



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00197/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20th April 2016**

**Decision & Reasons
Promulgated
On 19 May 2016**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Head, instructed by Lawrence Lupin Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born in 1998. He appeals against the decision of First-tier Tribunal Judge Wyman dated 20th September 2015 dismissing his appeal on asylum and humanitarian protection grounds.
2. Permission to appeal was granted by First-tier Tribunal Judge R A Cox on 26th October 2015 on the basis it was arguable that the judge failed to

give adequate and sustainable reasons for her adverse credibility findings and for her finding that the Appellant was not a practising homosexual or in a long standing relationship as he claimed.

3. The appeal came before Upper Tribunal Judge Chalkley on 6th January 2016. He set aside the judge's credibility findings for the reasons given in his decision dated 6th January 2016. The matter was adjourned for re-hearing before the Upper Tribunal.

Immigration History

4. The Appellant came to the UK as a student in 2011. His college's licence was revoked in June 2012 but he was granted further leave to remain. His college's licence was again revoked in 2013 but on this occasion the Appellant was refused further leave to remain in August 2013. He appealed the refusal of leave and his appeal was dismissed by the First-tier Tribunal. He became appeal rights exhausted in 2014.
5. The Appellant made a further application for leave to remain which was considered in October 2014 and refused in January 2015 with no right of appeal. The Appellant was arrested on 8th April 2015 and detained. He claimed asylum on 14th April 2015. Although he was initially accepted into the detained fast track process, he was released from detention on 26th June 2015.
6. The Respondent refused the Appellant's asylum claim for the reasons given in the refusal letter dated 18th May 2015. The Appellant's appeal was heard by the First-tier Tribunal on 26th August and 10th September 2015. His appeal was dismissed but the decision was set aside to be remade.

Issue

7. The issue before me is the same as that before the First-tier Tribunal, namely, whether the Appellant is homosexual and whether he is in a homosexual relationship with his partner SA. The burden is on the Appellant to prove the facts of his claim and the standard of proof in asylum and protection claims is that of a reasonable degree of likelihood or real risk.
8. For the purposes of this appeal it is not disputed that if the Appellant is homosexual then he will be persecuted on return to Pakistan. Further, if his claim is found to be credible then it is also credible that he would not live discreetly on return to Pakistan and therefore he would be at risk of persecution or serious harm. Accordingly, it is for me to consider the evidence and decide whether I find the Appellant's claim to be a homosexual to be a credible one.

The Appellant's claim

9. The basis of the Appellant's claim is that at the age of 10 he realised that he had feelings towards his cousin SA and he told him so. Those feelings were returned by SA. In 2002, whilst still living in Pakistan, they started a relationship which was sexual and they continued that relationship until they left Pakistan in July 2011, although that relationship was not known to either the family of the Appellant or SA.
10. The Appellant and SA came to the UK in 2011 on student visas. They have lived together whilst in the UK and, for part of that time, they have lived with their cousin HI in the same house. HI moved out of the house, where he lived with the Appellant and SA, when he got married.
11. Therefore, it is the Appellant's claim that he is homosexual and he has been in a long standing relationship with SA prior to coming to the UK and since he came to the UK. He claims that his family found out that he was homosexual by accident. They were urging him to return to Pakistan to get married and during a conversation with his elder brother, F, he stated that he would not be returning to Pakistan because he was in a relationship with SA. At that point the family started to threaten him over the telephone. He fears return to Pakistan because of what his family might do to him but also because he would be unable to live openly as a homosexual and would be at risk of harm from the authorities given that homosexuality is illegal and contrary to Muslim religion.

The Respondent's decision

12. The Respondent's refusal letter dated 18th May 2015 states that it is not accepted that the Appellant is gay because he has given inconsistent accounts about when he realised he was homosexual and when he disclosed his feelings about SA and other matters to his family. It was accepted that the Appellant had lived at the same address as SA in the UK, but not that they were in a relationship given that the Appellant did not know at which college SA was studying or whether or not he had in fact finished his studies. Photographs had been submitted but these just showed that the Appellant and SA were friends. The majority of the photographs submitted post dated the Respondent's decision. There were only photographs of HI's wedding which predated the asylum claim.

