



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2025-002601

First-tier Tribunal No: PA/01772/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

21st September 2026

Before

The Hon. MR JUSTICE LAVENDER, PRESIDENT
UPPER TRIBUNAL JUDGE KEITH

Between

NK (Namibia)
(ANONYMITY ORDER MADE)

and

The Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr A Badar, Counsel, instructed by Sarker Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 31 July 2026

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Contents

(1) Introduction.....	3
(2) Background.....	3
(2)(a) The Appellant’s Claims and their Rejection.....	3
(2)(b) The First-tier Tribunal’s Decision.....	3
(2)(c) The Grounds of Appeal.....	4
(2)(d) The Grant of Permission to Appeal.....	4
(3) The Proceedings in the Upper Tribunal.....	5
(3)(a) The Hearing before DUTJ Hobbs.....	5
(3)(b) Events after the Hearing before DUTJ Hobbs.....	5
(4) The Hearing and the Agreed Issues.....	6
(5) Issue (2): The Power to Set Aside a Grant by the FtT of Permission to Appeal.....	6
(5)(a) Issue (2): The Appellant’s Position.....	7
(5)(a)(i) Rule 5(2) of the UT Procedure Rules.....	7
(5)(a)(ii) Rules 42 and 43 of the UT Procedure Rules.....	7
(5)(a)(iii) Sections 10 and 25 of the TCEA.....	8
(5)(b) Issue (2): The Respondent’s Position.....	10
(5)(b)(i) The UT Procedure Rules.....	10
(5)(b)(ii) Rule 32 of the FtT Procedure Rules.....	10
(5)(b)(iii) Section 25 of the TCEA.....	11
(5)(c) Issue (2): Decision.....	11
(6) Issue (3): Whether to Set Aside the FtT’s Grant of Permission to Appeal.....	12
(6)(a) Issue (3): The Appellant’s Position.....	12
(6)(b) Issue (3): The Respondent’s Position.....	12
(6)(c) Issue (3): Decision.....	13
(7) Issues (4) and (5): The Proposed Amended Grounds of Appeal.....	14
(7)(a) Issues (4) and (5): The Appellant’s Position.....	14
(7)(b) Issues (4) and (5): The Respondent’s Position.....	15
(7)(c) Issues (4) and (5): Decision.....	15
(7)(c)(i) Issue (4): Whether to Allow the Applications to Amend the Grounds.....	15
(7)(c)(ii) Issue (5): Decision on Ground (3).....	17
(7)(c)(iii) Issues (4) and (5): The Merits of Ground (4).....	17
(7)(c)(iv) Issues (4) and (5): The Merits of Ground (5).....	18
(8) Notice of decision.....	18

(1) Introduction

1. The appellant, who is a national of Namibia, appeals against the decision of a judge of the First-tier Tribunal (“the FtT”), FtT Judge Balroop. In a decision promulgated on 23 April 2025, he dismissed her appeals against the respondent’s earlier refusal on 19 March 2024 of her protection and human rights claims.
2. As we will explain, this appeal has an unhappy history, thanks to the use by the appellant’s solicitors of AI to generate the grounds of appeal and skeleton argument. Two individuals have reported themselves to the Solicitors Regulation Authority and so we will say nothing about the professional conduct issues involved. However, this decision illustrates the considerable procedural difficulties which can arise when inappropriate use is made of AI.

(2) Background

(2)(a) The Appellant’s Claims and their Rejection

3. The appellant was born on 17 March 1989. She lived in Namibia until she arrived in the UK on 26 January 2023, when she was 33. She claimed asylum and humanitarian protection on arrival. The basis of her claims was that she was bisexual, and she feared persecution from her family by reason of her sexuality if she were removed to Namibia.
4. On 19 March 2025 the respondent refused the appellant’s claims. In her decision letter, the respondent said that she accepted that the appellant was bisexual but did not accept either the appellant’s account of her treatment by her family in Namibia or her claim that she had a well-founded fear of persecution on return to Namibia. The respondent also said that she considered that there would not be sufficient protection from persecution in Namibia if the key material facts of the appellant’s claim had been accepted, but that the appellant could relocate to various parts of Namibia.

(2)(b) The First-tier Tribunal’s Decision

5. Judge Balroop heard the appellant’s appeal on 7 April 2025. In his decision dated 23 April 2025, he concluded, for the reasons set out at [23]-[33], which primarily concerned the credibility of the appellant’s evidence, that he did not accept that the appellant was at risk from her family because of her sexual orientation. The Judge also considered, at [34]-[49], a news article about the Namibian Marriage Act 2024 and the Country Policy and Information Note dated September 2021 on *Namibia: Women fearing gender-based violence* (“the

CPIN”). He concluded, at [40], that the appellant had not demonstrated that she faced persecution for being bisexual. Accordingly, he dismissed, at [42], her appeal on asylum grounds and, at [43]-[44], her humanitarian ground of appeal. For the reasons set out at [45]-[58], he concluded that the refusal of the appellant’s claims did not amount to a disproportionate interference with the appellant’s right to private life.

