Upper Tribunal
Immigration and Asylum Chamber

Appeal Number:
IA/44947/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 16 March 2016	**On 1 April 2016**

Before

Upper Tribunal Judge Kekić

Between

A H

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation
For the Appellant: Mr A Miah, Counsel
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Anonymity

1. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (procedure) Rules 2005. There being no request to the contrary, I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Details of appellant and basis of claim

2. This appeal comes before me following my decision to set aside the decision of First-tier Tribunal Judge Callow dated 28 April 2014. The reasons for that decision are set out in a separate document promulgated in July 2014.

3. The appellant is a Lebanese national born on 7 March 1983. He challenges the decision of the respondent on 18 October 2013 to refuse to extend the discretionary leave he had been granted as the civil partner of a Syrian national who had also received a grant of discretionary leave on the same basis and who had also made an application for further leave. Although the applicant maintained that an intimate relationship still existed between them, he could not produce any documentary evidence of cohabitation and his partner notified the respondent that the relationship had broken down when making his own application which appears to have been on the basis that he had completed ten years of lawful residence in the UK. The respondent concluded that there had been a change in his circumstances and refused the application. She also took the view that the applicant could safely return to Lebanon.

4. The respondent does not, however, appear to have disputed that the appellant was gay. When the matter came before me on 23 July 2014 (not 2013 as my determination erroneously records), that claim remained unchallenged as did Judge Callow's finding that people who lived an openly gay life in Lebanon were liable to persecution. I subsequently gave directions that there were three issues to be determined: (1) whether the appellant would live openly as a gay man in Lebanon and if not, why; (2) whether he lived openly in the UK and if not, why; and (3) whether his relationship with his partner could continue after his removal.

The Hearing

5. At the hearing, I heard oral evidence in English from the appellant and his witness, RA, with whom he entered into a civil partnership on 30 July 2008.

6. The appellant adopted his witness statement which he stated was recently prepared. He gave an address in Ealing as his residence. He was then tendered for cross examination.

7. In response to questions from Mr Avery, the appellant confirmed his written statement that his family would not accept him and that he had to

hide his sexual orientation from them. When asked whether his family were aware of his sexuality he said his brother was the only family member who was aware. When asked whether he may have told others, the appellant replied that after a threatening email from his brother in 2013, he had not had any contact with his family. He was unsure about whether they knew about his sexuality.

8. The appellant was referred to the answer he gave at his screening interview when he had said that his family was aware of his sexuality. He explained to the court that he had meant that he would not be accepted in his area. He stated that he would be unable to live anywhere in Lebanon because he would be found anywhere he went including Beirut. He was asked several times what he feared would happen to him. After many non specific responses he said: "It is our religion. They decide what they have to do". He confirmed that he only feared his family. His family consisted of his parents, a brother, four paternal uncles and seven maternal aunts and their families. He said that they would find him if he returned to Lebanon. It would be easy for a gun to be given to someone to finish his life. He said it was a closed life there and his family would know whatever he did. When asked whether he had any fears apart from his family, he replied that a fear of his family was enough.

9. The appellant was asked about whether he would go to gay clubs in Lebanon if he had no family. He replied he did not know of any. When he was asked whether he would go if there were clubs, he replied: "Life is not to go to the club. Even here I do not go to clubs much. I stay at home with my partner. Why do I have to go there?"

10. The appellant confirmed that he had entered into a civil partnership with RA in 2008 and that they were currently cohabiting at their residence in Ealing and had been doing so since RA returned from Syria last year after an eight month visit. Prior to that the appellant had lived at a Willesden Green address since 2011.

11. The appellant was asked about the break up of the relationship. He explained that this occurred in 2011 because of an issue over their immigration applications. He said he had sent his application in first whereas his partner had felt they should send their applications in at the same time. They had both been granted discretionary leave previously due to their relationship. On this occasion his partner applied for indefinite leave to remain due to having completed ten years of lawful residence. The appellant stated, however, that despite living apart, they had continued their relationship throughout that period. They resumed

cohabitation ten months ago because they had sorted out their problems. Despite those problems, however, they had retained their "connection" with each other.

12. The appellant confirmed that he had friends from a similar background to his and they accepted his sexuality. He had no issue with disclosing his sexuality to them.

13. The appellant was asked whether he had attended gay clubs whilst living apart from his partner. He said he had been once. It was not a regular past time.

14. He said that he was employed. When asked whether his work colleagues were aware of his sexuality, he said he did not talk to them about it. He did not ask them if they knew and when it was pointed out to him that he had maintained in his statement that they knew, he questioned how they would know. His statement was shown to him. He then said they might know. He said they supported him.

