



IAC-AH-LEM-V2

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

Appeal Number: AA/10526/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 12th February 2016**

**Decision & Reasons Promulgated
On 15th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**RSH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Reynolds, Counsel

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on [] 1978. The Appellant arrived in the United Kingdom on 21st November 2014 as a dependent partner of a Tier 4 Student Migrant. On 7th January 2015 the Appellant issued divorce proceedings and on 21st January 2015 he claimed asylum. His claim for asylum is based upon his fear that if returned to Sri Lanka he would face mistreatment due to his sexuality. The

Appellant's claim is consequently based on his membership of a particular social group as a gay man. That application was refused by the Secretary of State in a Notice of Refusal dated 10th July 2015.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal O'Garro sitting at Hatton Cross on 24th November 2015. In a decision and reasons promulgated on 26th November 2015 the Appellant's appeal was allowed on both asylum and human rights grounds and the Appellant was consequently found not to be in need of humanitarian protection.
3. On 2nd December 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. On 4th January 2016 First-tier Tribunal Judge Lambert granted permission to appeal. Judge Lambert noted that the grounds argued that the First-tier Tribunal Judge had failed properly to consider internal relocation in the light of the decision in *LH and IP (gay men: risk) [2015] UKUT 00073* and to resolve a material conflict of fact relating to the Appellant's ex in-laws' sphere of influence in Sri Lanka. Judge Lambert noted that the latter ground was supported by an apparent absence of evidence-based reasoning at paragraph 42 of the decision and is of prime relevance to the question of the Appellant's ability safely to relocate to Colombo. No Rule 24 response has been lodged by the Appellant's legal representatives.
4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State. For the purpose of continuity throughout the appeal process Mr RSH is referred to herein as the Appellant and the Secretary of State as the Respondent. Mr Reynolds is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Clarke.

Case Law

5. The authoritative country guidance to be considered in this appeal is that in *LH and IP (gay men: risk) Sri Lanka CG [2015] UKUT 00073 (IAC)*. That case is authority for the following propositions: -
 - (1) *Having regard to the provisions of articles 365 and 365A of the Sri Lankan Penal Code, gay men in Sri Lanka constitute a particular social group.*
 - (2) *Gay men in civil partnerships in Sri Lanka do not constitute a particular social group for the purposes of the Refugee Convention. The Sri Lankan authorities' failure to recognise alternative marital and quasi-marital statuses such as civil partnership or homosexual marriage which are available in other countries of the world does not, without more, amount to a flagrant breach of core human rights.*
 - (3) *Applying the test set out by Lord Rodger in the Supreme Court judgment in HJ (Iran) & HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31, in general the treatment of gay men in Sri Lanka does not reach the standard of persecution or serious harm.*

- (4) *There is a significant population of homosexuals and other LGBT individuals in Sri Lanka, in particular in Colombo. While there is more risk for lesbian and bisexual women in rural areas, because of the control exercised by families on unmarried women, and for transgender individuals and sex workers in the cities, it will be a question of fact whether for a particular individual the risk reaches the international protection standard, and in particular, whether it extends beyond their home area.*
- (5) *Where a risk of persecution or serious harm exists in an appellant's home area, there may be an internal relocation option, particularly for individuals returning via Colombo from the United Kingdom.*