(2)(c) The Grounds of Appeal

6. The appellant sought permission to appeal to the Upper Tribunal (“the UT”). As is standard, that initial application was considered by a Judge of the FtT, pursuant to Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (the “FtT Procedure Rules”).

7. The appellant’s then solicitors, Sarker Solicitors, drafted grounds of appeal which contained four grounds. However, as was subsequently to be accepted by the appellant’s counsel:

“... the grounds of appeal were completely infected by the use of AI. In addition to the citation of fake cases, and paragraphs from cases which are not contained in those judgments, the Grounds of Appeal also quote paragraphs from the decision of the First-tier Tribunal which do not appear in that decision.”

8. For instance, the grounds of appeal purported to quote from [33] of Judge Balroop’s decision. The purported quotation included the following two sentences:

“The letter from the Traditional Authority and the police report appear to post-date the events in question and were only provided at the hearing. On that basis, I do not place any significant weight on them.”

9. This was pure invention, which was not to be found anywhere in Judge Balroop’s decision, yet criticism of it formed the basis for one aspect of ground (3) in the grounds of appeal.

(2)(d) The Grant of Permission to Appeal

10. FtT Judge Roots granted permission to appeal. It is necessary to say something about the format of the grant of permission. Judge Roots’ decision was expressed as follows:

“Permission to Appeal is Granted.”

11. However, in the reasons for his decision, Judge Roots stated, at [5], that grounds (1) and (2) were not arguable and, at [8], that permission to appeal was granted on grounds (3) and (4). It appears from his reasons that Judge Roots intended to grant permission to appeal on grounds (3) and (4) alone, but that is not what he ordered in the operative part of his decision. Based on the reasoning in *Safi and Others (Permission to appeal decisions)* [2018] UKUT 388 (IAC) 13, Mr Toal submitted that permission to appeal had been granted on all grounds. This was initially disputed, but at the hearing before us Mr Terrell accepted this on behalf of the respondent.
12. In the reasons for his decision, Judge Roots also said, at [3], that it was a concern that in several places the grounds of appeal cited paragraphs in Judge Balroop's decision, the contents of which did not correspond with what was asserted in the grounds of appeal. Judge Roots listed these paragraphs. He noted, at [4], that the grounds wrongly misquoted Judge Balroop's findings in numerous places.

(3) The Proceedings in the Upper Tribunal

(3)(a) The Hearing before DUTJ Hobbs

13. A hearing was listed before Deputy Upper Tribunal Judge Hobbs on 17 September 2025 to consider whether Judge Balroop had erred in law. Despite Judge Roots' expressed concerns, Sarker Solicitors did not seek to amend the grounds of appeal or otherwise to address the many flaws in the grounds of appeal but instead filed and served a skeleton argument based on the defective grounds. Without criticism of him, it was not until the day before the hearing that Mr Terrell emailed Sarker Solicitors, asking for clarification about a number of citation errors which appeared in the grounds. In response, Sarker Solicitors applied for an adjournment of the hearing, which was refused. They accepted that AI was used to generate the grounds of appeal filed in the FtT and the skeleton argument filed in the UT. The appellant's counsel, Mr. Mavrantonis, renewed the adjournment application at the hearing, which was when he accepted the flaws in the grounds of appeal, as quoted above.
14. Judge Hobbs adjourned the hearing, with directions which included the following:
 - “10.1 Any application to vary the Grounds of Appeal must be made within 14 days of the date of promulgation of this notice.”
 - “10.4 The respondent has 14 days following the filing of any application made by the appellant pursuant to [1] above to make any further application in relation to the Grounds of Appeal.”

(3)(b) Events after the Hearing before DUTJ Hobbs

15. The appellant applied on 29 September 2025 for permission to amend the grounds of appeal. On 30 March 2026 the respondent indicated that she was not applying to set aside Judge Roots' grant of permission to appeal, because of the legal uncertainty as to whether the UT could set aside a FtT Judge's grant of permission. Nevertheless, in his directions of 26 May 2026, Principal Resident Judge Mandalia indicated that the case raised an important point of principle and practice, namely:

“The circumstances in which the Upper Tribunal can set aside a grant of permission to appeal by the FtT or the Upper Tribunal by operation of The Tribunal Procedure (Upper Tribunal) Rules 2008 and/or section 25 of the Tribunals, Courts and Enforcement Act 2007 in circumstances where the grant of permission arises because the judge considering the application is misled by a party or by reason of a mistake as to fact.”