15. The appellant said he went to work at 7 a.m. He worked in Knightsbridge as a chef, five days a week. He got home after 5. He travelled on the Piccadilly line. He was off last Friday. His partner was a manager at a restaurant in Westfield. He worked last Friday and was home around 9 p.m. That completed cross-examination.

16. In re-examination the appellant said he did not have issues over his sexuality with his work colleagues. There had been one man he had had an issue with but he had left. He said that his partner had also been refused discretionary leave but after making an application on long residence grounds, he was successful. The applicant was shown a copy of his screening interview and asked what he had meant by 'family'. He remained silent. He was asked which members of his family were aware of his relationship. He said his brother knew. He then said that all his family probably knew. His father was a butcher. His brother was a supermarket manager but was now in Africa. His uncles all worked in shops or restaurants. In their free time they had involvement with Hezbollah and Harket Amal as those groups operated in his home area. They would not accept his sexuality. He had not moved in with his partner in order to assist his appeal.

17. In reply to questions I then put for clarification, the appellant confirmed that he feared Hezbollah and Harket Amal as well as his family. He had not had any gay relationships in Lebanon because "you can't speak about

that". He would not be able to have any relationships if he returned. He had not discussed the future with RA but if he had to return to Lebanon, he would kill himself. His partner would not go to live there.

18. I asked the appellant to describe an average week of his life to me. He said he and his partner went to work. On days off they would stay at home and watch television. They liked football. He would not be able to have a private life like this in Lebanon as men could not live together.

19. I asked the appellant why he lived separately from his partner if they had remained a couple. He said that the contract on the house had run out. They could have found other accommodation together but decided to take a break. He had had other relationships but his partner was the only serious one. He had decided on a civil partnership because they loved each other.

20. The appellant confirmed he had not had contact with his family since receipt of the email from his brother in October 2013. When I pointed out to him that he had said in his screening interview that he spoke to his sister, he agreed he had three sisters but said he had not been asked this question and he did not speak to them. He had not had an interpreter at the interview.

21. Mr Avery had a question arising. He asked the appellant the whereabouts of his brother and was told he had been in Mozambique since around 2011. Mr Miah had no questions arising.

22. I then heard evidence from RA, a Syrian national. He adopted his witness statement, confirmed the contents were true and was tendered for cross examination.

23. The witness confirmed that he and the appellant had broken up in 2013 for 2-3 years. They got back together in February 2015 after he had returned from Syria because they liked each other and had known each other since 2008. The witness was asked several times for a more specific reason for the decision to resume cohabitation. He replied they had always been in contact and they loved each other. He had not had any other relationships whilst apart from the appellant. He had spent almost 8 months in Syria.

24. The witness was asked whether he had ever been in touch with the appellant's family. He replied that he had, sometimes. He spoke to his parents over the phone. The last occasion was after Ramadan to wish them

for Eid. He did not know if the appellant spoke to his parents. He could not recall if they had asked about the appellant. The conversation had been brief. He did not know when the appellant had last spoken to his family. The appellant had a problem with his family but the witness did not know what the problem was. He said the appellant was very sensitive. He had never spoken to the appellant's brother. The appellant had introduced him to his parents as a work colleague when he first spoke to them. He called them on celebratory events. He was known to them as the appellant's friend. They may have asked after the appellant. The appellant had never told him why he did not speak to his family. He, the witness, had never encountered any problems with them.

25. The witness said he did not want to go and live in Lebanon. It was not a free country. He had been there for a week on his way to Syria.

26. The witness confirmed he worked as a restaurant manager. He had been employed for the last ten years. He worked a five day week at Westfield. He had returned home from work around 8 or 9 p.m. last Friday. That completed cross-examination.

27. In re-examination the witness was asked why he had called the appellant's parents. He said he just called to say hello. They asked who was calling and he told them.

28. In response to my questions the witness stated that he was unsure whether the appellant's parents knew about their relationship. I asked whether they knew he and the appellant cohabited. After a long silence, the witness said he was unsure but thought they did. He said the appellant may have told them. They had never discussed it. His own family did not know. He was aware that the appellant had told his brother about them. He could not recall whether this had been whilst they were living together. He was asked about the brother's reaction. After a long silence he said that it had been bad.

29. I asked what had led to the break up of the relationship. The witness said there was nothing specific but that the appellant was very stressed about his work and about people knowing about his sexuality. He said that during their separation they were sometimes in contact over the phone. I informed him that the appellant had maintained that they were still a couple. The witness then said they did sometimes see each other. He did not remember if they had a sexual relationship. He thought not. They decided to resume living together because they liked each other. He said that if the appellant left the UK their relationship could not continue. He

said that they normally spent their time working, watching TV, cooking and sometimes going to the cinema. They met at the beginning of 2008.

30. Neither Mr Avery nor Mr Miah had any questions arising and that completed the oral evidence.

31. After the lunch break, I heard submissions. These are fully recorded in my record of proceedings and summarised below. The appellant and his partner were nor in attendance for the submissions.

