



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04259/2013

THE IMMIGRATION ACTS

Heard at Newport
On 19 December 2013

Determination Sent
On 24 February 2014

Before

THE HON MR JUSTICE McCLOSKEY, PRESIDENT
MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

AA
(Anonymity Order Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Hoshi, instructed by Migrant Legal Project
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the appellant and to the respondent

and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Iraq who was born on 11 March 1976. The appellant initially left Iraq and travelled to Holland in January 2006. He claimed asylum and was granted a five year residence permit valid until 2 April 2012. However, that residence permit was withdrawn and subsequent appeals by the appellant dismissed. The appellant was, as a consequence, returned to Iraq on 16 August 2011.
3. The appellant left Iraq for a second time on 24 November 2011 and travelled to the United Kingdom. He claimed asylum on 2 December 2011. On 17 April 2013, the Secretary of State refused the appellant's application for asylum and humanitarian protection and under Articles 2, 3 and 8 of the ECHR. On 21 April 2013, the Secretary of State made a decision to remove the appellant to Iraq by way of directions.

The First-tier Tribunal Decision

4. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 12 June 2013, Judge Troup dismissed the appellant's appeal on all grounds. Before the First-tier Tribunal, the appellant claimed that he would face a real risk of persecution or serious ill-treatment in Iraq on four bases:
 - (i) imputed political opinion because of his association with a friend "BY" a political journalist who was unlawfully killed in 2010;
 - (ii) his religious belief, namely his (imputed) Shi'a Muslim faith;
 - (iii) his membership of a particular social group (PSG) and/or his imputed political opinion, namely as a 'westernised' returnee; and
 - (iv) his membership of PSG, namely homosexual men in Iraq.
5. As regards each of these claims, Judge Troup did not accept that the appellant was at risk on return. The Judge made an adverse credibility finding and rejected the appellant's account that he had come to the attention of the Asaab-Ahal-Alalhq, an organisation violently opposed to the UN Assistance Mission in Iraq through his association with a childhood friend, "BY" who was a journalist and who had written articles critical of the organisation. Further, the Judge found, having regard to the background evidence and the country guidance decision of HM and Others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC) that the appellant had not shown that he would be at risk because of his Shi'a faith or on the basis of his being "westernised". Finally, the Judge did not accept the appellant's evidence that he was gay and at risk on return on as a result.

Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal (UT). On 4 July 2013, the First-tier Tribunal (DJ Garratt) granted the appellant permission to appeal. The appeal was initially listed before the UT (UTJ Grubb) on 9 October 2013. Following that hearing, in a decision dated 25 October 2013 the UT concluded that Judge Troup had not made an error of law in reaching his adverse credibility findings and that his decision to dismiss the appellant's appeal on the bases set out above in paragraph 4(i)-(iii) stood.
7. However, the UT concluded that Judge Troup had erred in law in finding that the appellant was not at risk on return to Iraq on the basis of his sexual orientation - as set out in paragraph 4(iv) above.
8. The Judge's decision to dismiss the appeal on humanitarian grounds and under Article 8 was not challenged and those decisions stood.
9. Consequently, the UT directed that the appeal should be relisted for a resumed hearing in order to remake the decision in respect of the appellant's claim to be a refugee on the basis that he was gay and at risk of persecution because of his sexual orientation on return to Iraq.
10. The appeal was listed for a resumed hearing on 19 December 2013 before the present constitution of the Upper Tribunal. At that hearing, the appellant was represented by Mr Hoshi and the Secretary of State was represented by Mr Richards.

The Issues

11. On behalf of the Secretary of State, Mr Richards did not seek to argue that the appellant could be returned to Iraq if he established that he was gay. We did not, therefore, hear any argument based upon the background material in relation to the risk, if any, on return to Iraq of a gay man. The sole issue upon which we were addressed was the appellant's credibility and whether we accepted his claimed sexual orientation. Given our adverse conclusion on the appellant's credibility, we do not express any view on the correctness of Mr Richards' concession.

