Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09573/2019 (V)**

THE IMMIGRATION ACTS

Heard by way of a remote hearing
On the 21 May 2021

Decision & Reasons Promulgated
On the 07 June 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

Z B
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L. Brakaj, of behalf of Iris Law
For the Respondent: Ms Pettersen, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge Ali (hereinafter referred to as the "FtTJ") promulgated on the 2 October 2020, in which the appellant's appeal against the decision to refuse his protection claim was dismissed.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The hearing took place on 21 May 2021, by a remote hearing conducted on Microsoft teams which has been consented to and not objected to by the parties. A face- to- face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant who was able to see and hear the proceedings. There were no issues regarding sound, and no technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The appellant is a national of Georgia. His immigration history is set out in the decision letter, the decision of the FtTJ and the papers before the tribunal. It can be summarised as follows.

5. The appellant arrived in the UK on 1 March 2016 and claimed asylum on 22 March 2016. He arrived with his wife and his 3 children who were minors at the time that the appellant claimed asylum, and all 4 family members were dependents upon his asylum claim.

6. The basis of that claim related to his son and his claimed sexuality. The account given by the appellant was that when his son was aged 10 or 11 the problem started for the family when a neighbour had told his wife that he had seen his son with another boy together. Soon after this their son was bullied by locals. The news relating to their son quickly spread and he was bullied on many occasions.

7. It was said that the family moved away from the home area in 2012 but the problems followed them, and the same problems arose in that community.

8. In 2014 the family moved to another part of Georgia where the main appellant had been working however, they stayed only for a very short time due to the problems their son had. As people spread information quickly it was said that his son was bullied by other children, teacher's, neighbours, and the police.

9. A particular incident was relied upon that occurred in 2016 when the main appellant was in London on business. He was told by his wife that his son had been badly beaten by his schoolmates and burned with a cigarette on his lip. She said that he tried to commit suicide. She also told him that her daughter had been involved trying to help her brother and was pushed down the stairs. Her wrist had been broken. As a result, the main appellant stated that he would return to Georgia on the first available flight. He changed his ticket and returned home.

10. A month after returning to Georgia, the main appellant brought his family (his wife and 3 children) to the UK and made a claim for asylum based on the risk of persecution or serious harm to his son as a result of his sexual orientation.

11. In a decision letter of 7 October 2019, the respondent considered the basis of claim on the basis of membership of a particular social group (the appellant's son's sexuality). At paragraphs 28 – 46 the respondent considered the evidence presented to the Secretary of State to support the appellant's claim that his son would be at risk of harm on account of his sexual orientation.

12. The respondent set out the factual claim made by the appellant in the SEF and then undertook a consideration of the evidence provided by the appellant's son and from the asylum interview which took place on 6 September 2019 as permission had been given to use the information to decide the main appellant's claim.

13. When making an assessment of that claim, the respondent set out the account given but highlighted within that account inconsistencies in the evidence. For example, respondent set out that the appellant's son stated he told his parents of his sexuality but nobody else however alternatively he stated he told a priest (question 45 – 46 and question 45). He also stated that he told his parents of his sexuality but did not remember what was said to him in response (question 63). As to when incidents occurred whilst at school, he stated that he was bullied every day because of his sexuality (question 57 – 58) but at another part could not remember when the bullying started that believed it was around the age of 14 but then stated it was before it was 14 but he could not remember how old he was (question 52). He did not know how the boys in school discovered his sexuality.

14. The respondent also recorded that when the appellant's son was asked to explain the reasons why he left Georgia he was recorded as saying that he "did not want to talk about his past" which he was trying to forget and when asked by the interviewing officer if he was happy to answer questions about his sexuality, the appellant's son replied, "I don't want to talk about my personal life" (Q 65). The respondent set out in the decision letter at paragraphs 38 – 41 the opportunities given to the appellant's son to provide evidence at the interview which was declined. It was also noted at [41] that the interviewing officer gave the appellant's and the opportunity to put matters in writing or to write a statement rather than answer questions but that the appellant's son was not willing to do this. In the light of the lack of evidence submitted, the respondent concluded that there was a lack of information to confirm the appellant's son's sexual orientation and as a result that material fact was rejected.

