Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02090/2019 **(P)**

THE IMMIGRATION ACTS

Decided without a hearing **Decision & Reasons Promulgated**
On 25th June 2020

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

AMIT [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

This decision has been made without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

DECISION AND REASONS

Introduction

1. This is the remaking component of the Upper Tribunal's decision in this appeal, following my conclusion (set out, with reasons, in a notice promulgated on 10 January 2020) that the First-tier Tribunal had erred in law when dismissing the appellant's appeal against the respondent's refusal of his human rights claim. The error of law component of my decision is appended to this notice. In summary, I concluded that the judge had failed to deal adequately with the two core aspects of the appellant's Article 8 claim; his assertion that he is a bisexual man, with the difficult consequences this would have him if he returned to India; and his

particular health condition, namely Type I diabetes with an episodic presentation known as Diabetic ketoacidosis ("DKA"). None of the judge's findings were preserved.

Procedural history

2. A resumed hearing was originally listed for 20 March 2020. For reasons entirely beyond her control, the designated Senior Presenting Officer was unable to attend and an adjournment was sought. In all the circumstances, including the emerging highly unusual circumstances brought about by the Covid-19 pandemic, I granted the adjournment. This was with the intention that a further hearing could be listed in the near future.

3. As matters have turned out, an expeditious re-listing for this appeal proved to be impossible.

4. Directions to the parties were sent out on 27 April 2020 in order to progress the case. By an email received by the Tribunal on 27 April 2020, the appellant stated his wish to have his appeal determined without a further hearing. Amongst the reasons set out for this was the suggestion that he did not have the appropriate technology order to participate in a remote hearing. In order to clarify matters, further directions were sent out on 28 April. It was specifically put to the appellant that he could wait for a face-to-face hearing to be listed in due course. The directions also asked him to confirm whether he wished his legal representatives (or counsel) to make any further submissions on his behalf. The following day, the appellant responded in an email, clearly confirming that he wished his appeal to be finally determined without a hearing and that he did not wish for his legal representatives (or counsel) to make any further submissions. This response was forwarded by the Tribunal to the respondent.

5. On 4 May 2020, another Note and Directions notice was issued. This confirmed the appellant's wish to have his appeal determined without hearing. In addition, it stated the following:

> "The Upper Tribunal is in possession of the case file. The evidence upon which the appellant seeks to rely when the remaking decision is undertaken is contained in a bundle received by the Upper Tribunal on 14 February 2020 (under cover of letter dated 8 February 2020). This bundle ("the appellant's bundle") comprises two parts: section A is entitled "supplementary bundle" and is paginated i-129; section B is entitled "First-tier Tribunal Appeal Bundle" and is paginated 1-137. This is the only evidence emanating from the appellant that the Upper Tribunal will consider when remaking the decision in this appeal.
>
> As to the scope of the remaking decision, the following issues are to be addressed:

i. the appellant's overall credibility, specifically as at relates to his claimed sexuality, his health conditions, and his personal circumstances in the United Kingdom and if he returned to India;

ii. the supporting documentary evidence relating to the above matters;

iii. the relevance of the above matters to the assessment of the Article 8 claim, both within the context of the Immigration Rules and without.

Directions to the parties

To the appellant:

1) **No later than 5 days after this notice is sent out** (the date of sending out will be stated on the covering email or covering letter), the appellant is to confirm with the Upper Tribunal **and** the respondent whether the appellant's bundle can be served on the respondent in electronic form (specifically, in PDF format in appropriately sized attachments to multiple emails);

2) If such service is possible, the appellant's bundle shall be served on the respondent in electronic form **no later than 5 days after this notice is sent out**;

3) Further and in any event, **no later than 14 days after this notice is sent out**, the appellant may, if so advised, file and serve by electronic means written submissions relating to the remaking of the decision in his appeal. Such submissions should include any relevant legal points, together with references to any relevant evidence contained in the appellant's bundle;

4) If and when the respondent files and serves written submissions in compliance with the direction set out below, the appellant may, if so advised, file and serve by electronic means a reply **no later than 7 days** following service of the respondents written submissions."

6. On 7 May 2020, the appellant responded by filing a handwritten statement, dated 6 May 2020. This confirms that he did not want to have a face-to-face hearing. No submissions were received at that point.