The hearing

13. The Appellant's partner SA has also claimed asylum and his appeal is due to be heard by the First-tier Tribunal on 25th July 2016 (reference number PA/01491/2016). There was no application to link the appeals. Having regard to the overriding objective, I decided to proceed with the hearing.

14. The Appellant relied on a consolidated bundle of documents containing 71 pages and the Respondent relied on the Respondent's bundle containing the refusal letter, asylum interview record [AIR] and other documentation.
15. At the hearing the Respondent submitted a copy of SA's refusal letter dated 26th January 2016 and the Appellant submitted a skeleton argument. I heard evidence from the Appellant, his partner SA, his cousin HI, his friend MR and HI's friend QAM.

Appellant's oral evidence

16. The Appellant confirmed his name and address and relied on his witness statement dated 26th May 2015. He lived with his partner SA and two others called M and L. The Appellant last had contact with his family on 3rd February 2016 when HI, his cousin, arranged for him to speak to his sister S who was going to get married. During the telephone call his sister became upset and the Appellant's elder brother F took hold of the telephone. At this point the Appellant gave the telephone back to HI who then received threats and abuse from F. There had been no contact since the telephone call of 3rd February 2016.
17. The Appellant would not be able to go back to Pakistan and continue to live with SA. His family knew of the relationship and had threatened him and SA. The army, the police and other Islamic organisations did not accept homosexuality which was illegal in Pakistan.
18. In cross-examination, the Appellant stated that he did not have an interpreter in his screening interview even though he had asked for one. He was able to speak Urdu and English and he confirmed that he had understood all the questions. He had replied that he was single in answer to the question about his marital or relationship status. At this point in the evidence Ms Head referred to the Appellant's answer to question 4.1 in the screening interview where he stated that he lived with his partner in the UK and he gave SA's name and date of birth.
19. The Appellant confirmed that he only claimed asylum after he was arrested by an Immigration Officer and that he was not aware that he could claim asylum on the basis of sexual orientation until after his arrest. He did not have any gay friends other than his partner SA. His friends and family were all from Pakistan where homosexuality was not common. The Appellant had met two people who were friends of his friend, one in central London and one at a club. These were the only other two people he knew who were gay and they were not present at court.

20. The Appellant had four sisters and his younger sister S had just got married. It was her first marriage. He was asked about question 24 of the AIR where he had stated that all his sisters were married. This was clearly incorrect given his evidence that his younger sister had only recently got married. The Appellant explained that the nikkah was in October 2015 and therefore in his mind she was married. When it was pointed out that the interview took place in May 2015 and therefore predated the nikkah, he said that his culture and traditions were such that once his sister was engaged then it was clear the nikkah would follow and then she would leave her parents.
21. The Appellant stated that the telephone call on 3rd February 2016 was on HI's mobile telephone, although he could not recall whether HI had made or received the call. He was with HI at that time at the Appellant's home address. He was not sure if SA was present, but SA was in the property at the time and had not gone out for the day. He thought that SA was coming and going from the room. SA was aware of the threats received from the Appellant's brother F on that day and aware of the telephone call which was received about 3 o'clock in the afternoon.
22. The Appellant could not remember the last time he spoke to his mother but it was a very long time ago. She was his only surviving parent. He had received threats from eight people in Pakistan which included his elder brother, his brother-in-law, elderly members of his family and SA's family including his father, elderly relatives and uncles. The Appellant had never been in a relationship with anyone other than SA who had no status in the UK. SA had made a claim for asylum while his student leave was outstanding. His student leave had been curtailed on receipt of the asylum claim.
23. The Appellant stated that his friend MR was giving evidence today and MR first became aware of his relationship with SA in 2012 at the beginning of the year. He had found out at the Appellant's home, his previous address [46BD]. MR had come on a planned visit and they had eaten pizza. MR had returned home to the north of England during the evening.
24. The witness QAM first became aware of the Appellant's relationship with SA when QAM visited them at their own home. He did not see very much of QAM who was a friend of the Appellant's cousin HI. The Appellant had not changed his mobile number after receiving threats from his family because he wanted to be aware of conditions there. If he was granted asylum he would not go back to Pakistan.
25. It was put to the Appellant that his answers at questions 44, 61 and 89 of the AIR, about when he first realised he was gay, were inconsistent. He first stated that he was 10 years old and then later stated that he was 13 or 14 years old. The Appellant confirmed that he realised that he had feelings for his cousin in 1998, but it was in 2002, when they actually had sex, that he came to know that he was gay.