32. For the respondent, Mr Avery submitted that the evidence had given rise to credibility issues as both witnesses were very vague about their relationship. He submitted that this was no more than a convenient arrangement. They had both been unclear as to why they broke up, why they reconciled and what the nature of the relationship had been in the interim. There was also the strange evidence of the contact with the appellant's family. The witness did not appear to have any inkling that the appellant had claimed he was in fear of his family and therefore could not return. This also raised concerns over whether the appellant had any genuine fear of them and suggested that there was no issue and that the claim had been fabricated.

33. Mr Avery acknowledged that the respondent had accepted that the appellant was gay but argued that the claimed relationship was not ongoing. The appellant led a quiet life in the UK. Even when not with his partner, he did not go to clubs. If he continued with the same lifestyle in Lebanon as he did here, that would not cause any problems for him. His evidence about his work colleagues was inconsistent and it was difficult to ascertain why he was fearful. Whilst homosexuality was illegal in Lebanon, the law was not enforced, there were activist LGBT groups and society was more accepting of LGBT persons that it had been. The appellant had failed to establish he would be at risk of persecution if he conducted himself there as he did here. Discrimination did not amount to persecution. He had made an application to the respondent as a partner via the ten year route but computer records showed there were some gaps in leave. The matter would be considered after this determination had been promulgated. The appeal should be dismissed.

34. Mr Miah, in his submissions, asked that I make positive credibility findings. He submitted that the appellant was a refugee within the terms of the convention being a member of a social group. He said both witnesses had given largely consistent evidence and had put forward their own reasons for the problems in their relationship. This was not a sham

marriage. They gave consistent evidence on what time the appellant's partner had returned home from work last Friday. This suggested that they knew each other very well.

35. There was no dispute that the appellant was gay and the issue was the risk to him on return. The relationship only went to the issue of article 8. The witness had been polite in calling the appellant's parents. He said they could not live in Lebanon and he raised an issue over a fear of the authorities in his statement. With regard to the appellant's evidence over contact with his family, there may have been confusion over the terminology and tense used. There was documentary evidence in the bundle to show that both the appellant and his partner were registered at the Ealing address. On balance the relationship was genuine and would not be able to continue if the appellant was removed. The appellant and his partner lived openly as a gay couple and although they were private people they had been to gay clubs. The appellant feared his family and its connections with extremist groups. There was an extensive family network and the appellant would not be able to return and live openly as a gay man. One gay club was shut down in 2013. This was indicative of the approach of the authorities. The appellant had been in the UK since 2006 and whilst I was not asked to make findings under the rules, I was urged to consider this long residence as part of the article 8 claim.

36. At the conclusion of the hearing I reserved my determination which I now give with reasons. These are not set out in any order of priority.

Findings and reasons

37. There have been delays in the resolution of this appeal. Some are due to the appellant and his representatives and some due to the appeals process itself, and the challenges made. The First-tier Tribunal's decision was set aside in July 2014. The appellant's representative sought a resumed hearing so as to enable the appellant and his partner to give oral evidence. On 17 October 2014 the matter once again came before me. As we now know, on that occasion, RA was in Syria. Mr Walker and Mr Miah (also representing the appellant on that occasion) jointly expressed discomfort about the Tribunal making primary findings on an asylum claim that had never been put to the Secretary of State. I was told that the appellant would make an asylum application but would not withdraw this appeal until he had done so as to avoid any risk of detention. The matter was therefore adjourned to a CMR hearing on 6 March 2015 but it then transpired that although the appellant had claimed asylum on 17 November 2014, he did not intend to withdraw the present appeal. That,

therefore, had to be relisted for hearing. Meanwhile, the respondent arranged two substantive interviews on 13 April and 5 May 2015, neither of which the appellant attended. That led to the refusal of asylum on 8 May 2015. No appeal was lodged against that decision and the present appeal is pursued.

38. I have had regard to all the evidence both oral and documentary, to the submissions and to the lower standard of proof when assessing the claim and determining the three issues that had been agreed on. For reasons that shall become clear, the evidence raised a fourth issue: the genuineness of the claimed relationship between the appellant and his partner. Submissions, albeit brief, were also made on the appellant's private life in the UK and his period of residence. In many ways however the issues are intertwined and much is dependent upon the credibility of the appellant and his witness.

39. The appellant relied upon two bundles; one served for this hearing and one served for a previous hearing. There were also various statements/letters from the appellant served at previous hearings. The respondent relied upon the appeals bundle, on country material (which I set out below) and on the appellant's screening interview which has also been served on at least one previous occasion. I have the previous determinations, grounds of challenge and decisions. The respondent previously adduced a decision letter dated 21 October 2013 in respect of RA whose representatives were M A Consultants (also representing the appellant). The respondent refused RA's application for discretionary leave as a partner but granted a period of leave until 21 April 2014 due to the situation in Syria. Home Office records show that he then made an application on long residency grounds in February 2014. He obtained ILR in May 2014.