15. The remainder of the decision letter made reference to Section 8 of the 2004 Act relevant to the main appellant's claim that he arrived in the UK on 1 March 2016 and whilst he claimed that he travelled with the intention of escaping harm in Georgia and to claim asylum, he did not do so at the earliest opportunity. Reference was made at paragraph 49 that he made a claim for

asylum after being notified a decision that he would be granted leave to enter the UK with a multi-visit visa. The decision was made on 16 February 2016 and he claimed asylum on 22 March 2016. It was recorded that his claim did not rely wholly on matters arising after he was notified of the decision and his failure to claim asylum before being notified of an immigration decision damaged his credibility.

16. At paragraphs 54 – 64 the respondent addressed the issue of sufficiency of protection for the appellant's son and the appellant's family members and set out the country materials relevant to this issue. The respondent concluded that the appellant had failed to demonstrate that the authorities of Georgia would be unable or unwilling to offer protection if it had been sought.

17. At paragraph 65 – 75, the respondent addressed the issue of internal relocation and concluded that based on the individual circumstances of the claim and on the background evidence, that the appellant had not shown that it would be unreasonable to expect the appellant's family members to return to Georgia or to relocate to one of the other areas outside of the capital city.

18. The remainder of the decision letter related to article 8 of the ECHR where it was noted that in the light of the short length of residence in the United Kingdom the appellant and his family members could not meet the requirements of paragraph 276ADE nor was it accepted that they would be very significant obstacles to their integration into Georgia if required to leave the United Kingdom (at paragraph 94). At paragraphs 97 – 114 consideration was given to whether there are any unjustifiably harsh consequences for the appellant's that would render refusal of their claim to be a breach of article 8. Having considered the relevant considerations the respondent concluded that there were no such exceptional circumstances nor were there any such factors to demonstrate that a grant of discretionary leave should be given.

19. Consequently, the claim was refused on protection and human rights grounds.

The decision of the FtTJ:

20. The appellant appealed that decision, and it came before the FtT (Judge Ali) on 9 September 2020. In a decision promulgated on 2 October 2020, the FtTJ dismissed his appeal. The judge heard evidence from the appellant and also from his son.

21. The FtTJ set out the relevant issues at [14] of his decision and that the first issue related to the appellant's son's sexual orientation.

22. His analysis of the evidence and his factual findings on this issue are set out at paragraphs [30]-[41]. In summary, the FtTJ found that the evidence of the appellant and his son was both not credible and was inconsistent in material matters. There were discrepancies between the evidence given by the appellant and his son relating to when the appellant's began a sexual relationship, that there was an absence of evidence and information about who the perpetrators were and how they or anyone found out about the appellant's son being gay. At

[34] the judge set out the inconsistent evidence given by the appellant's son who claimed that he was unable to recall the names and faces of those who had beaten and bullied him however he also claimed that after reporting the matter to the police they would speak to the parents of the boys. The judge found that this was inconsistent with his claim and that the police would not be able to approach families of the alleged perpetrators if their identities had been unknown to the appellant's son. The judge also considered the core of the claim which was based on being at risk of harm in Georgia and that this had led to him moving home and school on 4 different occasions. The judge found that there were no letters from of any of the schools in Georgia to support his transfer to new schools and there was no information as to which schools he went to or how long. Given that the appellant provided an abundance of documents regarding finances and employment, it was noted that the appellant failed to provide any letters from the school and this undermined the account concerning the transfer of his son to a number of new schools. Further factual findings were made relating to his absence of evidence concerning the nature of relationship he claimed to have had when in Georgia.

23. The judge therefore concluded that the appellant had not demonstrated his sexual orientation to the lower standard of proof.

24. The FtTJ dismissed the appeal.

25. Permission to appeal was issued relying on the grounds of appeal and permission to appeal was refused by Judge Parkes but in renewal was granted by UTJ S. Smith on 26 November 2020.

The hearing before the Upper Tribunal:

26. In the light of the COVID-19 pandemic the Upper Tribunal issued directions on indicating that it was provisionally of the view that the error of law issue could be determined without a face- to- face hearing and directions were given for a remote hearing to take place and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties with the assistance of their advocates.

27. Ms Brakaj on behalf of the appellant relied upon the written grounds of appeal. There was a Rule 24 response filed on behalf of the respondent dated 1 February 2021.

28. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

29. Ms Brakaj in her oral submissions relied upon her grounds at paragraph 4 where it was submitted that the assessment of the evidence regarding the appellant's son's sexual identity was flawed. She submitted that at paragraph 32 of the decision whilst the judge stated he appreciated that the topic of his sexuality was sensitive, it was for the appellant to establish his claim. She submitted that this was the only reference to any issue that the appellant's son

had by way of difficulties or had faced. Thus, she submitted that such an approach was incorrect where young man was discussing such sensitive issues and where he had been living in a deeply homophobic area. She submitted that he had given evidence in his interview question 28 about events in Georgia and it was clear that the appellant's son had been struggling to give evidence.

30. Ms Brakaj submitted that while credibility was to be assessed by the judge, he did not look at the full picture and that those within the LGBT community faced a lifetime of persecution.

31. She further submitted that whilst it was not his asylum claim, the appellant's son was dependent on his father's claim and that he had struggled to give information and that this ought to have been taken account of during an assessment of the credibility of the claim.

32. In any event she submitted, the appellant' son did give detail and did confirm his sexual orientation and the difficulties that he had faced in Georgia, but the judge gave no consideration to that evidence.

33. Ms Brakaj then referred to paragraph 33 of the decision of the FtTJ and submitted that there the judge had stated there was inconsistent evidence given by the appellant and the appellant's son. However, looking at paragraphs 33 and 36 there was no such inconsistency on the evidence. Looking at the son's history it was around the age of 13 that he discovered his sexuality and that he had engaged in a sexual relationship at the age of 10 however he was looking back at the issue a number of years later. Ms Brakaj submitted that this evidence was consistent with those discovering their sexuality and their identity and that the judge had adopted an incorrect approach on that evidence of sexual identity.

34. Dealing with the other grounds, it was submitted that the judge set out issues relating to corroboration of the appellant's account from the appellant school and that the judge failed to appreciate the nature of the appellant's evidence and that the homophobic incidents had happened at the school. The appellant's son and the appellant were not able to say how the school had found out about the appellant's son's sexuality. Their account was that information may have been passed by the teachers, but no consideration of that evidence was undertaken by the judge. She submitted that there were points put forward as to how it occurred and that potentially the could be a link between the church, but the appellant's father did not know but it did not feature in the judge's assessment at paragraph 34. She submitted that if they were not told by those who bullied or persecuted them, then they could not know in any event. Against that background she submitted that it was not reasonable to expect the appellant's father to obtain information from the school and to expect letters in support (at paragraph 37 of the decision).

35. By reference to the grounds that she submitted that the judge failed to place weight on the medical evidence in support of the incident that occurred in 2016. However, the evidence from the appellant's son was available and there was a written statement from the appellant's wife. The judge had reached the

conclusion that as she was not in attendance at the hearing the appellant's wife's evidence only merited little weight. Ms Brakaj submitted that this was insufficient. All the judge had stated was a bald assertion that the written evidence was not accepted.

36. Ms Brakaj submitted that there were other minor issues identified by the judge when refusing the claim set out at paragraph 37, but those minor issues were insufficient to decide the case against the appellant.

37. As regards paragraph 38 she submitted it was of particular concern and that the judge placed weight on the fact that he was not in a relationship in the UK. However, that does not mean that the appellant was not gay and was a neutral point. She submitted that this was not the correct approach and that the fact there was no evidence he had a partner could not be considered in the negative.

38. In summary she submitted in finding that the appellant's son was not gay, the judge gave no consideration to the overall evidence and whilst he criticised evidence that was missing, he did not consider the evidence that was there. They had been detailed evidence given. Thus, she submitted the approach to the evidence was flawed and demonstrated a lack of consideration.

39. Ms Pettersen on behalf of the respondent relied upon the rule 24 response filed on 1 February 2021.

40. She submitted that the judge gave consideration to the circumstances of the appellant's son and had regard and explicitly referred to the fact that he was aware of the difficulties a person may have when discussing the topic of their sexuality. Thus, the judge did give consideration to the difficulties a person may face in disclosing sensitive issue. However, the judge then went on to consider factors in the appellant's claim before concluding that the nondisclosure was a matter relevant to his credibility. It was further submitted that the judge was entitled to have regard to the circumstances overall and the number of opportunities in different forums in which the appellant's son had the opportunity to disclose the basis of the claim but that the judge was able to find that his actions had an adverse impact on his credibility. It was further submitted that the finding was in no way determinative of the claim overall and the judge went on to consider the appellant's claim and provided adequate reasons to enable the appellant to understand why his claim failed.