(4) The Hearing and the Agreed Issues

16. The proposed amended grounds of appeal are substantially different from the original grounds, but, unhelpfully, the format of the draft amended grounds did not include any tracking or other means of making clear the amendments sought. We asked Mr Badar for his help. In response, he said that grounds (1), (2) and (4), as originally drafted, were no longer relied on. Ground (3) in the amended grounds was substantially redrafted. Amended ground (4) was an entirely new ground. There was a fifth ground (which we number as ground (5)), which was an amalgamation of parts of the original grounds (1) and (2).
17. We agreed with the parties that we should deal with matters in the following order:
- (1) Issue (1): the scope of the grant of permission to appeal. As we have already stated, Mr Terrell accepted that the grant of appeal was without limitation. It is worth reminding those considering applications for permission to appeal of the terms of the decision in *Safi* and the need for rigour in ensuring that, where there is to be a limited grant of permission to appeal, this is expressly stated in the decision and not merely in the reasons.
 - (2) Issue (2): the UT's power to set aside an erroneous grant of permission by the FtT. Both parties accepted that the UT has the power to do this, but on differing legal bases, which we set out below.

- (3) Issue (3): whether we should set aside the FtT's grant of permission of our own motion.
 - (4) Issue (4): whether we should grant the appellant's application for permission to amend the grounds of appeal.
 - (5) Issue (5): whether, if the amendments were permitted, we are satisfied that Judge Balroop erred in law.
18. We note that issues (2) to (4), which occupied a great deal of time at the hearing before us, only arose because of Sarker Solicitors' inappropriate use of AI. In relation to the obvious issue of whether Sarker Solicitors ought to pay the respondent's wasted costs, Mr Terrell indicated that the respondent would address this in a separate application after the hearing.
19. We have considered all of the parties' representations, including two skeleton arguments prepared on behalf of the appellant and a skeleton argument on behalf of the respondent.

(5) Issue (2): The Power to Set Aside a Grant by the FtT of Permission to Appeal

20. There are, in the present case, two potential grounds for setting aside the FtT's grant of permission to appeal:
- (1) The first is Judge Roots' error in granting permission to appeal on all four grounds, rather than on grounds (3) and (4) alone. This is the type of situation which was considered in *Ali (Permission decisions: errors; slip rule)* [2020] UKUT 00249 (IAC).
 - (2) The second is the fact that the grounds of appeal contained so many AI-generated misrepresentations, which is said to amount to a procedural irregularity
21. The parties' submissions focused on the latter ground for setting aside the grant of permission to appeal.

(5)(a) Issue (2): The Appellant's Position

22. The appellant argued that there are a number of bases on which the UT has the power to set aside a grant by the FtT of permission to appeal.

(5)(a)(i) Rule 5(2) of the UT Procedure Rules

23. The first was under Rule 5(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the UT Procedure Rules'). Rule 5, entitled "Case management powers", provides, *inter alia*:

- "(1) Subject to the provisions of the 2007 Act and any other enactment, the Upper Tribunal may regulate its own procedure.
- (2) The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction."

24. Rule 5(3) contains a non-exhaustive list of direction which may be made pursuant to Rules 5(1) and (2). Mr Badar emphasised that, although Rule 5(2) provision concerns case management powers, Rule 5(2) permits this Tribunal to give directions in relation to the disposal of proceedings (which is the effect of setting aside a grant of permission), as well as setting aside earlier directions.

(5)(a)(ii) Rules 42 and 43 of the UT Procedure Rules

25. Alternatively, Mr Badar submitted that this Tribunal could exercise its powers under Rules 42 or 43 of the UT Procedure Rules, which provide as follows:

"Clerical mistakes and accidental slips or omissions

42. The Upper Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision or record of a decision by—
- (a) sending notification of the amended decision, or a copy of the amended record, to all parties; and
 - (b) making any necessary amendment to any information published in relation to the decision or record.

Setting aside a decision which disposes of proceedings

43. (1) The Upper Tribunal may, on the application of a party or on its own initiative, set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—
- (a) the Upper Tribunal considers that it is in the interests of justice to do so; and
 - (b) one or more of the conditions in paragraph (2) are satisfied.

...

(2) The conditions are—

...

(d) there has been some other procedural irregularity in the proceedings.”

26. Mr Badar submitted that, when Rules 42 and 43 refer to a ‘decision’, this is not limited to a decision made by the UT, but includes decisions made by the FtT.

27. We asked Mr Badar about *Ali*, at [49], in which the UT expressed the opinion, albeit *obiter*, in respect of Rule 42, that a ‘decision’ was confined to a decision of the UT. We asked him to identify a principled basis for distinguishing between Rules 42 and 43 in this respect, but he was unable to suggest a reason for distinguishing between them. He submitted that *Ali* was wrongly decided, but he was unable to refer us to any authority for that proposition.

(5)(a)(iii) Sections 10 and 25 of the TCEA

28. Alternatively, Mr Badar submitted that the UT has power under sections 10 and 25 of the Tribunals, Courts and Enforcement Act 2007 (‘the TCEA’) to set aside a FtT decision to grant permission to appeal. Section 10(1) provides as follows:

“The Upper Tribunal may review a decision made by it on a matter in a case, other than a decision that is an excluded decision for the purposes of section 13(1) (but see subsection (7)).”