40. Neither party referred to or adduced any case law but I have had regard to HJ (Iran) [2010] UKSC 31, RT (Zimbabwe) [2012] UKSC 38 and Razgar [2004] UKHL 27 when considering the evidence and claim.

41. I acknowledge that the respondent had previously accepted that the appellant was gay and in a gay relationship with RA and it appears that both had relied on their civil partnership to obtain discretionary leave. It was found by Judge Callow, albeit he went on to dismiss the appeal, that the appellant would be at risk of persecution in Lebanon were he to live an openly gay life there. That finding has not been challenged at any stage by the respondent. I therefore proceed to determine this appeal on the premise that the appellant is gay and that between August 2009 and

September 2010 when two periods of discretionary leave were granted, the respondent accepted that he was in a subsisting relationship with RA. I also acknowledge Judge Callow's finding on persecution for openly gay individuals in Lebanon.

42. I have had regard to the country information submitted at the various hearings, limited though it is. Given the accepted position for openly gay people, it is of limited assistance. Nevertheless, I have considered it. The picture provided by the various material is of a generally homophobic society but one where attitudes are changing, at least in Beirut, and where the law on homosexuality has not been enforced for decades. I set out a brief summary of the main evidence below. Some was summarized by Judge Callow in his determination.

43. The COI Response of 21 November 2012 addresses the application of the law in Lebanon regarding the persecution of homosexuals. It is confirmed that Article 534 of the Penal Code criminalizes "unnatural sexual intercourse" which is punishable with up to one year of imprisonment but reports that in December 2009 a judge ruled that homosexual conduct is natural and so does not contradict nature. Other cases were also being fought on those lines (and there is reference in other material to a similar decision with reference to a woman made in 2014). It provides information about HELEM (the Arabic acronym for LGBT), an activist group which reports on a decline in interference from the state in central Beirut where the police are said to no longer raid or attack nightclubs. Gay bars and clubs are said to be common and Beirut is described as a haven for gay men and lesbians, luring people from throughout the region despite the persistence of a negative stigma.

44. The more recent internet report of 15 May 2015 also reports on Lebanon being more open minded than the rest of the Arab world but notes the conservative attitude of most Lebanese people. It too confirms that the law is not commonly enforced and notes that the Lebanese National Centre for Psychiatry declared that homosexuality was not a mental disorder and did not need to be treated. HELEM was reported to have organised several public demonstrations, lectures and fundraisers. It was acknowledged that homophobia was entrenched in society but that society was becoming more accepting.

45. The article from the Human Dignity Trust of 4 March 2014, the Immigration and Refugee Board of Canada report of 9 January 2014 (also cited in the Ref World extract) and the BBC Radio 4 article of 25 November 2013 all deal with the treatment of sexual minorities in Lebanon. The first

article reports on the ruling of a Lebanese court that whilst homosexuality is not the norm, it is not unnatural and therefore technically not illegal. The second confirms the vagueness of the Penal Code which leaves the definition of "nature" open to interpretation. It reports that there is a growing acceptance of the gay community in Beirut and the existence of gay clubs, restaurants and bars. However all the reports acknowledge that discrimination and abuse remains prevalent.

46. Gay star news confirms that the law has not been enforced for decades though public displays of affection are not advised, that the situation for gays has improved significantly and that gay clubs and bars operate freely. Beirut is described as a gay paradise and Byblos has a gay beach. There are gay travel agents who assist with holidays.

47. Having considered all the evidence in the round, and with the accepted facts in mind, I deal with the issue of credibility as this arose during the course of the evidence given by the appellant and RA. Both had provided witness statements and both then gave oral evidence. I found them both to be largely unreliable witnesses. Questions had to be repeated several times in order to obtain direct or indeed any answers. There were long periods of silence in response to some questions put and contradictions between the evidence given by both and also internal inconsistencies in the appellant's evidence. I do note that Judge Callow, when making his positive findings, only heard oral evidence from the appellant. The main problems are set out below.

48. There is agreement that the appellant and RA ceased living together at some point after the second period of discretionary leave was granted in September 2010. However the evidence was wholly inconsistent as to when and why that occurred, the period of separation and the nature of the relationship and of contact during that period. To say that it was difficult to ascertain the facts in that respect from both witnesses would be an understatement. Neither gave clear, straight or informative replies. There were long periods of silence when questions were put and the responses provided little information yet both confirmed they understood the questions asked of them. The appellant also confirmed at his screening interview that he had understood all the questions put.