26. The Appellant was asked about question 182 of the AIR and explained that he had accidentally declared his sexuality to his brother F. He had told SA about this disclosure and they were very worried. The threats began very soon after telling SA and many calls were received but not all calls were answered. They were always to the Appellant's telephone or SA's telephone.
27. In answer to questions from me the Appellant stated that he expressed his feelings to SA in 1998 and in 2002 sexual activity took place. It continued in Pakistan after 2002 up until he came to the UK in 2011. He had not claimed asylum soon after he arrived because, although he knew of the asylum procedure, he was not aware that he could claim asylum on the basis of sexual orientation. He first found out that he could claim asylum on that basis in April 2015 after he was detained.
28. The Appellant's family found out that he was in a relationship with SA around the end of 2013 and the beginning of 2014, although he could not remember the exact time. They had found out because they kept asking him to return to Pakistan to marry and he kept refusing to do so. They then expressed their doubts that something was wrong because he was continuously refusing to marry such that, on one occasion, when he was talking to his brother F on the telephone, he told him by mistake that he was happy with SA.
29. SA has studied an ACCA course at LSBS College, then business management at London Academy. He was unable to tell the interviewer the name of the college during his AIR because there had been some confusion when selecting the college and the name of the second college had in fact gone from his mind at that time. He did not know whether SA had finished his course at the time of the interview because he was not aware of the exact date having not seen the CAS letter.
30. In re-examination, the Appellant confirmed that he did not know who had made the telephone call on 3rd February 2016, but that he had spoken on HI's telephone.

Oral evidence of SA

31. SA relied on his witness statements dated 6th May 2015 and 18th August 2015. He stated that he was in a genuine relationship with the Appellant and that if he went back to Pakistan they would both be killed or harmed because no-one accepted their relationship not his family, the government, the police or other Islamic organisations.
32. In cross-examination he stated that his family had found out about his relationship with the Appellant in 2014 from either a family member or a friend, he did not know exactly. It was at the beginning of 2014 or at the

end of 2013. He was unable to be more specific, other than it was more than two years ago. The Appellant's family became aware of the relationship first because they were forcing the Appellant to get married and the Appellant told them by mistake. The Appellant had told his older brother F that he was happy with SA.

33. The Appellant last had contact with his family on 3rd February 2016 when HI had told the Appellant that his sister was getting married. HI facilitated the call so that the Appellant could speak to his sister. It became apparent during the telephone call that she was weeping and the Appellant's brother grabbed the telephone. The Appellant on hearing his brother's voice handed the telephone to HI who was then abused for knowing about the relationship. SA could not remember where the call was received, but that it had been facilitated by HI, and HI had in fact called the Appellant's sister. The Appellant and SA were not aware of the marriage until HI told them. SA was in the room throughout the call but he could not exactly remember what time the call was made or where they were other than they were with HI.
34. SA had had no other relationships other than his relationship with the Appellant. He had not claimed asylum upon receiving threats from Pakistan because he was unaware that he could claim asylum on the basis of his sexuality. He had no other friends who were homosexual other than the Appellant. He did not discuss his studies or his course in detail with the Appellant.
35. In re-examination, Ms Head asked SA to explain why the Appellant had said the telephone call on 3rd February 2016 was made at their home. In response SA stated that he was not sure if HI had come to their house or they went to him because SA was under such stress.

Oral evidence of HI

36. HI relied on his witness statement dated 18th August 2015. He confirmed his name and that he had recently moved address. The first time he realised the Appellant was gay was when he caught the Appellant and SA having sex in his bed in 2011. He confirmed everything in his statement was true and that he could derive no benefit from falsifying his evidence. If the Appellant was sent back he would be at risk of harm.
37. HI had returned to Pakistan from 20th September to October 2015 when he went to spend Eid with his family. He was asked several times of the whereabouts of the Appellant and SA by their families. He tried to convince them that he did not know. He was told to find out and sort them out. This meant there would be big harm for them. He stated that killing in his country was not a major thing and there were issues with law and order.

