



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-002026

First-tier Tribunal No: PA/51372/2021  
IA/05601/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 9 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL  
UPPER TRIBUNAL JUDGE NEVILLE**

**Between**

**A A  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Allison, counsel instructed by Sindhu Immigration Services  
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**Heard at Field House on 29 July 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant is a national of Pakistan, born on 6 February 1974. He appeals against a decision promulgated on 14 May 2023, in which First-tier Tribunal Judge George ("the Judge") dismissed his appeal against the respondent's decision to refuse his protection claim.

2. The First-tier Tribunal made an anonymity order, and we consider it appropriate to do likewise. Derogation from the principle of open justice is justified by the harm to the appellant that might arise if he were to be identified, together with the importance of maintaining the integrity of the United Kingdom's asylum system.

### **Relevant Background**

3. The appellant entered the United Kingdom on 27 October 2010, holding entry clearance as a student valid until 4 May 2012. Following the refusal of a subsequent application, he has been without any leave to remain since 18 September 2012. On 1 May 2014 the appellant applied for a residence card as the extended family member of an EEA national. Dismissing the appeal against the Secretary of State's refusal of that application in a decision promulgated on 24 August 2015, First-tier Tribunal Judge Aujla found that the appellant's credibility was "fundamentally flawed".
4. On 20 December 2016, the appellant claimed asylum on the basis that, as a gay man, he would face a well-founded fear of persecution on return to Pakistan. The claim was refused on the basis that the appellant's account of being a gay man was not credible. In dismissing the appellant's appeal against that decision on 23 August 2017, First-tier Tribunal Judge Lucas relied upon several negative indicators of credibility in the evidence before him.
5. Further submissions made on 3 September 2018 were accepted by the respondent as a fresh claim for asylum on the basis of sexuality, which was then refused. The appeal against that decision was dismissed by First-tier Tribunal Judge O'Callaghan on 11 June 2019, again on credibility grounds and relying on various unsatisfactory features of the appellant and his then-partner's evidence. Applications for permission to bring an onward appeal against that decision were refused.
6. On 24 April 2020 the appellant made further submissions, relying on a relationship with a new partner and letters of support from numerous individuals attesting to the appellant's sexual identity. This was again accepted as a fresh claim by the respondent and refused in a decision dated 4 March 2021.
7. The appellant's appeal against that most recent decision came before the Judge for hearing on 1 March 2023. She heard evidence from the appellant, his claimed new partner, four of his friends, and the director of a community organisation and charity called the 'Shout it Loud Club'. In her decision to dismiss the appeal, the Judge first identified the negative credibility assessments of Judges Aujla, Lucas and O'Callaghan as providing the starting point. She then assessed the witness and documentary evidence before her, before concluding as follows:

58. Based on the evidence before me, I have found the appellant to be lacking in credibility. but when I consider the previous findings and on an application of Devaseelan, this further supports my own findings. The appellant is wholly lacking in credibility. I have made a note of the timings of the last appeal promulgated in June 2019 and allowing time for any permission applications, the appellant almost immediately afterwards said he was in a relationship with [*his new partner*] (June to September 2019) and that they moved in together in October and were engaged in December 2019. It was in 2019 that he engaged with Shout It Loud. This pattern of engaging in activity to assist with his immigration status immediately after an adverse decision is evident

from the history. I note that despite having had immigration solicitors, the appellant did not make a claim for asylum on the basis of homosexuality until December 2016 and adverse findings have already been made about this and of course, this has been subject to previous determinations. Similarly, the appellant's witnesses in the previous appeals were also found to lack credibility. I have not set out every bit of evidence that I heard as there is a full record but I find that there is a pattern of the appellant producing witnesses that are simply lacking in credibility.

### **The appeal to the Upper Tribunal**

8. Permission to appeal was refused by First-tier Tribunal Judge O'Garro on 14 May 2023, but granted on a renewed application by Upper Tribunal Judge Perkins on 21 December 2023.
9. The grounds of appeal can be summarised as follows:
  - a. First, the Judge erred in placing material weight on an inconsistency in the appellant's evidence without having taken into account his explanation for it (or having given adequate reasons for rejecting that explanation).
  - b. Second, the Judge erred in placing material weight upon an inconsistency between two witness statements made by one of the appellant's friends when this could be explained by the way in which the second statement was produced by the appellant's representatives.
  - c. Third, the Judge gave inadequate reasons for rejecting the credibility of two of the appellant's friends.
10. Having heard submissions from Mr Allison and Ms Cunha on all three grounds, we gave an oral decision allowing the appeal on the first ground and remitting the appeal to the First-tier Tribunal for re-hearing with no findings of fact preserved. It is therefore unnecessary to address the second and third grounds of appeal. The reasons for our decision are set out below.

### **Consideration**

11. In her decision at [50], the Judge observed the following: (we have corrected a typographical error)

The appellant has given inconsistent evidence about the ending of his relationship with [*his former partner*]. He has said that either [*his former partner*] fell in love with someone else and then that they had a 'huge fight' because he was unable to work. This inconsistency is so fundamental that it leads me to conclude that the appellant is not credible. These are such significant events that the appellant would know which of these were true.
12. This inconsistency had also been raised in the respondent's refusal decision, to which the appellant had responded in a witness statement that was adopted before the Judge:

7... In response to this I state that my relationship with [*the former partner*] started falling apart when my immigration appeal was dismissed in June 2019. He started picking up fights with me. He said

he was tired of paying my legal bills. He also said that I am unable to work in UK and have become financial liability for him. His emotions faded for me and he started seeing another guy. I submit that I have been consistent regarding the reasons about how my relationship [...] broke down.

13. In an otherwise careful and thorough decision, nowhere does the Judge refer to this explanation or give any reasons for rejecting it. Ms Cunha accepted that the Judge erred in that respect, but sought to persuade us that either the omission was immaterial due to the other reasons given by the Judge for rejecting the appellant's account, or that if the decision were set aside then some credibility findings concerning other witnesses could be preserved. She identified, in particular, that the Judge's treatment of one source of evidence had not depended on any of the analysis impugned in the present grounds of appeal.
14. We conclude that the Judge's overall credibility assessment cannot be sustained on the basis of her other reasons. While a judge is not required to identify all evidence relied upon in reaching findings of fact, or every step in their reasoning, a party is still entitled to know why they lost. Here, the appellant's credibility was materially damaged by an inconsistency for which an explanation had been put forward. The importance ascribed by the Judge to the inconsistency is clear from her description of it as "so fundamental that it leads me to conclude that the appellant is not credible". When the explanation is considered against the evidence upon which the claimed inconsistency is based, it can be seen as capable of being accepted. The appellant needed to know why it was not accepted before he could understand why he had lost his appeal. As argued by Mr Allison, while the appellant may face some difficulties in establishing the credibility of his account, a negative outcome is not inevitable. We are not satisfied, in the circumstances, that the Judge would inevitably have reached the same conclusion notwithstanding the error of law into which she fell. We are therefore unable to accept Ms Cunha's submission that the judge's error was immaterial to the outcome.
15. Nor can the Judge's treatment of other pieces of evidence be properly preserved. It is well-established that the assessment of credibility in this field requires the evidence to be considered as a whole, or 'in the round': KB & AH (credibility-structured approach : Pakistan) [2017] UKUT 491 (IAC) at [35]; QC (verification of documents; Mibanga duty) [2021] UKUT 33 (IAC) at [38]-[57]. This Judge may have found herself able to properly reject individual pieces of evidence on their own merits but that does not justify restricting a future judge's ability to reach a different view, in light of the evidence as it then stands.

## **Disposal**

16. We apply the principles set out in the Practice Direction and the Practice Statement according to the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC). The nature and extent of the fact-finding required when this appeal is re-heard requires remittal to the First-tier Tribunal. Neither representative sought to persuade us otherwise.

## **Notice of Decision**

- (1) The decision of the First-tier Tribunal contains a material error of law and is set aside.

(2) The case is remitted to the First-tier Tribunal for re-hearing with no findings of fact preserved, to be heard by any judge other than Judge S George.

Upper Tribunal Judge Neville  
Immigration and Asylum Chamber

31 July 2024