The Law

12. The burden of proof is upon the appellant to establish that there is a real risk that he will be persecuted for a Convention reason, namely as a member of a PSG (gay men in Iraq) or will be subjected to serious ill-treatment contrary to Article 3 of the ECHR.
13. In reaching our findings and conclusions in this appeal, we have taken into account all the evidence both oral and documentary that was put before us.

The Evidence

14. Without objection from Mr Richards, we admitted into evidence a supplementary bundle of documents from the appellant under rule 15(2A) of the Tribunal

Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698). That bundle contained, *inter alia*, a supplementary witness statement from the appellant dated 2 December 2013; an expert report prepared by Sheri Laizer dated 27 November 2013; and a number of background documents and policy documents relating to refugee claims based upon sexual orientation. On behalf of the appellant, Mr Hoshi put before us a helpful skeleton argument.

15. The appellant gave oral evidence in which he adopted his supplementary witness statement dated 2 December 2013. The appellant was cross-examined by Mr Richards and asked a number of questions, by way of clarification of his evidence, by the Tribunal. During the course of the appellant's evidence, the Tribunal raised a concern as to whether the interpreter might, perhaps, be encountering difficulties when interpreting the appellant's evidence given that it related to sensitive matters concerning the appellant's sexual orientation or for some other reason. In order that enquiry could be made of the interpreter, the Tribunal asked the appellant (though not his representative) to leave the hearing room briefly. The Tribunal indicated to Mr Hoshi that he could explain to the appellant subsequently why he had been asked to leave the hearing room. Mr Hoshi did not demur. Having made enquiry of the interpreter, the Tribunal was satisfied that the interpreter was able to perform his function fully. The Appellant remained outside the hearing room for at most five minutes.
16. It was not disputed that the appellant lived in Iraq until January 2006 when he left and travelled to Holland. He lived there until he was removed to Iraq on 16 August 2011. He left Iraq and came to the UK on 24 November 2011.

Witness Statements

17. The evidence concerning the appellant's claim to be gay and at risk on return to Iraq is set out in his two statements dated 22 May 2013 (pages A1-A5 FtT bundle) and 2 December 2013 (pages A1-A3 supplementary bundle).
18. In his statement of 22 May 2013, at paras 10-11 the appellant described his "first relationship with another man". This occurred whilst he was in Holland between 2006 and 2011. He says that the man's name was "Jan" and lasted for 8 months. The appellant's evidence is as follows:

"10. It was in Holland that I had my first relationship with another man. I realised a long time ago that I like to be with men and not women, however, this is something we cannot say in Iraqi society. Every time I had a girlfriend I would stay with her for a few weeks and then we would separate. I could not be open about this in Iraq because people could kill you. I have never told anyone before because I am ashamed, and even in Holland I kept it a secret. I don't like even to talk about it. But I cannot hide it any longer and need to talk about it in the court. I am really frightened to tell people about these things because I think they won't like me anymore and they will try to get away from me and avoid me.

11. In Holland I used to go to the gay pubs and bars. I was in a relationship with a Dutch guy called Jan for 8 months but neither of us wanted to make it

public so it was secret. I used to have friends in Holland from Iraq and other countries – there is a bigger gay scene in Holland than in the UK.”

19. That statement makes no reference to any relationship with a man whilst the appellant was living in Iraq.

20. In his more recent statement dated 2 December 2013, the appellant does refer to his time whilst he lived in Iraq and, in particular, that he had a boyfriend for about a year whilst doing his military service. At paras 4-5, the appellant says this:

“4. When I was 16-17 years old I had a couple of friends who were like me and we used to meet up with some slightly younger effeminate boys and practice sex with them about once or twice a week. 20 years ago the situation was much better. Now, if they find out about any type of activities like that they will kill both of you without question.