41. In her oral submissions Ms Pettersen submitted that the grounds were a challenge to the credibility findings. In relation to paragraph 11 of the grounds, it was stated that little weight was placed on the appellant's wife's evidence. However, she did not give evidence orally before the judge and thus it was untested evidence. Furthermore, an explanation was given as to why she was not at the hearing, but that explanation was not accepted by the judge.

42. Paragraph 9 of the grounds argued that the identity of the perpetrators was not known but there was no evidence that the children had to change school and the issue about whether the police could be approached and therefore the judge was entitled to consider the police and whether they were inactive or not and

there was no evidence the police had been approached as those persons concerned could not be identified.

43. Paragraph 10 criticised the findings made concerning the injury, but it was open to the judge to conclude that the medical evidence did not confirm the cause of the injury that it was open to him not to give weight to that medical evidence

44. As to the grounds where it was asserted that the judge required corroboration, that was not reflected in the decision and the judge did not require corroboration.

45. Overall, she submitted the judge had given full consideration to all the evidence and the grounds were nothing more than a disagreement with those factual findings.

46. At the conclusion of the hearing, I reserved my decision which I now give.

Decision on error of law:

47. The first issue raised in the grounds relates to the FtTJ's assessment of the evidence and in particular that which related to the appellant's son's sexual identity. The grounds and the oral submissions assert that the judge erred in law in his assessment of the appellant's son's credibility based on his unwillingness to answer questions about his sexuality in the asylum interview.

48. Ms Brakaj submits that the appellant had provided a witness statement subsequent to the interview and had given evidence at the hearing. Furthermore, there was no consideration by the judge as to how an applicant might feel in discussing details relating to the claim and that the difficulties in this regard were not properly taken into account by the judge.

49. I have carefully considered the grounds in the light of the evidence and the decision of the FtTJ. Having done so, I am not satisfied that the judge fell into error in the way the grounds assert. At [14] the judge set out the issue to be determined in the appeal and the principal issue was whether the appellant's son was gay and therefore the evidence relating to his sexual orientation was central to that assessment.

50. In my view it is not correct to state that the judge summarily dismissed the appellant's claim on the basis of the appellant's son's reluctance to provide evidence in his asylum interview. At paragraphs [31] – [40] the judge addressed the evidence holistically to reach a conclusion on the appellant's son's sexuality and did so by taking into account not only his reluctance to provide evidence in interview but also made factual findings based on the evidence and the account that the appellant's son did in fact provide.

51. At [31] the judge did observe that the appellant had been interviewed as part of the asylum claim brought by his father. That is not an unusual occurrence given that the appellant's father and other family members relied upon the appellant's son's account in establishing their factual claim.

52. It is also correct as the FtTJ stated that during the interview he was asked about the reasons for claiming asylum and he referred to his sexuality but then refused to give any further information or provide answers to questions asked of him, however sensitively foot. At [31] the judge highlighted the questions that he was asked, and the questions refused to answer.

53. At [32] the judge took into account relevant issues including that at the time of the interview the appellant was not a minor but was an adult and that he had refused to answer questions concerning the core of the claim.

54. Contrary to the grounds, and the submissions made, the judge did place in the balance and take account of the sensitive nature of disclosure of such information and it is not the case that the judge ignored this as a relevant factor (see paragraph 32). However, he was entitled to also take into account the fact that the appellant had agreed to come forward and to have an interview but also that he had also been offered the alternative approach of putting his claim in writing (so as to provide an account of his claim without the need for any questioning on the part of the interviewing officer) which was an approach that he also refused. The judge was also entitled to take into account that his former representatives had provided a letter stating that the appellant would not discuss the factual claim with them and described him as a "minor". However, as the judge observed, that was incorrect as the appellant was an adult at the time.

55. Overall, I do not consider that the judge was unaware of the difficulties someone may have in disclosing evidence of an intensely personal nature which related to their sexuality. He was plainly aware of this at [32] when addressing the credibility of the claim, it was a factor to which he was entitled to have some regard.

56. Had the FtTJ found the appellant's failure to answer questions to be the overarching finding on credibility and to dismiss the appeal on that basis, then the judge would have erred in law. However, that was not the approach taken by the judge and as submitted on behalf of the respondent, the judge went on to consider the factual account given by the appellant and his family members before reaching the overall conclusion that the appellant's son had not given a credible or consistent account of his sexuality.

