



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/03422/2018

**THE IMMIGRATION ACTS**

**Heard at Leeds Combined Court  
Centre  
On 15 July 2019**

**Decision & Reasons Promulgated  
On 13 August 2019**

**Before**

**THE HON. MR JUSTICE LANE, PRESIDENT**

**Between**

**W I  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Holmes, Counsel, instructed by Bankfield Health Solicitors

For the Respondent: Mrs Petterson, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal brought by the appellant against the decision of First-tier Tribunal Judge Fisher, sitting at North Shields in November 2018, whereby the judge dismissed the human rights claim brought by the appellant. Permission to appeal was granted by the First-tier Tribunal in April 2019 on the grounds advanced on behalf of the appellant by Ms Pickering. Those grounds assert that the judge made a mistake of fact concerning the evidence as to whether the appellant had or had not been leading an openly gay life in the United Kingdom and that the judge misapplied the

law, when looking at the question pursuant to paragraph 276ADE of the Immigration Rules of whether there were significant obstacles to the appellant's integration in Pakistan, if he were returned to that country.

2. Before me, the appellant is represented by Mr Holmes and the respondent by Mrs Petterson. I have regard to their oral submissions.
3. The decision of the First-tier Tribunal records the lengthy immigration history of the appellant, who first arrived in the United Kingdom in July 2007. He came as a student and subsequently obtained further leave in that capacity. He was refused an application for leave to remain in 2014 as an entrepreneur and appealed against that decision but subsequently withdrew the appeal. He then made a series of EEA applications as an extended family member, each of which was refused. Finally, in June 2017, he sought indefinite leave to remain on the grounds of long residence. The respondent considered that application but refused it in a letter dated 8 January 2018. It is common ground that the appellant cannot succeed in an application under the rules based on long residence, given the length of time that he has been in the United Kingdom on a lawful basis. However, the refusal was also the rejection of a human rights claim and it was on that basis that the appellant appealed to the First-tier Tribunal.
4. The judge began his analysis of that evidence at paragraph 4 of the decision and stated that he had considered all the documentary evidence, as well as the oral evidence, which concerned two witness statements of the appellant. So far as the appellant's sexuality was at issue, the judge noted at paragraph 6 that the appellant said that he was gay man. He explained how he had been conflicted over his sexuality. He had had a relationship with a man whilst in the United Kingdom. His wife, according to the evidence, had discovered that he was gay through text messages with his ex-partner. He had married his wife in September 2012. She discovered his sexual orientation late in 2013.
5. The relationship with the male partner was said to have begun in March or April of 2012. The appellant said he had been threatened by his wife and her family from 2014 and that he had received a number of unwanted telephone calls. Those had been reported to the police, but he had not claimed asylum because he had been directed, he said, down a particular route by the Home Office, as most of his time in the United Kingdom had been lawful.
6. The appellant told the judge that his relationship with his ex-partner had ended around April 2017. The partner was not present as a witness because the relationship had broken down in somewhat acrimonious circumstances. Nor was a previous EEA sponsor present, as that person had not been aware of the appellant's sexuality. When he had found out, he ceased his support of the appellant.

