellant's grounds point to numerous places where the Judge is said not to have given adequate reasons for findings that contributed to her rejection of the appellant's credibility. He relies on MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) [5] for the principle that the Judge's reasons needed to be consistent at least to some degree with "common sense, fairness and human experience". In the alternative and in addition, her reasons were "perverse". In his grounds, the appellant carefully itemised eight separate errors, identifying the precise paragraph and the nature of the claimed error in each instance.
6. Both the Upper Tribunal's grant of permission and the hearing before me focused on Para. 37 of the Judge's decision. I set that paragraph out in full, incorporating the appellant's challenges:

"The appellant's account of how he knew that he was homosexual when he was living in Pakistan I find not to be credible. As the appellant says, the teachings of Islam in Pakistan are against homosexuality and the appellant says that he knew this to be the case. Given that, **I would have expected the appellant to have challenged his own sexuality, to try and form relationships with girls for example** [The appellant says that this is

irrational, inherently wrong and perverse.]. The nature of his relationships with boys in Pakistan was **not sexual at all. He simply behaved as all men do according to the appellant. His case is that he obtained an extra pleasure from these encounters.** [The appellant argues that these findings are both internally inconsistent and not supported by the evidence, because the appellant described receiving sexual pleasure from touching or hugging men and boys in the course of ordinary encounters, and then fulfilling his desires afterwards through masturbation]. **He does not single out any particular individual** to whom he was particularly attracted. **I consider that this is unlikely** given his stated strong homosexual attractions. It would have been expected that he would have developed an attraction, even if unfulfilled, to at least one man in Pakistan. [The appellant says that there is no proper basis for the Judge's assumption that the appellant should have developed an attraction to one person in particular.] Further, I consider that the appellant did not tell his family about his alleged homosexuality at all. He knew that he was facing a return to Pakistan because he had not attended the University course for which he was given a visa. **To have told his family about his alleged homosexuality would have been reckless in the extreme** [the appellant says that it is unclear why this was reckless, as the appellant was living in a safe country at that point] given the teachings of Islam on homosexuality and his knowledge that his family would reject him if he told them that he is homosexual. Further, **there was no need to tell them at all as he had not had any homosexual encounters.** [The appellant says that here, like elsewhere in the decision, the Judge appears believe that a person cannot have a sexual identity without engaging in sexual activity.] ”

7. At the hearing before me, Mr Walker conceded that the findings at Para. 37 showed that the Judge had made a material error of law and that the decision must be set aside. I therefore announced at the hearing that the decision did contain a material error of law and would be remitted to the First-tier Tribunal for a hearing de novo.
8. For the sake of clarity, and in the hopes that such errors can be avoided in the future, it is worth identifying the most significant errors that required this decision to be set aside. These include that:
 - (i) it is simply not credible that a person with a diverse sexual or gender identity has not actively tried to suppress it by acting contrary to it;
 - (ii) there is a particular burden on LGBTQ+ people from Muslim communities to explain why they did not reject or conceal their sexual or gender identity; and
 - (iii) sexual identity cannot exist in the absence of consummated sexual activity with another person.
9. These assumptions have no proper basis and should be avoided.

Notice of Decision

10. The decision of Judge Walker involved the making of a material error of law. It is set aside. The appeal is remitted to the First-tier Tribunal to be

dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Walker.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber
2024

22 November