57. I am satisfied having read the decision as a whole that the judge did not regard his failure to disclose the nature of his case in interview as determinative of the claim overall and in this regard, I reject the submission made by Ms Brakaj that the judge approached the evidence in a flawed way. I do not consider that is reflected in the decision when it is read in its entirety.

58. The grounds go on to challenge the factual findings made by the judge by reference to the remainder of his decision.

59. Ms Brakaj seeks to challenge the decision in paragraph [33] where the judge identified discrepancies between the evidence of the appellant and his son. She submits that there was no discrepancy in the evidence and that both witnesses

gave evidence as to the approximate age the appellant's son entered into a sexual relationship. She further submits that this had been described in greater detail in the witness statements.

60. At paragraph 33, the judge referred to the evidence that the appellant had given in interview relating to his son's sexuality and that his son was involved in a sexual relationship at the age of 10 (see questions 22 and 23 of the interview). There is no ambiguity as to those answers which are set out in the interview and recorded at page 135 of the respondent's bundle. However, the judge recorded that when cross-examined he stated that his wife had told him that their son had a sexual relationship when he was around 10 or 11 years old, and that this relationship lasted for around a year. The appellant's son during cross examination stated that he found out that he was gay when he was aged 13 and not 10 as his father had put in his evidence. The judge recorded the evidence that when the inconsistency was put to the appellant's son, he failed to provide an explanation for this, and the judge recorded "he simply reverted to saying that his father would never say he was aged 10." The judge identified further discrepant evidence given after re-examination when his representative had asked him about his relationship with the boys and he then stated his witness statement was incorrect which had referred to him being aged 10 and he stated that he was aged 9 (this was directly inconsistent with his witness statement at paragraph 4).

61. Whilst the grounds seek to assert that there was no inconsistency in the evidence, it is plain from paragraph 33 and the evidence recorded by the FtTJ that when seen in the light of the evidence of the appellant son's witness statement (at paragraph 4) there was a clear inconsistency in the evidence. That was material as it was the appellant son's case that it was after his sexual contact had taken place the local community began to abuse him, and the family moved away for those reasons.

62. The grounds also seek to challenge paragraph 34 of the decision. Part of the appellant's son's factual claim was that he had been the subject of abuse and bullying by a number of individuals including boys at school and in the local community. The judge considered this aspect of the claim at [34] and found from the evidence that there was an absence of factual information and evidence given as to those identified as the perpetrators involved and secondly, how they or anyone had found out that the appellant's son was gay.

63. The judge identified the lack of evidence expressly at [34] pointing to the failure to answer the question as to how people had found out about his sexuality at question 44. Earlier in his interview the appellant was asked "why did you move to a different area? The appellant replied "because of the people. My country is a small country and stories are shared quickly and everybody knows everything. Everyone is aggressive towards you. If you are rich, they hate you. When they see me and know my story, they hate me due to this as well. Due to being rich and sexuality." At question 44 the appellant was asked "how do people find out about your sexuality?" The appellant replied, "I don't know". At question 45 the appellant was asked "who did you tell about your sexuality"

the appellant replied, "my parents". He was then asked, "did you tell anyone else". The appellant replied "no". Thus, the FtTJ was correct to identify that the appellant was unable to say how people had found out about his sexuality. Further as set out in question 52, the appellant was unable to recall when his problems started and was unable to recall the names or faces of the people who were involved in bullying him or had beaten him. He did not provide an account as to how the boys had found out about his sexuality either (see question 60 and 62).

64. Not only was there a lack of factual evidence concerning the basis of his claim relating to his sexual identity, but the judge also considered the lack of evidence undermined his account. He claimed that after reporting the matter to the police they would speak to the parents of the boys involved. However, the appellant son's evidence that he did not know the names or recognise the faces of his persecutors was inconsistent with the claim that he had been able to provide evidence to the police so that they were able to speak to the parents of the boys involved. As the judge identified "it begs the question as to how the police could approach the family of the alleged perpetrators if their identities were unknown to the appellant's son" (at [34]).

65. In my judgement the grounds and submissions made on behalf the appellant where it is suggested that the police were able to obtain details since it occurred at school, offer no more than a disagreement with that finding and does not acknowledge the core inconsistency in that evidence.