29. However, we note that the Court of Appeal said in *R (Singh) v SSHD* [2019] Imm. A.R. 1275; [2019] EWCA Civ 1014, at [22], after referring to Rules 41, 45 and 46 of the UT Procedure Rules:

“The effect of these rules is that the exercise of the power of review conferred by section 10 of the 2007 Act is limited to a situation where the Upper Tribunal is considering whether to give permission to appeal from its own decision and, even then, is limited to circumstances in which the decision from which permission to appeal is sought is potentially inconsistent with a legislative provision or binding authority.”

30. Section 25 provides as follows:

“25 Supplementary powers of Upper Tribunal

(1) In relation to the matters mentioned in subsection (2), the Upper Tribunal—

- (a) has, in England and Wales or in Northern Ireland, the same powers, rights, privileges and authority as the High Court,

...

- (2) The matters are—

...

- (c) all other matters incidental to the Upper Tribunal's functions.”

31. Pursuant to section 25, the UT has the same powers as the High Court to set aside its own erroneous grants of permission, as confirmed by the Court of Appeal in *Singh*, at [19]-[20], [28] and [36]-[37]. In that case, which concerned the UT’s power to set aside a grant by the UT of permission to apply for judicial review made in the absence of a party, the High Court had power to set aside a grant by the High Court of permission to apply for judicial review both under CPR 23.11(2) and pursuant to its inherent jurisdiction to manage its proceedings in a just and effective manner. It was held that the UT could exercise the same power as the High Court.

32. In relation to grants of permission to appeal, the High Court, when acting in an appellate capacity, has the power conferred by CPR 5.18, which provides, insofar as is material, as follows:

- “(1) The appeal court may-

...

- (b) set aside permission to appeal in whole or in part;

...

- (2) The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.”

33. The Court of Appeal used this power (which was then contained in CPR 52.9) to set aside one of its own grants of permission in *R (Sabir and Others) v SSHD* [2015] EWCA Civ 1173, but we were not shown any authority in which this power was used by an appeal court to set aside a grant by the lower court of permission to appeal.

(5)(b) Issue (2): The Respondent's Position

(5)(b)(i) The UT Procedure Rules

34. The respondent did not accept that Rules 5, 42 or 43 of the UT Procedure Rules gave the UT power to set aside a grant of permission by the FtT. The respondent submitted that:
- (1) Rule 5 relates to case management powers and Rule 5(2) relates to directions.
 - (2) In relation to Rule 42, a decision based on misleading grounds of appeal or a misleading skeleton argument could not be corrected by the 'slip rule', which was intended to correct errors of expression: see *AS (Afghanistan) v SSHD* [2019] 1 WLR 3065; [2019] EWCA Civ 208, at [39].
 - (3) Moreover, the UT explained in *Ali* why Rule 42 relates to decisions of the UT, not the FtT. This remains good law and there is no principled basis for departing from *Ali*.
 - (4) 'Decision' has the same meaning in Rule 43 as in Rule 42. There is no good reason for giving the same expression two different meanings in two adjacent rules. This is reinforced by the fact that Rules 42 and 43 both form part of Part 7 of the UT Procedure Rules, which is entitled, "Correcting, setting aside, reviewing and appealing decisions of the Upper Tribunal."

(5)(b)(ii) Rule 32 of the FtT Procedure Rules

35. Before we turn to the application of section 25 of the TCEA, about which Mr Terrell had some reservations, Mr Terrell submitted there was a simpler and well-established path to setting aside the FtT's decision. Whereas section 25 of the TCEA is a power of the UT alone, a judge or panel of judges of the UT could, as had been contemplated in *Ali* in relation to the 'slip rule' power under Rule 31 of the FtT Procedure Rules, reconstitute himself or themselves as a judge or panel of the FtT. Acting as the FtT, he or they could exercise the power under Rule 32 of the FtT Procedure Rules, which states:

- "(1) The Tribunal may, on the application of a party or on its own initiative, set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if—
 - (a) the Tribunal considers that it is in the interests of justice to do so; and

(b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

...

(d) there has been some other procedural irregularity in the proceedings.”

36. Rule 32 of the FtT Procedure Rules mirrors Rule 43 of the Upper Tribunal Rules. The UT, acting as the FtT, has power under Rule 32 to set aside a decision on the basis of procedural irregularity. Of note, and as was made clear in *Abbasi (Rule 43; para 322(5) accountants' evidence)* [2020] UKUT 00027 (IAC), at [51]-[54], fraud or dishonesty during a process, even if only discovered after the conclusion of the process, could amount to a procedural irregularity. Here, the use of AI constituted a similar procedural irregularity.

(5)(b)(iii) Section 25 of the TCEA

37. In relation to section 25 of the TCEA, Mr Terrell submitted that the position was nuanced. He significantly assisted us by referring to a number of authorities which suggested a potentially wide application of the power. These were: *(Singh)*, at [18]; *William Hill Organisation Ltd v Crossrail Ltd* [2016] UKUT 275 (LC); *R (Watson) (s.94B process; s.25 powers) v SSHD* [2022] INLR 558; [2022] UKUT 00156 (IAC); and *Circleplane Ltd v Commissioners for HMRC* [2025] UKUT 254 (TCC). The UT in *Watson* interpreted section 25(2)(c), at [57], as requiring only that:

“there must be a free-standing function of the Upper Tribunal to which the matter in question is “incidental”.”

