



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/00734/2020 (V)**

**THE IMMIGRATION ACTS**

**Heard at Field House (by remote means)  
On 24<sup>th</sup> March 2021**      **Decision & Reasons Promulgated  
On 06<sup>th</sup> May 2021**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**LM  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr B Lams of Counsel, instructed by TNA Solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. There were technical difficulties for Ms Isherwood accessing the video call, which were improved significantly by her camera being switched off, such that with the agreement of the parties, the hearing proceeded with her joining the video call orally. The file contained the documents in paper format.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Howard promulgated on 29 May 2020, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 9 January 2020 was dismissed.
3. The Appellant is a national of Namibia, born on 2 April 1980, who claims to have arrived in the United Kingdom on 13 December 2018. He claimed asylum on 5 July 2019 on the basis that he would be at risk on return to Namibia as a gay man.
4. The Respondent refused the application the basis that it was not accepted that the Appellant was gay because his account was both internally and externally inconsistent; with a lack of expected introspection and detail. Further, the Respondent did not accept the Appellant's claim that his father had tried to force him to marry or that he beat him due to inconsistencies in the claim. The Appellant's credibility was damaged pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 as the Appellant only claimed asylum after he was arrested. In any event, the Respondent considered that even if the Appellant was gay, that would not per se lead to any risk on return to Namibia where he had family support to live openly and there was a sufficiency of protection and option of internal relocation available. For these reasons the Appellant's asylum and humanitarian protection claims were refused and there was found to be no breach of Articles 2 and/or 3 of the European Convention on Human Rights. The Appellant had not established family life in the United Kingdom and would not face very significant obstacles to reintegration on return to Namibia. Overall, there was no basis for a grant of leave to remain and no exceptional circumstances.
5. Judge Howard dismissed the appeal in a decision promulgated on 29 May 2020 on all grounds. In summary, the First-tier Tribunal did not find the Appellant's claim to be gay credible and that alone was sufficient for the appeal to be dismissed in circumstances where there was no freestanding or separate claim to humanitarian protection or on human rights grounds.

### **The appeal**

6. The Appellant appeals on three grounds as follows. First, that the First-tier Tribunal materially erred in failing to consider the Appellant's credibility in the round, without reference to the principles in *Tanveer Ahmed* and basing the conclusions on a single finding of inconsistency which was found to have tainted all other evidence. Secondly, that the First-tier Tribunal materially erred in law in misunderstanding the Appellant's evidence about his first sexual experience with a particular partner as opposed to his first sexual experience ever. Thirdly, that the First-tier Tribunal materially erred in law in ignoring the fact that the Appellant's sister's written statement was made to the police, which of itself is a cogent reason why she did not implicate her father within it. The other written statements were also dismissed in a pre-emptory fashion and the

fact that they were prepared for the purposes of the appeal does not mean that no weight should be attached to them.

7. In further written submissions made on behalf of the Appellant, it was reiterated that the First-tier Tribunal had erred in its assessment of credibility and noted that there were no findings on whether there was a sufficiency of protection or option of internal relocation available to the Appellant.
8. At the oral hearing, Mr Lams relied on the written grounds of appeal. In relation to the first ground, he submitted that the First-tier Tribunal formed a negative view of the claim based on a single inconsistency without considering all of the evidence in the round and assessing all the other evidence as having been tainted by that inconsistency; even though some evidence, including the claim that the Appellant's father had attacked him, was accepted. There were significant parts of the Appellant's claim which were not even referred to in the decision, such as the claim that the Appellant's father sought to force him to marry his cousin.
9. The First-tier Tribunal's decision is said to consider the Doctor's and the Appellant's sister's evidence as an afterthought. The statement from the Appellant's sister refers to the police on its face and Mr Lams accepted that it was not in relation to the investigation of the claimed assault or any other offence but was made to the police as a notarised formal statement which he thought was for the purposes of the appeal. In any event, the Appellant's sexuality and the assault are different parts of the claim and the lack of evidence on one part does not undermine the matters that were covered in the statement. The fact that it was made to the police may be a reason why it did not include any reference to the assault. However, the fact that this and other statements were prepared for the appeal hearing was not a sufficient reason for no weight to be attached to them.
10. In relation to the letter from the traditional authority, the First-tier Tribunal only considered whether the contents were consistent with conservative views in Namibia rather than considering any other factors which may bear on the credibility of the document itself. The First-tier Tribunal's logic that the document is not credible because the author was not hostile to the Appellant was submitted to be problematic and whilst it may be part of the consideration, it was insufficient as a sole reason for the weight to be attached to it.
11. The second ground of appeal concerns the First-tier Tribunal's understanding of the Appellant's evidence about his first sexual experience. Mr Lams submitted that there was no inconsistency as in paragraph 15 of the Appellant's written statement for the First-tier Tribunal, the inclusion of the word 'when' clarified that he was referring only to his first sexual experience with this particular person and not his first one ever. Mr Lams submitted that the first issue was whether the First-tier Tribunal was entitled to find that there was an inconsistency in

the Appellant's evidence as to his first sexual experience and secondly, if so, whether that was sufficient to undermine and taint the remainder of the evidence.

