



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06685/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 November 2020

Decision & Reasons Promulgated  
On 14 January 2021

Before

UPPER TRIBUNAL JUDGE KEITH  
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

'BB'  
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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 him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.*

**Representation:**

For the Appellant: Mr Murphy, Counsel, instructed by City Heights Solicitors  
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of his protection and human rights claim.
2. The appellant is a citizen of Bangladesh. He sought leave to remain in the UK on the basis that he is an openly gay man of Hindu heritage, in a relationship with a male partner of Muslim faith. He claimed adverse treatment in Bangladesh as a result of a gay relationship in that country, following which he had suffered attacks and had to flee Bangladesh, and his parents also suffered adverse attention and had to flee that country.
3. In terms of the appellant's immigration history as recorded in the respondent's subsequent decision to refuse his application, the appellant first entered the UK on 23 January 2010 on a Tier 4 (General) Student visa, valid until 31 July 2013. The appellant's leave was curtailed in 2012, but that curtailment was reconsidered in 2014 and 'not pursued'. On 23 July 2013, whilst the appellant still had valid leave to remain, he applied for further leave to remain as a Tier 4 (General) Student, which was refused. The refusal was subsequently maintained on 25 August 2015. The appellant was served with notice of liability to removal on 11 August 2017 and claimed asylum on 5 November 2017. The respondent refused the appellant's application in a decision (the 'Refusal Letter') dated 15 May 2018. The respondent accepted that the appellant came from Bangladesh but did not accept that the appellant was gay as claimed. The Refusal Letter did not go on to consider whether the appellant would be likely to conceal his sexuality out of fear of persecution; if he were perceived as gay, whether he would suffer adverse interest at a level such as to amount to persecution; or the sufficiency of protection or viability of internal relocation in Bangladesh.
4. On 3 October 2019, First-tier Tribunal Judge Courtney (the 'FtT') dismissed the appellant's appeal against the refusal of his protection and human rights claims. She did not accept that the appellant was gay, for the reasons summarised at §6 of the error-of-law decision of this Tribunal.
5. The appellant lodged grounds of appeal, the gist of which were summarised by First-tier Tribunal Judge Fisher, granting permission on 14 November 2018, as being that the FtT had erred in failing to consider the evidence of the appellant's partner and the second witness, HH, whose honesty was not challenged.
6. This Tribunal set aside the FtT's decision, allowing the appeal without any preserved findings of fact. This Tribunal regarded it as appropriate to remake the decision, noting the availability of evidence and narrowness of the issues (albeit their seriousness).

*The core of the Appellant's claim*

7. The appellant says he is a gay man and that he has a well-founded fear of persecution by reason of his sexuality. He fears the family of his ex-lover, the Islamic

militants who he says would take action against him due to Facebook entries, the authorities (given that sex between men is a crime in Bangladesh) and Islamic extremists whom the appellant says have threatened him.

*The gist of the respondent's refusal*

8. The core point taken against the appellant in the Refusal Letter was that the respondent did not accept that the appellant is gay in light of:
  - a. Asserted inconsistencies as to whether the appellant had had a relationship in Bangladesh
  - b. The appellant's claimed fear of persecution while asserting an ignorance in laws prohibiting homosexuality in Bangladesh
  - c. The fact that the appellant's documentary evidence of gay club memberships post-date the appellant's protection claim
  - d. The similarity of letters from supporters of the appellant.
9. The respondent also did not accept the authenticity or accuracy of hospital treatment said to corroborate the alleged attack in Bangladesh.
10. The respondent further took issue with the late stage at which the appellant claimed asylum, referring to section 8 Asylum and Immigration (treatment of Claimants etc) Act 2004 in light of the appellant having arrived in the UK in 2010 on alternative rejected bases but only claiming asylum in 2017 following service of a notice of liability to removal.

*The issues in this appeal*

11. The sole issue in remaking the FtT's decision is whether the appellant is gay. Credibility is a key issue.
12. At the hearing, the respondent accepted that if the appellant is gay, he would have a well-founded fear of persecution by reason of his sexuality, and questions of living openly, sufficiency of protection and internal relocation were not in issue.

*Documents*

13. The appellant provided an electronic bundle of documents running to some 322 pages, including:
  - a. witness statements from himself, his asserted partner HH, Mr Hizir Tezgel and his girlfriend Ms Ozlem Sungurlu, Mr William George Brewis and Mr Rezaul Karim Fakir
  - b. Various supporting letters, ID cards of the appellant's parents, lodger agreements, copies of Facebook entries, photographs, membership cards

- c. News reports and Home Office Country Policy and Information Note, version 3.0, dated November 2017.
14. The respondent referred us to the most recent Country Policy and Information Note (CPIN), version 4.0, dated April 2020.

*The Hearing*

15. The appellant attended the hearing and gave evidence through a Bengali interpreter. HH, Mr William George Brewis and Mr Rezaul Karim Fakir appeared as witnesses. All were cross-examined.

*The appellant's submissions/evidence at the hearing*

*Written statement*

16. The key points arising from the appellant's witness statement were that he was a national of Bangladesh born into a conservative Hindu family. He became aware of his sexuality in May 2008 when he was around 17 years old. He was in a homosexual relationship in Bangladesh with a Muslim man, RM, from November 2008 to 7 April 2009. This relationship ended when, on 7 April 2009, RM's elder brother discovered them engaging in sexual relations. The same day, the elder brother attacked the appellant and exposed the relationship to the appellant's parents, threatening them to keep the relationship a secret. The appellant felt forced to flee for his life. He came to the UK on 23 January 2010.
17. Since being in the UK, the appellant said he had noticed gay people being accepted in society and so felt able to live openly as a gay man himself. He initially had many casual relationships with men he met at gay clubs but has been in a serious relationship with HH, a Muslim, since October 2015. The appellant and HH first met in January 2015 but were separated from March to September 2015. Since 31 October 2015 they have been living as a gay couple.
18. The appellant claimed asylum on 15 November 2017 following an incident where HH on 17 October 2017 drunkenly posted intimate photographs of the two of them together on Facebook. As a result of this incident, HH's parents became aware of their relationship and threatened to kill the appellant if he returned to Bangladesh. The appellant also received threatening telephone calls from unknown numbers.
19. The appellant says his family were 'tortured' as a result of this incident, and as Hindus, were also tortured due to the appellant being in a homosexual relationship with a Muslim man. His family were forced to flee Bangladesh in December 2017 due to the threats they were receiving. They are now living in India. His father and brother have disowned him and his mother is the only one supporting him. Some extended family members remain in Bangladesh but the appellant says he will suffer prejudice and ill treatment from them.