38. We note that the UT in *Circleplane Ltd* decided, at [46], that the strike-out of an appeal for abuse of process could be seen as ‘incidental’ to the UT’s function of dealing with cases fairly and justly.

(5)(c) Issue (2): Decision

39. We accept that a judge or panel of the UT has the power to set aside a grant of permission to appeal by the FtT by reconstituting himself or itself as a judge or panel of the FtT and exercising the power under Rule 32 of the FtT Procedure Rules.
40. In those circumstances, it is unnecessary for us to express a concluded opinion on the other bases for the power contended for the parties. We confine ourselves to saying the following:

- (1) Rule 5 of the UT Procedure Rules: while we see some force in Mr Terrell’s submission that this rule concerns case management powers and directions, we note that the Tax and Chancery Chamber of the UT decided in *Circleplane Ltd*, at [43], that Rule 5 gives the UT power to strike out an appeal for abuse of process.
- (2) Rules 42 and 43 of the UT Procedure Rules: in our judgment, these rules are limited to correcting or setting aside decisions of the UT. We agree with what was said about the interpretation of Rule 42 in *Ali* and we see no reason to apply a different interpretation to Rule 43.
- (3) Section 10 of the TCEA: the application of this section is limited, as explained in *Singh*, at [22], cited above.
- (4) Section 25 of the TCEA: when acting in its appellate capacity, the High Court has power under CPR 52.18(1)(b) “to set aside permission to appeal”. This power does not appear to be limited to permission to appeal granted by the High Court itself. Section 25(1)(c) gives the UT the same powers as the High Court in matters incidental to the UT’s functions. The UT’s functions include deciding appeals and doing so in accordance with the overriding objective. In our judgment, setting aside permission to appeal is, in an appropriate case, incidental to that function, as is illustrated by the fact that CPR 52 includes CPR 52.18(1)(b).

41. Having regard to a submission made by Mr Badar, we add that, in our judgment, the power to set aside permission to appeal includes a power to set it aside in part.

(6) Issue (3): Whether to Set Aside the FtT’s Grant of Permission to Appeal

(6)(a) Issue (3): The Appellant’s Position

42. Mr Badar argued that we should not set aside the grant of permission to appeal. He accepted, without reservation, that the initial misrepresentations were serious and that they were not acknowledged, despite Judge Roots identifying his concerns in the grant of permission. Instead, the appellant doubled-down on them in her skeleton argument before the UT. This was a procedural irregularity. However, he added that the appellant herself was blameless in all of this. Where, as here, aspects of the grounds were arguable and the effect of setting aside the grant of permission would be to deprive the innocent appellant of an arguable appeal, the interests of justice lay in maintaining the grant of permission.

(6)(b) Issue (3): The Respondent's Position

43. The respondent did not apply for the grant of permission to be set aside, in light of the legal uncertainty about the UT's power to do so. Mr Terrell nevertheless pointed to the egregious nature of Sarker Solicitors' misrepresentations, which were, at best, negligent and, at worst, reckless. The paralegal who drafted the grounds of appeal and skeleton argument had provided no real explanation for producing the skeleton argument after Judge Roots had identified concerns about the grounds of appeal in his decision to grant permission. The supervising solicitor, Mr Sarker, had not assumed any managerial responsibility for the paralegal. It was not until Mr Terrell himself identified the issue that steps were taken to address the point. This was one of the more extreme examples of the misuse of AI, rather than a mere mis-citation of particular cases. As already identified, the misstatements extended not only to what the Judge had supposedly said and to incorrect case citations, but also to assertions of legal propositions which were not supported by the cases cited and also misstatements as to the evidence. The matter could not have been more serious. That said, without making any concession, Mr Terrell acknowledged that part of the amended ground (3) was uninfected by the misstatements to the Judge.

(6)(c) Issue (3): Decision

44. The appellant accepts that the serious procedural irregularities in this case are the result of the conduct of his solicitors. It would be misleading to describe them as having been caused by AI, rather than by the solicitors' misuse of AI. The appellant's solicitors filed with the UT, as part of a formal legal process, seriously misleading grounds of appeal, asserting: that a Judge had stated certain things in his judgment, when he had not; that the evidence stated certain things, which it did not; and that legal cases were authorities for various legal principles, when they were not. This occurred because Sarker Solicitors did not check the accuracy of the grounds of appeal, did not consider the grant of permission and did not check the accuracy of the skeleton argument. Both were produced by a junior member of staff, namely a paralegal, using ChatGPT, which itself raises significant concerns about client confidentiality and legal privilege. Throughout this, it appears that Mr Sarker's supervision of the paralegal did not begin to mitigate the risk of filing seriously misleading submissions. We say no more, as that is a matter for the Solicitors Regulation Authority.
45. Had the appellant sought to rely on the original grounds of appeal, then we might well have decided to set aside permission to appeal, in whole or in part. However, matters have been considerably simplified by Mr Badar confirming

that grounds (1), (2) and (4) as originally drafted are withdrawn, so that the only one of the original grounds of appeal which the appellant wishes to pursue, and then only in part, is ground (3).