5. It was easier then because when we were in school we were together all the time and would mix together. When I finished school and did military service things became more difficult. I used to have a boyfriend at that time, for about a year. It was a secret relationship. He was also a soldier, but he was working in the kitchen cooking for the officers.”

21. At paragraph 7, the appellant also states:

“7. There were rumours of my sexuality back in my home area and when I finished my military service I tried to rent a room away from my family. I left Iraq in 1999 and went to live in Jordan because I found life difficult to live in Iraq, for everything, including my sexuality.”

22. As regards his time in Holland, the appellant says at para 8:

“8. Even in Holland I considered my sexuality a secret. There were a lot of Middle Eastern and Arabic people there. Also it is my private life so I didn’t like people to know about it – I didn’t talk about these things. In general the Europeans are nice people and respect other people’s rights, and they don’t judge you harshly like Iraqis or other Middle Eastern communities.”

23. In his statement of 2 December 2013, the appellant describes his situation in the UK at paragraphs 11-13:

“11. It is very hard to describe the feelings, but I have felt shame and isolation as a result of my sexuality, both in Iraq and in Europe. The problem is even here I don’t have the freedom because I cannot work and I cannot move out of Plymouth so it is very difficult for me to feel like an ordinary human being capable of forming relationships and being open about it. Plymouth is a small city with a small community of Arabs and Muslims. There is a small asylum seeker and refugee community that I am associated with; everybody knows each other and people gossip. I live in NASS accommodation with other asylum seekers, some of whom are Arabic and their other friends come over and it would spread very quickly if I ever invited a boyfriend or potential boyfriend back to my place.

12. I am not in a relationship at the moment. I am always optimistic and think maybe next week I will meet someone. I have been to a local gay community

group twice but I find they are all younger than me and it is very difficult to understand each other, for both language and cultural reasons. They are a bit closed and I think they prefer to have relationships amongst each other and not with a foreigner. There is a stigma attached to being an asylum seeker.

13. I don't like the other Arabic people in Plymouth to know about my sexuality. I don't have much friendship with those people because they talk about religion and politics and these things do not interest me. I want to move to a bigger city where I can meet more people like me. It's very depressing for me here in Plymouth."

24. This statement makes no reference to a relationship with a man in Plymouth which the appellant told us about in his oral evidence.

25. It is not a matter of dispute that the appellant did not disclose (or rely upon) his sexual orientation to the authorities in Holland prior to his removal in August 2011 and that he raised it for the first time in his evidence submitted to the First-tier Tribunal. The appellant made no reference to it in his screening or asylum interviews on 2 December 2011 and 13 December 2011 respectively. At para 14 of his statement dated 2 December 2013, the appellant explains why he did not disclose this aspect of his asylum claim sooner as follows:

- "14. I did not disclose my sexuality as part of my asylum claim sooner because I was ashamed and scared to disclose it. I have heard stories of what has happened to people in Iraq when people find out they are gay. I could never come clean even in the UK because I would be shunned by the group of people I know from the Arab and Muslim community in Plymouth. I have never liked to talk about it - I have always tried to hide it. I have never felt like I could ever talk to anyone about it. The reason I disclosed it to my solicitor before my hearing was because I was tired of fighting it. I felt a lot of pressure on me I just decided to tell my solicitor the truth. I wanted somewhere safe to live."

Oral Evidence

26. In his oral evidence to this Tribunal, the appellant was asked questions about any gay relationship that he had in Holland. In his evidence, he explained that he had had a relationship with a man name "Jack". He was Dutch and came from Rotterdam. He said that he met "Jack" when "Jack" worked for an organisation helping refugees. He said that they had a relationship for about 2½ to 3 months. In answer to questions put to the appellant by the Tribunal, the appellant said that he could not remember the full name of "Jack". He said that the relationship had been in 2007 and "Jack" had given him a home after which they lived together for 2½ months or thereabouts. When asked what interests they shared, the appellant said that they talked together, sometimes they drank together and sometimes he expressed sympathy and he gave love to him. He said that they spoke together in the Dutch language - "a little bit not much". The appellant said that the relationship came to an end when "Jack" left the appellant. He had last spoken to "Jack" in 2007.