7. The appellant's handwritten statement was forwarded by the Tribunal to the respondent. There was uncertainty as to whether the appellant representatives had in fact served the relevant bundle of evidence on the respondent. I deemed it appropriate to hold a telephone case management hearing in order to assess the situation and ensure that both parties had had a fair opportunity to put forward their respective cases before I reached a final decision on the appeal. It transpired that the respondent had been served with the appellant's bundle in electronic form (following a delay in respect of which I do not criticise the appellant's representatives) and was in a position to provide written submissions.

8. On 9 June 2020, the respondent filed and served her written submissions (described as a skeleton argument).

9. In order to afford the appellant every fair opportunity of presenting his case, I then directed that he could file and serve any reply to the respondent's submissions within 5 days of 10 June 2020. I made it very clear that I would be making my decision on the appeal either upon receipt of such a reply, or in default of the direction being complied with.

10. 12 June 2020, written submissions drafted by Ms Heybroek of Counsel, were filed and served. In summary, they assert that, by reference to country information, the appellant's sexuality would make him the subject of significant discrimination in India. This, in combination with his time away from that country and is lack of a social/familial support network, would go to show "very significant obstacles" and/or that the respondent's decision was disproportionate on a wider Article 8 basis. I will address the points raised in more detail, below.

11. Having considered all the circumstances in this case, including of course the express wishes of the appellant, I concluded that I could and should determine the appeal without a hearing, pursuant to rule 34 of the Procedure Rules.

The evidence

12. Under cover of letter dated 8 February 2020, the appellant's representatives made an application under rule 15(2A) of the Procedure Rules to rely on additional evidence that had not been before the First-tier Tribunal. There has been no opposition to this application. I formally grant the application and admit that evidence.

13. The respondent's skeleton argument also contains an application to rely on further evidence on the issues of sexuality and treatment for diabetes in India. This evidence is all in the public domain and is relevant to the issues before me. I formally grant that application and admit the evidence referred to in the skeleton argument.

14. In remaking the decision in this appeal, I therefore have regard to the following sources of evidence:

i. the appellant's combined bundle, under cover of letter dated 8 February 2020, comprising sections A and B;

ii. the appellant's handwritten witness statement dated 6 May 2020;

iii. the country information referred to in the respondent's skeleton argument (which included relevant hyperlinks);

iv. the country information referred to in the appellant's written submissions dated 12 June 2020;

v. The respondent's original appeal bundle, under cover of a front sheet dated 8 March 2019.

Additional materials

15. I have taken account of the submissions set out in the appellant's skeleton argument, originally drafted by Ms Heybroek of Counsel, and amended by Ms Allen of Counsel on 19 March 2020, and those in the latest written submissions dated 12 June 2020. I have also taken account of the submission set out in the respondent's skeleton argument and the reasons for refusal letter dated 14 January 2019.

The parties' respective cases

16. The appellant's case can be summarised as follows. He came to United Kingdom in October 2003 as a student and has resided in this country ever since. He asserts that during this period of residence he has established strong ties, both in respect of family members and a wider social circle. He has lost ties with India. He claims to be bisexual and asserts that this will cause him significant problems on return to India in light of societal discrimination. In addition, his medical condition is significant and, when taken together with all other relevant matters, goes to show that he would either face "very significant obstacles" to reintegration into Indian society, with reference to paragraph 276ADE(1)(vi) of the Immigration Rules, or that his removal from the United Kingdom would in any event be disproportionate on a wider Article 8 assessment.

17. It is to be noted that the appellant has never made a protection claim, nor does he seek to rely on Article 3.

18. The respondent's reasons for refusal letter implicitly accepts that the appellant has established a private life in United Kingdom. However, it was said that in all the circumstances he will not face "a very significant obstacles" to a reintegration into Indian society. The question of whether there were "exceptional circumstances" in the appellant's case is then considered. It is accepted that the appellant has forged "strong bonds" with family members in the United Kingdom. It is not accepted that these constitute family life for the purposes of Article 8. The appellant's claim to be bisexual is considered. Whilst this aspect of his case is not expressly rejected, there is no concession in his favour. The respondent effectively took the claim at its highest for the purposes of the decision being made. The letter ends by noting that the appellant had not made a protection claim.