46. In those circumstances, notwithstanding the clear procedural irregularity, we are satisfied that it is not in the interests of justice that we set aside the grant of permission. The relevant part of ground (3) is a relatively discrete ground, limited to the issue of whether the Judge erred in his evaluation of the appellant's documentary evidence by discounting it on the basis that he did not believe the appellant.
47. Accordingly, we do not set aside the grant of permission to appeal in this case.
48. At the risk of stating the obvious, we make clear that where a representative or party discovers a misrepresentation in their case, it is imperative that they assist the Tribunal by identifying it precisely and promptly. In this case, Mr Badar identified at least 18 separate errors in the grounds of appeal and withdrew three of the four grounds. The respondent was entitled to have the errors clearly identified. It should not have been necessary, as it was in this case, for Mr Terrell to identify that the grounds of appeal were defective and then for the Tribunal to await witness statements from legal representatives or submissions at the hearing to identify the misstatements in full.
49. While it is not the responsibility of the respondent to identify misstatements in the grounds of appeal or in a skeleton argument, the sooner they are identified by either party, the greater the chances of avoiding an unnecessary hearing and wasted costs. For instance, if misstatements are identified in the response to the notice of appeal under Rule 24 of the UT Procedure Rules, this may lead to the Tribunal making a decision under Rule 34 and thereby avoiding a needless hearing.

(7) Issues (4) and (5): The Proposed Amended Grounds of Appeal

50. It is appropriate to consider issues (4) and (5) together, since the appellant relied on the alleged merits of the proposed grounds of appeal as a significant factor in relation to her application for permission to amend the grounds of appeal.

(7)(a) Issues (4) and (5): The Appellant's Position

51. In relation to the amended ground (3), the appellant submitted that the Judge fell into a *Mibanga* type error (see *Mibanga v SSHD* [2005] I.N.L.R. 377; [2005] EWCA Civ 367), i.e. that he addressed the documentary evidence only after reaching a conclusion on the credibility of the appellant's central allegations.

Specifically, having evaluated the appellants' credibility, the Judge found, at [33]:

"The Appellant has produced a number of documents; medical documents, grievance letter from the traditional authority and police reports. I remind myself of Tanveer Ahmed* 2002 UKIAT 00439 when considering the documentary evidence. The documents are clearly designed to corroborate the Appellant's account. As I find that her account is so fundamentally inconsistent that she was not persecuted by her family because she is Bi-sexual. I find that the documents are evidentially neutral."

52. These documents include: medical records and police reports dating from the times when the appellant claimed to have been injured either by or at the behest of family members; and a report by the appellant to a local authority, in which she claimed that she had been mistreated and assaulted by her relatives. The Judge did not evaluate them individually or in any more detail than is set out at [33] of his decision. Alternatively, the Judge's reasons were inadequate.
53. In relation to the new ground (4), it was said that the Judge failed to consider in the round the evidence as to risk on return, having regard to the relatively modest bar for establishing such a risk, as confirmed in *MAH (Egypt) v SSHD* [2023] Imm. A.R. 713; [2023] EWCA Civ 216 at [52]. Even a 10% chance that an appellant would face persecution may satisfy the relevant test. The Judge also failed to apply the guidance in *Karanakaran v SSHD* [2000] 3 All E.R. 449; [2000] EWCA Civ 11, para [55], namely that, when assessing future risk, a tribunal should not exclude evidence to which they were willing to attach some credence, even if they could not go so far as to say that it was probably true.
54. In response to our question why ground (4), which Mr Badar accepted was an entirely new ground, had not been submitted before 29 September 2025, Mr Badar accepted that he had no explanation.
55. In relation to the new ground (5), it was submitted that the Judge failed properly to take account of the country evidence when evaluating the risk to the appellant of persecution by reason of her accepted sexual orientation as bisexual. The Judge was selective in his citations from the CPIN, which suggested an increase in violence as a result of the introduction of legislation banning same-sex marriage.

(7)(b) Issues (4) and (5): The Respondent's Position

56. First, the respondent objected to the application for permission to introduce the new ground (4). Especially in the context of the egregious behaviour by the

appellant's solicitors, allowing this amendment would be to permit a 'second bite of the cherry'.