49. The appellant stated in oral evidence he and RA stopped living together in 2011. RA said they had ceased to cohabit and had taken a break in 2013. In his witness statement, RA said they broke up four years after 5 March 2008 (i.e. March 2012). The recent letter of application by the appellant as a partner states that the break up occurred on 10 June 2012. The FLR

application form states that RA had been living in Ealing since 7 July 2011. It is contradictory over where the appellant had lived at that time. It is stated that he was at an address in NW6 from March 2008 for eight months and then at an address in E4 until 10 June 2012. If the break up occurred on that date in June, it is unclear why RA was living in Ealing from July 2011, almost a whole year without the appellant. Elsewhere on the form the appellant claims to have lived in Willesden Green from November 2011.

50. The appellant stated that the reason they decided to live apart was because there was an issue over their immigration applications in that he had sent his in first whereas RA was of the view that they should have been sent together. He also said the lease on their accommodation had come to an end. When RA was asked for a reason, he stated that it was nothing specific, that the appellant was stressed about work and about people knowing about his sexuality. The explanation about the lease is flatly contradicted by other oral evidence. If the separation was in July 2011 and due to the termination of a tenancy agreement as claimed in court, it is unclear how the appellant continued to live at the same address and without RA for a further eight months.

51. The appellant's oral and written evidence was that despite the cessation of cohabitation, he and RA remained a couple, saw each other regularly and continued their relationship. His grounds of appeal refer to them still loving each other and sharing a bed. His evidence to Judge Callow was that intimacy continued. The refusal letter makes reference to his claim that he still spent nights with RA during their period of separation. The recent letter of application also maintains that the relationship has "always continued". However RA's oral evidence contradicted all of this. He said that they "sometimes" had contact over the phone. When the appellant's evidence was put to him he stated that they did sometimes see each other. When asked about whether they had maintained intimate relations, he initially said he could not remember and then said they had not.

52. The evidence was equally unsatisfactory about what prompted the decision to resume cohabitation. Neither could give any reason other than they had always liked or loved each other but they could not explain what had changed in their situation and what had led to their cohabitation after a long period apart. They denied it had anything to do with the appeals process.

53. The evidence was also contradictory about when they resumed cohabitation. The recent letter of application to the Home Office stated it was in August 2015 but RA's evidence was that cohabitation resumed in February 2015 and the appellant said in oral evidence that it was ten months ago, i.e. May 2015. The documentary evidence of cohabitation is very sparse and internally inconsistent. I only have copies and have not seen the originals. There is a utility bill from EDF in both names described as "your first electricity and gas bill" covering the period between 31 July and 21 September 2015. There is a letter dated 15 September 2015 confirming RA's employment and giving his address as Hamilton Road in Ealing. His pay slips which cover the period between February and August 2015 show the Ealing address as does his bank statement which covers the period from 19 February 2015 – 1 September 2015. Letters dated 4 and 10 September 2015 confirm the appellant's employment but provide no address for him. His pay slips, however, give the Willesden Green address for the period from March – July 2015. There is only one pay slip (for August 2015) to the Ealing address. The appellant's bank statement for February – September 2015 show his Willesden Green address. They also show several cash withdrawals over this period made in Willesden Green. The appellant is frequently overdrawn. Other than the one shared utility bill and a single payslip for August 2015, I have seen no other independent evidence of the appellant's residence in Ealing. Indeed, the evidence largely shows him to be at the Willesden Green address over the period covered by the documents. I have not been provided with any explanation for this.

54. I note that despite notification from the respondent in May 2015 when asylum was refused that the appellant had no permission to work, he has continued in employment and remains in employment.

55. The appellant and RA have also contradicted themselves over when they met. The application letter from the appellant's representatives maintain that they have known each other since 2006 and the application form confirms that however RA said twice in his oral evidence that they met in early 2008. This significant discrepancy has not been resolved.

56. Mr Miah submitted that the consistent evidence between the appellant and RA, over what time RA had returned from work last Friday, indicated that they knew each other very well. When that one factor is considered in the context of all the other discrepant evidence, I cannot find that it establishes that they have a subsisting same sex relationship. I note in reaching my findings that RA was very vague about other matters that one would expect him to know had he been in a genuine long term

relationship with the appellant. The appellant claimed to fear his family to the extent that he claimed he would be killed if he returned. There was discrepant evidence as to whom he actually meant, whether it was just his brother or his parents, uncles and other extended family. He also claimed to have had no contact with any members of his family (although there was inconsistent evidence here too) since receiving a threatening email from his brother in October 2013. However RA spoke of calling the appellant's parents for Eid and of seemingly making a point of calling them on celebratory events and encountering no problems. There was no suggestion that they expressed any hostility about the appellant during these conversations and he did say that he thought they asked after the appellant in the sense of asking how he was. RA did not however know if the appellant was in contact with his family; he thought there was a problem but did not know what the problem was and he did not know if they were aware of their partnership or the appellant's sexuality. After some hesitation he agreed that he was aware that the appellant's brother knew and when asked of his reaction to the news, he was silent before stating he recalled it was bad. Given that the appellant and RA are supposed to be in a long term relationship and that RA was supposed to be supporting the appellant's asylum claim, I would expect them to have discussed the appellant's fears and problems and for RA to have more than a vague knowledge of the case. Knowledge of the time RA finished work one day is not indicative of a committed on going relationship when all the other substantial evidential difficulties are considered.

