Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01683/2018**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 1st October 2018	**On 22nd October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR K S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, Counsel, instructed by Arshed & Co
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be

identified. The effect of such an "anonymity order" may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.

2. The appellant is a national of Pakistan. He claimed to have arrived in the United Kingdom as a student on September 25, 2010 and his leave was extended until November 25, 2013. In March 27, 2013 the appellant was given notice that his leave would be curtailed on June 22, 2013 and the appellant lodged an application to extend his stay as a student but this was refused by the respondent on December 11, 2013. He appealed that decision but that appeal was rejected by the Tribunal on May 9, 2014.

3. The appellant claimed asylum on September 7, 2015 but his claim was refused on May 4, 2016. He appealed that decision but his appeal was dismissed and his appeal rights were deemed exhausted on March 1, 2017.

4. The appellant submitted further grounds of appeal on October 25, 2017 but the respondent rejected those grounds in a decision dated January 15, 2018 under paragraphs 336 and 339F HC 395.

5. The appellant lodged grounds of appeal on under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 2, 2018. His appeal came before Judge of the First-tier Tribunal Aziz (hereinafter called "the Judge") on March 5, 2018 and in a decision promulgated on March 14, 2018 the Judge dismissed his appeal.

6. The appellant appealed this decision on March 22, 2018. Permission to appeal was refused by Judge of the First-tier Tribunal O'Garro on April 13, 2018. The appellant renewed his grounds of appeal on May 10, 2018 and Upper Tribunal Judge McWilliam found it arguable, on July 10, 2018, that the medical evidence was capable of supporting the appellant's asylum claim and whilst the weight to be attached to that evidence was ultimately a matter for the Judge it is arguable that whilst she accepted the diagnosis she attached no weight to it and failed to give adequate reasons for rejecting it in paragraph 58 of her decision.

7. The respondent filed a Rule 24 response dated September 12, 2018. The respondent argued the Judge had clearly considered the medical evidence at paragraph 58 of her decision and the fact the appellant had been diagnosed with PTSD did not mean the Judge had to accept that the only cause for this was his alleged mistreatment in Pakistan. The Judge also made findings that the appellant had given inconsistent evidence both before the original Tribunal and before her.

SUBMISSIONS

8. Mr Brown adopted the grounds of appeal and invited the Tribunal to consider two specific issues. Firstly, he submitted that the Judge had failed

to attach sufficient weight to the evidence of one of the witnesses who was an LGBT activist who had given evidence on four other occasions. Mr Brown submitted that he should have been treated akin to a Dorodian witness because he was in a position to give an opinion on the genuineness of the appellant's sexual behaviour. The Judge had accepted that the witness had given inconsistent evidence but gave no reasons for rejecting his evidence at paragraph 60 of the decision. Secondly, he submitted that the Judge should have revisited the medical evidence which had previously been rejected by another Tribunal. There was fresh medical evidence which should have led the Judge to revisit the protection claim issue. He conceded that counsel who represented the appellant in the First-tier Tribunal appeared to concede the issue but he nevertheless raised this as a second ground especially as permission to appeal had been given on this.

9. Mr Tan adopted the Rule 24 response dated September 12, 2018. The Judge was entitled to find that the witness had given consistent evidence but when considering his evidence the Judge had to look at it alongside other evidence that had previously been given or had been given to the First-tier Tribunal. He disputed that the witness should be treated like a Dorodian witness and submitted that the Judge was entitled to consider all the evidence and make a finding which he did in paragraph 60 of his decision. With regard to the second issue Mr Tan submitted that the Judge did consider the medical evidence. The refusal letter clearly had regard to the medical evidence and the Judge referred to the previous Tribunal decision. The previous Judge concluded that the medical evidence had been based on the appellant's account and the fresh medical evidence was provided by the same doctor and was merely an update. At paragraph 58 of the decision the Judge accepted the appellant suffered from PTSD but rejected the claim that it was caused through problems in Pakistan.