20. The appellant says he has a genuine fear of persecution from Muslim fundamentalists, Bangladeshi society in general, his extended family members, RM's elder brother and Bangladesh as a state, being the government/army and the police. It is a criminal offence to practice homosexuality in Bangladesh and he fears for his life. If returned he will be forced to live discreetly.
21. The appellant says he suffers from severe depression and mental health issues and has attended MIND counselling sessions. He considers he will become mentally insane if returned. He has also contacted his local MP Mr Clive Efford for assistance with his asylum application.

*The appellant's oral evidence*

22. In oral evidence the appellant said he first came to the UK as a student. He confirmed that he applied for a student visa in December 2009 after the incident with RM (this was verified by reference to the visa application dated 8 December 2009). After that incident he was in hospital for two weeks and only his mother and brother came to visit him. His father and other brothers did not come. He applied for a student visa after it became clear his life was in danger. Between leaving his home area in April 2009 and arriving in the UK in January 2010, the appellant stayed in Dhaka having been taken there by his mother and brother who arranged a house for him. They told the appellant not to leave the house unless it was essential. He had one or two friends in Dhaka. His friend helped him with his passport.
23. The appellant confirmed that when he came to study in the UK he never thought of going back to Bangladesh. He sought legal advice when making his further student application in the UK and asked how could he stay here. The lawyer, a legal advisor, told him he could apply under human rights and even stay for a long time but even then could be refused. He could not recall when this was.
24. The appellant confirmed his sexuality was exposed to his parents as a result of the incident with RM, when RM's brother told the appellant's family that their son had done bad things with RM. The brother said nobody should know about the matter otherwise it would be bad for the appellant's parents' dignity.
25. The appellant used to go to college but the college shut down. His mother paid for the course from Bangladesh. When he first arrived at the airport one of his friend's cousins collected him and he stayed at that friend's house for two days. He then lived in a house in Dulston, saying one of his college friends used to live there and helped him arrange the house. The appellant has no relatives in the UK.
26. The appellant confirmed the address where he and HH first resided together was one address, but recently they had moved to a second address. The appellant was shown a letter dated 18 December 2017 addressed to HH at a third address which was at odds with the claim that they were living together at the first address. The appellant said he did not know how HH managed to receive that letter at that address as they were living together at the time, and thought it was because HH's address had not been changed with his GP. The appellant said he had not seen the letter and HH had

not told him about it but he knew HH had not changed his address with his GP. The appellant was directed to the fact that the letter formed part of the documents given in support of his claim at his Asylum Interview. The appellant said he did give the letters for HH's medical conditions but didn't know the old address was on the letter; he had told HH to change his address with the GP and it was not something that affected the appellant.

27. The appellant was then directed to printouts from his doctor and prescriptions for his medication in the appellant's bundle which both showed another, fourth, address. The appellant explained that he first came to the UK, he saw the doctor near the fourth address as that doctor saw lots of Bangladeshi people and was easy to understand; he had not changed his address with this doctor. He did live at the fourth address a long time ago, maybe 2013-2014.
28. The appellant was directed to the lodger agreements at pages 130-133 appellant's bundle, none of which contains an address. It was noted that they are all between the landlord and appellant and HH, for one double room at a rent of £300 per month. The appellant confirmed these related to the first address. They had to pay rent there but could not pay it on time and did not have a good relationship with the landlord. The first address is the address used by the appellant's MP when he wrote on 15 June 2018. The appellant explained that the reason why the MP had his current address whilst his GP had an old address is because he doesn't receive letters from his GP, only emails and phonecalls. Medicine is ordered via an app. He kept his GP as he speaks his language. He used to travel some way to see this GP but doesn't currently due to covid.
29. The appellant confirmed he currently lives at the second address rent free, having starting living there in January 2020. The appellant said he found this address having seen small stickers on a window in Whitechapel asking for a caretaker. Him and HH share one of two rooms in the house and are able to live rent free as they take care of the landlord. The landlord does not pay for this care but sometimes buys food for the appellant and HH and gives them money to buy him shopping. Otherwise, the appellant is not working and neither is HH. The appellant does not have a proper bank account but has a monzo card.
30. In answer to whom was supporting him financially, the appellant replied that he and HH do not spend much money and live a very simple life. If they need money they ask their friend Mr Fakir. The appellant said his parents do not support him financially as their situation is now very bad and they cannot afford it. The appellant said he sometimes contacts his mother. His father signed a statement in support of him but does not talk to him.
31. The appellant confirmed he was a non-practising Hindu and HH is a non-practising Muslim. He said he had lived with HH for around five years and their relationship was serious. They have discussed marriage and had an appointment at East London Registry Office last year but could not get married due to ID problems. They have not thought about having children.

32. The appellant said HH has no family in the UK but his family are aware that the appellant and HH are together. They did not live near to, or know, each other in Bangladesh.
33. The appellant said before 2017 he did not know about asylum; he only knew that asylum could be sought for political reasons or problems like war. He confirmed that between 2015 and 2017 he had no immigration leave to be in the UK but he never thought about going back to Bangladesh. He did not contact the Home Office at the time because he understood them to have given some kind of contract to a company called Capita from whom he used to receive phonecalls saying they were told they had to catch and deport him, so he went into hiding. When he was in hiding his friends sometimes helped him and his mother supported him from Bangladesh before he claimed asylum.
34. The appellant confirmed HH was studying when he came to the UK and did not finish his course. HH never told the appellant why he didn't finish his course but said colleges frequently get shut down. The appellant didn't think HH had immigration leave when they met.
35. In answer to whether he and HH ever discussed getting legal advice, the appellant said they didn't think about it when they found each other as they were living in a good situation and were always scared that if they contacted the Home Office they may be returned to Bangladesh. HH was not working when they met; he repeated that sometimes their friend helped them and they lived a simple life.
36. The appellant confirmed he and HH did not live together when they first met and he thought HH was living in Stratford. He never asked who paid for HH's studies. They first met in a club. He was able to go to clubs because his mother sent him money from Bangladesh. In answer to what HH was living on in 2015, the appellant thought maybe HH's family supported him as well but they did not talk about it and before they started living together he did not ask. They started living together at the end of October 2015. The appellant thought HH's parents, his mother in particular, were supporting him from 2015-2017. The appellant has never spoken to HH's mother. Before the asylum claim, HH's parents did not know they were living together, they only found out when HH sent posts to Facebook.
37. The appellant confirmed he met Mr Fakir towards the end of 2017. In answer to whether he knew when Mr Fakir claimed asylum, the appellant said he didn't know when he made the claim but Mr Fakir told him once it had been granted. The appellant was unclear about when he understood Mr Fakir to have applied for and/or been granted asylum. Initially he said Mr Fakir did not tell him when exactly it was granted but told him it had been granted due to his homosexuality. The appellant thought Mr Fakir already had asylum when they first met. They did discuss the appellant's immigration status and that was why Mr Fakir was at the hearing, to support the appellant. The appellant said they did not talk about it when they first met but once they got to know each other well the appellant asked Mr Fakir what can be done about claiming due to homosexuality and Mr Fakir confirmed it

