



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

Appeal Number: AA/09982/2014
AA/09985/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2015**

**Decision and Reasons
Promulgated
On 13 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

**N I (FIRST APPELLANT)
M J A (SECOND APPELLANT)
ANONYMITY HAS BEEN DIRECTED**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Butler, Counsel for Z A Solicitors, London
For the Respondent: Mr Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant was born on 1 November 1982 and the second appellant was born on 9 February 1988. Both appellants are citizens of Pakistan. The first appellant applied for asylum on 2 April 2014 and the second appellant applied to be treated as a dependant on the first appellant's claim. The first appellant's asylum application was refused on 22 May 2014. The appeals were heard by Judge of the First-tier Tribunal S

Aziz on 23 April 2015. He dismissed the appeals under the Refugee Convention, under Articles 3 and 8 of ECHR and on humanitarian protection issues in a determination promulgated on 12 May 2015.

2. An application for permission to appeal was lodged and permission was refused by Judge of the First-tier Tribunal Cox on 9 June 2015. Further grounds were submitted and permission was granted by Upper Tribunal Judge Archer on 26 August 2015. The grounds assert that the judge failed to apply the case of **HJ (Iran) v Secretary of State for the Home Department** [2010] UKSC 31 and wrongly refused to accept that the appellants are gay men. The grounds state that the judge should have granted an adjournment to enable the appellants to obtain further evidence from Pakistan in relation to marriage and divorce certificates and the judge wrongly made adverse credibility findings. They state that the judge went on to make positive findings of fact and the permission states that it is arguable that the judge failed to take proper account of those findings of fact, concluding that it was not reasonably likely that either appellant is gay or has entered into gay relationships. The permission states that there is nothing on file to show that an adjournment application was made at the First-tier hearing but the judge did note at paragraph 56 that the respondent's bundle was served on the day of the appeal hearing, including the evidence regarding the authenticity of the first appellant's divorce certificate. The permission states that procedural unfairness is arguable.
3. Counsel for the appellant handed me a bundle containing a number of cases and a report from the British CBT and Counselling Service which is undated. She was seeking anonymity and referred to her letter of 9 September 2015 applying to adduce further evidence. The Tribunal did not reply to this letter.
4. I told her I was prepared to grant anonymity.
5. The Presenting Officer opposed the admission of new evidence. He referred to the report from the British CBT and Counselling Service submitting that in this report it is stated that the appellants were referred to the service on 22 July 2015.
6. I put to Counsel that this is an error of law hearing and what has to be decided is whether there is an error of law in the First-tier Tribunal Judge's decision, based on what was before him. I did not accept the additional evidence.
7. Counsel submitted that at paragraph 16 of her skeleton argument she states that the key issue according to the First-tier Tribunal Judge is whether the appellants are homosexual and whether on their return to Pakistan, they will want to live as openly gay men. She submitted that this is an error of law and I was referred to the said case of **HJ Iran**. She submitted that the key issue is not whether the appellants are homosexual but whether they will be treated as homosexual if they return to Pakistan.

