Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01910/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 February 2018	**On 27 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

[S L]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Ferguson, Counsel instructed by Birchtree Law Chambers
For the Respondent: Miss J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, date of birth [ ] 1990, sought in a protection claim, dated 9 August 2016, to remain on the basis of his

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sexuality as bisexual. His claim was refused by the Secretary of State on 7 February 2017. His appeal came before First-tier Tribunal Judge Hawden-Beal (the Judge) who, on 11 April 2017, dismissed the appeal. At that appeal the Appellant was represented by a Mr Othieno and the Respondent was represented by the Presenting Officer, Mrs Banks. The Appellant gave evidence, made a statement, was cross-examined and submissions were duly made on his behalf. The Judge in addressing the case plainly had in mind the relevant burden and standard of proof and clearly understood the basis of the Appellant's fear on return. The Judge also as he was entitled to do took into account the process by which the claim came to have been made and assessed the evidence which had principally come from the Appellant. Permission to appeal was given on 16 November 2017 by Upper Tribunal Judge Chalkley.

2. The Appellant had indicated he had for some three or four years a former housemate with whom he had been in a sexual relationship. The housemate was not present or willing to give evidence in support of the Appellant's claim. The Appellant's evidence was that he had been ambiguous or undecided as to his sexuality when he had lived in Pakistan, until as an adult he had come to the UK as a student and lived life here. However, he had done so in a Pakistani community in London and elsewhere so he had not disclosed his sexuality other than in the relationship with the partner whose name is not entirely clear from the Judge's decision, nor indeed the Appellant's statement.

3. Be that as it may, at paragraph 34 of the decision the Judge did not accept that the Appellant had been in a relationship with the former housemate, and that the Judge found it "very difficult to accept given the close proximity in which they would all have lived", that the relationship was not known. That was an assessment that might be made in the light of the evidence and there was nothing overtly erroneous in that conclusion. I bearing in mind I am not seized of the information about the accommodation, its nature and the extent to which two people could

enjoy, whilst living apart, such a sexual relationship. It did not seem to me that of itself the Judge's comment is particularly damaging to the assessment the Judge was making. He was not introducing his personal views of the nature of a relationship and how it might occur within the accommodation spoken to.

4. Further, the Judge said:-

> "There is no evidence of the relationship because the partner feared that coming to court would jeopardise his application for indefinite leave to remain. That fear is irrational and unfortunate because it is crucial to the Appellant's claim. Without it, there is nothing to support his claimed sexuality."

It is right to say that that as an expression of fact was plainly wrong because there was, of course, the Appellant's evidence of the relationship. It is perhaps infelicitous language to have said there was no evidence of the relationship because the balance of the decision was spent with the Judge assessing the Appellant's evidence, how it sat in the context with the background evidence and the claims that he had made, in his statement about his sexuality. The problem the Appellant faced was quite simply this: On one hand he said (at paragraph 13 in his original statement) that he was not in fear of his community in the UK, that he was able to disclose his sexuality to whom he choose to here in the UK, and on the other hand he said, the position that the Pakistani community living in the UK hold largely the same views as held by those living in Pakistan: They do not accept LGBT people, but he said however the important difference was that in the UK they are "bound by the law and cannot harm me. I therefore do not fear them here. This is not the case in Pakistan where the law supports harm against LGBT people".

5. It seemed to me that on one hand the Appellant's description of the fact that he has, other than with his partner in the UK, lived his life without revealing his sexuality, could be explicable entirely as he claims as part of

a genuine case and that he just preferred to live it that way, that must be a matter for him, but the Judge did not accept that. For reasons that he gave, which may not, or would not possibly be the same as the ones I might consider giving to justify a decision, nevertheless are sufficient and adequate to show that he has addressed the issue and has come to a conclusion upon it. He was entitled to conclude the Appellant is not bisexual and that the claim of risk on return to Pakistan was therefore false.

6. It followed from that that the elements of claimed risk on return simply do not have a proper basis. The background evidence plainly supports the general view that LGBT people face considerable difficulties in Pakistan. Similarly, gay men may face particular difficulties if they are openly so, but the Judge's view was that the Appellant did not show he belonged to a particular social group, and nor was his sexuality the basis of risk on return for any other reason. In those circumstances Miss Ferguson's arguments largely address this on the basis that the Appellant is the only one who can give evidence essentially about his sexuality. If the partner is not willing to give evidence or former partner is not willing to give evidence, the Judge should, absence of any demonstrable contrary evidence have reached the conclusion to that low standard of proof that the claim was made out.

7. Miss Ferguson's argument has the attraction for the Appellant in that he does no more than simply have his say-so as to his sexuality. He describes, for example, he is not part of any drinking culture, being a Muslim, but he attended clubs and he named in his statement at paragraph 15 about three or four of them, and knew of other places but he could not previously describe them, nor so far as I can tell, did not subsequently describe them. Those clubs are not known to me and not in the evidence as far as I can tell, other than by name. Whether or not it is simply inconceivable that someone who is so-called' straight' would go to such premises for one reason or another, I simply do not speculate. It

seemed to me simply attendance at clubs, or visiting clubs on one or two occasions or more does not demonstrate with any cogent evidence the sexuality of the Appellant.

8. In these circumstances, whilst I might not have reached the same view, it seemed to me that the mistakes the Judge made at paragraph 34 do not demonstrate a material error of law or that another Tribunal properly addressing the same evidence would have reached any different conclusion.

9. The further criticism upon which leave was given was with reference to paragraph 36 of the decision in which the Judge said:-

> "I am not satisfied that his parents do know of his claimed sexuality and I am satisfied that he has not told them of his claim for asylum because they will then realise that he stopped studying in 2015 and they have been supporting him ever since for no purpose."

10. Looking at the Appellant's evidence, not having heard it and seen how the oral evidence was recorded as contained within the reasons for decision, I am satisfied that the evidence is considerably ambiguous as to whether the parents know of anything about his claimed sexuality. It is by no means apparent from what the Appellant was saying that they do or would, or would have deduced it by now or since his presence in the UK, given that he has not been studying for quite a number of years now. Whether they might work it out simply would be useless speculation. It seemed to me that the Judge was entitled to come to the conclusion on the evidence that the Appellant had not told them of his asylum claim. Whether the Judge was right to infer the reason for that was as he stated was neither here nor there because the substance of the point is that the Judge had formed the view that the Appellant had not disclosed his sexuality, indeed within his community in Pakistan there or in his community in the United Kingdom. For those reasons the Judge may have speculated perhaps, inappropriately to a degree, in relation to why the

Appellant has been concealing the claims from his parents, but that ultimately does not tend to suggest a different decision would be reached by any other Tribunal looking at the evidence.

11. For these reasons therefore, noting that the Judge did consider this matter in the alternative, I nevertheless take the view that the Judge made no material error of law in his assessment of the protection claim under the Refugee Convention, nor indeed under the Humanitarian Protection provisions within paragraph 339C of the Immigration Rules. There was no challenge to the Judge's findings in relation to the Article 8 ECHR claim and the Original Tribunal's decision I therefore find stands.

DECISION.

12. The appeal is dismissed.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 20 March 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 20 March 2018

Deputy Upper Tribunal Judge Davey