12. On behalf of the Respondent, Ms Isherwood submitted that there was no material error of law in the First-tier Tribunal's decision, even though it was not the best example of an asylum decision. Overall, this was a case in which the Appellant had simply not addressed the inconsistencies in his evidence and in which supporting evidence lacked key information, such as the Appellant's sister's statement not including any reference at all to the claimed assault. The Appellant had simply failed to submit adequate evidence to establish his claim before the First-tier Tribunal.
13. The inconsistency in the Appellant's claim about his first sexual experience was highlighted initially in the substantive asylum interview, relied upon in the decision letter and not properly addressed or explained at any later point. This was part of the core of the Appellant's claim and it was open to the First-tier Tribunal to note this and find that the Appellant's evidence was tainted by this inconsistency.
14. In relation to the other evidence, Ms Isherwood noted that whilst it was accepted that the Appellant was assaulted by his father, it was not accepted that this was because he was gay and there was simply nothing in his sister's written statement to support that as it does not refer to the assault at all. The explanation offered by Mr Lams as to why reference to it may have been missing from the statement does not assist, the evidence before the First-tier Tribunal simply did not support the core parts of the Appellant's claim.
15. The First-tier Tribunal was entitled to attach little weight to the traditional authority letter in circumstances where it was at odds with the background evidence and the Appellant's own claim.

### **Findings and reasons**

16. I begin with the second ground of appeal as that is the logical starting point and if the First-tier Tribunal erred in finding an inconsistency due to a misunderstanding of the evidence then the remainder of the reasoning is not likely to stand, such that that alone would be a material error of law.
17. It is necessary to consider in more detail the First-tier Tribunal's findings on the Appellant's credibility, specifically on the evidence as to his first sexual encounter and the evidence before it upon which those findings were made. The relevant parts of the decision found as follows:

*"26. The appellant claims to be gay. He claims that he first sensed he was gay while a teenager at school and that his first attempt at a gay relationship, while unsuccessful was while still at school. His second would be partner was JH. His case is that JH was his first sexual partner.*

27. *Initially the appellant stated that his first sexual partner was a man he met on Twitter using a false name. He stated that he was thirty-one years old when this finally happened. He made this assertion in a witness statement dated the 9<sup>th</sup> September 2019. Three months later when being interviewed about his asylum claim he stated that his first sexual encounter was while at school with JH.*

28. *The Appellant's sexuality lies at the heart of his asylum claim. It is the reason why he says, from a teenager he recognised this difference in himself and he then sets out a narrative of the significant events on that journey, culminating in his father's ostracising him and his fleeing Namibia. Central to this narrative is his first sexual act as a gay man. It is the appellant who introduces it as a fact for consideration in his first witness statement. When he makes the alternative assertion in his asylum interview it is [in] response to an open question about his "crush" on JH. At no time is he being closely questioned about his sexual encounters in a way that might be described as designed to trip him up.*

29. *I am asked by the appellant to conclude that the change in the identity of his first gay sexual partner from a man he met through Twitter when aged thirty-one, to a youth he had a crush on while at school is an explicable confusion on the part of the appellant.*

30. *If the subject matter of the confusion was a peripheral detail, confusion might be a credible explanation. This subject matter goes to the very core of his claim. It is from that moment that, in reality, all else flows as it must be the first substantial step in his journey to the confirmation of his true sexuality. That it should be the subject of two such wildly different recollections is simply not credible, even to the lowest standard.*

31. *If the appellant is not credible when recalling his first gay sexual experience then everything else he says in support of his claimed sexuality is equally tainted. ..."*

18. I set out the evidence before the First-tier Tribunal on this point in some detail, as the matter goes much deeper than suggested by Mr Lams in submissions that this was a mis-reading of one particular sentence in a written statement from the Appellant which had two possible meanings (whether the Appellant was describing his first sexual partner or his first sexual experience with a particular partner) and the First-tier Tribunal interpreted it in the wrong way.

19. The Appellant's statement dated 9 September 2019, submitted to the Respondent after his initial asylum screening interview and likely together with a preliminary information questionnaire dated 12 September 2019; contained the following:

*"9. My first crush was on someone in my year at [...] high school I went to. Is name was [JH]. I first noticed him in the corridor between lessons, where he was mucking about with a group of friends, making them laugh. I liked him straight away. He was tall, mixed-heritage, athletic, and the class joker. He was always happy to talk to me, but never in a romantic way. I do not think he ever knew how I felt about him. I never told him, of course. I could barely admit it to myself.*

...