was possible. The appellant then said he met Mr Fakir after the appellant had made the claim, and it was after he told Mr Fakir that he had made a claim that Mr Fakir had agreed to help him. He made the claim for asylum, and then met Mr Fakir towards the end of 2017. The appellant was questioned again about whether, when they first discussed asylum on grounds of homosexuality, Mr Fakir said he had already been granted asylum – the appellant said yes, because he was homosexual and he met him at the gay club with his friend. The appellant didn't know the date when he became aware Mr Fakir had been granted asylum but he thought it was before they met and it was after the appellant had claimed asylum.

38. The appellant met Mr Brewis in November 2019 and visited him frequently at Mr Brewis's house in the Kennington area, sometimes spending the night. The appellant discussed his claim with Mr Brewis who said he would give evidence. Mr Brewis never visits the appellant; he goes to Mr Brewis as he lives alone. The appellant knew Mr Brewis and Mr Fakir knew each other but did not know how they met.

*HH*

*Written statement*

39. In his statement HH confirmed he is a national of Bangladesh, was born in a strict Muslim family, identifies as a homosexual and is the appellant's partner. He has been in a relationship with the appellant since 31 October 2015 and living together for the past 2.8 years (this appears to be a typographical error - the timeframe having been carried over from a previous version of the statement). They first met in January 2015 at GAY Late Club in Soho. As their friendship progressed they found out they were both homosexuals. Whilst they have different religions, they have experienced the same struggles as homosexual men from Bangladesh. HH's religion is, he stated, an enemy of homosexuality.
40. HH has always identified as a homosexual. He was in a homosexual relationship with a Muslim partner in Bangladesh, which terminated when their sexuality was exposed. He was badly beaten up whilst being intimate with his partner. He had to flee Bangladesh on 1 December 2009 to save his life.
41. HH and the appellant live openly in the UK as a gay couple.
42. On 17 October 2017 HH drunkenly posted intimate photographs on Facebook, after which his family became aware of his sexuality and relationship with a Hindu male and sent online abuse and threats to the appellant, also via Facebook. The appellant also received threatening telephone calls from unknown numbers.
43. HH considers both he and the appellant would face persecution in Bangladesh due to their past homosexual relationships there.

*HH's oral evidence*

44. HH gave evidence through the Bengali interpreter.



45. HH confirmed that he and the appellant get raised eyebrows and stifled jeers from the Muslim community in the UK because of their homosexuality. When they go out they hold hands and walk freely but this is against their religion. HH is not a practising Muslim and the appellant is not a practising Hindu.
46. HH and the appellant met in 2015 at a gay nightclub. At the time HH was not working. His friends were helping him financially. He got financial support from his parents in 2015 but they have disowned him now and do not support him.
47. In answer to what he was living on now, HH said where they live at the moment they do not pay rent because the landlord is very kind and elderly and they look after him. They moved to their current address in January 2020. In terms of buying food or clothes, HH's friend Mr Fakir helps sometimes and they do not buy too many clothes.
48. When HH first met the appellant, the appellant was not working. It was after about seven months that they discussed their immigration status and the fact that neither of them had a right to be in the UK. When they began living together they discussed getting some legal advice. They decided they could not go to Bangladesh as they were homosexual and would be killed. They spoke to an immigration lawyer and then claimed asylum. Prior to 2017 HH had not taken any legal advice about staying in the UK.
49. HH confirmed he knew Mr Fakir and that he had been granted asylum, he thought in 2017. They met three years ago. When asked whether Mr Fakir already had asylum when HH met him, HH said "I met him in the club". When asked again whether Mr Fakir has asylum when they met, HH replied "not in the club, but afterwards". HH said Mr Fakir was granted asylum after they met and was granted it as a homosexual man. When questioned again whether Mr Fakir was granted asylum before or after HH has met him, HH said "I can't remember, I know him last three years". He said they were very close friends. When asked about how soon into their relationship did HH and Mr Fakir talk about asylum issues, being gay in Bangladesh and the difficulties they faced, HH said "When I made the application for asylum, sometime before that". When asked if this was sometime before the appellant applied, HH said "there was an incident for us through Facebook and then we went to the club, we spoke to Fakir and David". HH then said Mr Fakir suggested applying for asylum. When questioned whether, following this suggestion, HH asked Mr Fakir if he himself had been granted asylum, HH replied "nah, David is British nationality". HH later said Mr Fakir didn't tell them about asylum, David did, and Mr Fakir was not with David at the time.
50. HH said before 2017 he did not know asylum could be claimed on the basis he was a homosexual from Bangladesh. When asked when he found out Mr Fakir had been granted asylum on this basis, HH said after he had got it; he didn't remember when; "when he got it he told us". When asked whether they celebrated together HH said "we had drinks because sometimes when we get together we drink beer". When pressed as to whether HH was told by Mr Fakir that he had been granted asylum,

HH could or would not answer the question directly, giving several different incoherent answers.

51. HH confirmed the appellant was not in touch with his family in India because they don't like the appellant and HH's homosexuality. HH didn't know when the appellant was last in touch with his mother but knows he used to talk to her. He confirmed they were still in touch in 2017 but didn't remember about 2018. She knew the appellant had claimed asylum in the UK because they made a statement in support of him. HH later said that the appellant does talk to his mother.
52. HH confirmed he did not know the appellant in Bangladesh. He did not know how far away their homes in Bangladesh were from each other but thought it would take 3-4 hours to drive the distance.
53. HH said he did not have a proper bank account but a monzo card. Mr Fakir was the only person providing him with support by sometimes giving him pocket money. If HH needed money he would tell Mr Fakir and he would provide maybe £100 cash. The last time was around a month ago.
54. HH was shown the letter dated 18 December 2017 addressed to him at the third address. He confirmed this was not the correct address for him at that time. He said he used to live there a long time ago but had no idea why they would write to him there, perhaps they had found it on their system. He did not have any ID which could be a reason why he didn't change the address. When he got his ID card as an asylum applicant he changed the address. He got the card after he made the claim but he could not remember the date. HH then said he did have the card at the date of the letter.
55. HH confirmed that between March and September 2015, HH was in Ireland because an agent took him there to claim asylum. He did not maintain contact with the appellant during this time.