38. He then referred to the telephone call on 3rd February 2016 and stated that it was made on a Wednesday. No-one had told the Appellant that his younger sister was getting married but HI knew and told him. The Appellant was upset and in tears so HI decided to speak to the Appellant's sister and ask her to speak to the Appellant before she was married. He was able to convince her and they decided a time when she could speak alone which was about 3 to 4pm in the afternoon because Pakistan was five hours ahead. HI had called the Appellant's sister and as soon as she spoke to the Appellant she started crying. All of a sudden F, the Appellant's elder brother, took the telephone and as soon as the Appellant realised he passed the telephone to HI. HI said, "Hello how are you?" and F said, "I know you are telling lies and we will definitely kill them now we know that you are behind everything." There had been no contact with the Appellant's family since the telephone call on 3rd February 2016.
39. HI was supporting the Appellant and SA because they were his cousins and had been born and brought up in front of him. When they came to the UK he had looked after them and he loved them. They were like his brothers. Particularly at this time, everyone was against them. He had seen their childhood and then school and college, so he could not be hard hearted. It was their life and people needed to understand there was a lack of education in Pakistan. Even in the UK people loved humanity and human beings for what they were. HI accepted the Appellant's and SA's chosen lifestyle. He supported them and would continue to do so.
40. In cross-examination, HI stated that the telephone call on 3rd February 2016 took place in his office. He had called on his mobile telephone. His office was in the same road as the Appellant's home, about 200 yards from where the Appellant and SA live. When it was put to him that the Appellant had said the conversation took place at the Appellant's home, he said that was not correct. It took place in his office because he was always in the office from 10am to 7pm.
41. The Appellant's sister, S, had just got married and had flown to Dubai with her husband last month. The family first became aware of the Appellant's relationship about two years ago somewhere in the middle of 2014, it was not spring or winter at all. He had no incentive to help the Appellant and SA remain in the UK and he had no reason to falsely support their claim in this country. He did not want them to leave because he knew if they returned to Pakistan they would be killed because homosexuality was not acceptable in his culture. Even if they were not killed by their families, they would be in danger from society at large because homosexuality was illegal.
42. The family had found out about the Appellant's homosexuality around summer 2014 because it was at the same time as the sun festival. Other members of the family were not as liberal as HI because they remained in Pakistan where people were very strict and some were illiterate and did not understand. Homosexuality was contrary to Muslim religion.

43. In answer to questions from me he stated that he had not advised the Appellant or SA to claim asylum. He did not know why they had not claimed sooner. HI did not know they could claim asylum on the basis of sexual orientation. The Appellant had told him when he was arrested and he had no idea about the situation in the UK.

Oral evidence of MR

44. MR relied on his statement dated 20th April 2016 which he signed and dated in court. He said although the Home Office did not accept that the Appellant and SA were gay he had seen them and they were living like a couple. He did not have any other gay friends. He had just come to see the Appellant and SA. He did not know of any other gay friends. He had come to support them today because if they were sent back then a member of the family or the community would kill them. He was asked about his opinion on the Appellant and SA being gay. He stated that it was their life.
45. In cross-examination, he said that he had first visited the Appellant and SA in 2012 when they were living at their previous address [46BD]. He had come to the UK in 2011 and visited them in around June or July 2012. The weather was hot at that time. It was put to him that the Appellant had said he had visited at the beginning of 2012, but MR disagreed and stated that it was in June or July 2012. When he came to visit them, they had called him and he had said when he was coming, and they had eaten pizza together.

Oral Evidence of QAM

46. QAM relied on his statement dated 18th August 2015. He had come to give evidence because the Appellant and SA could choose how to live in the UK, but they could not choose how to live in Pakistan because Pakistani culture did not accept homosexuality. If the Appellant and SA went back they would have problems with their families. He said that their relationship was quite physical. For example, he had visited one day and they were sitting on each other's lap. He would not do such a thing, not even as a joke, because a man could not sit on another man's lap. It was not accepted and he had not been brought up like that.
47. In cross-examination, he stated that he lived and worked in Reading and therefore he did not often see the Appellant and SA, save for festivals or religious ceremonies such as Eid. He did see HI more often. He had not realised that the Appellant and SA were gay for four years because he did not see them very much. He had only seen them behave in an openly gay way rather recently in 2015 when he saw them sitting on each other's lap. He was surprised by this display of affection and had asked HI about it when they were going home in the same car. He wanted to know why HI

had not mentioned it to him sooner. QAM had not even mentioned the situation to his wife because homosexuality was not accepted in his culture.

