



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

Appeal Number: AA/10025/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 August 2015**

**Decision & Reasons
Promulgated
On 14 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RN

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr T Wilding of the Specialist Appeals Team

For the Respondent: Mr T Bahja of Counsel instructed by Duncan Lewis & Co, solicitors

DECISION AND REASONS

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

Unless and until a Tribunal or court directs otherwise, the Respondent is granted anonymity. No report of these proceedings shall directly or

indirectly identify him or any member of his 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 Respondent

1. The Respondent to whom I shall refer as the "Applicant", is a national of Sri Lanka born on 1 July 1990. He is a Sinhalese from Colombo.
2. On 27 January 2010 he arrived with leave as a Tier 4 (General) Student Migrant. On 8 March 2012 the Appellant (the SSHD) curtailed his student leave. It would appear the Applicant did not exercise his right of appeal and on 6 June 2012 submitted an application for leave as a Tier 1 (Highly Skilled Entrepreneur) Migrant which on 15 August 2012 the SSHD refused with no in-country right of appeal. The Applicant sought permission to bring proceedings for judicial review which on 16 April 2013 was refused. On 21 October 2014 he reported an assault upon himself to the police which brought him again to the attention of the SSHD who on 22 October 2014 made directions for his removal to Sri Lanka in ten days.
3. On 28 October 2014 the Applicant claimed asylum because he feared persecution on return to Sri Lanka by reason of his sexual orientation. He was detained on 1 December 2014. Judge of the First-tier Tribunal Adio later ordered the transfer of his appeal out of the detained fast track procedure.
4. By a decision promulgated on 1 June 2015 Judge of the First-tier Tribunal Eban allowed the Applicant's appeal on asylum and human rights grounds and made a direction for anonymity.
5. The SSHD sought permission to appeal which on 23 June 2015 Judge of the First-tier Tribunal Page granted because it was arguable the Judge's decision was so devoid of reasoning that the SSHD could not understand why the Applicant had been successful and arguably the Judge had failed to make findings whether the Applicant could internally relocate in Sri Lanka.

The Upper Tribunal Hearing

6. The Applicant attended although he took no active part in the proceedings.
7. For the SSHD Mr Wilding relied on the permission grounds. The Judge had failed to give proper consideration to the learning in *LH and IP (gay men: risk) Sri Lanka CG [2015] UKUT 00073* and had failed to consider the issue of internal relocation which the SSHD had raised at some length at pages 12 and 16 of her reasons for decision letter of 18 November 2014.
8. The Judge had failed to consider whether the Applicant could relocate to a different area of Colombo or to another city, such as Kandy. Additionally

paragraph 17 of her decision was inadequately reasoned to support her allowing the appeal.

9. *LH and IP* at paragraphs 118 and 119 stated:-

... Although there is a lack of state protection, there is no evidence of serious harm except in isolated instances. There may be a few members of the wider LGBTI community who suffer difficulties at the level of persecution, but the evidence is not there to indicate that it is only because they are gay men.

... If a risk exists, we find that internal relocation would normally be sufficient to enable an individual to avoid the risk, since risks are usually from family, friends or neighbours. Colombo would ... be the obvious choice for internal relocation ... options may exist to other Sri Lankan cities also.

The decision contained material errors of law and should be set aside.

10. Mr Bahja for the Applicant submitted the Judge had been entitled to the findings of fact she had made on the basis of the evidence before her and to conclude the Applicant would be at risk. References had been made to internal relocation at paragraphs 11, 12 and 17. The Judge had made clear findings of fact at paragraph 14 of her decision.
11. The circumstances of the Appellants in *LH and IP* were different from those of the Applicant who had been beaten by his father and raped on two occasions. He would not be able to relocate.
12. There was no material error of law in the Judge's decision which should be upheld.
13. In response Mr Wilding noted that Mr Bahja had not mounted a sustained defence of the reasoning in paragraph 17 of the Judge's decision in which she had barely dealt with the issue of internal relocation and so had not adequately dealt with that issue which had been a material feature in the SSHD's reasons for refusal of the Applicant's claim.

Findings and Consideration

14. The Judge's decision is as indicated in the SSHD's grounds for permission to appeal extremely brief. Brevity in a decision is a quality to be admired so long as all the material issues are adequately considered. The Judge's decision failed adequately to address:-
 - the availability of internal relocation in Colombo which is a substantial city or anywhere else in Sri Lanka;
 - the assessment of the likely origins of risk to gay men addressed at paragraph 119 of *LH and IP*;

- the relevance and impact of the Applicant's evidence that he had been beaten by his father, raped by his uncle and subjected to a gang rape by fellow students;
- generally to match the findings of fact made by the Judge to specific elements of the evidence, being the Applicant's replies at interview, statement and oral evidence before the Judge; and
- the need for her decision to set out or refer to the relevant parts of the oral evidence.

These were material errors of law such that the decision should be set aside in its entirety. Concessions made by the Respondent will survive.

15. There then followed discussion whether the parties were ready to proceed to a substantive re-hearing. No interpreter had been booked and for lack of rehearsal of the oral evidence in the decision, I found that without oral evidence it would be unlikely that I could order that the Judge's findings be preserved. I took account of the fact that the SSHD had accepted the Applicant's sexual orientation but had not expressly accepted his account of his beating and rapes.
16. The decision has been set aside. Section 12(2) of the Tribunals, Courts and Enforcement Act 2007 allows for the case to be remitted to the First-tier Tribunal with directions or for the Upper Tribunal to re-make it. Having regard to Practice Statement 7.2(b) and the nature and extent of the fact finding required, I conclude the decision should be remitted to the First-tier Tribunal to decide afresh.

Anonymity

17. The First-tier Tribunal made an anonymity direction and although the issue of anonymity was not addressed at the hearing before me I find it appropriate for the time being to continue the anonymity direction and make an anonymity order.

NOTICE OF DECISION

The First-tier Tribunal's decision contained errors of law such that it should be set aside in its entirety and the appeal heard afresh.

Signed/Official Crest
2015

Date 11. viii.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