10. Mr Brown responded to these submissions and reiterated his view as to how the witness should have been treated and argued that if it was felt the appellant had been feigning his claim and this should have been put to the witness. With regard to the medical issue he submitted that the appellant had been to numerous sessions since the last letter and the Judge should have dealt with this in his decision.

FINDINGS

11. This was the second appeal that had been brought by the appellant against the two decisions that refused him asylum/protection.

12. When the matter initially came before Judge of the First-tier Tribunal Boylan-Kemp on October 3, 2016 that Judge had a number of documents before him including medical evidence from Dr Young and Dr Addis dated September 2016. At that hearing the appellant claimed that he faced persecution in Pakistan because of his sexuality and in assessing his claim the Judge had regard to evidence given of events in Pakistan and also about his activities in the United Kingdom. The Judge had regard to

documentary evidence that the appellant claimed demonstrated his engagement with the LGBT community and he also had regard to medical evidence that stated the appellant had been engaging with the mental health services since the beginning of 2015 as he was suffering from PTSD. The Judge noted that the medical history was based on what the appellant had reported to the medical professionals.

13. The Judge rejected his claim, giving detailed reasons and following that hearing the appellant submitted further grounds of appeal and further evidence which was considered by the respondent and those representations led to the refusal letter dated January 15, 2018. It is this decision that brought the appellant back before the First-tier Tribunal.

14. Mr Brown submits that the appellant addressed the concerns raised by the Judge at the previous hearing by calling a witness from the LGBT community to give evidence. Details of this evidence is contained in the Judge's decision as were his credentials and the fact that he had attended four other appeal hearings.

15. The Judge considered his evidence at paragraph 54 of the decision and accepted that the witness gave consistent evidence. The Judge recorded the following, "such findings go in the appellant's favour and I take them into account in my overall assessment of credibility".

16. The appellant had submitted further documentary evidence of him attending various clubs and LGBT events and at paragraph 57 the Judge accepted this was evidence of him being engaged within the gay community but quite properly noted that the issue was whether the engagement was because he was genuinely gay or was it because he had fabricated an asylum claim and his attendance at such events was to bolster his claim. The Judge reminded himself that the previous Tribunal had concluded his behaviour was the latter.

17. At paragraph 59 the Judge went on to consider all the documentary evidence but dismissed his claim because he did not find the appellant to be a credible witness. The Judge made it clear that he had had considered the witness evidence but concluded that whilst the evidence from the witness was consistent the Judge nevertheless concluded that this was the only factor which went in the appellant's favour. In other words, the Judge accepted what the witness said but concluded that he had been hoodwinked.

18. Mr Brown submitted that the witness should have been afforded higher status but he is, for all intent and purposes, a witness of fact. Dorodian witnesses are members of the church who have undergone training. He was someone who knew the appellant and believed the appellant was gay. He gave that evidence but ultimately the Judge found there were too many adverse findings and that those findings outweighed this evidence. As for not asking the witness if he thought the appellant was pretending to be

gay I am satisfied that given the witness evidence the witness would have not have said anything different to what he had already said in evidence.

19. Mr Brown also argued the Judge should have revisited the medical evidence but the latest evidence says little more to what was set out in the original letters. The Judge looked at the medical evidence and made reference to it in paragraphs 58 and 59 of the decision. The medical evidence was something that the original Tribunal had considered and unless this new evidence exhibited information that would potentially alter the position then the Judge was entitled to treated as he did. The appellant had been a regular attender both before and since his first appeal. Mr Brown confirmed the medical issue only went to the protection claim. The Judge's conclusions are set out in paragraph 60 of the decision and were open to him

20. Neither of the issues advanced by Mr Brown amount to an error in law.

DECISION

21. There is no error in law I uphold the original decision.

Signed Date 01/10/2018

Deputy Upper Tribunal Judge Alis

FEE AWARD
TO THE RESPONDENT

I do not make a fee award as I have dismissed the appeal.

Signed Date 01/10/2018

Deputy Upper Tribunal Judge Alis