Submissions

48. The Respondent relied on the refusal letter dated 18th May 2015, in particular, paragraphs 51 to 59 and 60 to 64. The issues set out therein were particularly relevant in deciding this appeal.
49. Mr Whitwell submitted that the Appellant's immigration history adversely affected his credibility because he had claimed in his AIR (216 to 219) that he intended to live permanently in the UK which was contrary to his student visa. Further, he had delayed claiming asylum and should have done so shortly after his arrival or at the latest after he had received threats from family in Pakistan. However, the first time he raised his asylum claim was whilst he was in detention and pending his administrative removal. Section 8 applied. It was not credible that he was unaware he could claim asylum on the basis of sexual orientation. He had made several applications for a visa and was well aware of the immigration system in the UK.
50. It was not accepted that the Appellant was a homosexual or in a relationship with SA because his answers in interview about when he realised he was gay were inconsistent. He had stated aged 10 and 13 or 14 years old. It was unusual that neither the Appellant nor SA had had any other relationships. The Appellant had little knowledge of his partner's studies at the hearing before the First-tier Tribunal and it was evident from the AIR that SA had not visited the Appellant whilst he was in immigration detention.
51. There were discrepancies in oral evidence today about when the Appellant's family found out about the relationship. The Appellant and SA claimed it was late in 2013 around the beginning of 2014 and HI was sure that it was in the summer because the weather was warm and there was the sun festival. There were also discrepancies in relation to when MR visited the Appellant's home. MR stated that it was July 2012 whereas the Appellant and SA stated it was the beginning of 2012. There were clear discrepancies as to when others became aware of the relationship which undermined the Appellant's credibility.
52. The evidence in relation to the telephone call on 3rd February 2016 was also inconsistent. The Appellant had stated in interview that his sisters were married but it was clear from the telephone call on 3rd February 2016 that in fact one of his sisters was not. His explanation that he considered his sister married when she signed the nikkah was not plausible given that it post-dated the interview.

53. There was also an inconsistency in relation to where the telephone call on 3rd February 2016 took place. The Appellant said it was at his home, HI said it was at his office and S could not remember. Mr Whitwell submitted that the telephone call on 3rd February 2016 did not happen as the Appellant had in fact claimed. The Appellant's answers were relatively vague, he could not say when he last had contact with his mother and he was unable to name the specific month when his family found out about his relationship with SA.
54. The photographs did not take the matter any further given that the only ones which pre-dated the decision related to a family wedding. The Appellant did not have any gay friends, which was odd, and the only witnesses were family members. There were no other members of the gay community.
55. Mr Whitwell submitted that there was insufficient evidence of the relationship pre-dating the asylum claim. The Appellant was not a credible witness and the appeal should be dismissed. If however I accepted the Appellant's credibility then I should also accept that he would not live discreetly in Pakistan and therefore there was no alternative argument in relation to risk on return. If the Appellant was a credible witness and I found that he was a homosexual and in a relationship with SA then his claim would succeed.

The Appellant's Submissions

56. Ms Head relied on her skeleton argument and invited me to allow the appeal because the Appellant had discharged the burden on him to show that he was gay. There was no inconsistency in interview about when the Appellant discovered he was gay. He was attempting to explain his emotional feelings. It was not unusual that he would have been unaware of his sexuality at the age of 10 save that he was attracted to his cousin. He confirmed his sexuality at the age of 13 or 14 when he had sex with his cousin.
57. The Appellant claimed asylum when he was detained because he was not aware he could claim asylum on that basis prior to that date. He had been living in the community which was not part of a gay scene and had been honest about it. He was not in a position to talk about it to others. When detained he was given a duty solicitor who would have explained his rights and the Appellant mentioned his partner in question 4.1 of the screening interview.
58. SA had not made a claim for asylum because he had student leave and he only claimed after being properly advised that he was able to do so. Accordingly, the delay in making an asylum claim did not undermine the Appellant's credibility or the basis of his claim. Homosexuality was not accepted in the Appellant's community and therefore it was not a common

event. It was plausible that he would not know he could claim asylum on that basis and in fact he did make a claim as soon as he became aware.

