IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12641/2018**

THE IMMIGRATION ACTS

Heard at Field House
On the 2nd September 2021

Decision & Reasons Promulgated
On the 26th October 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR MD A KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M West instructed by City Heights Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant applies appeals, with permission, the determination of First-tier Tribunal Judge Graves promulgated on 7th January 2020 dismissing his appeal against the reasons for refusal letter of the Secretary of State for the Home Department dated 17th October 2018 refusing his protection and human rights claim in the United Kingdom.

© CROWN COPYRIGHT 2021

2. The history of the appeal is that the appellant's appeal was previously dismissed by First-tier Tribunal Judge Raymond in a decision dated 22nd March 2019 which was set aside by Deputy Upper Tribunal Judge Raymond and remitted to the First-tier Tribunal.

3. As pointed out in the grant of permission in this instance, by First-tier Tribunal Judge Kamara, the decision of First-tier Tribunal Raymond was set aside because of a complaint of a four-month delay between hearing and promulgated, incoherence in a failure to consider the successful appeal of the appellant's witness.

4. The grounds of permission were as follows

Ground 1

5. Arguable failure by the First-tier Tribunal Judge in taking into consideration a previous determination which had been set aside. The judge noted at 10 that the appellant's appeal was listed as a de novo hearing but had taken evidence into account at 40 and 44 from the determination of Judge Raymond. For example "Mr Hart attended the previous hearing and while that decision had been set aside, I find it relevant to record that he denied in oral evidence that he had ever been in a sexual relationship of any kind with the appellant". At 44 the judge recorded "Mr Hart has told this Tribunal at the previous hearing that he too had provided supporting statements for other appeal hearings".

6. It was notable that the witness Mr Hart was not present at the appellant's appeal hearing and it was held in **R and the Secretary of State for the Home Department ex parte Aissaoui [1997] Imm AR 184** at 187 that an Adjudicator should not be "wrongly influenced in any way by" a previous determination which has been set aside and the Court of Appeal made it clear in **Rafiq Swash and the Secretary of State for the Home Department [2006] EWCA Civ 1093** that the second Adjudicator must be careful not to be influenced by the discredited findings.

7. The judge was wrong to refer to those previous findings bearing in mind the witness was not present and able to respond to the adverse finding.

8. Permission was requested to rely on the unreported decision of the Upper Tribunal in **MN and the Secretary of State for the Home Department** AA/00141/2016 that a second adjudicator should not go behind the determination of an earlier adjudicator. The application was in accordance with paragraph 11.2 of a 2018 Practice Direction which directs that the appellant should fulfil the following criteria:

   (a) include a full transcript of the determination;

   (b) identify the proposition for which the determination is to be cited; and

   (c) certify that the proposition is not to be found in any reported determination of the Tribunal, the IAT or the AIT and had not been superseded by the decision of a higher authority.

Ground 2

9. The judge made numerous findings at 18 et seq but failed to give anxious scrutiny to the evidence.

10. At 22 the judge states that the appellant was inconsistent in how his "family" found out about his sexuality because he stated at question 4.1 of his screening interview ("SCR") that his family found out through social media, but in his asylum interview ("AIR") that they found out during the incident of 2004 in the hostel.

11. The appellant however unequivocally did not say that his family found out in 2004. Only the appellant's brother-in-law and mother arrived at the scene of the incident in 2004, [question 66 in AIR] and not his whole family as the judge suggests.

12. Secondly at paragraph 22 the judge stated, the appellant's family were told what had happened and the assumption by the judge was that *everything* was told but this was never clarified by the interviewer. Indeed the appellant at Q68 of his AIR responded when asked if his family realised about his sexuality by saying, no they did not realise, and question 65 of the AIR was never clarified by the interviewer and it was difficult to understand due to a lack of punctuation or grammar within the interview. The appellant stated "I was bleeding so much if he dies they took me to the local clinic and I got stitches later they called my family and told my family they came and told them what happened".

13. From that answer it was manifestly clear who was told what. For example the appellant could reasonably have meant his family were told about his stitches and being taken to the local clinic as being told about his homosexual nature of the incident.