8. She submitted that the judge relied on immaterial considerations and did not take into account relevant findings. She submitted that his approach was perverse. She submitted that the decision was procedurally unfair and an adjournment should have been granted to the appellants.
9. I asked if an adjournment request was made at the First-tier hearing. The Presenting Officer submitted that the Presenting Officer at that hearing had sought an adjournment for the admission of a verification document. The appellant's representative opposed the adjournment and at no time suggested that the hearing should not go ahead.
10. Counsel then referred to paragraph 18 of her skeleton argument which deals with the correct way to assess credibility and refugee status. The low standard of proof is referred to. She submitted that a true account is not always detailed or consistent in every detail as per the Home Office's policy instruction on assessing credibility and refugee status dated in January 2015. She referred to the correct approach being a holistic approach and submitted that the judge in the case before me nitpicked at the evidence.
11. She submitted that at paragraph 82 of the said case of **HJ Iran** the approach to be followed by Tribunals is narrated. She submitted that the judge did not believe that the appellants are gay. I asked her why she thinks they will be treated as gay on return and she submitted that they have entered into a civil partnership which is a public declaration that they are gay. I put to her that the judge raised questions about this and found there to be serious credibility issues. Counsel submitted that the appellants have informed their families about the civil partnership so there are strong reasons for them being treated as gay on return. I put to her that credibility is the issue here; the judge did not believe the appellant's evidence. She submitted that although the judge states that he does not believe there will be a problem as the appellants are not gay, he has not given any consideration to them being treated as gay on return and she submitted that this is a clear misdirection. He only looked at half the test. She submitted that this is an error of law as they might well be persecuted on return.
12. I was referred to paragraph 27 of the skeleton argument and the positive findings of fact made by the First-tier Judge which are that the appellants are good friends, they have lived together at various addresses since 2012 and they undertook a civil partnership ceremony on 7 November 2013, attended by witnesses. Counsel submitted that the United Kingdom recognises that they are gay based on the civil partnership agreement. She submitted that the judge did not raise any inconsistencies against these positive findings and failed to give the appellants credit for the fact that their evidence is consistent with the COI report on Pakistan. She submitted that background evidence makes it clear that being gay in Pakistan leads to persecution by communities and the State.
13. Counsel then referred to paragraph 33 of her skeleton argument and submitted that the judge has taken a microscopic approach to the

evidence. She submitted that it is not unreasonable that the appellants cannot remember certain dates of events that took place years before and that the typographical errors in the marriage document are a minor issue. I put to her that all of this goes to the appellants' credibility and she accepted that the findings are relevant to credibility but she submitted the judge used too narrow an approach.

14. With regard to the first appellant's marriage and divorce certificates Counsel referred to paragraphs 127 and 139 of the decision. The judge states that the concerns which he has raised, leads the Tribunal to attach little weight to these certificates. Again this goes to credibility.
15. Counsel referred to paragraph 35 of the skeleton argument which deals with who knows about the appellants being gay, in Pakistan. She submitted that the First-tier Judge put inappropriate weight on alleged discrepancies about events which happened years before. She referred to the first appellant's relationship with B and H before his relationship with his present partner, the second appellant and she submitted that the judge states that the first appellant when asked who in Pakistan knows about his sexual identity gave evidence that "was all over the place". This is because he gave different accounts in various interviews and statements but she submitted that much of this evidence was about things which the appellant did years ago so it is likely that there will be inconsistencies. With regard to the appellant's relationships with B and H, Counsel submitted that again the judge has stated that there are discrepancies in his evidence. She submitted that complete consistency is not necessary.
16. With regard to the appellant's present relationship counsel referred me to paragraph 38 of the skeleton argument. The judge states that the appellants gave different accounts of their first date and so he rejected their evidence. She submitted that this is not highly relevant. She submitted that a holistic approach is what is required. Again at paragraph 150 of the determination the judge goes into minute detail about who proposed. The second appellant said the first appellant proposed and the first appellant said it was by mutual consent.
17. Counsel then went on to deal with delay on claiming asylum and she submitted that the judge has put too much weight on this delay. She submitted that this is not a determinative point.
18. With regard to the second appellant, Counsel referred to paragraph 40 of the skeleton argument and the second appellant's claims about death threats. She submitted that again the judge put too much weight on minor points at paragraph 157 of the determination and did not give enough weight to his positive findings of fact.
19. Counsel submitted that credibility is the issue here. She referred me to the case of Ilkhani [2005] EWCA Civ 1674 which states that it is not necessarily the case that a truthful witness will be a consistent witness. The case states that a mere trivial inconsistency on its own is not sufficient for a lack of credibility finding. She submitted that the judge misdirected

himself and put an unduly rigorous emphasis on the parties not being gay because they made some errors about dates and because the judge was not satisfied with the marriage and divorce certificates of the first appellant. She referred to paragraph 124 of the determination submitting that in this the judge states that he is detailing his main adverse credibility findings and she submitted that this is an error of law he should have detailed all his adverse credibility findings.

