



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

**Appeal Number: PA/09649/2019 (P)  
PA/09648/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34  
On 24 June 2020**

**Decision & Reasons Promulgated  
On 2 July 2020**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**AK**

**AS**

**(ANONYMITY ORDERS MADE)**

**Appellants**

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellants are nationals of Afghanistan. On 14 June 2019 the 1<sup>st</sup> Appellant made a fresh claim for asylum on the basis that he feared persecution as a gay man in Afghanistan. Meanwhile, the 2<sup>nd</sup> Appellant had made a fresh claim on the same basis on 12 June 2019. Both of their applications were refused and they appealed. When they did so they asked for their appeals to be heard together. The appeals came before First-tier Tribunal Judge

Richardson, who dismissed their appeals in decisions, promulgated on 19 December 2020 and 30 January 2020.

2. They appealed against these decisions and Upper Tribunal Judge Blum granted them permission to appeal to the Upper Tribunal on 6 March 2020. He found that it was arguable that First-tier Tribunal Judge Richardson had failed to give adequate reasons for giving little weight to their evidence about their relationship. He also found that it was arguable that he had failed to have regard to material evidence; namely the chat transcript and the emails from “meetup”
3. An error of law hearing for both Appellants had been set down for 4 May 2020 but was vacated in the light of the COVID 19 Pandemic. On 21 April 2020 Upper Tribunal Judge Gill gave directions about the future conduct of the error of law proceedings in the light of current restrictions. She also said that she was minded to find that the error of law hearing could proceed on the papers.
4. The Appellants’ solicitors replied on 5 May 2020, stating that they relied on their previous grounds of appeal and providing contact details for their counsel. The Respondent submitted separate skeleton arguments for each appellant on 11 May 2020. In both appeals the Respondent asked for an oral hearing but gave no specific reasons for doing so and I find that an oral hearing is not necessary in this particular case to ensure that the interests of justice are upheld. I find that I can apply the powers contained in rules 2 and 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and make by decision on the papers in the light of the papers before me.
5. As these are linked appeals relying on the same evidence and as the decisions made by First-tier Tribunal Judge Richardson contain the same references to the facts and law, I have combined my decision and it relates to the appeals made by both appellants and this error of law decision applies equally to them both.

### **ERROR OF LAW DECISION**

6. In both of these appeals, the Respondent had accepted that the Appellants had made fresh claims for asylum based on the fact that they feared persecution as gay men and that they relied on material that had not previously been before the First-tier Tribunal when their earlier appeals were dismissed. The fact that the credibility of their early accounts had not been accepted did not mean that the evidence on which they relied in their fresh claims did not

have to be considered with anxious scrutiny and in the light of the relevant objective and country evidence.

7. Even reading the decisions as a whole, it is not possible to ascertain what view First-tier Tribunal Judge Richardson took of the chat extract between the two Appellants. The judge also failed to consider the significance of the Appellants being on the meet-up site. First-tier Tribunal Judge also failed to take into account the fact that many of the photographs showed the Appellants at a public event and not merely with each other. In addition, two of the three original photographs, which were retained on file, had been taken by another person of the Appellants in the company of other people. They were not photographs taken by the Appellants of each other, as asserted in paragraph 36 of First-tier Tribunal Judge Richardson's decision.
8. First-tier Tribunal Judge Richardson also gave considerable weight to the delay on the part of the Appellants before making their fresh claims. When doing so he failed to take into account the contents of the Country and Policy & Information Note *Afghanistan: sexual orientation and gender identity* Version 2.0 January 2017 and the impact that growing up in Afghanistan may have had on their fears of revealing their sexuality.
9. For all of these reasons, First-tier Tribunal Judge Richardson's decisions contained material errors of law.

## **DECISION**

- (1) The Appellants' appeals are allowed.
- (2) First-tier Tribunal Judge Richardson's decisions are set aside.
- (3) The appeals are remitted to be listed together in the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Richardson, Povey or Coutts.

**Nadine Finch**

Signed  
Upper Tribunal Judge Finch

Date 23 June 2020