*Mr Fakir*

*Written statement*

56. Mr Fakir's statement states that he has known the appellant for around three years, having (along with Mr Fakir's partner SR) met him and HH at GAY Late in Soho. They later met up in many places and socialised together. They were delighted to meet a gay couple from the same country as them and were fully aware of how difficult it is being gay in Bangladesh which is a Muslim country.
57. Mr Fakir and his partner SR recently obtained asylum in the UK as being a gay couple. Spending lots of time together, he came to know the appellant was suffering from severe depression. Mr Fakir states that the situation for homosexuals in Bangladesh is life threatening and refers to incidents of violence and harassment against homosexual people.

*Mr Fakir's oral evidence*

58. Mr Fakir gave evidence through the Bengali interpreter. He confirmed he had been granted asylum status on the basis of his sexuality in 2018. He made his claim in 2017, probably in January.
59. Mr Fakir has known Mr Brewis for around a year now and has a casual physical relationship with him. Mr Fakir's relationship with the appellant and HH is a close one.
60. When Mr Fakir first met the appellant in 2017 he didn't know that the appellant had no basis to stay in the UK but came to know when they became close, roughly in 2017-2018. Mr Fakir told the appellant he had claimed asylum only once it had been granted. The appellant told Mr Fakir the appellant had also applied after finding out that Mr Fakir had been granted asylum. They did not discuss it before because "in the beginning it was not necessary to talk about these things", they were not good things to talk about. When Mr Fakir was granted asylum he became brave enough to discuss it. After that they discussed it more often and grew closer. Mr Fakir remembers telling the appellant and HH that he had been granted asylum. Mr Fakir had a party where he rented a restaurant and provided food. His solicitors and three or four other people were there however the appellant and HH were not there. At the time they were still new friends, it had not even been a year. When Mr Fakir told them it was face to face and their reaction was good and they told Mr Fakir that they had also claimed.
61. Mr Fakir confirmed he works and sometimes supports the appellant and HH financially because they have problems and they are good friends. He sometimes gives them money, last time was £100 probably last month. Mr Fakir said when the appellant and HH had a visa they were able to work and earn money. He didn't know if anyone else supported them financially. They had known Mr Brewis for around a year but he didn't know if Mr Brewis was helping them or not.
62. Mr Fakir confirmed that he, the appellant, HH and Mr Brewis met up regularly (more so before lockdown). Mr Fakir did not go to the appellant and HH's house but they came to Mr Fakir's house, although mostly they go to Mr Brewis's house.
63. Mr Fakir said it was perhaps not surprising that the appellant couldn't remember whether Mr Fakir had been granted asylum before or after they met because the appellant was mentally not right, being depressed and coming to court three or four times.

*Mr Brewis*

*Written statement*

64. Mr Brewis confirmed he is a British national born in London, retired and living a gay life. He is a close friend of the appellant and HH. He met them in November 2019 at She World, a LGBT club in Stratford, through their common friend Mr Fakir.

65. The appellant and HH frequently visit Mr Brewis's flat, at least once a month, and stay overnight most of the time. There is absolutely no doubt that they are a sweet gay couple. As a gay man, Mr Brewis finds the appellant and HH are very loving and caring to each other. They are afraid of having to give up their gay life and would be devastated if they had to return to Bangladesh.

*Mr Brewis's oral evidence*

66. Mr Brewis gave his evidence in English. He described himself as a gay flamboyant man. He has a casual relationship with Mr Fakir, they have sex with each other. There used to be other men but that has stopped due to Covid. The appellant and HH used to come and have a drink, they stayed over sometimes and slept in the front room. Mr Brewis calls the appellant 'Baboo'. Mr Brewis never visits them, they always come to him, it has always been that way. He doesn't travel to them.
67. When asked how he knows the appellant and HH are gay, Mr Brewis said he was claustrophobic so there are no doors in his house other than the bathroom door. One night he got up to get a drink and heard them kissing and cuddling as he walked past. He took no notice and went back to bed. When asked how he knew they were kissing and cuddling, Mr Brewis said "you know the noise", he did have a "little look" but only slightly. They had the nightlight on and he saw them kissing on the lips. However, he knew before this that they were gay, having met at She World. They became close friends because the appellant and HH were friends with Mr Brewis's friend, Mr Fakir.
68. Mr Fakir has been Mr Brewis's friend and occasional partner for 2-3 years now. They never discussed when Mr Fakir was granted asylum, but he did know Mr Fakir had asylum. When asked why they didn't discuss it, Mr Brewis said there are some things in his life he hadn't told Mr Fakir, the conversation just never came up. Mr Brewis did not know anything about Mr Fakir's immigration status when they met, or that he was Bangladeshi. Mr Brewis did ask what Mr Fakir was doing in the UK and Mr Fakir said to get a job and a better life.

*Written Statement of the appellant's parents (neither attended to give evidence)*

69. This statement confirmed that the appellant's parents currently live in India and are practising Hindus. They had to flee Bangladesh to India after their lives were threatened following the appellant's sexuality with a Muslim boyfriend being exposed on Facebook in October 2017. After this, many people in Bangladesh became hostile to them. Their house was vandalised and they were physically assaulted day in, day out. In the last few years they had been marginalised and under threat for being Hindu. When the appellant's sexuality was exposed the hostility increased. Besides local extremist and fundamentalist groups, the brother of the appellant's previous partner, RM, used his local political muscle to attack them. RM's brother had always been vindictive to the family as the appellant and RM were caught in an intimate moment by RM's brother in April 2009.

70. They went to the police station to file a complaint but the police threatened them too and informed RM's brother. Due to the threats that ensued they had no option but to flee. The threats are of killing the appellant if he returns to Bangladesh.
71. The statement is accompanied by copies of the parent's ID cards, confirmed as genuine by a notary in Bangladesh.

*Witness statements of Mr Tezgel and Ms Oslem Sungurlu (neither attended to give evidence)*

72. Mr Tezgel is a friend of the appellant, having met him at work in January 2013. He found out about the appellants' homosexuality in 2013. They are still in regular contact. The appellant and HH regularly meet up with Mr Tezgel and his girlfriend Ms Sungurlu. The appellant lives freely and openly as a gay man in the UK; he and HH make a very happy couple.
73. Ms Sungurlu has known the appellant since December 2017 having met him through her boyfriend Mr Tezgel. The appellant and HH come for dinner regularly and they all spend time together hanging out. The appellant and HH are a sweet and loving couple. The appellant lives freely and openly as a gay man in the UK.

