



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/11710/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 22<sup>nd</sup> February 2019**

**Decision &  
Promulgated  
On 22<sup>nd</sup> May 2019**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**N Z  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. Brown, Counsel instructed by First Law Solicitors  
For the Respondent: Mr. Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. An anonymity direction was made by the First-tier Tribunal ("FtT"). As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a national of Pakistan who appealed to the FtT against a decision of the respondent dated 24<sup>th</sup> August 2018 refusing his claim for asylum and humanitarian protection. His appeal was dismissed for the reasons set out in the decision of FtT Judge Davies promulgated on 12<sup>th</sup> November 2018.

### The decision of the FtT Judge

3. The background to the appellant's claim for international protection, taken from the respondents decision, is set out at paragraphs [15] to [21] of the decision. At the hearing of the appeal, the FtT Judge heard evidence from the appellant, and two witnesses. The evidence of the appellant is set out at paragraphs [28] to [44] of the decision. The evidence of the first witness, [ZM], who claims to have been in a sexual relationship with the appellant since January 2017, is set out at paragraphs [45] to [48] of the decision. The evidence of the second witness, [IC], who claims to be a famous drag queen known as 'ZK', is set out at paragraphs [49] to [53] of the decision.
4. The Judge's findings and conclusions are set out at paragraphs [75] to [92] of the decision. At paragraph [75]. The Judge states:

"I have no hesitation in this appeal in concluding, after considering all the evidence, and applying the lower standard of proof to it, that both the appellant and his witnesses have given evidence that is untruthful and thus unreliable."

5. At paragraph [76] of the decision, the FtT Judge concluded that he could attach no weight to a written statement from [GH], a Pakistani national who sought to confirm that he had had a sexual relationship with the appellant, whilst the two of them were studying in the same school in Pakistan. Having considered the evidence of the appellant and [GH], the FtT Judge identifies a number of concerns regarding the credibility of the claim made by the appellant. At paragraphs [87] to [91], the FtT Judge considered the evidence of the two witnesses that had given evidence to the Tribunal. Insofar as [ZM] is concerned, at paragraphs [87] and [88], the Judge states:

“87. Whilst accepting that the witness [ZM] has been granted refugee status on the basis of his sexuality, taking into account the appellant’s lack of credibility I do not believe that he is genuinely in a homosexual relationship with the appellant.

88. I do not believe that [ZM] has been a truthful witness.”

6. Insofar as the evidence of [IC] is concerned, the Judge found that the evidence was of no value because the appellant and [IC] had given completely inconsistent evidence as to where they met. The Judge rejected the claim that [IC] and the appellant were in a relationship, which resulted in them having sex in a hotel in Manchester. Again, the Judge found [IC] to be an untruthful witness who was brought to court to support a false claim for refugee status by the appellant. At paragraph [91], the Judge concluded as follows:

“I have fully considered the submissions made by the appellant’s representatives but I cannot accept that the appellant is genuinely a bisexual, that he was ever in a homosexual relationship in Pakistan, or that he was ever genuinely in a homosexual relationship in the United Kingdom.”

### The appeal before me

7. The grounds of appeal relied upon by the appellant criticise the Judge’s assessment of the evidence given by the appellant’s witnesses, and the support that they provide to the account relied upon by the appellant. The appellant contends that the Judge provides inadequate reasons for rejecting the evidence of [ZM] and [IC]. It is said that the ‘mistake’ in the evidence between the appellant and [IC], as to where they had met, was not sufficient to undermine the evidence of their relationship and the claim that they had had sex at a hotel in Manchester following a night out. It is also said that the Judge erred in the assessment of the written evidence of [GH], and failed to make any finding as to whether the appellant was in a relationship with R.
8. Permission to appeal was granted by FtT Judge Murray on 18<sup>th</sup> December 2018. The matter comes before me to determine whether the decision of the FtT Judge contains a material error of law, and if so, to remake the decision.

9. On the behalf of the appellant, Mr Brown submits that both of the witnesses that gave evidence before the Tribunal, attested to a physical and sexual relationship with the appellant. He submits that the Judge has failed to provide adequate reasons for rejecting the evidence given by [ZM] and [IC], and the Judge appears to have formed an opinion about the appellant, that has infected his consideration of the evidence given by the witnesses. He submits that it does not appear to have put to either of the witnesses that attended to give evidence, that they had come to the Tribunal to give a fabricated account, to support the claim being made by the appellant. He submits that the finding that the evidence of the witnesses was untruthful, was a serious allegation that was not put to the witnesses.
  