19. The respondent's skeleton argument confirms that the appellant's claimed sexuality had not been previously expressly rejected. The document also effectively takes this aspect of the appellant's case at its highest. Reference is made to evidence contained in the respondent's Country Policy Information Note ("the CPIN") and the case of MD (same-sex oriented males: risk) India CG [2014] UKUT 00065 (IAC). It is said that the appellant had not provided evidence as to whether he would wish to live discreetly in India simply because of the social mores and/or family use, rather than out of a fear of harm. In addition, it is said that the appellant would be able to live as an openly bisexual man in a number of urban centres in India without facing any significant problems.

20. On the issue of the appellant's medical condition, the skeleton argument submits that he is well aware of his condition and the appropriate treatment. It is said that there was no evidence to suggest that the appellant would be unable to seek and find employment in India. This, together with possible support from family and/or friends in the United Kingdom, would allow the appellant to access available treatment in India. It is submitted that this aspect of his case did not disclose a breach of Article 8.

Findings of fact

21. It is common ground that the appellant arrived in United Kingdom 10 October 2003 as a student. I find this to be the case. I also find, again predicated upon the agreed position of the parties, that the appellant had leave to remain as a student until 30 June 2009. An attempted in-time extension application was rejected and all subsequent applications for leave to remain have been refused. Therefore, I find that the appellant has been in this country unlawfully since 1 July 2009.

22. Based on the evidence before me as a whole, I find that the appellant has in fact established good ties in the United Kingdom. In respect of family members, I find that he has a sister living in Bradford, two maternal uncles, a maternal aunt, maternal uncles, and two cousins residing in this country. I find that his sister is married and has two children.

23. Having regard to the appellant's three witness statements and those of his sister and a cousin, and the numerous photographs provided, I am satisfied that there is a good relationship between the various family members. Having said that, it is surprising that other family members had not provided any written evidence. I accept that the family members see each other on a relatively frequent basis. I find that the appellant has not been residing with any of these family members, at least in recent years. I am willing to accept that the appellant has been financially dependent upon the family members for a significant period of time.

24. Given the past and current financial support provided by various individuals, it is highly likely that such support would be forthcoming were the appellant to return to India. No family member has suggested that they would simply cut the appellant off, as it were, were he to leave the United Kingdom. I also find that the gurdwara at which the appellant has acted as a volunteer over the course of time would be willing and able to provide additional support.

25. I am also prepared to accept that the appellant has established good friendships whilst in this country. Although there is only one letter of support contained in the appellant's bundle, more appear in the respondent's bundle.

26. The appellant has asserted that he no longer has any family members residing in India. This assertion is supported by the witness statement from his sister. In addition, translated death certificates for the appellant's father, mother, and older sister, are contained in the bundle. I am satisfied that these documents are reliable as to their contents. On balance, I am satisfied that these family members have indeed died, as claimed. I find it to be more likely than not that the appellant no longer has any close relatives living in India. It may be that there are more distant family members there, but I am willing to accept that he is not in contact with them and is unlikely to have the ability to discover a means of establishing (or re-establishing) contact with any such individuals.

27. I find that the appellant does not own property in India, nor does he have any other form of assets in that country.

28. The appellant claims that he is bisexual. Aside from his own assertions contained in the two witness statements and the letter setting out his human rights claim (which, it must be said, have been put in the barest of terms), there is no other supporting evidence on this important issue. The appellant's sister and the only friend to have provided a letter of support make no mention of his sexuality. This is despite the assertion in the human rights claim letter that the appellant's family members in the United Kingdom were "much more accepting" in respect of sexuality than Indian society It may be that he has never in fact wished to divulge this information to them. However, he has not said as much in his witness statements. Indeed, the 2019 statement makes no reference to his sexuality at all. From an evidential perspective, the position is very unsatisfactory.

29. There is no evidence from the claimed former partner, Mr [Z], despite the assertion made in the human rights claim letter of May 2018 that although that relationship ended, they remained "very close and in contact." The lack of evidence from this individual and the absence of any explanation from the appellant as to why no such evidence has been provided (or even sought) is not insignificant.

30. Despite being expressly informed about the option of making a protection claim, the appellant has never pursued this course of action. To that extent, he has avoided the scrutiny that such a process would normally entail (including, for example, an interview). It is the case that he has attended hearings before the First-tier Tribunal and the Upper Tribunal in order to give oral evidence, and I take that into account, although of course he has ultimately decided not to take a further opportunity to provide such evidence.