*The respondent's closing submissions*

74. The respondent relied on the Refusal Letter and all challenges were maintained. It was not accepted that the appellant is a gay man, nor his accounts of what had happened in Bangladesh and the Facebook incident. Even with the new evidence adduced, the Presenting Officer asserted that the appellant was not credible. There seemed to be an extraordinary lack of communication between the parties in relation to Mr Fakir's grant of asylum and claim, for example the appellant could not even remember if Mr Fakir already had asylum in 2017. Mr Fakir's response was very evasive and inadequate. It was surprising that Mr Brewis did not know when Mr Fakir was granted asylum, in light of their statements referring to the terrible situation in Bangladesh. There were also different explanations given as to the different addresses referred to for the appellant and HH.
75. The appellant's evidence in relation to his parents was extraordinary in saying that he continued to be supported only by his mother when both parents drafted a statement in support.
76. There was a discrepancy between the appellant and HH in relation to the legal advice they have sought. The appellant said they had spoken to a legal advisor in relation to asylum and was told they may get limited leave whereas HH said no enquiry had been made.
77. The Presenting Officer appreciated both the appellant and HH were now here illegally and that it was a point relating to section 8 Asylum and Immigration (Treatment of Claimants etc) Act 2004 that they both arrived on student visas, which they both went on to renew and claimed asylum many years later. Not much can be said about what they are living on; they may be working illegally and not wish to say

so. It seems implausible that they have been living on basically nothing except the odd handout for years.

*The appellant's closing submissions*

78. The appellant's representative said there was no real reason in the Refusal Letter to deem the appellant anything but credible and we would look in vain for clear inconsistencies. The only point the Presenting Officer has raised of substance is the pedantic one that Mr Brewis knew Mr Fakir had asylum but did not know when it had been granted. However they are in a casual sexual relationship and it is a stretch to criticise him for his lack of knowledge.
79. As regards the addresses, this was adequately clarified. The appellant explained there are apps and he gets emails. The GP has the old address which has not been changed but it is not a point that the claim or credibility turns upon. HH further explained that he did not seek to change the address until he was able to, having obtained his ID card.
80. In terms of legal advice, the appellant and HH had not even met at that stage.
81. As regards what they are living on, this is akin to the old 'Mr and Mrs' television show where couples are asked questions about each other and it is funny when they are caught out. The point is that even people who know each other very well say different things. Overall, they were actually very consistent in what they said, about the house being rent free, the elderly landlord whom they look after providing food, Mr Fakir giving them cash sometimes, that the appellant is not a practising Hindu and HH is not a practising Muslim, they met in 2015, they moved to their current address in January 2020. They were put to the 'Mr and Mrs' test and were consistent.
82. As it is an asylum claim, it needs to be looked at through the 'glass half full' lens when deciding to the lower standard whether the appellant is a gay man. We were invited to say that Mr Fakir was a credible witness who has been recognised as a gay man. There is no reason to deem him anything other than credible. In terms of the appellant and HH's own credibility, they were consistent. They all said they go to Mr Brewis's house. He had seen them physically intimate in bed kissing. Is there a reasonable degree of likelihood that Mr Brewis is telling the truth? Certainly to the lower standard. He turned up to this Tribunal of his own volition. Therefore, on the lower standard clearly they are in gay relationship and the appellant is a gay man.

*The Law*

*Asylum protection*

83. Paragraph 334 of the Immigration Rules states that the appellant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on the appellant to satisfy us that he falls within the definition of a refugee in Regulation 2 of the Qualification Regulations, as read with Article 1(A) of the Refugee Convention. In essence, the appellant has to show that there are substantial grounds for

believing that he is outside his country of nationality by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling, owing to such fear, to avail himself of the protection of that country.

84. When considering the appellant's general credibility in the context of Paragraph 339 of the Immigration Rules and section 8 of the 2004 Act, we were conscious that section 8 was only an element to be considered in relation to the appellant's credibility and was not determinative.
85. We have noted the respondent's asylum policy instruction on sexual orientation and asylum claims, version 6 dated 3 August 2016, pages 33 to 34, which requires the respondent's officers to consider possible reasons for someone not disclosing their sexuality at the first available opportunity, for example because of feelings of shame; cultural implications; and painful memories. The instruction suggests that a failure to mention sexuality at the main asylum interview may call into question the credibility of the claim, unless there are good reasons for not having mentioned it, but that all factors had to be considered in the round.

#### *ECHR*

86. The burden of proof rests with the appellant to satisfy us that there are substantial grounds for believing that, as a result of the respondent's decision, he will be exposed to a real risk of death contrary to Article 2 or serious harm in breach of Article 3 of the ECHR.

#### *Findings of fact*

87. We considered all of the evidence presented to us, whether we refer to it specifically in these findings or not.

#### *Events in Bangladesh*

88. The Respondent says in the Refusal Letter that it was inconsistent that the appellant was not aware of the laws on being gay in Bangladesh. We disagree. The appellant was seventeen at the time and, given both the appellant's and the country background evidence, being gay was not a subject that would necessarily have been discussed such that the appellant could have been expected to be knowledgeable about the relevant law. It is also clear from the way the Asylum Interview Record question was phrased that the appellant could have understood the question to have been requesting details of the specific law, rather than whether homosexuality was illegal in general. The appellant confirms this was his view of the question in paragraph 29 of the detailed grounds of appeal.
89. We are conscious that in asylum claims there is often little or no documentary evidence to support the appellant's testimony. It is therefore perhaps understandable why there is no documentary evidence of the appellant's relationship with RM beyond the hospital notes. We cannot attribute much weight to those notes as, even translated they do not describe why the appellant was in hospital, what (if any) his

injuries were and what treatment he received. But beyond this, the respondent has not challenged events in Bangladesh in any meaningful way and the statement from the appellant's parents confirms the appellant's account of events both prior and subsequent to the appellant leaving Bangladesh. Whilst there is some inconsistency between the appellant saying his father has disowned him, and his father signing a witness statement in his support, we do not find this to be of much consequence in the claim as a whole. In the round and to the lower standard, we find the appellant's account of his relationship in Bangladesh, the way it ended and his reasons for leaving, to be credible.