57. Alternatively, the respondent submitted that the proposed amended grounds of appeal had no merit.
58. In relation to ground (3), what might at first sight appear as a *Mibanga* type error was, when read in context, adequately explained. The Judge's evaluation had to be seen in the context of the extraordinary weakness of the appellant's oral evidence and this was a case of the Judge evaluating all of the evidence in the round. The Judge had explained the direct contradictions in the appellant's evidence as to when her family first became aware that she was bisexual. The Judge's analysis should fairly be read in the context that, although documents might lend support to her account, nevertheless they largely indicated her own self-reporting, whether to the local authority, doctors or the police.
59. In relation to the new ground (4), the judge had not applied an impermissibly rigid approach to the assessment of credibility. Whilst it had always been accepted that the appellant was bisexual, one factor was when her family learned of her sexuality. The weight to be attached to the appellant's inconsistencies in relation that issue was a matter for the Judge.
60. With regard to the new ground (5), the Judge had been entitled to consider all of the evidence, without having to refer to all of it. The fact that the Judge referred to passages in the CPIN which suggested that there were certain instances of violence, but that, overall, there was a sufficiency of protection, did not mean that the Judge was obliged to repeat other passages of evidence on which the appellant had relied. This was a classic instance of an appeal "island hopping" between different aspects of the evidence.

(7)(c) Issues (4) and (5): Decision

(7)(c)(i) Issue (4): Whether to Allow the Applications to Amend the Grounds

61. In considering whether to allow the application for permission to amend the grounds of appeal, we bear in mind the need for a wide discretion to allow the amendment of grounds in asylum and human rights appeals, because of the seriousness of the consequences of making a wrong decision (see *Fadil Dyli (No 2) v SSHD* [2000] UKIAT 000001, at [8]). That said, we are conscious that times have moved on since *Fadil Dyli* was decided in 2000 and that a focus on the 'principal controversial issues' in a 'laser-like fashion' is now expected: *Lata (FTT: principal controversial issues)* [2023] UKUT 00163; [2023] Imm AR 1416. Just as the hearing before the FtT is not "a lap in the warm-up for a subsequent appeal in which a party's case can be differently articulated" (see *AL v SSHD*

[2026] EWCA Civ 370, at [80]), so grounds of appeal to the UT are not to be seen as merely the first draft of, or a place-holder for, the case actually to be advanced in the UT hearing.

62. In addition to the merits of the proposed grounds of appeal, which we address below, we may consider, in the context of the interests of justice: the timing of an application for permission to amend a ground of appeal; the extent of any delay and the reason for it; and the extent to which the amendment is a reformulation or clarification of an existing ground or is an entirely new ground. Our approach is consistent with the Court of Appeal's guidance in *Latayan v SSHD* [2020] Imm. A.R. 841; [2020] EWCA Civ 191, at [32]:

"... Any counsel appearing for the first time on an appeal will seek to refresh the arguments so as to present them in the most persuasive way, and I do not criticise counsel for his efforts on behalf of this Appellant. Nor should a party be penalised for drafting grounds of appeal concisely. However, these arguments were not pleaded at all on this appeal and in my view they cannot be raised now. An appeal court can entertain a new argument of law where that is in the interests of justice (though it will be slow to do so) – Miscovic v Secretary of State for Work and Pensions [2011] EWCA Civ 16 per Elias LJ at [69], Sedley LJ at [109-112] and Moore-Bick LJ at [134] – but these arguments relate entirely to an assessment of the facts and they cannot fairly be raised on the hoof. They are not Robinson-obvious points that the tribunals or court could be expected to appreciate for themselves in a case where the Appellant was represented by counsel. As my lord, Lord Justice Singh, said in Talpada v The Secretary of State for the Home Department [2018] EWCA Civ 841 at [69]:

"Courts should be prepared to take robust decisions and not permit grounds to be advanced if they have not been properly pleaded or where permission has not been granted to raise them. Otherwise there is a risk that there will be unfairness, not only to the other party to the case, but potentially to the wider public interest, which is an important facet of public law litigation."

63. In this case, the amendment to ground (3) was a refocussing and amplification of part of an existing ground. In this context, notwithstanding the delay in making the application, we apply our wide discretion to permit this amendment. No litigation advantage has been gained as a result.
64. On the other hand, the reformulation of grounds (1) and (2) as ground (5) came about because the original grounds (1) and (2) were so riddled with errors as to be barely comprehensible and Judge Roots rightly considered that they were

not arguable, while ground (4) is an entirely new ground. Moreover, despite what Judge Roots said in the grant of permission to appeal, the application for permission to amend the grounds of appeal was not made until after the first hearing of this appeal before the UT and after Mr Terrell had pointed out the errors in the original grounds of appeal.

65. As we have said, Mr Badar was unable to provide any explanation for the delay in raising ground (4). The only inference is that it was added at the same time as the application was made for permission to amend the other grounds because it appeared to the author of the grounds to be an additional good point. The context was the serious procedural irregularity which was the result of the appellant's solicitors' actions. We accept Mr Terrell's submission that it is not in the interests of justice in this case that the appellant be permitted to advance entirely new grounds, or to replace grounds riddled with misrepresentations, well beyond the original time limit for seeking permission to appeal. If we permitted that, the appellant would gain an advantage from submitting, in time, false or misleading grounds, only to apply to add to, or replace, them when the falsehood or inaccuracy was discovered. The merits of grounds (4) and (5) are not such as to outweigh the considerations pointing against the grant of permission to amend. We therefore refuse the application for permission to amend in respect of the new grounds (4) and (5).

