



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

Case No: UI-2023-004874

First-tier Tribunal No: PA/51580/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 3<sup>rd</sup> of May 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WELSH**

**Between**

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

Appellant

**and**

**AAW**  
**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Melvin, Senior Home Office Presenting Officer  
For the Respondent: Mr Rameez Dar of Archbold Solicitors Ltd

**Heard at Field House on 5 March 2024**

**DECISION AND REASONS**

**Anonymity Order:**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. 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 or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellant seeks international protection and is therefore entitled to privacy.**

**Introduction**

1. For ease of reference, I refer to the parties as they were before the First-tier Tribunal.

2. This is an appeal against a decision of First-tier Tribunal Judge Parkes (“the Judge”), promulgated on 6 February 2023. By that decision, the Judge allowed the Appellant’s appeal against the decision of the Secretary of State to refuse his protection and human rights claim.
3. The Appellant’s claim, in summary, was based on his sexual orientation namely that, as a gay man, he would be at risk on return to Pakistan. The Judge found the Appellant to be a credible witness and, this being the only issue in dispute, the appeal was therefore allowed.

### **Grounds of appeal and grant of permission**

4. The grounds of appeal plead one ‘headline’ ground, namely “material misdirection of the law/lack of adequate reasoning/error of fact” but the following can be identified from the particulars:
  - (1) The Judge failed to give adequate reasons for concluding that the Appellant is a gay man [ground 1].
  - (2) The Judge failed to take into account the delay in making the asylum claim and/or failed to give any reasons why this factor was not relevant to the credibility assessment [ground 2].
  - (3) The Judge failed to take into account relevant evidence, namely that which demonstrated that the Appellant had previously used deception in an immigration application, in that he had submitted an English language test certificate (“ETS”) which had been obtained by fraudulent means [ground 3].
5. Permission was granted, on 23 November 2023, by Upper Tribunal Judge Kebede. The grounds upon which permission was granted were not restricted.

### **Upper Tribunal proceedings**

6. The hearing was conducted via Cloud Video Platform. I was content that remote communication was effective and no concern was raised by either advocate.
7. I heard oral submissions from both advocates, to whom I am grateful. During the course of this decision, I address the points they made.

### **Discussion and conclusion**

8. In relation to ground 3, the Judge found at [22]:

“In the Refusal Letter the Respondent took issue with the English language test used by the Appellant in his initial entry clearance application. Given the Appellant’s vague answers to the questions it was considered that the Appellant had used deception to obtain it and had misled immigration officials. The burden on this aspect shifts to the Respondent and aside from the contents of the Refusal Letter itself there is no supporting evidence. The information is inadequate and I find that the allegation is not approved. I only mention it as it was expressly not conceded by [the Home Office Presenting Officer] who referred to it.”

9. It was not in dispute between Mr Melvin and Mr Dar that there had in fact been evidence before the Judge relevant to the determination of this issue, namely the bundle of evidence typically relied upon by the Respondent in such cases, which included evidence specifically identifying that these documents relate to this Appellant. Further, the Appellant's own case (as set out in his witness statement) was that he had *not* sat the test: he had paid somebody for the certificate believing that it reflected his performance on the course on which had been enrolled and he was unaware that he was supposed to have sat a formal test.
10. It follows that the Judge did fail to take into account the Respondent's evidence on this issue. That evidence was plainly sufficient to demonstrate, on a balance of probabilities, dishonesty and so the Judge should have gone on to assess the totality of the evidence on this issue (applying DK & RK (ETS: SSHD evidence; proof) India [2022] UKUT 00112 (IAC)) in order to determine whether the Respondent had discharged the burden of proof. The decision is therefore tainted by an error of law.
11. In relation to the question of materiality, Mr Dar submitted that, in any event, there had been no cross-examination of the Appellant in relation to his account about the circumstances in which he obtained the test certificate. I have considered this submission with care but I am satisfied that the error was material because, if the Judge had proceeded on the correct basis, it would have been open to him to make his own assessment of the credibility of the Appellant's account. It cannot be said that he would necessarily have found in favour of the Appellant on this point or that, if he had not, he would inevitably have reached the same conclusion in respect of the Appellant's overall credibility.
12. As this error feeds into the judge's assessment of the appellant's overall credibility, it taints all of his findings of fact such that none can be preserved. I therefore do not need to go on to consider grounds 1 and 2.

### **Notice of Decision**

13. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.

### **Remittal**

14. I conclude that the appropriate forum for the remaking of this decision is the First-tier Tribunal, not to be listed before Judge Parkes, with no findings of fact preserved. In reaching this conclusion, I apply paragraph 7.2 of the Senior President's Practice Statement and the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

**C E Welsh**  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**27 April 2024**