57. As mentioned previously, the appellant was contradictory over whether his family were aware of his sexuality and over the contact he had had with them. In oral evidence he maintained that he had only told his brother. At his screening interview in November 2014, however, he said that his family were aware of his sexuality and so did not accept him. He also said that he had not spoken to his parents for two years but that he did speak to his sister but the rest of the family were not aware of that contact. Mr Miah asked me to find that the appellant may have been confused with the term family or may have confused the tense used when speaking of contact. I do not accept that. The appellant confirmed on completion of the interview that he had understood all the questions put to him. The transcript of the screening interview was available to the appellant and his representatives at least since the hearing before Judge Pickup when it was filed and possibly since it was conducted as normal practice is to provide a copy to the applicant when the interview is complete. No attempts have been made to correct or amend what the appellant had said at that time. I accept he did not have an interpreter but none had been requested and he had not requested an interpreter for any

of his hearings either. I note also that the appellant speaks of his family and then separately of his brother and his parents. He is plainly aware of the different terms. He also clearly meant that he had ongoing contact with his sister after the threats from his brother as he made it plain that is family were not aware of this contact. There would have been no point in saying that if contact with all members of the family had ceased some years before. As Mr Avery submits, this gives rise to questions over the appellant's claim of being in fear of his family and raises concerns over the true situation regarding the family.

58. I have had regard to the email dated 27 October 2013 said to emanate from the appellant's brother. It is written in English. It purports to be in response to a conversation during which the appellant disclosed his civil partnership. Given that the appellant and RA had been living apart for over a year and a half or even two and a half years before that, depending on which version of the evidence is taken into account, I find it difficult to understand the timing of the disclosure. This is even more puzzling when the evidence (according to the copies of his three passports in the respondent's bundle) is that he had visited Lebanon at least twice after the date he entered into the civil partnership – in 2010 and 2011. he does not explain why he decided to tell his brother the news after the break down of the relationship and at long distance rather than when he was still living with RA, the relationship was fresher and he could have had a more intimate discussion with his brother. I note that significantly the email was dated just days after the appellant's application for further leave was refused on 18 October 2013. the timing of the email when taken into account with all the other difficulties I have set out with the evidence gives rise to serious concerns over whether the truth has been told.

59. The appellant stated at his screening interview that he came to the UK because he was gay and had been so for a long time. It was easy to do so with a student visa. Despite saying he could not return because of that, he has been back to Lebanon at least three times; in 2007, 2011 and an unspecified date (according to his 2012 application form at 6.12 and 6.13). I note from the copies of the appellant's passports contained in the respondent's bundle that the unspecified date appears to be 2010. This information does not support the information the appellant gave elsewhere in the pending FLR application form of never having left the UK since his arrival in 2006. More importantly, it does not accord with his claim that he fears returning to Lebanon because of his sexuality. He does not provide any evidence that anything untoward occurred on any of his three visits.

60. There is also contradictory evidence over whether the appellant's work colleagues were aware of his sexuality. In his witness statement he claimed that they did know and that they were supportive of him. When asked about this in oral evidence the appellant seemed to have no idea of what was maintained in his statement as he explained he did not talk to them about himself and they did not ask. It was only when the matter was pursued and he was shown the statement that he tried to backtrack and said they may know. He also referred in evidence to one colleague who had caused problems for him but who had since left.

61. There was a similar problem with what he said about his friends. He claimed in his statement and in oral evidence that he had friends from a similar background and that they were aware of his sexuality and had no issue with it. He maintained they had a different mindset when they came to the UK. However RA said that the appellant tried to keep their relationship from others and the appellant's evidence to Judge Callow was that he hid his sexuality from his friends. In his undated letter to the respondent sent pursuant to his last application, he stated that he had not revealed the fact of his marriage to anyone in London or in Lebanon. The latter evidence contradicts the appellant's subsequent claim that his brother had known of the relationship prior to the date of the hearing before Judge Callow.

62. Although there is passing reference to a fear of the authorities in his statement, the appellant failed to expand upon this in his oral evidence, despite being asked several times about whom he feared. Numerous questions on the nature and source of his fear were put; his answer was that he feared his family and that should be enough. It was only after the issue was pursued at length that he ventured that he was also afraid of extremist groups his family had some involvement with in the local area. No further details were given.