31. Although I have not been provided with any materials relating to the EEA application made in 2016, it appears as though at that time, and when the human rights claim was made in May 2018, the appellant was asserting that he was gay. It is clear from the record of evidence provided before the First-tier Tribunal that the appellant was then claiming to be bisexual. This is repeated in the second witness statement contained in his bundle. In the absence of any evidence that the appellant regarded being gay as the same as being bisexual, I regard this as an inconsistency.

32. As regards the respondent's position, it is right that his claimed sexuality has not expressly been disputed. Nor, though, has it been expressly accepted: as confirmed in the respondent's skeleton argument, she had simply adopted the approach that this aspect of the claim would be taken at its highest.

33. Taking all of the above into account, I find that the appellant has failed to show that it is more likely than not that he is either gay or bisexual.

34. When setting out my conclusions, below, I will assess the appellant's case on this basis, but also on the alternative premise that he is bisexual (that being the most recent assertion in respect of his sexuality).

35. I turn now to the issue of the appellant's health. There is a fair amount of medical evidence contained in his bundle. This consists of a patient record printout from his GP, covering the period November 2007 to March 2014 in section A, together with hospital and GP letters in section B (a large number of which are simply appointment letters). A letter from Ealing Hospital, dated 26 October 2009 confirms that the appellant was doing "reasonably well" with his new diagnosis of diabetes. It confirms that he had been prescribed Metformin. Reference is made to his presentation with "mild ketosis and acidosis." Section B also contains detailed information provided to patients relating to diabetes, including Diabetic ketoacidosis. I am satisfied that the appellant has been well-aware of his condition and its management from the outset of his diagnosis.

36. From the evidence before me, in particular the 2019 witness statement, I find that the appellant has only been hospitalised on account of his diabetes on one occasion, that being in 2009 at the time the diagnosis was made. I can see no evidence to indicate that there have been subsequent episodes of a failure to manage the condition or some other form of resistance to relevant medication. This is of significance, given that DKA

(as far as I can glean from the medical evidence as a whole) is an episodic condition.

37. As the respondent's skeleton argument points out, there is no medical report from a relevant specialist doctor as to the current (or even relatively recent) treatment of the appellant's condition and/or the possible consequences of either a change in medication or any other relevant matter. There is no case-specific report as to treatment for diabetes (in any of its forms) in India. There is no medical evidence of the appellant suffering from memory loss, and I do not accept that there is any such cognitive impairment.

38. I find as a fact that the appellant has, over the course of the last 10 years or so, managed his condition adequately and without the need for specialist intervention on an urgent basis.

39. It has not been suggested, and I do not accept in any event, that the appellant is at a greater level of risk than any other person with DKA. He does not fall within any of the "special patient groups" referred to in the information notes contained in section B of his bundle. Nor does he have any of the factors associated with an increased mortality risk when in hospital, such as, for example, older age, psychological issues, neuropathy, cardiovascular disease, or excess alcohol intake. The research article referred to by the appellant in his typed 2020 witness statement does refer to a "substantial short-term risk of death associated with recurrent DKA admissions". However, the appellant has not experienced recurrent hospital admissions. Further, the article quite obviously does not specifically relate to the appellant's case.

40. I now address other relevant matters. I find that the appellant is well-educated, having obtained numerous qualifications in the United Kingdom, including a degree. I find that he has worked in the past at a time when he had permission to do so. There is no evidence to suggest that the cessation of work was due to his medical condition. On his own evidence, his one and only hospital admission occurred after his previous leave to remain (and therefore his right to work) had expired.

41. It has never been suggested that the appellant does not speak either Punjabi and/or Hindi. I find that he does. He speaks English fluently.

42. It is highly likely that the appellant went to school in India and that he worked in one form or another prior to his entry to the United Kingdom in 2003.

Conclusions on the Article 8 claim

Paragraph 276ADE(1)(vi) of the Immigration Rules

43. I begin with paragraph 276ADE(1)(vi). The relevant date for the assessment is that of human rights claim, namely 4 May 2018.

44. Bearing in mind the relevant guidance from the Court of Appeal, I direct myself as follows. The "very significant obstacles" test sets a high threshold. The meaning of "integration" (or, more accurately, "re-integration") involves a broad evaluative judgment of all relevant matters, both subjective and objective. Ultimately, it is a question of whether the individual concerned will be enough an "insider" such that, in all the circumstances, he will be able to develop and lead a reasonable life, bearing in mind the need to create social and economic ties in the country of origin.

45. On my findings of primary fact and in light of the matters discussed in the following paragraphs, I conclude that the appellant falls short of satisfying paragraph 276ADE(1)(vi).