27. In re-examination, the appellant was asked why he had given the name of the man with whom he had had a relationship in Holland as both "Jan" and "Jack". The appellant replied that the European name was different from the Arabic name and he could not remember.
28. In his oral evidence, the appellant said that he had had a gay relationship with a man in the UK. The relationship had been for about one week in 2012. The appellant said that it was with a man who had come from Newcastle as a tourist to Plymouth. They met in a bar. The appellant said that he could not remember the man's name - he had given three names and the appellant did not remember which was the truth. The appellant said that the man was staying in a hotel but had told the appellant not to come there; he would come to the appellant. The appellant confirmed that the man had visited him where he lived. When asked whether they had lived together for the week of the holiday, the appellant replied "three days". The appellant said that after the man returned to Newcastle he had been in touch with him but the appellant had lost his mobile phone which contained all his telephone numbers.
29. In answer to questions from the Tribunal, the appellant said that although the man from Newcastle had visited him at his NASS accommodation in Plymouth he had not slept there. When the appellant's attention was drawn to a sentence in paragraph 11 of his second statement that "it would spread very quickly if I ever invited a boyfriend or potential boyfriend back to my place", the appellant said that he did not wish to add anything.
30. In re-examination, the appellant was asked why, if he had concerns about other people seeing him, he had invited the man from Newcastle back to his accommodation. The appellant said that the time was suitable and there was nobody at the house. He said that he would like to have had sex with the man, that was why he called him to the house, but they did not have sex. The appellant said that the three Iranians in the house went to school to study English.
31. In his oral evidence, the appellant said that he had first realised that he was gay when he was in Iraq as a child. He said that he was more attracted to men than women. He said that he was approximately fourteen years old. When it was put to the appellant that Dr George in his report of 23 May 2013 states, in his narrative, that the appellant had said that it was "while in Holland that he became aware that he was homosexual" (see para 111 of Dr George's report at A45 of the FtT bundle), the appellant said that he could not remember talking about this to Dr George. He said that he had a mental problem and couldn't sleep for long and that he took tablets to make him sleep.
32. In his oral evidence, the appellant was asked whether he had had a gay relationship before he went to Holland in Iraq. He replied that he had whilst he was in the army.
33. When asked about para 8 of his statement where he said that in Holland he considered "my sexuality a secret", the appellant said that he was very serious about

keeping it secret. People didn't like it. He said that he knew that the police would protect him but he had to keep it secret. His sexuality was not acceptable in his culture and there were many Arabs around in Holland.

34. The appellant was asked why he had not claimed asylum in Holland on the basis of his sexual orientation before his removal in 2011. He said that it would be a stigma for him to announce that he was homosexual. He was scared of people in Holland. They had put him in prison and he would rather go to Iraq. When he was asked whether he would have preferred to go to Iraq, he said "No". He added that he could not claim asylum on the basis of his sexuality because it was "so shameful for me". When asked why he was able to claim asylum on that basis now, he said that his "mentality is becoming very bad" and that he did not feel well and that is why he has had to say these things to protect himself.
35. In answer to questions from the Tribunal, the appellant said that he was now prepared to talk about these matters because when he went back to Iraq his condition became worse and worse. He said that he had not had time to speak about his health condition at the first Tribunal. He said that he had told his solicitor about his health and his solicitor had had all the papers about his health condition. The appellant gave evidence about how he had, since 2011, been taking medicines prescribed by his doctor in Plymouth. He took the medicines for about nine months but he became tired and he stopped taking them about one year ago. He explained that he had had a problem sleeping but that had improved when he stopped taking the medicine after about one year. Then, the appellant said, he had developed a problem with his neck.