63. Mr Miah argued there was an extensive family network and so the appellant would be at risk all over Lebanon. The appellant's evidence is that his family members held occupations as butchers and shop keepers. He was vague about what alignment they had to extremist groups but said this was common in his area as these were the operating groups there. I have seen no evidence to suggest that his family members have any influential connections or links which would enable them to know when the appellant would be in Lebanon or where he was. There is no suggestion that this "extensive network" exists outside his home area. Certainly, there was no claim that any family lived in Beirut or any other large cities. Nor was it explained how they would be aware of his return

or whereabouts. The appellant's three return visits to Lebanon wholly undermine his claimed fear. If he felt so troubled by his fears that he had to leave the country in 2006, it makes no sense at all that he would return voluntarily so many times and that he would not make an asylum claim until many years after entry.

64. The appellant was asked about his lifestyle in the UK. He stated that he did not go to gay bars and clubs and, when not at work, stayed at home and watched TV. When it was put to him that he had claimed to frequent gay bars in his statement, he appeared surprised but then said he had been once or twice. He said he was not aware of such clubs and bars in Beirut but that in any event he would not go to them.

65. His involvement with social media is equally low key and discreet. The evidence shows he joined two Facebook meet up groups in December 2014. I note that his evidence to Judge Callow was that he used a false name on Facebook.

66. Part of the appellant's evidence is his recent application for leave on the basis of 10 years under the partner route. Whilst I am not proposing to make any decision on whether he qualifies for this, and indeed Mr Miah did not ask me to, I was asked to have regard to the appellant's long residence as part of the article 8 claim. This application form contains information in support of that claim. I have therefore considered it with care. There are, however, numerous inaccuracies with the information supplied. I do not know if these amount to deliberate misrepresentation by the appellant or carelessness and incompetence by his representatives (as they had all the evidence I now have and should have been aware of the significant inconsistencies), but they are of concern and I set them out below. Some matters have already been touched upon above.

67. The appellant stated on the form (completed in October 2015) that he had never been refused asylum in the UK. He plainly has been, on 8 May 2015. The information provided in that response is therefore not true. He stated he had never remained in the UK beyond the validity of his visa but he has in March 2007 and after his leave expired in September 2013. Whilst he had a pending appeal, he should have acknowledged the period of overstay and explained the circumstances. The appellant stated he met his partner in 2006 and their relationship commenced then but, as noted above, RA said in oral evidence that they met in 2008. He claimed to have been living at the Ealing address since August 2015 but I have addressed conflicts with this evidence earlier in my determination. The wrong date is provided for the date of the civil partnership. The appellant states that he

was last in Lebanon in March 2006 but by his own evidence as pointed out above he has been back there three times since then. He refers only to having siblings in Lebanon but in oral evidence he confirmed he also has parents and a large extended family of uncles, aunts and cousins.

68. In his August 2012 application form, the appellant stated RA was settled in the UK but the evidence available indicates that he was not granted ILR until 14 May 2014, almost two years later. Nor is his claim in that application that RA was his "husband" for more than 9 years truthful due to the break down of their relationship. The respondent was entitled to have expressed a view that there had been an element of deception.

69. The incorrect information supplied only adds to the unreliability of the appellant.

70. RA has also given contradictory evidence as set out above. I do not find him to a reliable witness either.

71. I would note that I have no corroborative evidence on the basis on which RA obtained his indefinite leave to remain although that is not directly relevant to this appeal or to my findings. I mention it for the sake of completeness as the appellant stated he obtained it due to having completed 10 years of lawful residence here after discretionary leave was granted, at least on one occasion due to the situation in Syria. I would note, however, that RA has been a frequent traveller to Syria even during the course of the conflict. His passport shows at least two recent visits to Syria and three trips to Lebanon in 2012, 2014 and 2015 although he only gave evidence of the one in 2015.

72. I have had regard to the principles established by HJ and HT [2010] UKSC 31 and I direct myself to the question of what the appellant would actually do if returned to Lebanon. The first two questions to be considered as part of the assessment by Tribunals have already been answered in the affirmative; that is to say, it is accepted that the appellant is gay and that if he lived openly in Lebanon he would be at real risk of persecution. The court held that:

> *"… if the Tribunal concluded that the applicant would live discreetly and so avoid persecution, it must go on to ask itself why he would do so; if the Tribunal concluded that the applicant would choose to live discreetly simply because that was how he wished to live, or because of social pressures, such as not wanting to distress his parents or embarrass his friends, his application should be rejected; social pressures of that kind did*

> *not amount to persecution and the Convention did not odder protection against them; if the Tribunal concluded that a material reasons for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then…his application should be accepted".*

73. Keeping these principles in mind and having assessed the evidence as a whole, I reach the following conclusions. These deal with the main points the appellant has relied on in support of his appeal.