59. The discrepancies in the dates and places where conversations took place were not significant. The core of the Appellant's claim and the facts relevant to the issues under consideration had been consistent. Any discrepancies in relation to dates and venues did not affect this.
60. Whether his younger sister was in fact married at the date of the interview was not a significant inconsistency. It was not surprising that he did not know where his sister was living at that time and he had deemed her married from her nikkah. They did not fundamentally undermine his claim in any way.
61. The adverse submission that SA had not visited the Appellant in detention was not put in evidence and there was evidence before the First-tier Tribunal that the Appellant did not want to see SA whilst he was in detention because he was too upset. This did not assist the Appellant's case in any event. If the Appellant's claim to be homosexual was false, then SA was more likely to have visited him in detention in order to be able to put their false claim together. The previous explanation that the Appellant and SA were too upset to see each other whilst in detention was indeed plausible.
62. This was in fact a unique case. It was unusual that the Appellant had not integrated into the gay community in the UK but that did not mean his claim was not genuine. The Appellant and SA had been together since the age of 13 or 14. The fact that they did not feel the need to be part of the gay community or the gay scene in the UK did not undermine this.
63. There was clear evidence that the Appellant and SA were in a relationship and HI was a credible witness. He loved both of his cousins and did not want them to be at risk of harm if returned to Pakistan. He derived no benefit from the Appellant being able to remain in the UK. The other witnesses were also credible, they received no benefit in giving evidence and there was no reason why they should seek to lie about the circumstances and come to court and perjure themselves particularly when this case went against their cultural traditions and religious beliefs.
64. QAM did not find the Appellant's behaviour to be something he could condone and it did not fit into Pakistani society so there was no reason for him to fabricate his evidence. It was only his level of humanity that compelled him to come to court in order to prevent their return to Pakistan. His evidence that he had seen the Appellant and SA holding hands over dinner and had asked HI about it afterwards was plausible. The fact that the Appellant and SA did not shout about their relationship was not unusual. Their behaviour was out of the ordinary according to QAM. If QAM had wanted to fabricate evidence he could have done so much more.

65. Even if the Appellant's family were not threatening him and SA, they could not live openly in Pakistan because it was illegal, contra-cultural and against Islam. The Appellant and SA could not live in Pakistan as they did here. They would not be able to live as a couple and as such the Appellant had satisfied the burden of proof and had shown that he was a refugee.

Discussion and Conclusions

66. Having reviewed the whole of the evidence in the round I make the following findings. I find the Appellant to be a credible witness. He has given consistent and cogent evidence and has not sought to embellish his claim. It has been argued that the claim is somewhat vague and lacking in specific detail, but the detail which is missing from this claim relates to dates and venues which are understandably difficult to remember. The core of the Appellant's claim was consistent throughout and has not changed in any great respect. There were no inconsistencies identified in the evidence given at the previous appeal and in this appeal.
67. The Respondent relies on the following inconsistencies:
- (i) The marriage of the Appellant's sister;
 - (ii) When the Appellant realised he was gay;
 - (iii) When his parents found out about his relationship;
 - (iv) When his friends found out about the relationship; and
 - (v) The telephone call on the 3rd February 2016.
- I shall deal with each in turn.
68. Firstly, the Appellant stated, in the AIR, that his sisters were married, but it transpired from his oral evidence that his youngest sister, S, had only recently married earlier this year and had become engaged to be married in 2015. I do not find that the Appellant's answer in the AIR undermines his credibility. It was not relevant to whether he was homosexual. It was relevant to the conversation which took place on 3rd February 2016, namely that the reason for the telephone call was that his sister S was going to get married and the Appellant wished to speak to her before she did so. There seems to be no reason for falsifying the purpose of the telephone call and it has little relevance to the core of the Appellant's claim.
69. The second discrepancy relates to when the Appellant realised he was gay. Having looked at the questions in the AIR and assessing them as part of the evidence as a whole, I accept Ms Head's submission that the Appellant's ability, as a teenage boy, to understand his feelings may have been confused. He had however been consistent in stating that he had feelings for his cousin SA in 1998 which developed into a sexual relationship in 2002. The fact that he was unable to say whether he realised he was gay at the age of 10 or 13 and 14 did not undermine his claim that he was in a homosexual relationship with his cousin SA.

