



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

Appeal Number: PA/02136/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
On 6 January 2020**

**Decision & Reasons  
Promulgated  
On 17 January 2020**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**F A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr C Holmes of Counsel instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. *Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.*

2. This is the appellant's appeal against the decision of First-tier Tribunal Judge Alty promulgated on 9 April 2019 dismissing her appeal against the decision of the Secretary of State dated 20 February 2019 to refuse her protection claim in her own right made on 5 July 2018. It should be noted that the appellant was a dependant in her mother's protection claim which was refused and the appeal dismissed in 2017. The most recent claim is based upon the appellant's claimed sexual orientation.
3. First-tier Tribunal Judge Fisher refused permission on 7 June 2019 but when the application was renewed to the Upper Tribunal, Upper Tribunal Judge O'Callaghan granted permission on all grounds on 9 November 2019.

#### *Error of Law*

4. For the reasons set out below I find no material error of law in the making of the decision of the First-tier Tribunal.
5. In essence, the appellant's claim is that in Pakistan she faced being forced by her uncle into an arranged marriage with an older man. However, from the age of 11 she had realised that she was more emotionally connected to girls. At first she knew only that she felt different from other girls and that she was never attracted to boys, however on her account it was only on coming to the UK in 2014 that she began to understand her feelings and realised that she was a lesbian. In 2018 she was introduced to a LGBT organisation but has continued to live effectively discreetly with her sexuality in the UK. She has never had a sexual relationship with anyone else and continues to live with her family in the UK, her mother and brother, but according to her they are unaware of her sexual orientation. She fears that, were they to become aware, they would never speak to her again and if returned to Pakistan and her family members knew of her claimed sexuality she would be killed and in any event, she claimed that on return she would be forced into an arranged marriage with a man.
6. Judge Alty noted that the previous Tribunal had considered but clearly rejected the claim of the risk of being forced into an arranged marriage and pursuant to the Devaseelan principles Judge Alty found no reason to depart from that finding and observed that she was not in fact requested to do so by Mr Holmes.
7. At paragraph 29 of the decision Judge Alty accepted that same-sex relationships remain illegal and that LGBT persons can be subjected to societal discrimination and violence in Pakistan. However, in the following paragraphs and by paragraphs 35 and 36 the judge had concluded that the appellant had failed to demonstrate to the lower standard of proof that she is a lesbian and concluded she did not face any risk of being treated as such on return to Pakistan. In the alternative, in very brief terms, the judge also concluded that even if the appellant were a lesbian, which was not accepted, she would actually continue to live discreetly in Pakistan as

she has done in the UK so for that reason there would be no risk, but obviously that is an alternative finding.

8. In granting permission to appeal to the Upper Tribunal Judge O'Callaghan considered the first four of six grounds arguable, suggesting that it was arguable that the core elements of the appellant's evidence had not been adequately considered. Although permission was granted on all grounds the judge observed that grounds 5 and 6 had limited merit and I certainly agree with that. In summary the grounds can be set out as follows, bracketed into pairs as they were by Mr Holmes. The first ground is that the judge failed to take into account material evidence the appellant was reluctant or fearful to disclose her sexuality to her family members. Allied to that was the fourth ground that at paragraph 32 the judge took into account irrelevant factors in reaching a conclusion that her family would not take a negative view of her sexuality on the basis that she had obtained good GCSE results suggesting the household was not a repressive one. The second and third grounds were that the judge failed to make any findings on the appellant's own evidence and in particular "the narrative of her sexual journey" and that the judge failed to provide adequate reasons for rejecting the appellant's case. Finally, the last pair of grounds 5 and 6 were that at paragraph 35 of the decision the judge applied the wrong standard of proof when stating "when weighed in the balance against the findings ..." when the correct standard was of course that of a reasonable likelihood, and (6) that the judge erred in the alternative conclusion that the appellant would live discreetly in Pakistan.
9. The accordence of weight to evidence is a matter entirely for the judge, it is not an arguable error of law for a judge to give too little or too much weight to a relevant factor unless that exercise is in fact irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions or the appraisal of the evidence or the assessment of credibility or the evaluation of risk does not by itself give rise to an error of law.
10. Dealing with the first and fourth grounds together, the first ground alleges that the judge failed to take into account material evidence in assessing the appellant's claimed fear or reluctance to disclose her sexuality to her family. This is relied upon by the appellant as evidence to support the claimed sexuality and the grounds refer to statements made by the appellant as recorded in the respondent's bundle to the effect that she did not want her family finding out about her sexual orientation, but it is clear the judge was fully aware of that. As Mr Tan has pointed out, at paragraph 6, very early on in the decision, the judge noted that the appellant's claim rests on her sexuality and her fear of her family finding out. It was for that reason the judge made an anonymity direction. Whilst the evidence is not specifically mentioned it is not incumbent on a judge to deal with every aspect or every matter that is in contention provided it is clear from the decision that there has been a comprehensive consideration of the evidence in the round or relevant evidence has been taken into account. At paragraph 8 the judge also noted that the appellant had sought a