*Delay in claiming asylum*

90. We have considered the appellant's general credibility in the context of paragraph 339 of the Immigration Rules and section 8 of the 2004 Act. In doing so, we were conscious that section 8 was only an element to be considered in relation to the appellant's credibility and was not determinative. While the appellant did not claim asylum on the basis that he was gay until 5 November 2017, being after he was served with notice of liability to removal on 11 August 2017 and after previous refusals of leave to remain as a student, we considered what explanations there might be for his delay in doing so. The reasons provided, if truthful, would provide an explanation for the delay in doing so. These were effectively that:
- a. the appellant was not aware that asylum could be claimed on the basis of sexuality
  - b. the appellant did not want to contact the Home Office because he understood them to have instructed Capita to catch and deport him
  - c. the appellant had no reason to claim asylum until the Facebook incident in 2017 because prior to that he had leave as a student and when further leave was refused, despite living here illegally, he was in a 'good situation'
  - d. the appellant had not sought legal advice in relation to his sexuality prior to being in a relationship with HH, he had only sought it in relation to his student visa
  - e. it was only when he met Mr Fakir that he knew for certain that asylum could be claimed on grounds of sexuality
91. We find the first explanation to be fairly credible. The appellant was very young in Bangladesh and only had one relationship which, if the account is true (and we have found there to be a reasonable degree of likelihood that it was), ended in a traumatic way. The appellant fled and later took the easiest route out of the country, being via a student visa which his family funded. At this stage the only people who knew about his sexuality were his parents, his partner and his partner's elder brother, who had told the appellant's parents not to tell anyone else. There was therefore no reason for the appellant not to use his own passport to leave the country. Having arrived in the UK with leave, he had no reason to then claim asylum straight away. His education may have been limited by the initial curtailment of his student leave and subsequent inability to attend further study. Although he attended gay nightclubs, he did not



begin attending LGBTQ support networks until November 2017, which networks might have been able to inform the appellant as to the options open to him. Indeed he may have found ELOP by searching for networks that could assist with asylum claims based on sexuality, by 2017 having received legal advice and met Mr Fakir (see below). On the other hand, his attendance at such networks coming after his claim for asylum could be seen as a cynical attempt to bolster his claim.

92. The second explanation is credible in light of the first (see paragraph 90(b) above). When the appellant was refused further leave, if he truly did not know it was possible to claim asylum on the basis of his sexuality, he would not have known to do so and in fact had good reason, so he thought, for avoiding contact with the Home Office.
93. The third explanation is less credible in the sense that the appellant had by this stage been living in the UK illegally for over two years with another gay man. Although he says threats were made against him and his family as a result of the Facebook incident in October 2017, there was nothing to suggest that the threat of deportation as a result of this incident had suddenly become more imminent, or that he would be tracked down in the UK by those making the threats. Rather, the fear of what would happen *upon return* markedly increased. We accept that with this increase in fear could have sparked the need to legitimise the appellant's ability to be in the UK to avoid the risk of being sent back to Bangladesh. However, this would necessarily be on the basis of accepting the Facebook incident as not having been contrived.
94. We were very conscious of the Facebook incident occurring in October 2017 when the appellant had been served with a notice of liability to removal barely two months earlier. It is more realistic that any fear of being returned to Bangladesh was sparked by the removal notice which would have had definite consequences for the appellant in terms of deportation rather than the Facebook incident which entailed none.
95. We therefore find the reason that the appellant claimed asylum when he did was as a direct result of the notice of liability to removal and not the Facebook incident. It is not possible to know whether the Facebook incident was contrived and although it goes to credibility in terms of whether the appellant is willing to deceive in order to bolster his claim, it is only one of the factors to be considered in the round when assessing the core question of whether or not he is gay. There are several printouts from Facebook showing the posts from the time, with unofficial translations of the threats that followed. We would note though that there is little evidence beyond the parent's statement to show that the post 'went viral' and reached a significant number of people in Bangladesh. We do not know how many Facebook 'friends' the appellant had prior to the post or who these friends were and what their connections were. We do not know what the appellant's privacy settings were in order to determine whether the post was only visible to 'friends' or the general public. However, it speaks to the credibility of the *impact* of the incident (whether contrived or not) that the appellant's father was willing to sign a statement confirming the effect of the Facebook incident on them, in that it led to them leaving Bangladesh, in circumstances when his father had otherwise ceased all contact. It would be

understandable that a father who was ashamed of his son's behaviour would want his son to appreciate the negative impact it had also had on them.

96. The fourth explanation is more credible. Although it is unclear when exactly legal advice was sought by the appellant and HH together, it is apparent that it was not before 2015. The appellant said he didn't think about it when him and HH found each other as they were living well and were scared of the Home Office sending them back. HH said they discussed getting legal advice when they began living together, having decided they could not return to Bangladesh as they would be killed.
97. The fifth explanation would potentially have been credible were it not for the unclear answers given by both the appellant and HH concerning when exactly Mr Fakir told them (if he did) that he had claimed and was granted asylum, and when they told him they had claimed asylum. HH was particularly evasive on this point. By all accounts the appellant and HH met Mr Fakir towards the end of 2017. The Facebook incident occurred in October 2017. It may be that the appellant and HH were reluctant to clarify the timeline of events because they did not want it to look like they had made their claim up bearing in mind the similarities between their claim and that of Mr Fakir i.e. they are homosexual, from Bangladesh and (for HH and Mr Fakir) Muslim. Or it may be that they have in fact 'borrowed' from Mr Fakir's own claim. We do not know. Again, it is one of the factors to be considered in the round when assessing the core question of whether or not he is gay.
98. We felt that Mr Fakir was a generally credible witness. He gave straightforward answers to questions without hesitation. His account of supporting the appellant and HH financially tallied with their accounts and he also confirmed the details of his and their relationship with Mr Brewis. Like the respondent, we found it hard to believe the appellant and HH had managed to survive for so long on the occasional handout from Mr Fakir but this does not go to the core issue at stake.
99. In the round, we find the appellant's reasons for not seeking asylum prior to November 2017 not to be credible. He knew he was gay prior to coming to the UK. He knew he was under threat in Bangladesh; it is why he left. Once his student visa application was refused he knew he was in the UK illegally. After October 2015 he knew he was in a relationship with a gay man also from Bangladesh who was also here illegally. They both attended gay nightclubs and so arguably, even without formal membership of organisations such as ELOP, they had a network by which they could have become aware of the ability to claim asylum. Asylum is also something discussed regularly in the media in the UK. The appellant had met his friend Mr Tezgel via work in 2013 and they discussed the appellant's situation, thereby opening up another potential avenue for finding out about asylum. We do not know what the work was or what access the appellant had to television, internet and other media within it, but he was out 'in the world' so to speak and likely to be exposed to information. By his own account he also used Facebook which carries information on and links to a range of matters.