70. Thirdly, the date when the Appellant's family found out that he was homosexual. The Appellant had a conversation with his brother F on the telephone. The Appellant and SA stated that this was at the end of 2013 or the beginning of 2014. However, HI was sure that it was in the summer of 2014 because it was around the time of the sun festival and the weather was warm. I do not think much turns on this. Whilst I accept that this would have been a huge shock and a worry for the Appellant and SA, their ability to remember the specific month was not sufficient to undermine their credibility.
71. The fourth discrepancy relates to when the Appellant's friends found out about his relationship with SA. The Appellant claimed that MR found out about the relationship at the beginning of 2012. MR stated in oral evidence that it was in summer of 2012. I do not think anything material turns on which part of the year in 2012 it was. It was probably more of an event for MR given that it was rather a shock to find out that the Appellant and SA were homosexual.
72. The last point that is raised is in relation to the oral evidence about the telephone call which took place on 3rd February 2016. The Appellant stated that it took place at his home. SA stated that he did not know where it took place, but that they were with HI at the time. HI stated that it certainly took place at his office which was 200 yards away from the Appellant's home.
73. Given the proximity of the office and the Appellant's home, again I do not think much turns on the venue of the conversation given the actual nature of the conversation and what was said. All three witnesses gave consistent evidence on its content. It would be somewhat suspicious if their evidence was entirely the same in every respect. Therefore, it is not unusual that there might be some misremembering or discrepancies as to minor issues given the nature of the conversation and how emotive it was. The actual place where the conversation took place is not of particular relevance to whether the Appellant is in fact homosexual or whether he has sought to fabricate his asylum claim.
74. I accept the Appellant's explanation for his failure to claim asylum prior to his arrest and detention. He has lived within the Pakistani community in the UK and has had limited contact with the gay community. His experience of applying for student visas would not necessarily lead to knowledge of the asylum system. I find that his failure to claim asylum soon after his arrival or soon after he was threatened by his family does not undermine his credibility.
75. I find the Appellant's explanation for why he was unable to answer questions in the AIR about SA's studies to be credible. His lack of knowledge was understandable in the circumstances and did not undermine the core of the Appellant's claim in any event.

76. I find that SA was also a credible witness. His evidence was straightforward and cogent. It was consistent with the Appellant save for the points I have indicated above. I find that HI was a credible witness and was particularly passionate and sure of events. His account was largely consistent with the Appellant save for the points that I have raised above, which I do not find to be significant for the reasons already given.
77. As for the two remaining witnesses, I found their evidence to be credible. I am persuaded by Ms Head's submission that, had they sought to fabricate evidence in order to support a false asylum claim, then they could have done so much more. Their evidence was that they did not condone the Appellant's behaviour and homosexuality was against their culture and religion. However, they came to court and supported the claim without embellishment and gave evidence in a very straightforward manner.
78. The photographs neither enhance nor undermine the Appellant's claim. The Appellant and SA have not sought to exaggerate their behaviour. They did not have any close friends within the gay community. This may be considered to be unusual, but it did not detract from the overall credibility of the Appellant's claim.
79. Accordingly, I find that the Appellant is a credible witness and I accept his claim to be in a relationship with SA and to be a homosexual. Having reviewed the evidence as a whole and applying the lower standard of proof, that of a reasonable degree of likelihood, I find that the Appellant has discharged the burden on him and he has shown on the evidence before me that there is a reasonable degree of likelihood that he is a homosexual and that he is in a genuine relationship with his cousin SA.
80. Given the matters set out in the Appellant's skeleton argument and the fact that if the Appellant's credibility is accepted, then it is accepted he would not live discreetly as a homosexual in Pakistan, it follows from the background evidence and the material before me that the Appellant would be at real risk of persecution or ill-treatment on return to Pakistan. I therefore allow the appeal on asylum grounds.
81. Having done so there is no need to consider whether the Appellant qualifies for humanitarian protection. The appeal would also succeed on human rights grounds in relation to Article 3. No claim was made under Article 8 and no submissions were made.

Notice of Decision

I allow the appeal on asylum and Article 3 human rights grounds.

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 her or any member of her 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.

J Frances

Signed

Date: 12th May 2016

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

J Frances

Signed

Date: 12th May 2016

Upper Tribunal Judge Frances