14. At paragraph 28 of the witness statement dated 27th November 2018 the applicant states that his "mother and brother-in-law did not inform other family members about the fight, because being in a fight, in general is shameful".

15. Again at 22 the judge assumes that the fact the appellant's mother wanted the appellant to see a mullah for guidance bears no reference to seeing a mullah for guidance on sexuality. The appellant did not say that and neither does the interviewer clarify the issue and it was clear that the resulting shame on the appellant's family was a result of the fight not because of anyone knowing about his sexuality.

16. The judge again repeats at the end of 22 that his family were told everything about the incident but nowhere in the AIR is that assertion to be found.

17. The judge had simply selected parts of the appellant's AIR and held them against him without properly looking at what the appellant has actually said and without anxious scrutiny.

18. Similarly at paragraph 23 the judge states with reference to when the appellant last spoke to his family that he "last spoke to them in 2016, AIR 23" however that was not an accurate record of what the appellant actually said at question 23. His response was "2016. I can't remember exactly". The judge at 23 then used that date of 2016 to undermine the rest of the dates asserted by the appellant.

19. In fact the appellant's solicitors had prior to the hearing corrected this error in his AIR at question 23 by stating as follows in his undated fifteen page grounds of appeal

> "30. In response to paragraph 36 of the refusal the appellant confirms that he did not have any contact with his family since September 2015 …".

20. Paragraph 36 of the reasons for refusal letter refers to the answers the appellant gave at question 153, question 154 to 161 and question 19 to 25 where the appellant gives conflicting dates.

21. The judge however failed to consider all the psychological reports of Dr Sreenan dated 1st August 2018 which was relevant as per **Mibanga [2005] EWCA Civ 367**, which made clear that the medical evidence offers a factual context in which it may be necessary for the factfinder to survey the allegations placed before him and such context may prove a crucial aid to the decision whether or not to accept the truth of them.

22. The report of Dr Sreenan made it clear that the appellant was suffering from a diminished ability to think or concentrate. The judge paid lip service to the taking into consideration of the appellant's mental health but had not done so and it was clear the appellant stated at question 23 that he could not remember exactly.

Ground 3

23. The judge failed to approach the evidence in the correct manner.

24. At paragraph 24 of her determination the judge held against the appellant a perceived lack of important detail that might reasonably be expected in relation to the threats the appellant received.

25. The judge states the appellant did not give any detail about the social media threats he claimed to have received. That was simply wrong because at question 29 of the AIR the appellant specified that "I will [sic] receive loads of threats when I used social media like Instagram [sic] or Facebook [sic] I stopped using them. I saw nasty messages with a neck of an animal bleeding those kinds of pictures".

26. The interviewer at paragraph 30 does not ask for any more specific detail about the threats. It was wrong for the judge to state the appellant's answer lacked detail when the appellant was not asked in the AIR.

27. The judge stated at paragraph 24 that the appellant "said in his first interview that his family wanted to kill him. When asked about that at the second interview, he

only said his mother hung up the phone in September 2015 and they did not speak again". The suggestion by the judge is that the appellant did not mention any threats from his family in the AIR but that was wrong because at question 161 the appellant stated that "they told me … they will chop me up with a knife, they will kill me".

28. The judge at paragraph 24 wrongly conflated threats which the appellant received on social media from unknown persons and threats he received from his family. These were two separate and distinct issues in the appellant's appeal, see question 29 as against questions 158 to 161.

29. The judge's adverse credibility findings was again misconceived. The judge states that in the appellant's screening interview at question 4.1 that only certain people knew about his sexuality, but at question 28 of his AIR that "suddenly everybody knows about it". That was misleading because in the appellant's screening interview at question 4.1 he is only asked if any of his "family know in Bangladesh". The appellant's answers list only people close to him who know about his sexuality but he was not asked the question "who knows about your sexuality" as the judge's finding at 25 implies.

30. The judge cannot say the appellant had been inconsistent about who knew about his sexuality by comparing question 4.1 of the screening interview and question 28 of the AIR as the two questions were entirely different.

31. The judge had simply misconstrued the evidence.

Ground 4

32. The judge failed to give adequate reasons for her findings per **MK (duty to give reasons) [2013 UKUT 641** and entered the realm of speculation at paragraph 26 where she stated, "I find it difficult to understand how everybody in the community at home knew, that he had no concerns of the Bangladeshi community here, who will have links with people back home, know about his sexuality".

33. There was no evidence whatsoever to the effect that the Bangladeshi community here would have links with people back home. That was speculation.

34. Secondly it was simply wrong to state the appellant had no concerns about the Bangladeshi community but at question 149 the appellant stated precisely that.

35. The appellant at question 149 stated that "I do get fear from some people in east London there is a big BAN community we are still a bit discreet from our people".

36. It is clear the appellant had concerns about the UK Bangladeshi diaspora knowing about his sexuality and was thus discreet and the judge had overlooked or ignored parts of the appellant's evidence and failed to properly reason the findings.

37. At 26 the judge speculated that the family the appellant lived with, a Bangladeshi family would have not been kinder or genuine enough to allow the boyfriend to stay.

Thus it was inappropriate to state that a family would be less likely to offer accommodation to a gay man (that is not what is being said).

38. Simply because in Bangladesh same sex activity is outlawed under the penal code did not equate to all Bangladeshis being intolerant, that was perverse and inappropriate. As stated in **SB Sri Lanka and the Secretary of State for the Home Department [2019] EWCA Civ 160** a material error in logic is an error of law.

Ground 5

39. Again the judge simply misconstrued the evidence displaying an over failure to apply anxious scrutiny. At 27 the judge stated

> *"The appellant was equally inconsistent about important details of the event that triggered the problems with his family. He told the respondent at interview that the police were called, AIR 64 and then they were not called, AIR 65 and that was an incorrect reading of the evidence because at question 64 the appellant refers to the caretaker who came … then called the police, whereas the appellant is stating by reference to his family that 'luckily they did not call the police because I was injured'".*

40. At 28 the judge made an assertion that it was

> *"Incredible that the college would not have picked up on his lack of attendance, and would have allowed him, without further communication with his family, to just sit exams without attending classes for two years, or that his family would not have wondered why he had moved back home and had not noticed he had stopped attending his classes".*

41. The appellant was never even questioned either by the judge or by the HOPO in cross-examination about whether attendance at classes was mandatory or not.

42. To that end the Court of Appeal judgment in the case of **Secretary of State for the Home Department and Maheshwaran [2002] EWCA Civ 173** at 4 which stated "a failure to put to a party to litigation a point which is decided against him can be grossly unfair and lead to injustice. He must have a proper opportunity to deal with the point".

43. Secondly and in any event that finding by the judge at 28 was arguably perverse because there was no evidence before the Tribunal of the structure of the course he was on. The appellant reasonably explained after the incident in 2004 he "stopped going to college and just went in for my exam" because he was "really so scared", question 68 of the AIR.

44. There was arguably nothing wrong whatsoever with the explanation at question 68 and the appellant had every reason not to go into college after 2004 due to what had happened and there was nothing incredible as the judge put it about that aspect of the appellant's accoutn.

45. At 29 the judge stated that she found it "difficult to believe he would have taken such a risk" when referring to the appellant aged 19 watching same sex pornography in a

public internet café. The appellant's explanation at question 38 was that this took place in private booths and in his witness statement at paragraph 26 (reiterating the same point) it was entirely reasonable and not worthy of discredit as the judge made out at paragraph 29.

46. Again at 30 the judge entered into the realm of speculation by stating that because the appellant could not precisely state how many sexual partners he had between 2010 and 2017 that was somehow vague because "each relationship he has had with another man will be particularly significant because of the cultural, social and religious stigma attached to openly practising his sexuality, and the possibility of attracting adverse attention from the Bangladeshi diaspora".

47. There was no evidence to support this finding by the judge. Indeed at question 92 of the AIR the appellant stated when asked how his behaviour regarding his sexual orientation had changed since coming to the UK he stated in effect it was a "completely different world, it is open …", "you can express yourself, you can go out with a friend, you can come and go as you feel".

48. It was not the case that each relationship was particularly significant. That was simply speculation and was not put to the appellant.

49. At paragraph 31 the judge recorded that the appellant's evidence from the AIR and completely misconstrued it. The judge stated that the appellant was "vague and inconsistent about the relationship [with Hector]", calling it a "gay relationship", AIR 23. That was untrue.

50. If anything the appellant was arguably badgered and hectored by the interviewer in the interview and the grounds invited the reader to see the questions asked by the interviewer at questions 120 to 129.

51. He asked incessantly what type of relationship it was with 'Hector'. Attempts to frame the relationship as a serious relationship or boyfriend of the appellant, question 129 and the appellant had to repeatedly answer that it was not a serious or proper relationship and his answers at questions 120 to 129 were entirely consistent and unambiguous and the appellant had been entirely consistent and in fact it was the interviewer who was arguably badgering him.

<u>Ground 6</u>

52. The judge arguably erred in failing to ascribe any or significant weight to the fact that both witnesses, Mr Rahman and Mr Habib had previously been believed and found credible by a competent authority. The judge at 43 considered the evidence of both but arguably failed to apply what was stated by the DUTJ in his decision of 23rd May 2019.

53. In the determination of First-tier Tribunal Judge Neville of 10th April 2018 he stated that he found "the appellants [Mr Md Sanvi Rahman and Mr Md Rezazul Karim

Fakir] easily meet the low standard of proof as to their sexual identity and their relationship".

54. The judge failed to ascribe sufficient weight at paragraph 43.

Ground 7

55. At paragraphs 46 to 47 the judge dealt with the issue of Section 8 and the late claiming of asylum and obliquely refers to the Home Office's Asylum Policy Instruction but errs in stating that in respect of delay in making his asylum claim "the appellant has not alluded to any such feelings or reluctance due to a fear of consequences" when at 162 of the AIR when he is asked the question "why did you not claim asylum at this time", his response was "because I was so stressed".

56. The judge had simply overlooked the evidence.

Ground 8

57. The judge failed to properly consider the thirteen page psychological assessment of Dr Sreenan within the determination. This report was not challenged by the Secretary of State to save in an Article 3 ECHR context which the appellant did not pursue.

58. In the Court of Appeal case of **Mibanga** it was confirmed that a factfinder must not reach his conclusion before surveying all the relevant evidence.

59. The Court of Appeal held that it was incumbent upon the Tribunal to consider all evidence, no less expert reports and make findings on the report before arriving at its conclusion, and the judge did not do that.

60. Dr Sreenan stated at internal page 3 of 13 of the report that Mr Khan's symptoms of depression and anxiety were a result of the fear of persecution "due to his sexuality and mistreatment and betrayal of his previous legal representatives and the rejection from his family" but the judge made no findings as to the psychologist's linking of the appellant's depression with his sexuality.

61. The judge similarly made no findings in relation to Dr Sreenan's assertion, internal page 10 to 13 of the report that

> *"There seems to be a direct correlation between Mr Khan's fear of persecution due to his sexuality, the mistreatment and betrayal from his previous legal representatives, the rejection from his family, and the emergence of symptoms concordant with reactive depression".*

The Hearing

62. At the hearing before me Mr West stated that he did not propose to press ground 1. Although he did not abandon it, he agreed it was not impermissible to lift evidence as recorded by the previous judge. It should be noted that the witness referred to at

paragraph 40 of the judge's determination was not at the appeal hearing and a section had been merely lifted from what Judge Raymond had said at paragraphs 229 onwards. Thus the findings at paragraphs 40 and 44 were findings from Judge Raymond.

63. In relation to ground 2, Mr West stated that at question 66 the emphasis was on the fight, not about homosexuality. At ground 3 the appellant did give detail within his interview contrary to paragraph 47 of the decision (check).

64. Ground 4 was speculation on behalf of the judge. The judge assumed the link between those in the Bangladesh community here and in Bangladesh itself and had made a flawed subjective normative assessment of the evidence.

65. Judge at 5 also misconstrued the evidence when looking at questions 64 and 65 of the interview. It was not clear who was calling the police. The appellant was not asked about attendance at college. Paragraph 71 of the grounds highlighted a particular issue with the decision. The appellant had answered this query at question 92 of his interview and what the judge said at paragraph 30 was heteronormative. Paragraph 31 of the decision misconstrued the evidence. The judge was saying that this was a serious relationship and the judge was merely "parroting" the Secretary of State and the appellant had never said it was serious.

66. In terms of the psychologist's report it is very easy just to mention it at the outset of the decision and the judge had gone into the minutiae of the detail of the interview but had failed to actually apply the psychology report and merely paid lip service to the medical health issues.

67. Further at paragraph 23 the judge latched onto the appellant's answer in relation to 2016 and the appellant was only three months out. He had actually stated that it had occurred in September 2015 and was only a small inconsistency.

68. Mr Avery relied on the Rule 24 response, save for the reference to the delay in promulgation which clearly referred to Judge Raymond's decision.

69. Judges are allowed to refer to evidence of the previous determination and its findings which are set aside. The complaint is the judge adopted the findings but merely had pointed to obvious inconsistencies which could have been dealt with by the appellant but were not and further there was no attempts to obtain further evidence from Mr Hart. Merely similar conclusions were reached but on the face of it the appellant was adducing evidence of Hart to show that he was the same, a homosexual but that was not what Mr Hart said.

70. The other attacks on the findings were questions on interpretation of the evidence and the interpretation was clearly open to the judge. There was nothing to undermine the overall credibility of the findings. At paragraph 24 of the determination the judge was entitled to conclude that the family were told what happened and that the evidence could be interpreted in a different way did not mean that the judge was incorrect.

71. Going to paragraph 22, it was entirely reasonable for the judge to infer that people in Bangladesh community might have contact with those in Bangladesh itself. That was not controversial.

72. In relation to paragraph 27 of the decision and the police being told, again the interpretation of the evidence was entirely open to the judge.

73. It is clear that the medical evidence was taken into account by the judge and he explained when it was likely to have an effect. Overall there was no material error.

74. Mr West responded that paragraph 44 was a finding which had been lifted from Judge Raymond's decision.

75. He agreed that the overarching point that the questions were one of interpretation but in some cases the judge had failed to recognise evidence and so there were also omissions. In this case the judge had used her own interpretation to make out inconsistencies when on a fair reading there may have been an alternative interpretation and that was not fair. If there were alternative interpretations, it could not be fair to say that there were inconsistencies.

Analysis

76. In order to assist in explaining an error of law R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982 set out at paragraph 25 as follows:

> *"…It may be convenient to give a brief summary of the points of law that will most frequently be encountered in practice:*
>
> > *i) Making perverse or irrational findings on a matter or matters that were material to the outcome ("material matters");*
> >
> > *ii) Failing to give reasons or any adequate reasons for findings on material matters;*
> >
> > *iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters;*
> >
> > *iv) Giving weight to immaterial matters;*
> >
> > *v) Making a material misdirection of law on any material matter;*
> >
> > *vi) Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;*
> >
> > *vii) Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.*
>
> *26.Each of these grounds for detecting an error of law contain the word "material" (or "immaterial"). Errors of law of which it can be said that they would have made no difference to the outcome do not matter. This need to identify an error of law which would have made a material difference to the outcome was at the relevant time underscored by Rule 17(3) of the Immigration and Asylum Appeals (Procedure) Rules 2003, which provided that:*
>
> > *"(3) The grounds of appeal must –*

> *(a) identify the alleged errors of law in the adjudicator's determination; and*
>
> *(b) explain why such errors made a material difference to the outcome."*
>
> *Part 4 Perversity, the failure to give reasons, and proportionality*
>
> *27. It may be helpful to comment quite briefly on three matters first of all. It is well known that "perversity" represents a very high hurdle.*

77. As recorded in **UT (Sri Lanka)** [2019] EWCA Civ 1095 at paragraph 19, '*Baroness Hale put it in this way in AH (Sudan) v Secretary of State for the Home Department at [30]:*

> *"Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."'*

78. In relation to ground 1, Mr West, rightly in my view, conceded that this was not his strongest ground. It was entirely open to the judge to refer to the oral evidence of Mr Hart, a masseur, which was given at the previous tribunal. That is the case even if the decision were set aside. I recognise that the previous tribunal's decision was set aside owing to delay which might suggest the judge had forgotten or failed to record the evidence properly, but the oral evidence from that hearing before Judge Raymond is in this instance, very clearly recorded in the detailed record of proceedings on file. The appellant had produced evidence in relation to Mr Hart to show that he the appellant was gay. Mr Hart denied at the previous hearing that he had a physical sexual relationship with the appellant. That evidence is not undermined by the setting aside of Judge Raymond's decision. It was open to Judge Graves to rely on the contradiction in the evidence. It was a matter for the appellant as to whether he called Mr Hart to attend the hearing before Judge Graves or to request a further statement. Neither occurred. It was open to the judge to rely on that aspect of the evidence to found a contradiction at paragraph 40 of the decision. I thus make no ruling on the unreported decision.

79. The evidence assessed at paragraph 44, that Mr Hart had given evidence in other appeals, was also evidence to be found on file and not necessarily within Judge Raymond's earlier set aside decision.

80. Ground 2 advanced that the judge failed to give anxious scrutiny to the evidence albeit that the judge made numerous findings. The appeal grounds ran to 98 paragraphs no doubt to emphasise the litany of errors the judge had committed but the grounds appeared to be an expansive and elaborate attempt to detail error in the judge's decision by focussing on each finding and an attempt to extend the interpretation of the evidence in an untenable manner. Mr Justice Haddon Cave (now LJ) in **VHR (unmeritorious grounds) Jamaica** [2014] UKUT 367 (IAC) held

> '*Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet*'.

81. At 18 in the first paragraph the judge factored into her assessment, the appellant's possible trauma and abuse, when finding that the appellant's responses throughout his interview, were 'vague and inconsistent'. The asylum interviewer was repeatedly

criticised in the grounds as having failed to explore aspects of the appellant's evidence but first, that is not a criticism that can be levelled at the judge, and it is open to the appellant to put his case forward through his statement (oral or otherwise), but secondly, the interview took place over four hours and ran to 168 questions. Nor is it for the judge to 'enter the arena' to adopt the role of questioner.

82. That said, the interpretation the judge gave to the evidence was entirely open to her. There were clearly inconsistencies in the account. The appellant clearly stated at question 4.1 of his screening interview that his mother and relatives and some friends knew about him being gay from 'face book and social media'. By contrast, at AIR q65 as the judge stated, the appellant described an incident where he was caught in a sexual encounter with another male at a hostel and his brother-in-law and mother came, (and when asked if the 'family realised about your sexuality?' he responded 'no they did not realise'). The appellant specifically stated in response to question 65 'they [the hostel] called my family and told them what happened [the sexual encounter]'. The criticism that 'the family' was not told at that time is just not sustainable on the evidence itself. There is a direct contradiction in the appellant's responses as to how the family found out he was gay, and the judge was right to find so. The logical sequence of the questions must be taken into account and the sensible reading is that deduced by the judge not that maintained in the grounds.

83. Indeed the judge at paragraph 22 states that she did raise a question to clarify who knew about his sexuality and the judge reasoned 'when it was put to him it was not believable that no one knew he was gay, yet everyone at the hostel did, and they had all told his family, he then said at interview that after all his family did know about it'.

84. The reference to the muller came after the reference to the family being 'told what happened' [about the sexual encounter], and in response to the question 'what did they say to you?'. The logical flow of the questions and answers relate the appellant's sexuality. It was entirely open to the judge to state that the appellant's account changed and that the revelation of sexuality to family was a key event and he 'should be able to be consistent'. Whether the word 'everything' is used or not, the appellant clearly stated that the family, which can include the brother-in-law and mother, were told what happened (the sexual encounter) and it was simply not credible to the judge, understandably so, that he was not asked by them about his sexuality after that event [AIR 69].

85. The judge has not simply selected parts of the interviews to support her view. The reading of the evidence was a logical and sensible reading in the context of the interviews and statements. The grounds dissect the analysis of judge's assessment of when the appellant last spoke to his family. In interview when asked the appellant stated '2016. I can't remember exactly'. This suggests the exact date in 2016 was inferred. The appellant stated at AIR Q153 that his family discovered he was gay in September 2015 and yet they continued to support him financially until August 2016 while wanting to kill him (as he said in the first interview) for being gay. That contradiction the judge was entitled to deduce. It may be that the date

was corrected by the solicitors in the grounds of appeal but that does not undermine the findings of the judge.

86. I repeat, the judge at the outset at paragraph [18] made clear reference to factoring into her assessment causation when considering the account of an anxious asylum seeker who may have been the victim of trauma. It is not arguable that the judge failed to do so.

87. In relation to ground 3, that the interviewer does not explore more detail about the threats on social media did not prevent the appellant from detailing those threats. As the judge recorded at paragraph 38 the appellant, when asked about evidence of the online threat stated the '*he had deleted all his Facebook and Instagram accounts and so could not produce that*'. Having made a one-line reference to the threats at AIR q29 the appellant when asked at q159 'how have they threatened you?' with reference to the family itself stated they hung up the phone. Again the judge was entitled to take the approach that she did at paragraph 24. In fact at Q161 the appellant interpreted 'they can cut me off' himself from his own mind but the threats from the family itself did not include they would 'chop' him 'up'. It was open to the judge to infer from the evidence as she did. At the close of the substantive asylum interview, the appellant confirmed that he felt fit and well and it was recorded that he confirmed he understood the interview. Again at AIR q28 he stated, 'everyone knows my identity now'. That is clearly related to his sexuality.

88. The judge did not misconstrue the evidence. The appellant was inconsistent and vague. I find the criticisms semantic, subjective and not sustainable when reading the interviews as a whole and the decision as a whole. There is a raft of adverse credibility findings which the judge was entitled to make.

89. In relation to ground 4, and the charge of inadequate reasoning as held in **UT (Sri Lanka)** at paragraph 26

'If an error of law based on inadequate reasoning is to be identified, however, one must venture beyond general, literary criticism of this kind. In R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19, Lord Hope said (at paragraph 25):

"It is well established, as an aspect of tribunal law and practice, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. The appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it."

90. To suggest, as the grounds do that the Bangladesh community here might not have links with the community in Bangladesh is surprising and speculation, particularly as the judge stated the brother attends the Madrassa, which is attached to a mosque, [26] and takes the appeal no further forward.

91. The judge did not make the finding on the basis that the family would not have been kind but on the basis that it would have been uneconomic to allow one person but not two to reside rent free in their home. That was entirely open to the judge.

92. Ground 5. The appellant was clearly inconsistent as to whether the police were called to the sexual encounter incident at college, and it was open to the judge to criticise the account. It was logical and reasonable to infer that the appellant's account that he did not attend college and only sat his exams, was not credible, when that period of failure to attend extended to two years. That evidence was derived from the interview made available to the appellant and it was open to counsel to re-examine on the point. It may be necessary for the judge to ask for clarification on key issues but not on every minute point.

93. As seen from **R (Iran)** the hurdle for perversity is high; the reasoning was based not on whether the appellant was scared but the credibility of the college not investigating and that the appellant's family did not notice him not attending.

94. Whether the explanation (later produced) as to the appellant's use of private booths whilst watching pornography online at an internet café was correct, the judge gave sound reasoning stating a member of staff might walk in or view his online history and this was too much of a risk. That deduction comes nowhere near the high threshold for perversity.

95. It is not speculation on the judge's part to conclude that not being able to name any of the 'others' (sexual partners) was not vague. As the judge stated the appellant's account was that he only had sexual partners after much 'soul searching' and thus would have expected greater clarity from him as to numbers bearing in mind the asserted 'cultural, social and religious stigma' attached. The grounds attempt to recast the evidence and its interpretation. It is for the judge to make the decision not the representative.

96. The appellant did contradict himself about his first relationship between [AIR q104] and [AIR Q124]. The grounds advance that the judge, in effect could not rely on the interview because on the one hand it did not explore sufficiently and yet on the other and in this instance, the appellant was 'badgered and hectored'. He was merely asked about the contradiction in the interview as to when his first relationship took place, which the appellant contradicted, and his explanation was that his former relationship with Hector was not a relationship albeit that he had literally described it as a 'gay relationship' was simply not credible. It was open to the judge to construe the evidence as he did.

97. Not least as the judge recorded the appellant had been found, in a previous Tribunal decision, to have 'breached the provisions of the [Immigration] Rules relating to deception' (using false documents in a fraudulent application) and had not attempted to challenge that earlier decision. The judge correctly directed himself that this did not necessarily undermine the credibility in this appeal, but it was a factor. That was unassailable.

98. Ground 6. It was specifically put to the witnesses that they had been colluding outside court. As the judge stated at paragraph 44, in relation to the witnesses that although they vouched for the limitation of their contact and did not meet except as

set out in their statements, they had in fact attended ELOP (a holistic lesbian and gay centre) on the same day and for the same sessions and that from the photographs there were not many attendees. The judge was entitled to give the weight that he did to their evidence reasoning that he did not believe that the witnesses did not know each other and had agreed to provide evidence for the appeal [45]. The judge found at paragraph 39 that the emails about the appellant attending sessions with ELOP commenced after he claimed asylum. Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412.

99. Ground 7. In the context of the overall delay in claiming asylum of eight years, the judge was entitled to factor in this as damaging the appellant's credibility. The appellant actually states in interview 'because I was so stressed, I did not know I could claim it'. The judge gave sound reasons for disbelieving that a highly educated person embedded in the gay community and particularly the Bengali gay community would not know he could claim asylum. That follows the appellant's previous encounters with the immigration authorities.

100. Ground 8. The judge threaded references to the appellant's mental health throughout the decision and at the outset specifically acknowledges the role that anxiety and trauma can play in assessing evidence. It was not mere lip service because he applied the evidence. At paragraph 20 the judge notes the difficulties that lapse of time and mental health problems can cause, but cogently reasoned this did not explain why '*the appellant's evidence was vague in connection with matters I would expect him to be able to give detailed evidence upon such as his own thought and feelings, relationship, or key events in his life and how they transpired*'. The judge reaffirmed that he had considered the evidence holistically.

101. As confirmed in **MN v Secretary of State for the Home Department** [2020] EWCA Civ 1746 at paragraph 108

> *'If it is evident that the tribunal has in fact taken the expert evidence into account as part of the primary assessment, it does not matter at what particular point in the decision it is specifically referred to. The point is well made at para. 21 of the decision of the AIT in HH (Ethiopia)*[17]*:*
>
> > *"… [T]here is a danger of Mibanga being misunderstood. Judgments in that case are not intended to place judicial fact finders in a form of forensic straitjacket. In particular the Court of Appeal is not to be regarded as laying down any rule of law as to the order in which judicial fact finders are to approach the evidential materials before them. To take Wilson J's cake analogy, all its ingredients cannot be thrown together into the bowl simultaneously. One has to start somewhere. There is nothing illogical about the process by which the immigration judge in the present case chose to approach his analytical task."*

102. The judge made clear reference to the appellant's mental health difficulties in the decision and clearly, from a careful reading of the decision as a whole, understood the relevant legal approach to be adopted.

103. The judge unarguably reasonably construed the evidence and gave sound reasons in a comprehensive decision for rejecting the account overall. I find no material error of law in the decision.

Notice

The appellant's appeal remains dismissed. The First-tier Tribunal decision will stand.

No anonymity direction is made.

Signed *Helen Rimington* Date 1st October 2021

Upper Tribunal Judge Rimington