100. Having concluded that the appellant's reasons for not claiming asylum earlier are not credible, we are mindful that section 8 of the 2004 Act is merely a start of the assessment of the appellant's credibility and that we have to consider all of the evidence round.
101. Despite not claiming asylum until late 2017, the appellant had already been in a homosexual relationship with HH for two years. This is corroborated by HH and Mr Tezgel whom he met in 2013. If the lodger agreements are genuine they would also attest to the appellant and HH being in a relationship since October 2015. However it is hard to attach much weight to these documents as they do not contain an address and there is no identification or other documentation from the landlord. There are no other letters or documents sent to the first address from before October 2017. What we have are documents showing different addresses for each of the appellant and HH. They both explained this as being due to them not having changed their addresses at their respective GPs. However it is entirely unclear how HH received the letter dated 18 December 2017 from 'Partners NHS letter for counselling', an entity separate from his GP, when it was sent to an old address.
102. As to HH, we did not find him to be generally credible. He was vague, changeable and, at times, positively evasive when questioned. We did not get to the bottom of how he received a letter sent to an old address when he was supposed to be living with the appellant elsewhere and we could not ascertain when he discussed asylum with Mr Fakir. He gave a different account to Mr Fakir of the celebrations that followed Mr Fakir being granted asylum. We have seen no independent evidence as to HH's account of happened to him in Bangladesh and it does seem questionable that he would have suffered the exact same fate as the appellant in terms of being 'caught in the act' and beaten up. It is therefore difficult to attach much weight to his testimony. But the key issue in this claim is whether or not the appellant is gay, and whether or not he is in a relationship with HH goes to the heart of that question. Whilst we have found HH himself not to be generally credible, the fact of his relationship with the appellant is confirmed by other, credible, witnesses.
103. Numerous undated photographs appeared in the appellant's bundle showing the appellant and HH together, often kissing and touching each other, sometimes partially clothed. There are other photographs of the two of them with other people, in different situations and wearing different clothes, both during the day and at night, and notably a few feature Mr Brewis and Mr Fakir. Without explanations of what these photos are intended to show and when and where they were taken, it is difficult to attach much weight to them overall but we accept that they do show the appellant and HH having affectionate physical contact with each other on more than one occasion.
104. In addition to Mr Tezgel's statement (albeit we were mindful that he did not attend to give evidence), the evidence of Mr Brewis is a powerful indicator of the appellant and HH being in a gay relationship and his evidence was not challenged by the Respondent. Mr Brewis is independent from all concerned and had no reason to be anything other than truthful in saying he considered the appellant to be gay and

having witnessed him and HH kissing. The fact that the appellant and HH had not mentioned, relied on, or even been aware that Mr Brewis had so witnessed them in our view adds credence to his testimony. We found Mr Brewis to be an honest and straightforward witness who was very clear about what he did and did not know about the appellant and HH.

105. In conclusion, in assessing the appellant's case by reference to paragraph 339L of the Immigration Rules, on the one hand we find that the appellant did delay claiming asylum at the earliest opportunity, and noting the respondent's guidance, there was no reasonable explanation for that delay, noting the gap between when the appellant was openly gay and when he eventually claimed asylum at least two years later in 2017 after receiving the removal notice. On the other hand we find as compelling and certainly more than meeting the lower evidential burden of proof, the unchallenged evidence of Mr Brewis in particular. Whilst HH was challenged as to parts of his evidence, he was not challenged in any meaningful way on the core assertion that he was in a gay relationship with the appellant.
106. In summary and despite concerns around the delay in the appellant's claim of asylum we find that the appellant has established his general credibility for the purposes of paragraph 339L and that the evidence points to his being a gay man.
107. We find that the appellant is in a subsisting relationship with HH in light of the corroborating evidence from Mr Brewis and, to an extent the appellant's parents. Mr Tezgel and Ms Sungurlu also attest to the relationship from the time when they each met the appellant and HH.
108. As stated the Respondent accepts that if the appellant is gay (as we have found he is) he would live openly as a gay man and would have a well-founded fear of persecution were he to be returned to Bangladesh.

## Conclusions

### Asylum

109. On the basis of our findings set out above, we have found that the appellant does have a genuine and well-founded fear of persecution based on being a gay man and that he would only choose to live discreetly in Bangladesh because of fear of criminal prosecution, were he to be returned to Bangladesh .

### ECHR

110. Whilst the appellant has not referred us to evidence as to the specific individualised risk of his death which would otherwise contravene article 2 (noting that there had been gay people in Bangladesh who had been murdered, as referred to in the news article produced and CPIN, but the evidence was not clear enough as to the level of risk for gay people not acting as activists), we are satisfied that he would be at risk of serious harm in breach of article 3, based on the deteriorating environment for members of the LGBTQ community, noting the CPIN (Bangladesh: Sexual

orientation and gender identity and expression) dated April 2020 and pages 233 - 322 of the appellant's supplemental bundle, which include the 2017 CPIN and articles referring to members of the LGBTQ community receiving threats and harassment and suffering incidents of violence, including from members of the police, and extremists.

111. In respect of the appellant's private life, we conclude that, despite the appellant having entered and remained in the United Kingdom unlawfully since 2010, there would nevertheless be very significant obstacles to his integration into Bangladesh. This is solely on the basis of his being gay. The fact that there are such very significant obstacles is a weighty consideration for the purposes of his appeal outside the Immigration Rules under article 8.
112. In short, in weighing up the appellant's claim under article 8, on the one hand, there is a public aim in immigration control. Noting the provisions of section 117B of the 2002 Act, we attach little weight to such of the appellant's private life developed whilst unlawfully in United Kingdom. On the other hand, the appellant's inability to integrate into Bangladesh because of a well-founded fear of persecution and the risk of harm to him is an even weightier factor, and ultimately we conclude that the refusal of his leave to remain would be disproportionate in the context of a claim under article 8.

#### Decision

113. The appellant's appeal on asylum grounds is upheld.
114. The appellant's appeal on humanitarian grounds is upheld.
115. The appellant's appeal on human rights grounds is upheld (articles 3 and 8 but not 2).

#### Anonymity directions

As a result of this determination pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, unless and until a tribunal or court directs otherwise, we have ordered that the appellant and HH are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their families. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. The parties shall be at liberty to apply for discharge of this order.

Signed:

*L Shepherd*

Dated: 8 December 2020

*TO THE RESPONDENT  
FEE AWARD*

The appeal has succeeded. We regarded it as appropriate to make a fee award of £140.

