Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: PA/12046/2017**

PA/12049/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 6 February 2019	**On 12 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

FAHAD [S]

ALI [H]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr Bates Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellants are nationals of Pakistan A1 was born on 31.7.1984 and A2 was born on 2.2.1986. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

3. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Devlin promulgated on 17.7.2018 which dismissed the Appellants appeals against the decision of the Respondent dated 4.11.2017 based on their sexuality.

The Judge's Decision

4. Grounds of appeal were lodged and permission was refused by First-tier Tribunal Judge Andrew in a decision dated 14 August 2018. The application was renewed and came before Upper Tribunal Judge Gill on 16 November 2018. The 'Reasons' section of the Notice of Decision are detailed and consist of 5 paragraphs and conclude:

> "*When read as a whole, the judge's decision is a very detailed and fair one. There is no arguable error of law.'*

5. The decision however is headed 'Permission to appeal is granted.'

Discussion

6. Mr Bates referred to Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC) in which the tribunal stated that It is likely to be only in very exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all the grounds accompanying the application for permission, regardless of what might be said in the reasons for decision section of the document. Therefore while the reasons for the decision appeared to suggest permission would be refused he was content to proceed on the basis that permission had been granted.

7. The Appellants confirmed that they wished to rely on the grounds of application drafted by a Mr Chaudry of counsel on behalf of IAS who had previously represented them. They had nothing to add to the grounds.

8. Mr Bates made submissions on behalf of the Respondent and there is a full note of his submissions in the record of proceedings. It would be fair to say that he relied largely on the 'reasons' given by Judge Gill

Finding on Material Error

9. Having heard those submissions and read the detailed and well-reasoned decision of Judge Devlin I reached the conclusion that the Tribunal made no material errors of law.

10. The Appellants made an application for refugee status based on their risk on return to Pakistan as gay men who have entered into a civil partnership. They had previously made a claim for asylum based on their sexuality and relationship which at not resulted in a civil partnership and this was refused and their appeal was dismissed after a hearing before Judge De Haney dated 29 July 2013. In essence Judge De Haney dismissed their appeals because he did not accept that they were gay men and found they had fabricated this claim in order to remain in the UK. His decision was challenged and, in a decision dated 4 November 2013 the Upper Tribunal found no error of law in Judge De Haney's decision.

11. First-tier Tribunal Judge Devlin quite properly recognised in accordance with Devaseelan [2003] Imm AR 1 that the starting point of his decision was the decision of Judge De Haney and he set the law out in full at paragraph 74(1)-(7) recognising at paragraph 76 that Judge De Haney's decision was the authoritative assessment of the Appellants' status at the time when the decision was made.

12. The suggestion made in the grounds that Judge Devlin 'dittoed' (sic) the adverse credibility findings made by the previous Judge is wholly without merit. The Judge considered in great detail the fresh evidence adduced by the Appellants. At paragraphs 80-92 he gave reasons why that evidence would not

justify him going behind the decision of Judge De Haney which included for example the fact that the oral witnesses were apparently known to the Appellants at the time of the first hearing but had not been called; they appeared to have no independent knowledge of the matters they spoke of; their support for the Appellants account of events that caused them to flee from Pakistan was 'tangential'; none of the individuals gave live evidence and had such evidence tested. It was also clearly open to him to approach that evidence with some caution in accordance with the guidance in Devaseelan when it was evidence of witnesses who knew the Appellants at the time of the first hearing and therefore could have been called at the time of the first hearing unless there was good reason for this failure and no such reason was given.

13. Judge Devlin nevertheless went on to consider the Appellants evidence in detail and their explanations for the discrepancies found by Judge De Haney at 97 onwards and rejected at paragraph 120-121 their argument that the 'modulations' in their narrative was in some way probative of the reality of their fear as 'non sensical'. He found at paragraph 132-134 that the discrepancies remained unexplained and made detailed and well reasoned findings to explain his conclusion.

14. The argument which criticises the Judges approach to the absence of a representive appearing on behalf of the Respondent is wholly without merit. The Judge quite properly rejected at paragraph 136-143 the suggestion that the failure to cross examine required him to uncritically accept their attempts to address the inconsistencies in their account distinguishing this case from MS Sri Lanka [2012] EWCA Civ 1548. Nor did this mean that the Judge was required to conclude that the Respondent had declined the opportunity to cross examine the authors of the letters of support as the Appellants had indicated in the CMR form that they would not be called to give live evidence The Judge was entitled to ask questions for clarification purposes and there is nothing objectionable in the one example cited "What specifically served to convince him that the Appellants were gay?", there is nothing that justifies describing this as 'cross examination.'

15. The suggestion that the Judge failed to consider the Civil Partnership Certificate is also without merit because he did and indeed acknowledged that there was a difference between booking a ceremony and going through with it (paragraph 147). However he was entitled to considered this ceremony in the context of findings made as to inconsistencies between their accounts of when their relationship started and when they lived together, and the absence of documentary evidence of prior affection. He was also entitled to take into account that the Civil Partnership was entered into at a time when their appeal against Judge De Haney's decision was still pending and therefore their status was, and continued to be, precarious which impacted on the weight he gave the partnership document.

16. Thus the conclusions the Judge reached based on all the evidence before him were findings that were reasonably open to him and the grounds are merely a disagreement with those findings.

17. The grounds also criticise the Judges findings in relation to Article 8 and suggest "he dealt with the issue in a throwaway line." This is plainly wrong as there are 6 detailed paragraphs addressing the only Rule they could potentially meet, paragraph 276ADE1 (vi) against a finding that they were not, as they claimed, gay men. He found that they had lived the vast majority of their lives in Pakistan and he rejected their claim that their families had disowned them and therefore found that they would have help in re-establishing themselves. He was entitled to conclude in those circumstances that there would be no very significant obstacles to them reintegrating on return. His assessment of Article 8 outside the Rules was therefore in the context of finding that the Appellants did not meet the Rules. He nevertheless then went on to consider whether the Appellants had identified any reason for a grant of leave outside the Rules, any compelling circumstances and found there were none. He found that they had maintained a fabricated asylum claim and noted the strong public interest in discouraging such behaviour. He then applied the public interest factors as required by s 117 B of the Nationality, Immigration and Asylum Act 2002 and found that there was nothing outweighing the public interest in removal.

Contrary to what is asserted in the grounds the assessment is well structured and takes into account all of the relevant factors.

CONCLUSION

18. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

19. **The appeals are dismissed.**

Signed Date 8.2.2019

Deputy Upper Tribunal Judge Birrell