(7)(c)(ii) Issue (5): Decision on Ground (3)

66. In relation to ground (3) as reformulated, we are satisfied that, when his judgment is fairly read in context, Judge Balroop did not err in law. He reminded himself expressly at [22] of the need to consider all of the evidence in the round. While he considered the appellant's oral testimony before turning to the documentary evidence, he had to start somewhere. The documentary evidence included: a doctor recording the appellant as having a cut to her mouth due to an alleged assault in 2019; a complaint by the appellant to an authority in 2020; a report by the appellant to the police of an alleged assault in 2022; and a medical report of cuts and bruises in 2022. The appellant did not identify her assailants on either occasion. In relation to the incident in 2022, the appellant is recorded as saying that she did not know and could not recognise her assailants, but that she believed that they had been sent by her aunt.
67. The Judge's comments at [33] reflected the self-reported nature of the evidence. This was not to say that the reports were not genuine documents, but that, in the Judge's assessment, they were consistent with the appellant having made these reports to bolster her account. The Judge was entitled to conclude that the documentary evidence, when considered in the round, was neutral, in the

sense that it did not add to the reliability of the appellant's account, when considered in the mix of the evidence. While brief, the Judge's reasons were adequate and it was not necessary to refer to each piece of evidence when evaluating it.

(7)(c)(iii) Issues (4) and (5): The Merits of Ground (4)

68. In relation to ground (4) (the assessment of risk), the Judge was conscious of *Karanakaran*, referring to it specifically at [22]. He unarguably carried out an assessment of credibility on a nuanced basis. The Judge did consider the documentary evidence and did not impermissibly exclude evidence to which he was willing to attach some credence. The Judge did not dispute the authenticity of the documents, but concluded, for reasons already set out, that their contents depended, in large part, on the appellant's account. There was no failure to consider the low bar in assessing risk. However, at [24-30], the Judge addressed inconsistencies in the appellant's account:
- (1) as to when she realised that she was bisexual (which varied between when she was 13 or 14 ([26]), i.e. in about 2002-3, or aged 25, after she gave birth ([25]);
 - (2) as to when her family knew of her sexuality (which varied between when she was 13 or 14 or in 2019, when the appellant was aged 20: [28] to [30]); and
 - (3) as to her father's response to her sexuality (which varied between her father not having issues with her sexuality (para [24]) and protecting her until he died in 2021 or his expelling her from his life on learning of her sexuality in around 2003 or 2004, when she was 13 or 14).
69. This ground amounts to no more than a disagreement with the Judge's findings on credibility, rather than any error of law in applying too stringent a standard on the assessment of risk.

(7)(c)(iv) Issues (4) and (5): The Merits of Ground (5)

70. In relation to ground (5), the principal assertion is that the Judge should have taken into account country evidence of an increasing violence as a result of proposed legislation prohibiting same-sex marriages. We are satisfied that the Judge was not selective in his analysis of the evidence, but considered all of it in the round. The Judge was conscious of the appellant's case of an increase in violence because of the introduction of legislation prohibiting same-sex marriage, as the appellant accepts at para [37] of her skeleton argument. Rather, the ground alleges that there was 'inadequate consideration' of the

evidence in the appellant's favour and a failure to consider the 'totality' of the evidence. Contrary to this ground, the Judge considered, at [35]-[38]: the legislation; and the fact that it had yet to come into force; but also that LGBTI people were not reasonably likely to face persecution from state or non-state actors; that there had been a societal change in favour of LGBTI people; and that the state was willing to provide protection. As summarised in the Executive Summary, the CPIN did refer to a rise in homophobic rhetoric and violence against some LGBTI people, but not such that they were likely to face persecution or serious harm which the state was unable or unwilling to protect them from. This ground 'island-hops', by resting on a selection of evidence rather than the whole of the evidence which the Judge heard (see *Volpi v Volpi* [2022] 4 WLR 48; [2022] EWCA Civ 464, at [65(ii)]).

(8) Notice of decision

- 71. This Tribunal declines to set aside the FtT's grant of permission to appeal.**
- 72. The appellant withdrew the original grounds (1), (2) and (4).**
- 73. The appellant's application for permission to amend ground (3) is granted. However, ground (3) discloses no error of law.**
- 74. The appellant's application for permission to amend grounds (4) and (5) is refused. For completeness, grounds (4) and (5) have been considered in the alternative and disclose no error of law.**
- 75. The appellant's appeal therefore fails.**
- 76. Costs: no decision has been taken on costs. The Tribunal directs as follows:**
 - (1) The respondent shall file and serve on Sarker Solicitors any wasted costs application, or confirmation that costs are not being pursued, within 28 days of this decision being sent to the parties. The costs application shall set out a schedule of costs and the basis on which costs are sought.**
 - (2) Sarker Solicitors shall file and serve any response to the wasted costs application within 56 days of this decision being sent to them.**
 - (3) Absent any further request from the parties, the Tribunal will decide any wasted costs application on the papers, without the need for a hearing.**

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21st September 2026