20. Counsel submitted that when all the points are taken together and the said case of **HJ Iran** is taken into account, the judge took the wrong approach to the evidence as a whole and his decision is irrational. Paragraph 51 of the skeleton argument again states that the hearing should have been adjourned because of the late submission of the respondent's evidence.
21. The Presenting Officer made his submissions submitting that the judge has made a very comprehensive determination. He submitted that the appellants have made a big issue of living openly as gay men but they are now seeking anonymity and he submitted that this must go against their evidence.
22. He submitted that the judge did not look at whether on return to Pakistan the appellants will be perceived as gay as this was not in the grounds of appeal. I was referred to paragraphs 2 and 4 of the said case of **HJ Iran** and he submitted that this particular point was not actively raised at the First-tier hearing. What the judge had to look at, based on what was before him, was perceived gay activity in the United Kingdom and Pakistan.
23. The Presenting Officer submitted that what I have to decide is whether the judge's decision is unlawful, irrational or not adequately reasoned.
24. He submitted that the judge restricted himself to the grounds of appeal. He submitted that the grant of permission is extremely generous. He referred me to paragraph 148 of the determination relating to the appellants' relationship. The judge finds their relationship is not genuine although he also finds they are good friends, have lived together and have undertaken a civil partnership. He explains that the reason he does not find the relationship to be genuine is because of the adverse findings which he has set out in his determination. At paragraph 123 of the determination the judge makes a list of his findings of fact and what he accepts and he makes it clear at paragraph 124 onwards that he wholly disbelieves the appellants' claims.
25. The Presenting Officer referred me to paragraph 117 of **HJ Iran** and submitted that these appellants on return to Pakistan will not be perceived as gay because they are not gay and they will not be treated as gay because the people in Pakistan, who they know, will be unaware of the civil partnership agreement.

26. He submitted that at paragraph 118 of the determination the judge refers to the illegal status of homosexuality in Pakistan and the ill-treatment of gays so it is clear that he is aware of this.
27. He submitted that Counsel states that a more broad brush approach should have been applied by the judge but at paragraph 122 of the determination the judge refers to the cross-examination by the Presenting Officer stating that the appellants should not be subjected to a memory test and noting that they were asked to recollect events which took place many years ago. The judge states that he will be factoring this into his decision.
28. The Presenting Officer submitted that credibility goes to the core of this appeal. He submitted that the criticisms by the judge are not peripheral. The fact that he finds the appellants to be good friends is not enough for the decision to be overturned. The judge also refers to the appellant's representative accepting that there were inconsistencies before the First-tier Judge, (paragraph 125 of the decision). At paragraph 126 the judge states that if the Tribunal finds that the first appellant has told untruths in relation to his marriage and divorce (which the judge does), this will impact on his credibility as a witness of truth and in turn will affect whether the Tribunal can accept anything else that he says. He refers to the divorce and marriage not being able to be disassociated with the key issue in this appeal. As the Tribunal has serious doubts over his claimed marriage and divorce, this has a knock on effect and undermines the first Appellant's specific problems which he states he encountered in Pakistan due to his sexual orientation. I was referred to paragraphs 128 and 129 relating to the first appellant's marriage and the discrepancies in the first appellant's evidence and I was referred to paragraphs 131, 132 and 134 of the decision, all of which deal with adverse credibility. The judge goes on to refer to his concerns about the divorce certificate and the fact that as the First appellant's wife initiated the divorce it would be called a khula but the appellant refers to it as a talak which is the name given when a man initiates a divorce. The judge also refers to spelling issues.
29. He submitted that the judge finds that all of these matters go to whether the First appellant is gay or not.
30. He submitted that the evidence about who knows about the appellants' sexuality in Pakistan (paragraph 140) is all over the place. The Presenting Officer submitted that because the core of the evidence is contradictory this goes to the core of the appellants' identity.
31. The Presenting Officer referred to the first appellant being caught by his aunt in the house with another man. He submitted that this is not credible and the judge finds it not to be credible and gives proper reasons for this finding. He submitted that it was not unreasonable for the judge to find it strange that the both the appellants gave different answers when they were asked about their first date with each other. He submitted that there are also inconsistencies in the Appellants' evidence about the civil partnership.