direction that the decision be sent to the appellant's representative, not to her directly. Clearly the judge was aware the reason for that was that she allegedly feared her family finding out about her sexual orientation, and between paragraphs 13 and 17 of the decision the judge noted in summary form the evidence that had been taken into account and considered, all before the findings and reasons were given. It was at paragraph 32, which both Mr Holmes and Mr Tan have taken me to, that the judge addressed the submission of Mr Holmes at the First-tier Tribunal appeal hearing that the appellant's narrative was characterised by fear, that is a fear of her family finding out about her sexuality, and that might also be expressed as reluctance or unwillingness and fear of the consequences of them finding out, as I have already mentioned. But the judge noted all of that and at 33 of the decision the judge noted the appellant's explanation as to why she failed to mention her sexuality in the preliminary information questionnaire. She said she felt more comfortable talking about that than writing it down. The judge had taken all these factors into account. It was not the case that the judge was stating that because she had achieved excellent GCSE results or that she was described as usually a very happy girl that the claim was rejected. The judge was looking to see what evidence there was to support the claim that there was a fear of disclosure to her family, and an explanation which justified (1) a fear to explore her sexuality, and (2) supported the claim of sexual orientation. It is quite clear on reading the decision as a whole that the judge was fully aware of and took fully into account this aspect of the claim and weighed it in the assessment of the evidence. I am satisfied the judge did take into account all material evidence. I am not satisfied that the judge took into account irrelevant factors and the way in which the ground is expressed in that term misconstrues the decision.

11. I am not satisfied that the second and third grounds, again treated in parallel by Mr Holmes and Mr Tan, disclose any error of law in the making of the decision of the First-tier Tribunal. I bear in mind reliance on the policy of the Home Office that feelings of shame or secrecy or small indications of a similar nature are factors which may point to the truthfulness of an account, but reading the decision as a whole it is clear that the judge gave detailed consideration and made an anxious scrutiny of the evidence. Ground 3 in this regard is simply a rephrasing of ground 2. The judge in my view is not saying what the appellant should have done but observing what evidence there was to support her claim and what had not been done. The judge was carefully considering the evidence, and found it surprising that although she had been aware of her sexual orientation since about the age of 16 and was now 19 years of age that she had taken little if any steps to explore that sexuality. The judge pointed out that she had been introduced to an LGBT foundation and had numerous sources of support but up to that date had not accessed any of those resources.
12. In my view, the judge was entitled to note the limitation of the evidence supporting the appellant's account or justifying the appellant's case why there is a limitation of evidence of sexuality. The judge was entitled to

take into account inconsistencies in the account and in my view the decision is cogently reasoned. In that regard I also note that at paragraph 32 the judge pointed out that the witness Mr Shabbir was a long term friend of the family but even though the appellant's mother was suspicious about his sexuality, nonetheless she had not prevented her daughter from developing a close relationship with him, all of which suggested to the judge an environment of tolerance, or, the way the judge expresses it, does not indicate an environment of intolerance in the family. Again, this is not the judge stating what was to be expected but observing what was there and what was not there, when having to consider what the evidence was as to the appellant's sexuality.

13. In relation to the fifth and sixth grounds I am satisfied there is absolutely no merit in the fifth ground alleging the application of the incorrect standard of proof. It is clear from reading the decision as a whole including paragraph 23 that the judge made a correct self-direction on the burden and standard of proof stating that the evidence being weighed in the balance does not demonstrate the balance of probabilities threshold was applied as the standard of proof and that ground is no more than grasping at straws in an attempt to undermine the decision. Similarly, there is no merit in the sixth ground and in any event, the alternative finding is not material given the primary findings of the appeal that the appellant is not a lesbian as claimed.
14. In all the circumstances, I am satisfied the judge has made an adequate, cogently reasoned assessment of the evidence and reached conclusions that were entirely open on the evidence. In the circumstances, I do not find any material error of law and consequently this appeal to the Upper Tribunal must fail.

*Decision*

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require it to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



**Signed**

**Upper Tribunal Judge Pickup**

**Dated**

15 January 2020



**To the Respondent  
Fee Award**

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



**Signed**

**Upper Tribunal Judge Pickup**

**Dated**

15 January 2020