The Submissions

36. On behalf of the appellant, Mr Hoshi invited us to find that the appellant was credible. He accepted that there were a number of adverse credibility findings made by Judge Troup which had been upheld by the UT on appeal. Nevertheless, Mr Hoshi submitted that the appellant was credible on his sexual orientation. He submitted that the appellant had grown up in a culture where being gay was bordering on being seen as abhorrent and would result in serious ill-treatment. It was only now, Mr Hoshi submitted, that the appellant was able to give details because he felt sufficiently comfortable to do so. Mr Hoshi said that although the appellant had been given the opportunity to give details at the FtT's hearing, he had explained credibly why he had failed to do so. Mr Hoshi submitted that we should not count against the appellant that he had made a piecemeal revelation of matters relating to his sexual identity. It was only now that it was necessary for the appellant to reveal all in order to remain safe.
37. Mr Hoshi referred us to a number of documents set out at paras 21-24 of his skeleton argument which emphasised the difficulty faced by asylum seekers in revealing sensitive matters such as their sexual orientation. Mr Hoshi invited us to take into account the views of Sheri Laizer in her report dated 27 November 2013 that it was

plausible that the appellant would become engaged or married in order not to draw attention to his sexual orientation.

38. Mr Hoshi invited us to find the appellant credible and find that he is gay and, as a result of Mr Richards position on the objective risk to a gay man in Iraq, to find that the appellant had established his claim.
39. Mr Richards submitted that the FtT Judge had found that the appellant was someone who told lies. At para 41 of the determination, Mr Richards pointed out that the Judge had said that the appellant “lied and attempted to duck and dive in an effort to bolster his case”. Mr Richards pointed out that the appellant had raised the issue of his sexual orientation only as part of the FtT’s proceedings. He had not raised it before his removal from Holland in 2011 and he had not raised it in any of his interviews with the Home Office. Mr Richards pointed out that the appellant still maintained, in his more recent statement, the fiction that he was not married despite the finding of Judge Troup (which stood) that he was, in fact, married.
40. Mr Richards pointed out that there were inconsistencies in the appellant’s evidence, in particular concerning his claimed relationship in Holland with a man he called either “Jan” or “Jack” and there were discrepancies as to the length of that relationship. Mr Richards also pointed out that in his first witness statement the appellant said that he went to gay pubs and bars and yet, in his more recent statement, he says that in Holland “I considered my sexuality a secret”. Mr Richards pointed out that there was no supporting evidence from anyone in the UK as to the appellant’s sexuality. That was a relevant matter to be taken into account. Mr Richards invited us to look at the whole of the evidence and to conclude that the appellant was not to be believed.

Discussion and Findings

41. In reaching our assessment of credibility, we do so in the context of the background material and expert report on the cultural and social attitudes to homosexuality in Iraq. We bear in mind what Sheri Laizer says in her report at para 3(viii):

“Today there is no place for open homosexuality in Iraq. Various militant Islamic groups consider homosexuality a grave sin and would take it upon themselves to kill the offender. Gay men cannot now risk ‘coming out’ at all and there can be no open gay scene....any acts between men would place them in the most grave danger.”

42. We also bear in mind what Ms Laizer says at para 4(i) that:

An Iraqi male would be taking a grave risk to claim to be homosexual even outside Iraq any way in the Diaspora aware that his countrymen, if aware, will report back to their neighbourhood and those that know the person concerned. If, and when, that person returns to their family or social circle word would likely have preceded him...”

43. We also bear in mind the policy guidance documents to which Mr Hoshi referred us in paras 21-24 of his skeleton argument (see, *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*, UNHCR 22 September 2013,

Supp bundle pages C1-C18; *'Missing the Mark: Decision-making on LGBT Asylum Claims'*, UK Lesbian and Gay Immigration Group, September 2013, Supp bundle pages C19-C48); *'Guidelines on Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees'*, UNHCR Supp bundle pages C49-C65, especially C65-C67; *'No Going Back: Lesbian and Gay people and the Asylum System'*, Stonewall May 2010, Supp bundle pages C66-C101).