66. The grounds challenge the FtTJ's findings at paragraphs 35, 36, 37 and paragraph 38.

67. Paragraph 35 is challenged on the basis that the judge only gave limited weight to the medical evidence and that the appellant's sister had not given evidence but that the appellant and his son had done so. Paragraph 36 is challenged on the basis that the appellant's wife had provided a written statement and that that was not given weight and it was only as a result of her not giving oral evidence that it was rejected.

68. In my judgement, the decision of the FtTJ should be read as a whole and that the reference to individual credibility findings and the challenge to them fails to consider the assessment that was reached by the judge on the totality of the evidence.

69. At [35] the judge was addressing the evidence relevant to the family leaving Georgia and an incident where it was claimed the appellant's sister had become involved and as a result had received an injury to her wrist. The judge identified that there was a medical report or letter which referred to an injury. However, it was open to the judge to attach less weight to that evidence as corroborating evidence in the light of the letter's failure to confirm the causation of the injury. The fact that the appellant's sister had an injury to her wrist does not demonstrate that such an injury occurred in the circumstances or way claimed. It was therefore open to the judge to give little weight to that letter in the light of the failure of the appellant's sister to provide either a statement or

even a letter confirming what had happened. There was no dispute that she was in the UK along with other family members and therefore was in a position to provide evidence. The appellant's father was not present at the incident as he was in the UK and therefore could not have given any supporting evidence.

70. At [36] the judge returned to the issue of the appellant's evidence relevant to his sexuality and observed that the appellant's mother provided a witness statement but had not attended court. The relevance of the evidence was that the appellant had stated that the neighbours had told his wife that his son had been seen with another boy when aged 10 or 11 (witness statement paragraph 2) and then when his son was 14, he had told her about his sexuality and then she was the one who had informed the appellant. The judge therefore identified that the appellant's mother was central to the disclosure of her son's sexuality. However, while she provided a witness statement, she did not attend the hearing. The judge stated "the appellant's wife has provided a statement in support of this appeal, but she was not in attendance in court to give evidence. I find that given her son X confided in her and she knew about his issues more than the appellant then it would have made sense for her to attend the hearing as a witness."

71. Ms Brakaj submits that the judge was requiring corroboration and that someone seeking asylum is not required to corroborate their account and furthermore that the only reason given by the judge for failing to attach weight to his mother's statement was because she had not given oral evidence.

72. I do not accept those submissions. Firstly, the evidence of the appellant's wife was in written form only and as the issues under consideration related to the credibility of the appellant and the appellant son's account, the written evidence as it stood was untested evidence in the sense that as a result of her non-attendance, she could not be asked questions about the statement she gave. In those circumstances the judge was entitled to give that witness evidence limited weight.

73. Furthermore, it is not correct to state as the grounds have done, that he only gave limited weight because she did not give oral evidence. At [36] as Miss Petterson submitted, the judge considered the explanation given for her non-attendance which was she had children to look after. As the judge observed, her son was 11 and her daughter was 16 and he was entitled to find that that was not a reasonable explanation for her lack of attendance given the potential importance of such evidence.

74. As to requiring corroboration, the judge did not use that term when referring to the evidence. The relevant principles are to be found, so far as the European jurisprudence is concerned, in *A v Staatssecretaris van Veiligheid en Justitie (United Nations High Commissioner for Refugees (UNHCR intervening)* [2014] EUECJ C-148/13 ("*ABC*") and, so far as the domestic jurisprudence is concerned, in *SB (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 160.

75. Those cases make clear that a lack of corroboration for an appellant's account may be a relevant factor to take into account when assessing an asylum claim, including a claim based on sexual orientation. In *ABC* the CJEU held (at paragraph 58) that, in accordance with Article 4(5) of Directive 2004/83, a lack of corroborative evidence can be taken into account where (among other things) the applicant has not made a genuine effort to substantiate his application, or has not provided a satisfactory explanation for any relevant elements that are missing, or where the applicant has (without good reason) failed to apply for international protection at the earliest possible time. In *SB* the Court of Appeal held (at paragraph 46) that a lack of corroborative evidence could be taken into account where the applicant fails to produce supporting evidence on relevant issues where "*logically*" the applicant should be able to do so, although a material error in logic would be an error of law (paragraph 48). It was open to the FtTJ to take into account the lack of oral evidence from a witness who would plainly have been able to provide evidence.