Signed:

*L Shepherd*

Dated:    **8 December 2020**

ANNEX: ERROR OF LAW DECISION



IAC-FH-CK-VI

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

Appeal Number: PA/06685/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 January 2020**

**Decision & Reasons Promulgated**

.....

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**'BB'  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr M Murphy, Counsel, instructed by City Heights Solicitors

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

**DECISION AND REASONS**

**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 him or any member of his 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.*

1. These are a written record of the oral reasons given for my decision at the hearing.
2. This is an appeal by the appellant of the decision of First-tier Tribunal Judge Courtney ("FtT") promulgated on 3 October 2019, by which she dismissed the appellant's appeal against the respondent's refusal on 15 May 2018 of his protection and human rights claims.
3. In essence, the appellant's claims involved the following issues: whether, as a Bangladeshi national he was gay and had had both a relationship in Bangladesh which, when discovered, had led him being forced to flee; and had also had a relationship, which was ongoing, in the UK. The core points taken against the appellant by the respondent related to asserted inconsistencies in whether the appellant had had a relationship in Bangladesh; his claimed fear of persecution while asserting an ignorance in laws prohibiting homosexuality in Bangladesh; the fact that his documented evidence of gay club membership post-dated the appellant's protection claim; and the similarity of letters from supporters. In addition, the respondent did not accept the authenticity or accuracy of hospital treatment said to corroborate ill-treatment in Bangladesh.
4. The respondent further took issue with the late stage at which the appellant claimed asylum, referring to the well-known statutory provision of section 8 of the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, having arrived in the UK in 2010 and having previous claims, on alternative bases rejected but only claiming asylum in 2017.
5. In summary, the respondent did not accept that the appellant is gay.

### **The FtT's decision**

6. The FtT was not impressed by various aspects of the appellant's evidence, finding that social media evidence had been circulated and seen by a limited number of people and was contrived by the appellant's claimed partner. She did not accept the plausibility of the appellant's claim to have engaged in sexual acts in Bangladesh when family members were in the same property ([36]); inconsistencies about the arm on which the appellant claims to have slashed himself with his partner's initial (39); she placed limited weight on a tenancy agreement which merely established potential cohabitation with a claimed partner ([44]); she placed limited weight on photographs which did not depict physical contact between the appellant and his partner; ([47]); and she placed limited weight on membership cards for a gay club which post-dated the appellant's claim. The FtT was particularly impressed by one of the witnesses who appeared to be evasive and when contradicting himself, then complained of headaches. A second witness who claimed to have witnessed the appellant and his partner kissing in front of them could not 'save' the appellant's claim which in other respects, lacked credibility ([67]). The FtT also drew adverse inferences from the lateness of the appellant's asylum claim.



7. Having considered the evidence as a whole, the FtT did not accept that the appellant is a gay man.

### **The grounds of appeal and grant of permission**

8. The appellant lodged grounds of appeal which are lengthy, the gist of which were summarised by First-tier Tribunal Judge Fisher, granting permission on 14 November 2018, as being that the FtT had erred in failing to consider the evidence of the appellant's partner and the second witness, whose honesty was not impugned.
9. The grant of permission was not limited in its scope.

### **The hearing before me**

#### **The appellant's initial submissions**

10. Mr Murphy argued that it was not sufficient for the FtT to rely upon the authority of AB (Witness corroboration in asylum appeals) Somalia [2004] UKIAT 00125, for the proposition that an honest witness could not 'save' a weak case. What was said here is that in the absence of any finding that the appellant's friend was not being truthful, the FtT had failed to explain why she did not accept the appellant's claim to be a gay man, when a third party witness claimed to have seen the appellant in physical contact with his partner; and the appellant's partner had attested in evidence, to the fact of their relationship.

#### **The respondent's submissions**

11. Mr Lindsay asserted that the FtT's decision needed to be read as a whole, which made clear that the FtT did not accept that the appellant and his claimed partner were in a gay relationship and there were findings on various aspects of all of the evidence. There was specifically no requirement to refer to each and every piece of evidence and the self-directions on the evaluation of the evidence were unimpeachable. The FtT was entitled to rely on section 8 of the 2004 Act in relation to the lateness of the appellant's claim of asylum; the limited nature of any photographic evidence at paragraph [47]; and the fact that had the relationship been genuine there would have been more evidence available.

#### **The appellant's response**

12. Mr Murphy argued that while other findings and analysis of the evidence might be said to support the FtT's reasoning, that avoided the central issue, to which there was answer, that the FtT had failed to explain why she did not accept the evidence of the appellant's partner that they were in a gay relationship; or the evidence of a witness who had claimed to have witnessed the appellant and his partner embracing and kissing.

### **Discussion and conclusions**

13. I accept the force of Mr Murphy's argument that whilst the concerns on a number of aspects of the appellant's claim are ones which it was open to the FtT to consider, nevertheless there was a gap which goes to the heart of this appeal, of whether and why the FtT did not accept the evidence of the appellant's partner that he was in a relationship with the appellant. This was despite it being apparent that the partner had given evidence in cross-examination. Whilst the FtT criticised, at paragraph [57], the posting by the claimed partner of material on social media which was said to be contrived, nevertheless the FtT did not go on to analyse the central issue of the partner's oral testimony as to the genuineness of the relationship.
14. I also accept Mr Murphy's submission that in relation to a witness who had, as referred to at paragraph [66] of the decision, claimed to have seen them hugging and kissing in front of him, it was unexplained why that evidence was not accepted or if it were accepted, how that was then consistent with the finding that the appellant is not gay.
15. Where, as in this case, the credibility of the appellant is the central issue in this case, I regard those two crucial gaps in findings and analysis as undermining the FtT's decision. In the circumstances it is unsafe and cannot stand.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains an error of law, such that it must be set aside without any preserved findings of fact.**

### **Disposal**

16. With reference to paragraph 7.2 of the Senior President's Practice Statements and the narrowness of the legal issues, I regarded it as appropriate that the Upper Tribunal remakes the FtT's decision which has been set aside.

### **Directions**

17. The following directions shall apply to the future conduct of this appeal:
  - (a) The Resumed Hearing will be listed before Upper Tribunal Judge Keith or any other Upper Tribunal Judge sitting at Field House on the first available date, time estimate 3 hours, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.
  - (b) The appellant shall no later than 14 days before the Resumed Hearing with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

- (c) The respondent shall have leave, if so advised, to file any further documentation he intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than 7 days prior to the Resumed Hearing.
- (d) The anonymity directions continue to apply.

Signed *J Keith*

Date 7 February 2020

Upper Tribunal Judge Keith