46. It is right that he has been away from India for a significant period of time now. I have also found that the no longer has relevant family members there. These two factors certainly count in his favour.

47. He lived in India until the age of twenty-seven. He was educated in that country and was quite obviously fully conversant with its social and cultural mores. It is unlikely in the extreme that he has somehow lost any meaningful appreciation of how life is carried on in his home country. I have no hesitation in finding that this is not the case and that he maintains at the very least a reasonable knowledge and understanding in that regard. He has relevant linguistic abilities. I have found that the appellant would be able to rely on at least financial support from family members and others in the United Kingdom. This would provide meaningful assistance both in respect of matters such as finding accommodation, the acquisition of day-to-day necessities such as food, the ability to pay for access to utilities, and access to appropriate medication. Beyond assistance from others, the appellant is educationally well-qualified and has obtained work experience whilst in the United Kingdom. It is more likely than not that the appellant would be able to seek and obtain some form of reasonable employment, bearing in mind my finding that his medical condition not prevented him from working in the past and the absence of any evidence to suggest that it would prevent him from working now. Whether by virtue of the income derived from employment alone, or in combination with financial support from people in the United Kingdom, the appellant would be in a position to provide for himself.

48. On the issue of the health condition, there has been no evidence at all from the appellant to indicate that appropriate medication is simply not available in India, even if on only a privately-funded basis. The information contained in the respondent's skeleton argument shows that diabetes is recognised and catered for in India. It would be extremely surprising if this were not the case. I have found that the appellant has

managed his diabetes over the course of many years, has not required urgent specialist intervention since 2009, and does not fall into a category of those particularly vulnerable to the more serious consequences of DKA. As mentioned previously, the appellant's ability to find employment and/or the financial assistance available from people in the United Kingdom would enable adequate medical treatment to be accessed and maintained on a long-term basis.

49. I am prepared to find that the health issue represents an obstacle to respondent-integration. In and of itself, it does not extend further than that.

50. For the avoidance of doubt, Article 3 has never been relied upon by the appellant. In any event, and even taking into account the recent judgment of the Supreme Court in AM (Zimbabwe) [2020] UKSC 17, the appellant's claim comes nowhere near a satisfaction of the relevant test.

51. I have found that the appellant is not in fact bisexual. There is no question of his sexuality representing an obstacle to reintegration.

52. Bringing the above matters together, I conclude that the appellant would undoubtedly face obstacles to re-integration. Even on a cumulative basis, these would not be "significant".

53. I now turn to assess paragraph 276ADE(1)(vi) on the alternative basis that the appellant *is* bisexual.

54. The country guidance decision in MD concluded that gay men in India were not at a general risk of persecution (applying, of course, the lower standard of proof). The more recent country information does not show that all bisexual men are at risk of persecution. In any event, the appellant had not made a protection claim, and Article 8 cannot be used as a back-door route to seeking international protection. Of significance is the subsequent judgment of the Indian Supreme Court of 6 September 2018, which held that consensual homosexual acts between adults conducted in private were no longer an offence under section 377 of the Indian Penal Code (see 3.2.3 of the CPIN). It is right that there is no provision in Indian law for civil partnerships or for the recognition of same-sex marriages. However, the appellant has never suggested that he had a wish to enter into any formalised same-sex relationships. The country information does not show that other legislative and/or administrative restrictions are in place such as to constitute, either alone or together with other factors, "very" significant obstacles to the appellant being able to live a safe and reasonable life as a bisexual man.

55. The CPIN does indicate that there are still adverse societal attitudes towards gay men (see, for example, 3.3.9 and 5.1.3). Other passages cite evidence from activists that the Supreme Court judgment was not a panacea for the LGBT community in India. I accept that to be the case.

56. 5.1.2 provides the results of the 2016 Global Attitudes Survey on LGBTI People. 50% of respondents stated that they either somewhat or strongly disagreed that being gay, lesbian, or bisexual should be a crime, whereas only 31% somewhat or strongly agreed that it should. This discloses a broadly positive overall picture. Nonetheless, other sources of evidence show that there are issues of discrimination, particularly emanating from certain religious and nationalistic groups.

57. There is reference in the evidence to India being a "vast, diverse, multicultural country". Simply as a matter of common-sense, it must be the case that certain urban areas are highly likely to be more diverse and more accepting and/or tolerant than rural areas. That much is true in very many countries around the world. The appellant is not bound by any particular circumstances in his case to live in a rural part of India.

58. At 6.1.1 of the CPIN a report by the World Bank from 2012 states that: "[Focus group interviews] show very clearly that the LGBT community prefers to stay away from the mainstream health services. The reason for staying away is the stigmatisation faced by the LGBT community in the hands of the health service providers." This evidence does not state that there is official discrimination in respect of healthcare. I do take account of what might be a sense of wariness on the appellant's part in approaching medical services. However, he does not suffer from HIV, which is a specific condition that the country information suggests results in difficulty obtaining medical treatment. His condition is not one which might be (wrongly) perceived as being connected to sexuality. In addition, he will have funds to obtain treatment, including from private sources. He does not suffer from mental health conditions, which might act as additional vulnerability.

59. 6.2.1 of the CPIN refers to "reports of homophobic landlords refusing to rent accommodation to LGBT tenants" and the lack of a law effectively preventing such discrimination. This evidence does not indicate that such discrimination is widespread. Indeed, the same paragraph refers to MD, which in turn concluded that this particular issue was not "endemic or anywhere approaching it".

60. In respect of harassment and/or discrimination in the workplace, 6.3.2 sites evidence that relevant policies were normally locally defined and many organisations (i.e. employers) were "not necessarily inclusive, sensitised or protective towards LGBT persons." As with other specific aspects of the CPIN evidence, I accept that discrimination and poor practices exist. However, the evidence is not in my view show that the problems are so serious in terms of prevalence, severity, and geographical reach, that the appellant would be effectively forced to conceal his bisexuality in order to have reasonable access to relevant services and facilities.

61. The appellant's latest written submissions rely on a report from the International Commission of Jurists entitled "Living with Dignity: Sexual

Orientation and Gender Identity-Based Human Rights Violations in Housing, Work and Public Spaces in India", dated June 2019. Although this report was not before the First-tier Tribunal, nor had it been adduced in the Upper Tribunal previously, I have decided to admit it.

62. I have read the sections referred to in paragraph 9 of the written submissions. With respect, it is rather unhelpful that specific aspects of sections pertinent to the appellant's particular circumstances have not been quoted. A relatively large proportion of the evidence relates to transgender people and is thus irrelevant to the appellant's case. A certain amount of the evidence refers to protection-related problems (including violence from family members and/or certain. Once again, I emphasise the fact that I am not considering a protection claim in this appeal, and paragraph 4 the written submissions expressly acknowledges that the appellant is not claiming that he would be persecuted.

63. Whilst the report is based on anecdotal evidence, I accept that there is societal discrimination in respect of housing, employment, and accessing public spaces. This is consistent with the CPIN. What it does not show, when considered together with the CPIN, is that it is more likely than not that such discrimination is systemic and so prevalent as to lead me to conclude that the appellant will, if he wished to live as an openly bisexual man and in light of his circumstances as a whole, face "very significant obstacles" (whether as at the date of his human rights claim or now) to a reasonable re-integration into Indian society, particularly if the place of re-establishment is a major city. I say this whether the discrimination issue is taken alone or in combination with the other factors I have discussed previously.

64. My view on the overall position for the appellant is supported by the conclusions in MD (bearing in mind, as I do, the fact that the ICJ report is from 2019). Whilst MD was in the first instance considering the risk of persecutory treatment, it also concluded that it would not be unreasonable or unduly harsh for an openly gay man to relocate within a large urban area in India. Without having to conclude there is a direct equivalence between the reasonableness/unduly harsh assessment within a protection claim, and the issue of discrimination in an Article 8 claim such as the present, the former is at least of relevance in the latter.

65. On the alternative scenario and taking a cumulative approach to all of the relevant factors discussed above, there will be obstacles to re-integration that can properly be described as "significant". I conclude that these will not, on the facts of this case, be "very" significant. Put shortly, the appellant's previous experience of life in India, support from the United Kingdom, the nature of his health condition, and the country evidence on discrimination, combine to show that he will be able to develop and continue a reasonable private life in that country without the disproportionate interference with that protected right envisaged by the test under paragraph 276ADE(1)(vi).

66. It follows that the appellant cannot meet the relevant threshold and cannot succeed in his appeal on Article 8 grounds by virtue of satisfaction of the Rules.

Article 8 on a wider basis

67. The appellant has clearly established a private life in the United Kingdom over the course of his lengthy residence in this country. That private life encompasses his relationships with family members and friends.

68. I do not accept that he has also established family life. The strong ties that he has with certain family members does not meet the requisite threshold of showing more than the emotional ties and bonds to be expected between adult relatives. The appellant is obviously financially dependent upon family members, but this, in and of itself, does not go to constitute family life. He is not dependent upon relatives in respect of his health condition: he manages this himself.

69. Even if I were wrong in respect of the conclusion on family life, for reasons set out below, it would make no material difference to the outcome of the appellant's appeal.

70. I move straight to the issue of proportionality (the questions of interference, accordance with the law, and legitimate aim, all being uncontroversial).

71. I consider first the mandatory considerations set out in section 117B NIAA 2002, as amended.

72. The public interest in maintaining effective immigration control is strong, mandated as it is by primary legislation.

73. The appellant speaks English, and I regard this as a neutral factor.

74. Whilst having no income of his own, the appellant has not been dependent upon public funds in the sense of benefits. However, the evidence does indicate that he has had recourse to the NHS, and there is nothing to indicate that he has paid any amounts due for this. I conclude that this does weigh against him. At best, it is a neutral factor.

75. The appellant has been in the United Kingdom unlawfully since 2009. That is a significant majority of the time spent in this country. It is clear to me that a good deal of the substance of the relationships formed with other people during his residence has been established in the last 10 years or so. With reference to section 117B(4), there are no particularly compelling circumstances arising in his case which go to materially mitigate the reduction of weight to be accorded to his private life.

76. Even when the appellant had leave to remain, it was only ever on a very precarious basis, namely as a student. Thus, the lawful presence here does not carry any significant weight in his favour.

77. Moving on to other factors, I would be prepared to place weight upon relationships with other family members on the alternative basis that the appellant did enjoy family life with them. Having said that, the weight attributable to this factor would be relatively limited. Such relationships were only formed during precarious and then unlawfully status. They have never involved particularly significant dependency. There has been no reliable evidence of any best interests issues relating to any children with whom the appellant has had contact over the years.

78. On my findings of fact, the appellant's health condition does not weigh very heavily in his favour. In this regard I refer back to what I have said in the section of my decision dealing with paragraph 276ADE(1)(vi). There have been no material changes to his health situation since he made his human rights claim in May 2018.

79. When considering paragraph 276ADE(1)(vi), I have accepted that his re-integration into Indian society would involve obstacles, perhaps even significant obstacles. Again, bringing matters up-to-date, the same considerations that I have discussed previously apply now. The passage of time between the making of the human rights claim and June 2020 in no way materially affects my conclusion that the obstacles would not be "very" significant. I do place weight upon the existence of obstacles, but, taken alone, or in combination with all other matters, they clearly do not render the respondent's decision disproportionate.

80. I have discussed the appellant's sexuality in detail, above. My conclusions in respect of paragraph 276ADE(1)(vi) effectively apply to my proportionality assessment as well. In the first instance, I have found that the appellant is not bisexual and therefore this issue does not arise. On the alternative scenario that he *is*, there have been no material changes in his circumstances between May 2018 and now. As regards the country situation, there has been the important Supreme Court judgment in September of that year. That judgment was of course favourable to the position of gay and bisexual men. I have assessed the 2019 ICJ report. It does not indicate that matters have got materially worse since 2018. As with the health issue, the appellant's sexuality, taken alone or on a cumulative basis, does not constitute a feature of his case that tips the balance in his favour.

81. Having weighed up all the competing factors, for and against the appellant, I have come to the conclusion that his return to India would not be a disproportionate interference with his Article 8 rights. It follows that the respondent's refusal of this human rights claim is not unlawful under section 6 of the Human Rights Act 1998.

Summary

82. Whether considered in the context of the Rules on a wider basis, the appellant's Article 8 claim fails, and his appeal is therefore dismissed.

Anonymity

83. No anonymity direction has previously been made and none had been requested at this stage. In all circumstances, I make no such direction.

Notice of Decision

84. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. That decision has been set aside.

85. I re-make the decision by dismissing the appeal on human rights grounds.

Signed: H Norton-Taylor Date: 16 June 2020
Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

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

Signed: H Norton-Taylor Date: 16 June 2020
Upper Tribunal Judge Norton-Taylor

APPENDIX: ERROR OF LAW COMPONENT OF THE UPPER TRIBUNAL'S DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02090/2019

THE IMMIGRATION ACTS

Heard at Field House
On 6 January 2020
Extempore

Decision & Reasons Promulgated
.....

