



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

Appeal Number: PA/03202/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 20 December 2021**

**Decision & Reasons Promulgated
On 11 January 2022**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MAS
(ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Anzani, Counsel, instructed by Buckingham Legal Associates

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) the Tribunal makes an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. This is an appeal against the decision issued on 20 April 2021 of First-tier Tribunal Judge Row which refused the appellant's protection and human rights appeals.
2. The appellant is a national of Pakistan and was born in 1989.
3. The appellant came to the UK on 13 March 2011 as a student and had leave until 19 April 2015. On 26 February 2015 he applied for a residence card as the spouse of a Lithuanian woman. That application was refused on 13 December 2015 July 2015 as it was established that the Lithuanian national was already married to an Albanian man. The appellant was arrested on suspicion of applying for leave to remain by deception but was not charged. He pursued an appeal against the refusal of the residence card but his appeal was dismissed on 5 January 2017. After being detained as an overstayer liable to removal, the appellant claimed asylum on 3 August 2017. The claim was refused on 20 March 2020.
4. The appellant maintained that he was bisexual and would be at risk of serious mistreatment on return to Pakistan on that basis. He maintained that he was in a relationship with another man, MAH. He relied on the fact that he had given evidence in MAH's appeal in 2018. He and MAH had been found credible and it was accepted that they were in a relationship. MAH gave oral evidence before Judge Row in support of the appellant. Two other witnesses, NH and WSA, also gave oral evidence; see paragraphs 39 and 40 of the decision. The judge noted in paragraph 8 of the decision that the appellant had medical issues but that they were not relied upon to found a human rights claim. He otherwise made no reference to a medical report. The appeal was refused as the appellant's claim to be bisexual was not found to be credible.
5. The appellant appeal against the decision of First-tier Tribunal Row and was granted permission by the First-tier Tribunal on 1 June 2021.
6. At the hearing before me, Ms Anzani sought to vary the grounds, maintaining that the First-tier Tribunal had taken an incorrect approach to the findings of the First-tier Tribunal in the earlier appeal of MAH in 2018 in which the appellant and MAH had been found credible. Her application was not opposed by the respondent who accepted that there was no prejudice in the new ground being admitted and permission to appeal being granted. In those circumstances I granted permission to admit the new ground.
7. The First-tier Tribunal referred to the earlier appeal hearing in which the appellant and MAH were found credible in paragraph 68 of the decision:

"I take into account that the Judge in the appeal of MH accepted that MH was a homosexual man and found the appellant and MH to be credible witnesses. The issue in that appeal was whether MH was homosexual not whether the appellant was. The Judge in that appeal did not hear the evidence which I have heard or the evidence MH gave before me. If he had he might have reached a different conclusion in the appeal of MH."

8. I considered this paragraph against the guidance of the Court of Appeal in AL (Albania) v Secretary of State for the Home Department [2019] EWCA Civ 950. The Court of Appeal set out at paragraph 23:

“The approach to be taken by a tribunal to earlier findings of fact made in a determination relating to a different party, such as a family member, but arising out of the same factual matrix is now established. In *AA (Somalia) Carnwath and Ward LJ* (Hooper LJ dissenting) held, applying *Ocampo*, that in such a case the guidelines given by the Immigration Appeal Tribunal in *Devaseelan* apply. Those guidelines begin with the premise that the first tribunal's determination should be the starting point.

9. In my judgment it is not possible to identify from paragraph 68 of Judge Row's decision whether the correct legal approach was followed and the decision in the appeal of MAH from 2018 taken as the starting point rather than merely considered as part of the evidence as a whole. It is not correct to suggest that the approach set out in *AL (Albania)* did not have to be followed as it related to different facts. It related to the same issue being litigated before Judge Row, whether the appellant and MAH were in a genuine homosexual relationship. Even if paragraph 68 could be read as having taken the 2018 decision as the starting point, it does not set out with sufficient clarity what it was about the evidence that was sufficiently cogent so as to allow the earlier positive credibility findings to be distinguished. Merely stating that the evidence was different is not enough.
10. I found that this amounted to an error of law such that the decision had to be set aside to be remade where the assessment of credibility was a holistic exercise and the outcome of the appeal could have been different if the correct legal approach had been taken regarding the earlier decision.
11. Further, Ms Everett conceded for the respondent that the First-tier Tribunal erred in law in failing to address the potential implications of the psychiatric report of Dr Arwe dated 3 April 2021. The report had the potential to explain or mitigate the differences in the details provided by the appellant in his screening interview and later accounts, those differences being relied on adversely by Judge Row; see paragraphs 57, 59 and 60, for example. It could not be said that the outcome of the appeal would have been the same if the medical report had been taken into account in the credibility assessment.
12. I also accepted that there was force in Ms Anzani's submission that the First-tier Tribunal made no finding on the evidence of NH and WSA who attended the hearing to give evidence in support of the appellant's claim to be bisexual.
13. For all of these reasons, notwithstanding the numerous other unchallenged findings made by Judge Row, my conclusion was that the credibility assessment showed an error on a point of law such that it had to be set

aside to be remade afresh. Where no findings of fact are preserved it is appropriate for the remaking to be made in the First-tier Tribunal.

Notice of Decision

14. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade in the First-tier Tribunal.

Signed: S Pitt

Date: 20 December 2021

Upper Tribunal Judge Pitt