32. The Presenting Officer accepted that the delay is not determinative (paragraph 151 of the determination).
33. The Presenting Officer submitted that with regard to the second appellant stating that he received threats from his family in Pakistan the judge found that his evidence was highly contradictory and gave reasons for this finding. He submitted that the judge looks at all the evidence in the round, does not accept that the appellants are gay and does not believe that there will be problems when they return to Pakistan. He submitted that the judge finds that the account is fabricated and that is why the appeals have been dismissed. He submitted that there is no material error of law in the judge's decision.
34. Counsel for the appellant submitted that the judge has only applied half of the relevant test. He has not considered whether on return to Pakistan the appellants will be treated as homosexual. It was submitted that based on his positive findings of fact and the case of **HJ Iran**, there must be a material error of law.
35. Counsel submitted that the judge made an error of law by not considering these matters and by taking miniscule matters into account and stating that these go against the appellants' credibility. She submitted that permission has been granted on all grounds. She submitted that poor grounds of appeal should not be held against the appellants.
36. Counsel submitted that the core of the appellants' identity is their sexuality. This is intrinsic to their fundamental personas. She submitted that to draw conclusions from things like typographical errors on the marriage certificate is unfair to the appellants. I was asked to look substantively at the facts and consider credibility in the relevant context of **HJ Iran** and allow the appeal.

Decision and Reasons

37. I have to decide if there is a material error of law in the judge's decision. The judge states that the key issue in this case is whether the appellants are homosexual or not. Counsel submits that that is not the test and when **HJ Iran** is considered it is whether they are homosexual or not or whether they would be treated as homosexual on return to Pakistan. This is not in the grounds of appeal, as was pointed out by the Presenting Officer.
38. Counsel's argument is that because they have entered into a civil partnership they have declared publicly that they are homosexual.
39. The judge has explained very clearly why he does not believe the appellants' evidence. He has detailed discrepancies and inconsistencies in the evidence of both appellants in his decision.
40. At paragraph 125 of the decision the judge refers to the appellants' representative having had to concede that there were inconsistencies in the evidence relating to the first appellant's marriage. Counsel for the appellants argued that these inconsistencies did not relate to the key issue before the Tribunal which was whether the first appellant was gay.

Whether the appellants would be treated as gay on return to Pakistan was not raised before the First-tier judge. Nonetheless I have taken note of this issue and the terms of HJ Iran and I have noted the civil partnership agreement. It is clear that the judge did not believe any of the appellants' evidence. This must include their evidence of who knows of their homosexuality or the civil partnership agreement in Pakistan. The judge clearly finds that they have told no-one so the civil partnership agreement will not make any difference to the appellants on return to Pakistan.

41. The judge had gone into considerable detail about the discrepancies and inconsistencies in the evidence. There were so many of them he had no choice but to do this. He states however that cross-examination should not be a memory test and he states that he has factored into his decision that it is not always easy for a witness to recall with accuracy, events or the chronology of events which took place some years ago. Nonetheless he finds that these appellants gave evidence which was contradictory not only about unimportant issues but also about important issues. With regard to the marriage and divorce certificates, he finds that the evidence about these goes to the core of the claim. The first appellant's account of his relationships in Pakistan, his marriage and his divorce must be considered when assessing his evidence about his sexuality.
42. The judge refers to the first appellant's evidence about his marriage and divorce being so poor that he does not accept any aspect of this part of the claim. Neither does he accept the explanation of why asylum was not claimed earlier. He finds the second appellant's evidence highly contradictory as to when he received threats from his family in Pakistan.
43. With regard to whether an adjournment should have been granted, I have noted that no adjournment request was made by the appellants' representative at the First-tier hearing although an adjournment request was made by the Presenting Officer which was refused. And which the appellants' representative objected to. The appellant's representative clearly had a perfect opportunity to support the adjournment request but did not take it. In the circumstances there is no error of law in the judge not granting an adjournment.
44. I have to decide if there is a material error of law in the judge's determination based on what was before him and I find that there is no material error of law. The fact that he did not make any decision about the appellants being treated as homosexuals on return to Pakistan is because it was not in the grounds of appeal but I find that even if it had been in the grounds of appeal, because of the lack of credibility in the evidence before him, he would have dismissed the appeals on the same basis as he has done. There is no material error of law in the First-tier Judge's decision.
45. The First-tier Judge's decision dismissing the two appeals, promulgated on 12 May 2015 must stand.
46. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge Murray