74. The appellant is gay. That is accepted by the respondent and I do not go behind that concession.

75. It was also accepted by the respondent that at the time the two periods of discretionary leave were granted in August 2009 and September 2010, the appellant was in a genuine relationship with RA.

76. On other matters, I found the appellant and RA to be unreliable witnesses.

77. I do not know when the relationship ended as the evidence is so inconsistent but I find that it broke down soon after the second period of discretionary leave was granted.

78. I do not accept that the appellant and RA continued a relationship as a couple after they separated.

79. I find that there was no genuine desire on the part of either the appellant or RA to reconcile their differences and resume cohabitation.

80. I do not know if the appellant and RA have actually been living together at all since some time in 2015 because the evidence has been so inconsistent and the documentary evidence so limited but I find that if there is cohabitation, it is designed solely to facilitate the appeal.

81. I do not know whether the appellant has had other gay relationships in the UK. No questions were put to him about this. The evidence does not however support promiscuity.

82. The appellant has always led a quiet, discreet and private lifestyle in the UK. I do not accept that he has disclosed his sexuality to his friends generally although it may be that there are some who are aware. I do not accept his work colleagues are all aware of his sexuality either.

83. I do not accept that the appellant has been threatened by his brother.

84. I do not accept that the appellant has no contact with any family members.

85. It may be that the appellant has not disclosed his sexuality to his family. If that is so, I find that it accords with the way in which he has been living his life in the UK.

86. The appellant does not frequent bars and clubs in the UK and so would have no wish to do so in Lebanon.

87. I find that the appellant does not live openly as a gay man in the UK. He appears to be reluctant to reveal his sexuality even in the UK and I find that he chooses to live in a quiet and discreet way because that is what he prefers.

88. I find that if returned to Lebanon he would continue to live in the same quiet, private and discreet way. If he does so, then any sexual encounters he may have would not be public knowledge and would not cause him any difficulties. Given the fact that he has not entered into any long term relationships in the UK since the break up of the relationship with RA, it is not axiomatic that he would seek to do so in Lebanon.

89. I do not find that he would encounter any difficulties with the authorities or with fundamentalist groups either in his home area or elsewhere.

90. I find that should the appellant not wish to return home to his family, he would be able to live safely in Beirut without their knowledge should he so wish. I do not accept the claim that they would find him wherever he went.

91. These findings also impact upon the appellant's article 8 claim. Largely, that is reliant upon the claimed family/private life with RA and the appellant's ten years of residence here. It is not part of the appellant's case that he meets the requirements of the rules with respect to paragraph 276ADE or Appendix FM. Therefore I must consider whether the circumstances are such as to engage article 8 outside the rules.

92. Applying the Razgar stages, I find that the appellant has established a private life here because he has been since 2006, albeit with absences, and has made friends and has been working. I do not accept that his relationship with RA amounts to family life because I do not accept there

is any ongoing intimate relationship but I am prepared to accept that RA is a friend and that that friendship forms part of the private life the appellant has established.

93. The next three questions can be answered in the affirmative. I now proceed to undertake a proportionality assessment.

94. Given my finding that there is no relationship, other than friendship, between the appellant and RA, the main part of his article 8 claim falls away.

95. Little else is known about the appellant's life here. No questions were put to the appellant by Mr Miah about the nature of that life here. The witness statement does not provide any details either. There is no information as to the strength of any of the friendships formed or of any reason why such friendships could not continue from overseas. I have seen no evidence of any studies undertaken here although the appellant entered as a student. There is no evidence of any organisations the appellant has joined, any activities undertaken, any interests developed or hobbies pursued that could not be continued in Lebanon. Plainly the appellant has retained ties to his country of origin by his frequent visits and he has a very large family there.

96. Reliance was placed on his length of residence but that alone is not enough to establish a breach of article 8. Indeed, I heard no submissions from Mr Miah as to why removal would be disproportionate other than the passing reliance on the appellant's residence. No compelling or compassionate reasons have been given as to why the appellant could not return and reintegrate into life in Lebanon and it was not argued that it would be unreasonable or harsh for him to do so.

97. In view of the rejection of his asylum claim, and the absence of any other reason for why he could not be expected to leave the UK, I conclude that his circumstances do not outweigh the public interest in maintaining a consistent and effective policy of immigration control.

98. No separate submissions were made on humanitarian protection grounds.

Decision

99. The decision of the First-tier Tribunal was set aside. I remake the decision.

100. The appeal is dismissed on asylum grounds.

101. The appeal is dismissed on humanitarian protection grounds.

102. The appeal is dismissed on human rights grounds.

Signed:

Dr R Kekić
Judge of the Upper Tribunal
Date: 23 March 2016