76. Paragraph 12 the grounds seek to challenge paragraph 37 of the FtTJ's assessment of the evidence. At [37] the judge addressed the appellant's account that the family had to move home on 4 different occasions and that the appellant had to change his son's school on each occasion. In consideration of that claim, the judge took into account that there was no evidence of any of the schools in Georgia to support that he did transfer to new schools and no information had been provided as to which schools he went to and for how long.

77. Ms Brakaj submitted in her oral submissions that these were "minor issues" and that they were not terminal to the case and were insufficient to decide the case against the appellant.

78. In my view this was finding open to the judge to make on the evidence before him. As a judge stated, the appellant provided a large number of documents from Georgia concerning his finances and employment but failed to provide any supporting evidence concerning his son's school and the changes of school and thus had failed to provide any supporting evidence and that this undermined his account that he had transferred his son to a number of schools as a result of the ill-treatment or abuse that his son had undergone.

79. The second part of paragraph 37 addresses the issue of how people in the community became aware of the appellant son's sexuality. As set out earlier in the judge's decision at [34] by reference to the appellant's son's evidence in interview, he was unable to state how other boys had found out about his sexuality. At [37] the judge addressed the evidence of the appellant and his explanation and evidence that people knew about his son because "information spreads quickly". The appellant's son's evidence was that the teachers at his new schools knew about him being gay because they made enquiries with the old schools and this is how they had found out. The judge considered that evidence but rejected it. He concluded that on the evidence before him "neither the appellant nor his son was able to identify how information about his son being gay was ever discovered and I do not accept is reasonably likely that the

teachers would take it upon themselves to make enquiries about their son's background."

80. Against that evidential background, I reject the submission made that it was not clear how they would even know such information. This does not offer any proper explanation for the lack of evidence in this regard. However, as the judge recorded there had been some explanation which the judge had rejected in the context of the claim.

81. At [38] the judge addressed his claimed sexuality in the context of personal relationships. It is not correct as submitted on behalf of the appellant that the judge placed too much weight on whether the appellant's son had been in a relationship in the UK. Ms Brakaj in oral submissions stated that paragraph 38 was a particular concern and that whether the appellant's son had a relationship or not in the UK it does not mean that he was not gay. She submitted that this was the wrong approach, and it was indicative of the wrong approach adopted throughout the decision by this judge.

82. At [30] the judge referred to the appellant's length of residence in the UK and found that there was no evidence of any relationships whilst in the UK. However, the judge was careful in his assessment to take into account that he had been in a relationship did not detract away from the claim of persecution. The judge did not consider this in an evidential vacuum but in the context of the appellant's claim which was that he had been in a sexual relationship since the age of 9 or 10 and thus the absence of a relationship was of some relevance. Furthermore at [38] the appellant claimed to be in a relationship with a person in Georgia who had gone to Europe. The judge found from the evidence that there was an absence of any information about who that person was, information concerning the relationship and that the appellant himself "knew very little about this relationship".

83. At [39] the judge noted the absence of evidence to support the claim that the appellant had gone to the police to report the matter on numerous occasions but there were no reports, or any letters provided despite the occasions it was claimed that he had attended at the police. The judge found that this was also a factor which undermined the factual basis of the account given.

84. In this case, the FtTJ had determined the credibility issues that were before him, being those which were regarded as being central to the question of whether the Appellant had demonstrated his sexual orientation and the problems he claimed had occurred in Georgia.

85. Equally, it is to be recalled that judgments at first instance are necessarily an incomplete impression made upon the judge by the primary evidence. This FTT judge reached the conclusion that he did on the issues raised and he expressed himself succinctly on them. This is what Lord Hoffmann said on the point in the well-known passage of his speech in the House of Lords in *Biogen Inc. v Medeva plc* [1997] RPC 1 at 45:

> "The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (*as Renan said, la vérité est dans une nuance*), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation…".

86. Having considered the decision of the FtTJ in the light of the evidence before the judge and in the context of the grounds, I do not consider that the judge approached the evidence in a flawed manner and contrary to the grounds, the judge engaged with the core aspects of the account based on his son's sexual orientation but was entitled to reach the overall conclusion that neither the appellant nor his son had given a credible or consistent account.

87. Accordingly, the decision of the FTJ did not involve the making of an error on a point of law. The appeal is dismissed.

Notice of Decision.

88. The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT shall be stand.

Signed *Upper Tribunal Judge Reeds*

Dated 25 May 2021

I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.