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR AMIT [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Heybroek, Counsel, instructed by Harrow Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

This is the appeal of the Appellant against the decision of First-tier Tribunal Judge M A Khan ("the judge"), promulgated on 11 July 2019, by which he dismissed the Appellant's appeal against the Respondent's refusal of his human rights claim.

The Appellant, a national of India, came to this country as long ago as October 2003. There is a fairly complex immigration history, suffice it to say that he has remained in this country as an overstayer since July 2009. His human rights claim was essentially as follows. He asserted that he had established ties in the United Kingdom, that he no longer had any meaningful ties in India, that

he is bisexual, and that he suffers from Type 1 diabetes (a particular complication of this form of diabetes known as Diabetic ketoacidosis – "DKA"). The combination of these factors, it was said, went to show that there would be very significant obstacles to his reintegration into Indian society or that he should succeed on Article 8 on a wider basis.

The judge set out the essence of the Appellant's and the Respondent's respective cases, the content of cross-examination, and then the submissions made by the representatives to him.

The actual findings of fact are contained in [30] – [33]. It is right to say that these findings are almost entirely unparticularised and are not supported by any, or at the very least, any adequate, reasons. There are in [30] and [33] conclusions that the Appellant was a "evasive" and "vague" witness, and had not told the truth "about anything". The judge found that the Appellant had always intended to remain in this country and had lied about his decision to remain here despite an initial plan to return to India.

Once these "findings" are set out, the remainder of the decision simply recites the very well-known five-stage approach set out in Razgar, followed by (in full) sections 117A – 117B of the Nationality, Immigration and Asylum Act 2002 as amended. [38] concludes as follows: "The Appellant does not meet any of the requirements of Section 117B and his private life can continue in India."

The grounds of appeal do raise the issues of the Appellant's sexuality and medical condition in the context of his Article 8 claim. However, they go on to refer to Articles 3, 5 and 6 ECHR. There was never in reality going to be any merit to the Article 3 assertion and the Articles 5 and 6 points should not have been raised at all. The Appellant's representatives would be well-advised to consider the contents of grounds rather more carefully in future. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on 19 November 2019.

At the hearing before me, and having indicated my preliminary view of this matter, Ms Everett, with her customary fairness, accepted that the judge's consideration of the evidence and findings thereon were simply inadequate. Whilst the Appellant's case may not ultimately succeed, he was, she accepted, entitled at the very least to a properly considered decision on his appeal.

It is abundantly clear that the judge has materially erred in law. The findings, such as they are, are all too brief and are not supported by any or any adequate reasons. In addition, the judge has failed to make any findings whatsoever on what would properly be considered as the two core elements of the Appellant's case, namely his sexuality and his health (evidence of which was before him). There has been no balancing exercise under Article 8 and no proper consideration of paragraph 276ADE(1)(vi) of the Immigration Rules.

The judge's decision is fundamentally flawed and must be set aside in its entirety.

By way of disposal, I conclude that this matter should be retained in the Upper Tribunal and set down for a resumed hearing in due course. At that hearing, documentary and oral evidence relating to the Appellant's circumstances may be adduced subject to a Rule 15(2A) application. Oral evidence will only be permitted if an updated and comprehensive witness statement is prepared and filed and served in accordance with directions issued below.

I make no anonymity direction in this case.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

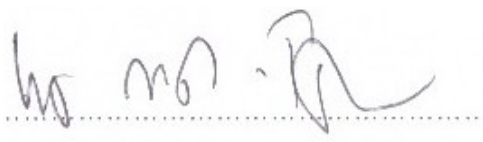
This appeal is adjourned for a resumed hearing to be held in due course.

Directions to the parties

1) **The Appellant is to file and serve a consolidated bundle of all evidence relied on, together with a skeleton argument. Any new evidence must be the subject of a rule 15(2A) application. The bundle shall be filed and served no later than 14 days before the resumed hearing;**

2) **Oral evidence from the Appellant will only be permitted if an updated witness statement is provided no later than 10 days before the resumed hearing;**

3) **Any further evidence from the Respondent shall be filed and served no later than 14 days before the resumed hearing.**



Signed Date: 7 January 2020
Upper Tribunal Judge Norton-Taylor