7. Asked whether he had allegedly been involved in a five-year gay relationship and whether he had been living openly as a gay man, or whether he had been more discreet, the appellant replied that he had been discreet; but over the last few years he said he had lived openly. As a result, people from his culture no longer spoke to him.
8. The judge, having set out the relevant law, proceeded to an analysis of the evidence. The first issue recorded in paragraph 15 of the decision was to determine whether the appellant had established that he was gay. The judge did not attach any significant adverse weight to the absence of his former partner as a witness, owing to the way in which they had parted. The judge considered he could attribute only limited weight to the evidence of work colleagues, who had sent in letters of support in connection with the proceedings, because none of the authors had been in attendance. There was a similarity in phraseology between the letters that suggested to the judge they had been prepared by others and the authors had merely appended their names.
9. Nevertheless, the judge stated that he accepted the appellant was gay. He did so because the most significant evidence in the appellant's favour was the disclosure of his sexual orientation to his GP in 2013, at a point when I note the appellant was said to have indicated that he was bisexual. The judge also placed weight on the activation by the appellant of a *Grindr* account the appellant had opened in 2014. It is common ground that *Grindr* is a website that enables gay people to seek out relationships. Accordingly, at the end of paragraph 15 the judge recorded that the appellant was "gay or bisexual".
10. At paragraph 16 the judge reminded himself of the case law of the Court of Appeal in SSHD v Kamara [2016] EWCA Civ 813 regarding the phrase "very significant obstacles to integration" in paragraph 276ADE. At paragraph 17 the judge stated that he was not persuaded that the appellant had been living an openly gay life in the United Kingdom as he claimed. None of the letters from his work colleagues, the judge said, made any reference to his sexuality. He would have expected them to have done so. The judge considered that the appellant's comment that people in his workplace thought that the appellant was gay was strong evidence that the appellant was not in fact living an openly gay life. Similarly in cross-examination the appellant referred to the wife of one of his friends who asked why he was not married. The judge said:-

"In my judgement, she would have known the answer to that question if he were openly gay. I am satisfied that he is discrete about his sexuality in the UK. Given the tolerance to those who are LGBT in the UK, it cannot realistically be said that his discretion is attributable to a desire to avoid persecution. If he wished to live openly in the UK, he could do so. I therefore conclude that his is discrete in the UK through choice, and that he would continue to live discretely in Pakistan."
11. At paragraph 18, the judge turned to the position in Pakistan. The judge noted that the appellant was 22 years old when he arrived in the United

Kingdom. He had visited Pakistan on no less than seven occasions between 2008 and 2014. The judge considered that the appellant had a good understanding of how life was conducted in Pakistan and the capacity to participate in it. The judge then said:-

“Living discreetly as I have found that he would, he would have a reasonable opportunity to be accepted and to operate on a day to day basis. He is an intelligent man who has gained qualifications in the UK which would assist him on return. He enjoys reasonably good health. There is no reason why he could not establish a network of relationships, as he has in the UK, to give substance to his life.”

12. At paragraph 19, the judge reminded himself that the appellant had not made a protection claim. The judge had observed that Pakistan was a huge country with a population approaching 200 million and there was not sufficient evidence in the judge’s view to show that the appellant’s family or his wife’s family had influence or contacts which would enable them to trace the appellant throughout the country on return. Overall, therefore, the judge was not persuaded that there were significant obstacles to the appellant’s integration in Pakistan.
13. The judge then noted that there was no family life advanced on behalf of the appellant. There was a private life but that would be given little weight, given that pursuant to the judgments of the Supreme Court in Rhuppiah [2018] UKSC 58, the appellant had never possessed anything other than limited leave to remain in the United Kingdom. Overall, the judge considered that although the decision would interfere with the appellant’s private life, in all the circumstances that interference would be proportionate.
14. The challenge advanced by Mr Holmes is based upon the two grounds drafted by Ms Pickering. Mr Holmes submits that the issue of work colleagues had been mischaracterised by the judge. These letters were character references and also included an assertion that the appellant had not been in a relationship at work with a female colleague, this being a matter which at one point was taken by the respondent. I do not consider that there is substance in this aspect of the challenge. It is trite law that it is for the judge hearing and seeing the evidence unfold before him or her to attribute such weight as is appropriate to that evidence. In the present case, the letters took the appellant’s case nowhere. I do not consider that the judge mischaracterised them or advanced a set of findings by reference to them which he was not entitled to do. Indeed, overall, the judge’s findings not only about the appellant’s perception by work colleagues but generally strike me as entirely appropriate. As I have noted, in paragraph 17 the judge went on to consider the inference to be drawn from the fact that the wife of one of the appellant’s friends clearly did not know that the appellant was gay.
15. Mr Holmes submits that the judge paid insufficient regard to the fact that the appellant had held down a gay relationship for nearly six years. Mr Holmes submitted this was evidence of living an openly gay lifestyle. With

respect, that is not correct. People may enjoy a gay life with a particular partner or partners, without making that manifest to others. This is underscored by the fact that it took time even for the appellant's wife to become aware of the position. The fact that, according to Mr Holmes, there came a point when the appellant "came clean to his wife" supports the judge's conclusion. At the very least, there is nothing in this aspect of the challenge that shows the judge was compelled to take a different conclusion than the one he reached.

16. So far as the *Grindr* account is concerned, I also do not find that this compels the conclusion, together with the other evidence, that the appellant was indeed living an openly gay lifestyle in the United Kingdom. The documentary material that was before the judge in respect of *Grindr* was extremely limited in nature. The main bundle has a large number of references showing when the account was used by the appellant over a number of years, but nothing else. The photographs of the appellant in the bundle, said to be posted on *Grindr*, are in themselves entirely unexceptional. The same is true of the small number of pages that were attached to the supplementary bundle. The fact that *Grindr* is a service that enables gay and bisexual people to communicate with each other and seek out relationships does not mean that anybody who uses it is thereby adopting an openly gay lifestyle in any realistic sense of the word.
17. Mr Holmes drew attention to passages in the appellant's first witness statement. At paragraph 12, we see the appellant saying that he had sought to hide who he truly was and the only reason that he did this was because in the Pakistani community such things are not talked about openly. However, at paragraph 13 the appellant said that he could live openly as a gay man in the United Kingdom where he was aware there was no risk to his personal safety. I find, however, that these passages serve only to confirm the fact that the judge was entitled to take the view he did. In particular, in paragraph 17 the judge said that, given the tolerance of those who are LGBT in the United Kingdom, it could not realistically be said that the appellant's discretion was attributable to his desire to avoid persecution. In other words, the judge concluded that the appellant was not living an openly gay lifestyle in the United Kingdom and that this was very firmly not for reasons of fear of the consequences. I therefore find no substance in the first ground.
18. I turn to the second ground. This is that it was an error of the judge to conclude in effect that paragraph 276ADE could not be satisfied, in that there would be serious obstacles to the appellant's integration into Pakistan. The reason was, again, that the appellant was gay. Mr Holmes submitted by reference to the medical evidence in the appellant's bundle that the appellant had been able to converse freely with doctors in the United Kingdom over a period of time as to his sexuality and to receive appropriate medical responses. Mr Holmes said this may not be possible in Pakistan. There is, however, a complete dearth of evidence that this is so, notwithstanding the legal position regarding homosexuality in Pakistan.

There is nothing to which my attention has been drawn which shows that gay people in Pakistan lack access to medical treatment.

19. By the same token, I do not consider that there was before the judge any evidence to compel the conclusion that the appellant, if returned to Pakistan, would not, on the basis of the attributes regarding his sexuality that the judge had found, be able to integrate. At paragraph 18 of the decision, it is clear that the judge did have in mind in considering this aspect of the case the fact that the appellant was, as he had found, gay. That is the reason why the paragraph includes the following: "Living discretely (sic) as I have found that he would, he would have a reasonable opportunity to be accepted and to operate on a day to day basis".
20. The judge then went on to find that the appellant could establish a "network of relationships, as he has in the UK, to give substance to his life". There was nothing before the judge to compel a contrary conclusion, given the findings that the judge had reached.
21. Overall, I am satisfied that the judge considered all the evidence. The judge also considered the submissions. The judge made findings which he was entitled to reach on that evidence. That included the important finding about integration in Pakistan. For these reasons this appeal is dismissed.

### **Decision**

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 their 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:

2 August 2019

The Hon. Mr Justice Lane

President of the Upper Tribunal  
Immigration and Asylum Chamber