10. Mr Bates submits that it was properly open to the Judge to outline the conclusion that he had reached, at paragraph [75], and to then set out his reasons for that conclusion. He submits that the matters set out at paragraphs [80] to [85] of the decision, are plainly matters that were relevant to the assessment of the appellant's credibility. Having rejected the appellant's evidence it was open to the Judge, to conclude that [ZM] was not a truthful witness. He claimed to be in a relationship with the appellant, and the Judge had rejected the appellant's claim that they were in a relationship. Mr Bates submits the Judge considered the evidence of [IM], and was again entitled to reject that evidence. There was plainly an inconsistency between the account provided by the appellant and [IM], as to where they met. Mr Bates submits that the Judge considered the written evidence of [GH] and was entitled to conclude that no weight can be attached to that evidence, for the reasons given. He submits that the Judge considered all the evidence in the round, and reached findings that were open to him on the evidence.

### Discussion

11. The assessment of credibility in an appeal such as this is always a highly fact sensitive task. The Judge was required to consider the evidence carefully, and where the appellant's account was rejected, set out his

reasons for rejecting the evidence. The Judge was required to give a brief explanation of the conclusions that he had reached on the central issues; Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 IAC

12. I have carefully read the witness statements of the appellant and his witnesses. The Judge could not have been assisted by the brevity of the statements of the witnesses. They provide very scant information about their relationship with the appellant. Although I accept that the reasons provided in the decision of the Tribunal need not be extensive, the reasons given by the FtT Judge for rejecting the evidence of [ZM] in particular, are in my judgement, insufficient. The Judge accepted that [ZM] has been granted refugee status on the basis of his sexuality but did not accept that [ZM] is genuinely in a relationship with the appellant. The Judge simply states that he does not believe [ZM] to be a truthful witness. It is difficult to discern from the decision, the reasons why the Judge found [ZM] to be an untruthful witness.
13. I pause to note that it would appear that [ZM] was granted a Residence Permit in June 2017, after his claimed relationship with the appellant had commenced. The witness statement of [ZM] provides very little information about his relationship with the appellant. The Judge might have been assisted by the disclosure of the background to the protection claim made by [ZM] to establish whether [ZM] had made any reference in his own claim, to his relationship with the appellant. The Judge was not assisted in his task by the very limited information provided about the relationship by [ZM], but that is not to say that the Judge was entitled to find that [ZM] is not genuinely in a relationship with the appellant, and that [ZM] is not a truthful witness, without adequate reasons.
14. There was plainly a material inconsistency between the evidence of the appellant and [IM], that the Judge was entitled to take into account, in reaching his decision. On its own, I would not have found there to have been an error of law in the Judge's approach to the evidence of [IM]. I have carefully read the witness statement of [IM] and it is limited in its

content, and very vague about the relationship between [IM] and the appellant.

15. I am quite satisfied that the matters set out at paragraphs [80] to [85] of the decision, are matters that were relevant to the assessment of the appellant's credibility, and weigh against the appellant. Having carefully considered the appellant's account of events in Pakistan, his relationships in the UK, and the extent to which the evidence of the witnesses lends support to that account, it may well have been open to the Judge to find in the end, that the appellant's account of events is not credible and is untrue, but the appellant is entitled to know the reasons why the Judge rejected the evidence of the witnesses.
16. In my judgement, the FtT Judge failed to provide adequate reasons for rejecting the evidence of the witnesses, in particular [ZM], as to those aspects of the claim that lay at the heart of the claim. A careful reading of the decision establishes that the Judge failed to consider the evidence in the round, and failed to consider whether the evidence of the witnesses was capable of lending support to the evidence of the appellant. It follows that in my judgement, the decision of the FtT Judge is infected by a material error of law, and the appeal is allowed.
17. I must then consider whether to remit the case to the FtT, or to re-make the decision myself. In my judgment, the appropriate course is to remit the matter to the FtT for hearing afresh with no findings preserved. In reaching my decision, I have taken into account paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

### **Notice of Decision**

18. The appeal is allowed, and the decision of FtT Judge Davies is set aside.

19. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved. The parties will be informed of a hearing date in due course.

Signed

Date

9<sup>th</sup> April 2019

**Deputy Upper Tribunal Judge Mandalia**

## **TO THE RESPONDENT**

### **FEE AWARD**

No fee is payable and there can be no fee award.

Signed

Date

9<sup>th</sup> April 2019

**Deputy Upper Tribunal Judge Mandalia**