44. Those documents point out that many asylum seekers may have difficulty in revealing their true sexual orientation whether because they frequently keep those aspects of their lives secret whether out of a sense of shame or stigma that would be attached to them if their sexual orientation became known. That is, perhaps, a strengthened reluctance when an individual comes from a culture such as the appellant's where religious, cultural and societal norms view homosexuality as abhorrent or worse.
45. Nevertheless, for the following reasons, we are not satisfied on the evidence that the appellant is credible and we find that he has not established that he is gay.
46. First, the appellant has been found by the FtT to have lied about virtually all aspects of his asylum claim. Judge Troup stated, at para 41 of his determination that:

"[the appellant] has lied and attempted to duck and dive in an effort to bolster his case."
47. Judge Troup concluded that the appellant had fabricated his account of being at risk in Iraq as a result of his association with a journalist who had written articles critical of an organisation violently opposed to the UN Assistance Mission in Iraq. Before the FtT, Mr Hoshi did not rely upon four documents submitted by the appellant. The appellant's own expert, Dr George considered that two of these documents were "highly likely to be counterfeit" and a third "may well be counterfeit too". The appellant has demonstrably lied about much of his claim.
48. The Judge also found that the appellant, contrary to his claim at the hearing, had in fact married an Iraqi woman in Syria in 2009. Judge Troup's findings, which stands as a result of this Tribunal's initial decision, was made despite the appellant's claim that he had, in fact, only been engaged to the woman. That is a false claim which the appellant continues to advance, even in the face of that judicial finding, in his witness statement of 2 December 2013.
49. Secondly, whilst we accept that an asylum seeker might be reluctant to disclose the sensitive information concerning his sexual orientation, the appellant has had a number of opportunities to do so since 2010 when his residence permit to live in Holland was withdrawn. Despite the threat of removal to Iraq, the appellant did not mention (or rely upon) his claimed sexual orientation to the Dutch authorities or in the ensuing judicial proceedings at any time after his arrival in Holland in January 2006 and before his removal on 16 August 2011. Despite the fear of being killed on return to Iraq, the appellant made no mention of any aspect of his claim (as now

made before this Tribunal) based upon his being gay. He made no reference to any relationship, whilst he lived in Iraq, with a soldier whilst he was doing his national service. He made no mention of his relationship with a man in Holland or of his fear which, he now claims in his supplementary statement, caused him to leave Iraq in 1999 and go to live in Jordan because there were rumours of his sexuality in his home area, making him fear serious harm if he returned.

50. Thirdly, the appellant made no mention of his sexual orientation nor placed any reliance upon it when he claimed asylum in the UK in December 2011. It was raised for the first time in his evidence presented to the FtT at its hearing on 4 June 2013 in his witness statement dated 22 May 2013 at paras 10-11.
51. We do not accept the appellant's evidence that he did not disclose this basis for his claim until, in effect, the appeal proceeding in the UK out of shame or because his mental health had deteriorated. Although there is evidence that the appellant suffered from sleep difficulties and, perhaps, some mental health issues, the appellant's own evidence was that he stopped taking any medication (apart from problems concerned with pain in his neck) about 12 months ago. We do not accept that the appellant's condition deteriorated in the window of time prior to the FtT's hearing such that, for the first time, the appellant felt compelled to reveal (for fear of return to Iraq) that he was gay. It is wholly implausible, in our judgement, that if the appellant's account were true he would not have mentioned it earlier, in particular in the course of the Dutch proceedings given that he was at risk of return to Iraq and, in fact, that is precisely what happened.
52. Fourthly, in a number of respects we find the appellant's evidence highly unsatisfactory. His evidence about his relationship with a man in Holland is confused. In his first statement he refers to him as "Jan" but in his evidence before us he referred to him as "Jack". Despite claiming that they lived together, during their relationship, the appellant used different names for his claimed partner and was unaware of his surname. The appellant's evidence is also inconsistent on the length of the relationship. In his first statement, he says the relationship was for 8 months (see para 11) whilst in his evidence before us he said that the relationship was between 2½ and 3 months. The alleged abrupt loss of contact between the two persons is another telling factor. The vagueness and inconsistencies in the appellant's evidence in respect of his claimed relationship in Holland lead us to reject his evidence in that respect. Likewise, self-evidently contradictory, he claimed to keep his sexual orientation a "secret" in Holland and yet he says he attended gay bars and clubs.
53. In addition, the appellant claims in his statement of 25 May 2013 that the relationship with "Jan" was "my first relationship with another man". Yet in his more recent statement and evidence before us, the appellant claims that he had had a relationship with another man for about one year whilst he was doing his military service in Iraq. No mention of that is made in his earlier statement and it is wholly inconsistent with his evidence in that statement that it was not until he was in Holland that he had his "first relationship" with another man.

