



**Upper Tribunal
(Immigration and Asylum Chamber)
Number IA/00704/2020**

Appeal

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

**Decision & Reasons
Promulgated**

On the 13 April 2022

On the 19 April 2022

Before

UT JUDGE MACLEMAN

Between

KANJOSE KAUARIA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Prudham dismissed the appellant's appeal by a decision promulgated on 12 May 2021.
2. The FtT refused permission to appeal to the UT.
3. The appellant applied to the UT for permission.

The grounds, summarised, are:

[1] Sexuality -

(i) error at [30-34] in finding “the LGBT letter” to be generic, which is incorrect; the specific information in the letter is cited;

(ii) using the appellant’s [lack of] credibility as an *a priori* reason to refuse the appeal, leaving other evidence out of the assessment - a statement from the witness Peter Johnson; screenshots of a gay dating website profile; photograph of the appellant in an LGBTQ magazine;

(iii) no clear finding on evidence of the witness Helen Wright; no suggestion her evidence false or of little weight; if her evidence was acceptable, no reconciliation of that with finding that appellant acted in bad faith;

(iv) if appellant bisexual, appeal should have succeeded on his position that he would act discreetly for fear of persecution.

[2] risk / sufficiency of protection / internal flight / article 8 -

(i) no adequate assessment of evidence of inaction by police;

(ii) inadequate assessment of background evidence on sufficiency of protection;

(iii) no specific findings, only adoption of previous tribunal’s findings on internal flight and on article 8.

4. On 30 September 2021, UT Judge Plimmer granted permission, on the view that arguably the FtT erred “in its assessment of the fresh evidence of the appellant’s claimed sexuality and his prospective risk, if bisexual, for the reasons set out in grounds [1] and [2].”
5. Having heard and considered the submissions for the appellant, Mr Diwnycz conceded, fairly and correctly, that the letter referred to in ground [1](i), unlike the version which was before the previous tribunal, was not merely generic, but specific; and that the decision failed to deal with the evidence mentioned in grounds [1] (ii) and (iii). He also accepted that those omissions were material, and that matters were so inter-related that the decision could not be saved by the alternative findings challenged within ground [2].
6. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the decision of the FtT is set aside. It stands only as a record of what was said. The case is remitted to the FtT for a fresh hearing, not before Judge Prudham.
7. No anonymity direction has been requested or made.

H Macleman

13 April 2022

UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.