Submissions/Discussion

6. Mr Clarke starts by pointing out that the country guidance of *LH and IP* indicates that internal relocation is available and that at paragraph 38 of the First-tier Tribunal Judge's decision the judge has only looked at the position of living in Colombo and has not given due consideration to other parts of the country. He takes me to paragraph 36 of the First-tier Tribunal Judge's decision and the finding made by the judge that *LH and IP* can be distinguished because the Appellant's partner is not Sri Lankan and that the Appellant's wife's family who live in Colombo are now aware of his sexuality and that they may seek revenge against him for shaming their daughter. He points out that it is clear from the analysis of this paragraph that the judge has failed to consider relocation to another part of Sri Lanka. He refers me to paragraphs 118 and 119 of *LH and IP* pointing out that there is evidence therein that relocation can be considered and whilst he notes that the judge at paragraph 30 has stated that he has considered everything in the round it would be possible for the Appellant he contends to live away from Colombo and it is incumbent upon the judge to resolve that issue and the judge has failed to do so. He invites me to remit the matter back to the First-tier Tribunal for rehearing.
7. Mr Reynolds submits that the original decision should stand and that there is no material error of law disclosed therein. He points out that the Secretary of State has in his submissions cherry-picked from the decision. He takes me initially to paragraph 30 pointing out that the judge has looked at the evidence in the round. He then refers me to paragraphs 35 and 36. He emphasises that there is direct reference therein to the head note of *LH and IP* and that at paragraph 36 he has gone on to set out why the judge considers this case can be distinguished from that authority. The judge he contends has at paragraph 37 gone on to quote extensively from the Country of Origin Report. He notes that the Appellant has been found to be a credible witness and that he was coerced into marriage and thereafter divorced. He points out that paragraph 42 of the decision cannot be read in isolation and that it is incumbent upon the Appeal Tribunal to look at paragraph 41 alongside it. He submits that the Appellant's case is unique. He emphasises that the Appellant is now divorced; decree absolute having now come through in December 2015. He asked me to find that there are no material errors of law and to dismiss the appeal of the Secretary of State.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

10. I start by reminding myself that the issue before me is to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I am not rehearing this matter. The submissions set out by the Secretary of State both within the Grounds of Appeal which I have fully considered and Mr Clarke's oral submission centre on an alleged failure by the First-tier Tribunal Judge to give due and proper consideration as to whether or not it was open to the Appellant to relocate outside Colombo. The First-tier Tribunal Judge found the Appellant to be credible. He has a Polish partner. The objective evidence indicates that there is a substantial lesbian/gay community within Colombo but there is little mention of it in objective evidence elsewhere within Sri Lanka. It is further accepted that the position is now materially different than it was in 2012 in that this Appellant is now divorced from his spouse, his former spouse's family who live in Colombo are aware of his sexuality and the First-tier Tribunal Judge gave due and proper consideration to the Appellant returning to Sri Lanka and whether his wife's family would seek revenge against him for shaming their daughter. The judge gave full and proper consideration to the objective evidence and to the authority of *LH and IP* and noted that the Appellant considered that his ex-wife's parents could inform the police about his sexuality exposing him to likely arrest and prosecution.
11. The judge has, I am satisfied, carried out a thorough analysis of the risks that the Appellant would face upon return to Sri Lanka. He has looked at all documentary

evidence in the round. He has given full and proper consideration at paragraph 35 to the authority of *LH and IP*. He has made a finding of fact at paragraph 36 as to why, and how, he can distinguish this case from *LH and IP*. Importantly thereafter he has then gone on to give due consideration to the Country of Origin Report. He has noted paragraph 2.5.1 which makes reference to discrimination based on sexual orientation or gender identity taking place particularly in Colombo but also within other areas.

12. Further the analysis carried out is given due and proper additional consideration by the First-tier Tribunal Judge at paragraphs 38 to 47 thereafter. He has noted at paragraph 39 that each case has to be considered on its own facts to see if the particular circumstances of an individual returning to Colombo (but not exclusively) will be exposed to serious harm.
13. In such circumstances I am satisfied reading the determination as a whole that the judge has given due and proper consideration to the position that the Appellant would face in his individual circumstances in returning to Sri Lanka and not just exclusively to Colombo. He has considered the facts of this case, the position in Colombo, the position generally, country guidance and the Country of Origin Report. It is a very thorough analysis and a detailed determination. As such it discloses no material error of law and for all the above reasons the appeal of the Secretary of State is consequently dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The First-tier Tribunal Judge made an anonymity direction. No application is made to vary it and it therefore remains.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris