



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

Appeal Number: PA/00187/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 10 January 2019**

**Decision and Reasons  
Promulgated  
On 21 January 2019**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**TAM  
ANONYMITY DIRECTION MADE**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Mr Brown, Counsel

For the respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.*

1. The appellant is a citizen of Pakistan. He claims that he is gay and faces a real risk of persecution in Pakistan for this reason.

#### *Procedural history*

2. In a decision dated 23 April 2018 First-tier Tribunal ('FTT') Judge Moxon rejected the appellant's claim to be gay and dismissed his appeal.
3. In grounds of appeal submitted on behalf of the appellant it was argued, inter alia, that the FTT failed to make any findings regarding the appellant's claim to have been involved in specific gay relationships when he was in Pakistan. FTT Judge Pedro granted permission to appeal in a decision dated 16 May 2018.
4. The respondent submitted a rule 24 notice dated 10 July 2018 in which he made it clear that he did not oppose the appellant's appeal and invited the Upper Tribunal to remit the matter to the FTT.

#### *Error of law discussion*

5. I can state my reasons for finding that the FTT committed an error of law briefly given the respondent's concession.
6. The appellant's claim that when he was 15 (1997) he began a secret gay relationship with Arshat until 2000 (when he moved to a new area) before commencing another secret gay relationship with Shahid in 2001, is an important aspect of his overall claim to be a gay man. As Ms Pettersen acknowledged, the respondent regarded this aspect of his claim to be of significance: when summarising the claim in the decision letter at [10] a) to g), the respondent refers to these two relationships at c) and d). The respondent then addresses the relationship with Arshat in detail at [22] and with Shahid at [23]. As the grounds of appeal point out those relationships are also expressly referred to in some detail in the appellant's comprehensive witness statement.
7. When summarising the appellant's asylum claim in its decision, the FTT refers to these two relationships at [24]. The FTT's findings of fact regarding the appellant's earlier gay relationships as a teenager are to be found at [39]. The FTT rejected the respondent's criticisms as to how the appellant realised he was gay or his account of the relationship when he was 15. The FTT regarded the appellant's evidence on these matters as plausible and consistent with the objective evidence. Although the FTT went on to find that "*these features enhance his credibility*", the FTT made no clear finding as to whether it accepted the credibility of the claimed relationships with Arshat and Shahid. Plausibility can inform credibility but is not determinative of it. Rather, the FTT listed matters supportive of the appellant's credibility and then evidence it considered as significantly

undermining it, before rejecting the appellant's claim to be gay. At no stage in its reasoning has the FTT made clear findings on the credibility of the claim to have been in two long term secret gay relationships when in Pakistan. This constitutes an error of law undermining the entirety of the FTT's factual findings.

8. In addition, the FTT appears to reject the appellant's claim to have been involved in a gay relationship with a man named Robert in the UK (see [44](a) and (b)) yet makes no finding regarding the claim that the appellant had a gay sexual relationship with Muhammad Hussain. This is particularly surprising because Mr Hussain gave oral evidence before the FTT, having made a witness statement that appears in the appellant's bundle. The FTT expressly records his evidence at [32] that he previously had a sexual relationship with the appellant and makes it clear at [42] that it is prepared to give weight to Mr Hussain's evidence, yet entirely fails to make a clear finding on the credibility of their claimed past gay sexual relationship. This error of law has not been clearly identified in the grounds of appeal, but it assists to underline the point that has been made on the appellant's behalf, as accepted by the respondent, that the FTT failed to make clear findings regarding the appellant's claimed past gay relationships (other than Robert).

#### *Disposal*

9. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I indicated at the hearing that I agreed with both representatives that this is an appropriate case to remit to the First-tier Tribunal. Findings of fact must be entirely remade. There is likely to be significant oral evidence from four witnesses.
10. I note reference to the use of the "second appellant" as an interpreter at the FTT hearing. It is unclear who was used as an interpreter, but it is important to highlight that only the court appointed interpreter should be utilised, where one is required, in hearings before the FTT.

#### *Decision*

11. The FTT decision contains an error of law and I set it aside. The appeal is remitted to the FTT, where it shall be reheard on a de novo basis.

Signed:

Ms M. Plimmer  
Judge of the Upper Tribunal

Date:  
12 January 2019