54. Likewise Dr George notes in his report (at para 111) that the appellant told him that:
- “He had always been confused about his sexuality, and that while in Holland he became aware that he was homosexual.”
55. In his evidence, the appellant claimed that he could not recall saying this to Dr George. There is no reason to doubt Dr George’s statement of what the appellant told him. Now, of course, the appellant claims that he had a “boyfriend” for about one year in Iraq whilst doing military service. That cannot be reconciled with the appellant’s statement to Dr George that he only became aware of his homosexuality subsequently when in Holland.
56. As regards his time in the United Kingdom, the appellant makes no mention whatsoever either in his statement of 22 May 2013 or that of 2 December 2013 of his claimed relationship (albeit brief) with a man from Newcastle in 2012. Whilst that relationship may not have yet occurred when the appellant made his first statement in May 2013, there is no suggestion that it occurred subsequent to his statement on 2 December 2013. Yet, in his oral evidence the appellant said that such a relationship had occurred for a brief period during the week that the man was a tourist in Plymouth where the appellant lived.
57. We found wholly unpersuasive the appellant’s evidence that, despite saying in his written statement that it was not possible to invite a boyfriend back to his NASS accommodation, he had been able to invite this man back because the other residents were out studying. In any event, the appellant’s evidence about this claimed relationship was entirely vague. He was unable to name the man concerned who, he claimed, came from Newcastle, simply saying that he had been given three names and did not know which one was the truth. We reject outright his claims to have had a relationship in the United Kingdom.
58. Fifthly, despite living in the UK for 2 years, the appellant was not in a position to call a single witness to support his claim that he is gay (see TK (Burundi) v SSHD [2009] EWCA Civ 40 at [16]).
59. Sixthly, even since the appellant has disclosed his claimed sexual orientation he has sought to enhance his evidence adding to it in piecemeal fashion so as to bolster his claim for international protection. When pressed on the detail of his story in his oral evidence, the appellant’s evidence was sometimes vague and sometimes inconsistent with what he had previously said (see above).
60. We do not accept that, despite the sensitivity of the information, the appellant, if genuine, would not have raised as part of his asylum claim and in the appeals process in Holland that he feared return to Iraq on the basis of his sexual orientation. Further, having already been returned to Iraq, we do not accept that the appellant would not raise the issue of his sexual orientation until immediately prior to the FtT’s hearing.

61. For all these reasons, looking at the evidence in the round and in the context of the background material, we find that the appellant is not a credible witness. The appellant is not a person of credit whose evidence can be relied upon. We reject the appellant's evidence of his sexual orientation. In our judgment, the appellant has fabricated this account to seek, as a last ditch effort, to remain in the UK. He has failed to establish that he is gay as claimed and, as a consequence, is at risk on return to Iraq.

Decision

62. Consequently, the appellant has failed to establish that he is at risk of persecution as a member of a PSG or of serious ill-treatment or harm contrary to Art 3 of the ECHR.
63. The appellant's appeal is dismissed on all grounds.

Signed

A Grubb
Judge of the Upper Tribunal

Date: