



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12032/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 19<sup>th</sup> September 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

MK  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms E Sanders, Counsel, instructed by Milestone Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of judge of the First-tier Tribunal Telford, first promulgated on 30 January 2018, dismissing the appellant's appeal against the respondent's decision of 8 November 2017 refusing his protection claim and his human rights claim. Although the First-tier Tribunal purported to issue a further decision under the 'slip rule' provisions contained in rule 31 of the Tribunal

Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014, for reasons soon explained, the purported decision of 16 February 2018 cannot be regarded as an appealable decision.

## **Background**

2. The appellant is a national of Pakistan, date of birth 7 July 1990. He entered the United Kingdom on 5 September 2010 as a student but overstayed. He claimed asylum in May 2017 fearing persecution in Pakistan on account of his sexual orientation. In brief summary, the appellant claimed he was bullied at school because of his mannerisms. He realised he was gay when he was 13 and googled his mannerisms. The appellant did not disclose his sexual orientation when he lived in Pakistan and never had any relationships in Pakistan. After arriving in the UK the appellant disclosed his sexual orientation to his father when the father said he wanted the appellant to marry a cousin. The appellant's father and brother sent messages threatening to kill him if he returned to Pakistan. The appellant claimed to have had three partners in the UK. He feared he would be persecuted by his family, the Muslim community and the government if removed to Pakistan.
3. The respondent did not believe the appellant was gay. The respondent did not find credible the appellant's account of becoming aware of his sexual orientation, and found inconsistencies in his evidence further undermined his credibility. There was, moreover, little evidence of the appellant's claimed relationships in the UK.

## **The decision of the First-tier Tribunal**

4. The appellant provided a principle and supplementary bundle for his appeal hearing. The judge heard oral evidence from the appellant and considered his written statement.
5. The judge did not accept the appellant was gay, and found that even if he was gay, the appellant would live discreetly in Pakistan not because of a fear of persecution but because of family and social pressures. Both these findings were premised on the judge's assessment of the appellant's credibility. As the judge stated at [26], the issue of credibility went to the heart of the appeal.
6. At paragraph 30 of the decision promulgated on 30 January 2018 the judge stated,

I have to say that he gave a very odd account of sexual self-realisation. He failed to describe and sort of cogent awareness of this or what might be termed a "journey" into self-discovery in the realm of sexuality. This undermines his core claim.
7. The judge noted the absence of supporting evidence for the appellant's account, including the absence of any evidence of steps taken by the appellant to marry a

former partner in the UK. The judge stated that the only evidence the appellant produced which could be linked to typical gay activity dated from 2017, the year he claimed asylum.

8. At [37] the judge stated,

His partner of more than a year – “Umar” was not prepared to provide evidence of any nature. There was no explanation for this. His lack of knowledge of Umar, his surname, whereabouts history, immigration status and indeed, anything to do with his life at all undermines his claim to be in a partnership with him or intend to marry him in a same sex wedding.

9. And at [38] the judge stated,

Wider than that, there is similarly no evidence of anyone else as partner, boyfriend or lover in the UK or elsewhere. He failed to explain why this was so.

10. The judge considered other evidence produced by the appellant, but rejected this evidence on the basis that it was insufficiently probative of the appellant’s sexual orientation.

11. Then at [54] to [58] the judge set out in substantial detail his assessment of the respondent’s guidance on family and societal pressure on homosexuals in Pakistan and applied this guidance to the appellant’s account.

12. The judge concluded by drawing an adverse inference under section 8 of the Treatment of Claimants, etc.) Act 2004 based on the delay in claiming asylum. Having disbelieved the appellant, the judge dismissed the appeal.

### **The second decision**

13. The judge’s decision was signed by him on 18 January 2018 and it was promulgated on 30 January 2018. A 2<sup>nd</sup> decision was however promulgated on 16 February 2018. The 2<sup>nd</sup> decision had new points added at [30], [35], and [38], and removed [54] to [58].

14. [30] now read,

I have to say that he gave a very odd account of sexual-realisation. He failed to describe any sort of cogent awareness of this or what might be termed a “journey” into self-discovery in the realm of sexuality. To simply say he discovered his sexuality from Google is not credible. He ventured that because he was called trans or transgender at school he used a search engine on the Internet – Google - found that word and then took the definition or meaning of it and applied it to himself. This is not plausible. Plausible in the context of an appellant making a statement of fact on the low standard of proof requires something to be more than merely possible. If he were seen as gay by others at school, he would have had a very much more difficult time. To not realise his own inner feelings until he was able to

read about it on the Internet does not strike me as plausible as he would have had other feelings distinct from and apart from a reaction to being name called. This undermines his core claim.

15. [38] now read,

Wider than that, there is similarly no evidence of anyone else as partner, boyfriend or lover in the UK or elsewhere. We have all heard that the one core element of a marriage is love. Love is distinctly missing from all of his talk about gay sex and marriage intentions. He failed to explain why this was so. I find it is because he is missing and understanding of all that it would mean. That lack of understanding undermines his claim to be gay.

16. The whole of the judge's assessment of the respondent's guidance was removed from the 2<sup>nd</sup> decision.

17. A note at the end of the 2<sup>nd</sup> decision read,

This Decision was originally sent for promulgation 23 January 2018, was in fact promulgated 30 January 2018 but immediately record 31 January 2018 under the slip rule due to typing errors in the body of the Decision. It was then unfortunately sent to the wrong FtJ Judge in error and only returned to me yesterday 9 February 2018.

18. The appellant maintains, and it has not been challenged, that he only received the 1<sup>st</sup> decision.

### **The grounds of appeal**

19. The grounds of appeal relate to the 1<sup>st</sup> decision. They contend, inter alia, that the judge misdirected himself in law when he held that "the driver" of a gay person's decision to live "discreetly" was definitive of his right to protection under the Refugee Convention, that the judge failed to set out the appellant's oral evidence, that the judge failed to consider relevant evidence in concluding that no reason was provided for the non-attendance of "Umar Butt" (in his statement the appellant did explain how his relationship with Umar ended and their loss of contact), that the judge's finding at [30] was insufficiently reasoned or articulated, and that the judge misdirected himself in his assessment of the background evidence and the respondent's guidance.

20. Permission was granted on all grounds.

### **The hearing on 18 June 2018**

21. At the 'error of law' hearing on 18 June 2018 before Judge Jackson it soon became apparent that the appellant's representative was unaware of the 2<sup>nd</sup> decision, and that she needed an opportunity to consider the validity of the decisions and whether any amendment to the grounds of appeal needed revision. The matter

was listed for a Case Management Review (CMR) hearing and the parties were given permission to file and serve written submissions as to the validity of the First-tier Tribunal decisions. The Tribunal received written submissions from Ms Sanders which relied on the decision in **Katsonga ("Slip Rule"; FtT's general powers)** [2016] UKUT 00228 (IAC) and which contended that the 2<sup>nd</sup> decision had no legal effect because the changes made between the decisions amounted to substantive alterations and not merely the amendment of typographical errors.

### The hearing on 14 September 2018

22. At the CMR hearing Ms Sanders adopted and expanded briefly upon the decision in **Katsonga**. Ms Everett did not express a particular view as to whether the First-tier Tribunal lawfully utilized the slip rule. Having considered both of the First-tier Tribunal decisions I was satisfied that the First-tier Tribunal had unlawfully utilized the slip rule.
23. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014 reads,

#### Clerical mistakes and accidental slips or omissions

31. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by –

(a) providing notification of the amended decision or direction, or a copy of the amended document, to all parties; and

(b) making any necessary amendment to any information published in relation to the decision, direction or document.

24. In **Katonga** the Upper Tribunal considered the slip rule and concluded as follows:

9. There appears to be no clear authority on the meaning and use of the "Slip Rule". It is, however, instructive to consider the authorities on the meaning of CPR 40.12, allowing the Court to correct at any time "an accidental slip or omission in a judgment or order". Despite the width of the wording in the CPR, there is an important restriction on the power given by that rule. The power is there to enable a misprint to be corrected, or to make the judge's meaning clear: Bristol-Myers Squibb v Baker Norton Pharmaceuticals Inc [2001] EWCA Civ 414. The power cannot be used to change the substance of a judgment or order: further authorities are cited at CPR 40.12.1 in the White Book. It is because the judge can use the slip rule only to make his original meaning plain rather than to change his original decision, that the Civil Procedure Rules and the Tribunal's Procedural Rules contain no provision for consultation with the parties. Indeed it is difficult to see that the parties ought to have any input into the judge's expression of what he originally meant.

10. We do not think that the power under the slip rule enables a decision to be reversed at the instance of the losing party. Once a decision has been given in a particular sense it may be subject to setting aside under rule 32 or the appellate process. In all other respects,

having made and sent out the decision, Judge O'Rourke was *functus*. For the foregoing reasons we regard the purported use of the slip rule to produce the second determination in the present case as ineffective. We allow the appeal against the second determination on the grounds that the First-tier Tribunal had no jurisdiction to make that second determination.

25. Having regard to the assessment of the slip rule in **Katsonga**, I find that the amendments made to the 1<sup>st</sup> decision went well beyond the correction of a misprint or typographical error or the clarification of the judge's meaning. The amendments to [30] sought to incorporate significant further reasoning as opposed to making the judge's meaning clear. While the amendments to [35] were not as significant, they nevertheless enhanced the judge's reasoning. The complete removal of [54] to [58] materially altered the substance of the judge's conclusions, holistically assessed.
26. While it may have been open to the First-tier Tribunal to set aside the decision of 30 January 2018 under rule 32 of the Tribunal Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014, the First-tier Tribunal did not seek to do so. I am satisfied that the changes between the two decisions was one of substance and that the decision promulgated on 16 February 2018 has no legal effect.
27. Having so concluded I gave Ms Everett an opportunity to consider the respondent's position. She very fairly accepted that the judge's reasoning at [30] of the decision dated 30 February 2018 was insufficiently reasoned, and that at [37] the judge failed to consider or engage with the explanation given by the appellant for the absence of evidence from Umar. I agree with her on both counts. The judge failed to give any adequate reasons for concluding that the applicant's account of his 'sexual self-realisation was "very odd", and the judge inaccurately stated that no explanation was given for the absence of evidence from Umar. It cannot be said that, but for these errors, the judge would have reached the same decision.
28. It was agreed by both parties that the decision was not legally sustainable. Given that the decision was premised on the judge's assessment of the appellant's credibility, and given that the errors of law concerned the judge's credibility findings, it is appropriate to remit the matter back to the First-tier Tribunal to be determined afresh by a judge other than judge of the First-tier Tribunal Telford.

### **Notice of Decision**

**The First-tier Tribunal decision contains material legal errors and is set aside. The case is remitted back to the First-tier Tribunal for a fresh hearing before a judge other than judge of the First-tier Tribunal Telford.**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.



18 September 2018

Signed  
Upper Tribunal Judge Blum

Date