14. *But by the time I turned 31, I could not suppress my sexuality anymore. I knew pretty much nothing about the gay community and was eager to learn. So, I created a Twitter profile using a fake name and used it to chat to guys online.*

15. *... I began messaging a man and, before long, we were seeing each other. I had my first sexual experience with him, and I felt so free when we were together. ..."*

20. In his asylum interview on 11 December 2019, the following questions were put and answers given:

*"59. Question: Tell me about the crush you had on [JH], how did it make you feel?*

*59. Response: ... We started something and we started a relationship*

...

*60. Question: In your WS you said that [JH] never knew about how you felt for him, because you never told him. Now you are saying you were in a relationship with him, can you explain that?*

*60. Response: He never knew at the start ... Things came together with time.*

*61. Question: How long did your relationship with [JH] last?*

*61. Response: ... We split only because of the school but we were still communicating but we did not really have the chance to meet again.*

*62. Question: What sort of relationship did you have with [JH]?*

*62. Response: We had a relationship, we even had intercourse.*

*63. Question: How old were you at that time?*

*63. Response: Maybe early, 20, 21. No, if it later then it is late 18 to 21. 18 to 21.*

...

*65. Question: In your WS you said that your first sexual experience was with someone you met on Twitter, now you are saying it was with [JH], can you explain that to me?*

*65. Response: No no no, not someone I met on Twitter, I do not recall saying that on my statement maybe we can read the statement again.*

*66. Question: On your WS it says in paragraph 15, I began messaging a man and before long, we were seeing each other, I had my first sexual experience with him and I felt so free when we were together. Are you telling me that is not correct?*

*66. Response: How did the paragraph start? [read] I think that should be under [JH]. No one from the twitter site I had sex with. That was supposed to be under [JH].*

*67. Question: Why is [JH's] name not in that paragraph, why does it just say you were messaging a man. If [JH] was your first sexual experience, why have you not named him as such?*

*67. Response: I think I did name it where his name is appearing.*

68. Question: *All you said about [JH] was that you never told him about how you felt, you could barely admit it to yourself. I am having trouble understanding why you would say something like that, and then tell me today that he was your first sexual experience. Can you help me to better understand?*

68. Response: *I thought I had mentioned it with [JH] I am not sure why it is not mentioned. Is it from the questions or is it the statement [it is from the statement] I should, maybe I did not. That is supposed to be clearly with, not anyone from Twitter but with [JH].*

69. Question: *You said earlier you were aware of the contents of your WS, and that it was correct, is that now not the case?*

69. Response: *[IO explains] Not really, to say that maybe I did not double check everything I wrote earlier. [This is a very important document, it is outlining your reason for claiming asylum, why did you not double check it?] I suppose, because, I am the one who wrote, I thought I knew it all, I just did not know that I had documented it mistakenly like that."*

21. In the reasons for refusal letter, the Respondent expressly relied on the inconsistency and interview record in paragraph 39 as one of the reasons why the Appellant's claim was not accepted.
22. In his written statement to the First-tier Tribunal dated 25 February 2020, the Appellant replicated paragraph 9 of his earlier statement dealing with his first crush on [JH] which included that the Appellant did "*not think he ever knew how I felt about him. I never told him, of course. I could barely admit it to myself.*". There was then an additional handwritten sentence which did not appear in the earlier statement which added, "*We had sex later, during the school holidays.*". In the second statement, paragraph 15 was also replicated from the earlier statement (set out above), with the addition of 'when' in the following sentence, "*When I had my first sexual experience with him ...*". There was no explanation in the written statement as to the earlier discrepancies, nor any reference to the asylum interview.
23. At the oral hearing, the Appellant stated that further to paragraph 9 of his written statement, he did tell JH later how he felt, and later they had a relationship which ended in physical intercourse. The Appellant named the person referred to in paragraphs 14 and 15 of his written statement and stated that he did have sex with him but his first experience was with JH. He was not cross-examined on this point and in submissions, Mr Lams simply stated that the Appellant had clarified the point about JH.
24. The difficulty with the ground of appeal and Mr Lams submissions to me is that it relies on an explanation of the evidence which was not given by the Appellant himself when asked about the inconsistency and in fact does not address the inconsistencies directly; which as can be seen from the asylum interview includes not only the Appellant's first sexual experience but whether he had a sexual relationship at all with JH and/or a man he met through Twitter (having denied the latter in interview but maintained

it in statements before and after and in oral evidence). There was within the evidence before the First-tier Tribunal, significant inconsistencies in the Appellant's claim about a core part of it which remained almost entirely unexplained by the time of the appeal hearing. The addition of a sentence in one paragraph of his earlier written statement and addition of the word 'when' in a latter point offered no explanation at all as to those inconsistencies and failed to clarify the Appellant's evidence on these issues. On the evidence that was before the First-tier Tribunal, there was no misunderstanding and it was open to the Judge to find as he did that there were two different accounts, which could not be explained by confusion and was simply not credible.

25. The second issue, encompassed within the first ground of appeal was then whether in light of that finding, the First-tier Tribunal erred in law in its assessment of the other evidence when concluding overall that the Appellant was not credible and was not gay. In paragraphs 30 and 31 of the decision, the First-tier Tribunal stated that given the subject matter, the Appellant not being able to consistently recall his first sexual experience went to the very core of his claim and that tainted everything else he said in support of his claimed sexuality. It is notable that this is specifically about the Appellant's evidence, by the reference to what 'else he says' and not that the issue taints all of the evidence, including that from other sources. In terms of his own account and evidence, that is not an unreasonable or unlawful finding.
26. The First-tier Tribunal then goes on to consider the evidence from other sources, the significant pieces being the Doctor's affidavit, which was considered to be credible but does not address or offer any evidence as to the motive or reason for the assault. Further, the Appellant's sister's document is silent on the assault, such that there is no supporting evidence from her on this point either. The First-tier Tribunal finds therefore that the evidence as to motive or reason for the assault is only that available from the Appellant himself. There is nothing to suggest that the possible explanation for the absence of evidence from the Appellant's sister offered by Mr Lams before me was before the First-tier Tribunal, nor apparent from the face of the document and in any event, it remains the case that there simply was no supporting evidence before the First-tier Tribunal beyond what was said by the Appellant in relation to the assault.
27. In paragraph 33 of the decision, the First-tier Tribunal states that no weight is attached to statements of named associates of the Appellant because they stand in isolation and were prepared in contemplation of an asylum claim. The latter is not a reason to attach no weight at all to the documents, as in essence, a significant amount of evidence will always be prepared for the purposes of an appeal, particularly witness evidence. The letters do however stand somewhat in isolation from the other evidence in that they do not address specific events relied upon by the Appellant and two of them are not supported by any identity documents and contain no more than vague character references. Although the reasoning of the First-tier Tribunal on the weight to be attached to these particular



documents is lacking, having considered that evidence, it is difficult to see how any significant weight could have been attached to it due to the content, or more the lack of specific content consistent with or supportive of the Appellant's claim or events forming part of it. In particular, it does not address in any detail any relationships the Appellant did or did not have; nor as to his relationship with his father or the assault.

28. The final evidence considered in paragraph 34 of the decision is the letter from the Ovaherero Traditional Authority which states that the Appellant reported his father for attempting to force him to marry an older cousin which he refused because he is gay and expresses sympathy for the problem but could not assist. The First-tier Tribunal found that the views expressed were inconsistent with the objective background country information of a conservative and generally hostile society towards homosexuality, particularly for a traditional chief. I would add it is also inconsistent with what the Appellant has said about values of the Ovaherero as well. For this reason, the letter was not considered credible. Whilst there may have been other considerations as to the credibility of the document, it was open to the First-tier Tribunal to find it not credible for the reason given and in any event, at best the document relies upon an account given by the Appellant and his own credibility is again relevant to this.
29. Having considered the parts of the evidence in turn, the First-tier Tribunal concluded that for all the reasons given, the Appellant was not a credible witness and had not established that he was gay. Although there is no specific reference to *Tanveer Ahmed* generally nor any express reference to the evidence being considered in the round; there is nothing on the face of the decision to suggest that the Tribunal did anything other than apply these principles and consider the totality of the evidence before coming to a final conclusion. I do not find that the First-tier Tribunal found a single inconsistency which then tainted all other evidence without it being considered in the round. In this case, it is more that there was a significant unexplained discrepancy in the core of the Appellant's account, which was sufficient to taint the Appellant's own evidence and his credibility and little if any further evidence from other sources supporting the core elements of the claim.
30. The elements of the third ground of appeal have been covered within the assessment of evidence and credibility in the round above in the context of the first ground of appeal. There is no separate error of law identified in the third ground for the reasons already given.
31. Overall, the First-tier Tribunal reached conclusions which were open to it on the evidence as a whole and without any misunderstanding of the facts and does not contain any material errors of law to the outcome of the appeal.

## **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

**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 G Jackson

Date

27<sup>th</sup> April 2021

Upper Tribunal Judge Jackson