



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2021-001035
UI-2021-001036
First-tier Tribunal Nos: PA/03019/2020
PA/03020/2020

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 19 March 2023

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

GRASS (FIRST APPELLANT)
CKPN (SECOND APPELLANT)
(ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr N Paramjorthy, instructed by S Saffer & Co Solicitors
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 20 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants . Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellants appealed to the First-tier Tribunal against the Secretary of State's decisions of 17 March 2020 refusing asylum and humanitarian protection claims. The First-tier Tribunal Judge dismissed their appeal but following an error of law hearing on 9 September 2022 I found an error of law in the judge's decision as to paragraphs 85 and 88 of that decision concerning the lack of reasoning. Specifically, I concluded that the judge erred in law in her evaluation of internal relocation in failing to specify what the information was in the CPIN on which she based her conclusions and a lack of any detail as to what the points made by Mr Paramjorthy were which were insufficient to allow her to conclude that the appellants would be at risk on return.
2. Mr Paramjorthy put in an expert report, dated 20 January 2023, written by Dr Chris Smith.
3. In his submissions Mr Paramjorthy helpfully reminded the Tribunal of what had been found at the earlier hearing. Mrs Nolan would be likely to argue that, as was said in the decision letter, the matter was governed by LH and IP [2015] UKUT 00073 (IAC), the relevant country guidance. A summary of the guidance was set out in full in Dr Smith's letter. It was necessary for there to be a specific risk assessment. At paragraph 5 of the report Dr Smith noted that the direction of travel on gay issues would seem to be positive and that when parliamentary time permitted there might be space for a change to the legal framework. There was reference to recent constructive dynamics particularly in Colombo where a Gay Pride event was hosted organised by a collective of gay activist NGOs. Unless there was a significant shift in attitudes the appellants were unlikely to be prosecuted on return bearing in mind the respondent's claim that there had been no prosecutions for same sex relationships for more than 50 years in Sri Lanka and Dr Smith observed that that was correct. There were however exceptions that proved the rule and instances where people had been detained purely as a result of their assumed sexuality. He referred to two posts by people who claimed to have been arrested and, in the case of one, also tortured and a reference in Sri Lanka Brief to the police continuing to harass, arrest and prosecute LGBT people. There is a reference to a case in June 2021 where the police raided a private hotel room in Colombo where three men were together socialising and drinking and they were arrested on charges relating to homosexuality and ill-treated. Dr Smith concluded that there was sufficient material evidence to indicate that the situation on the ground, rather than within government makes gay individuals and couples extremely vulnerable to arbitrary and persecutory behaviour especially on the part of the police. Public opinion seemed to be more in line with the attitude of the police and there was significant discrimination present among the diaspora. Religious attitudes towards homosexuality were mixed. There was a reference to a risk of vigilante actions against gays in Sri Lanka and to the fact that Sri Lanka had become significantly more conservative in recent years.
4. Dr Smith also referred to the relevant CPIN Report which accepts that gay people frequently face discrimination in accessing employment, housing and health services as well as sexual harassment at work. This, he said, might well be the least of the problems faced by the appellants, the sum of which could add up to persecution. As regards relocation to Colombo Dr Smith said that if the appellants could not safely reside there due primarily to threats from the family, it was pertinent to question whether there were areas outside the city that were sufficiently gay friendly as to imbue confidence regarding discrimination and protection. The appellants would stand out in Colombo as a cohabiting gay

couple and if their families came to know about their return this might be the way in which they were able to track them down.

5. On the issue of sufficiency of protection, Dr Smith considered that there would likely be no interest in risking the security of officers and committing precious financial and human resources on such a case, corruption amongst the Sri Lankan police is very common and it would be very unlikely that the authorities would respond positively to any complaint about a lack of response to a request for protection. There were risks of blackmail and extortion. The judiciary also contributed to flaws in Sri Lanka's rule of law.
6. In conclusion, Dr Smith considered that Sri Lanka would appear to be sufficiently homophobic to create an atmosphere of vulnerability for the appellants especially if they chose to live together, which was their right; there would be no sufficiency of protection and Sri Lanka remained an extremely hostile and persecutory environment for the appellants if they were forced to return there.
7. Mr Paramjorthy argued that when all the evidence was taken together the decision could be remade on the basis that there would be a risk on return for the appellants and also breaches of Articles 2 and 3. They would not be able to integrate into society and this was relevant to private and family life also.
8. In her submissions Mrs Nolan referred to the undisturbed findings of fact by the First-tier Judge, that the appellants did not face threats from their family and the level of threats was not persecution and that stood. In light of that, there was no well-founded fear of persecution.
9. She referred to headnote 3 of the country guidance case stating that in general treatment of gay men in Sri Lanka did not amount to serious harm. There was a significant population of gay people in Colombo. The judge had addressed that point. It was a question of fact as to whether the threshold was crossed in terms of risk for the particular individual. The judge had addressed this at paragraph 72.
10. Mrs Nolan also relied on relevant paragraphs of the November 2021 CPIN at paragraphs 2.4.10, 2.4.11 and 2.4.20 in particular. In general the evidence did not show that where a person was open about their sexual orientation this sufficed to amounting to a successful asylum claim. She also referred at paragraph 2.4.20 to 2.4.22 with regard to the issues of the level of societal discrimination and the attitude of the President which had been seen as ground breaking by LGBT activists.
11. The examples given by the expert in his report were not enough to show a real risk of persecution on return. He did not provide a sufficient basis to go beyond the country guidance. Ms Nolan also referred to the country guidance case in Roba[2022] UKUT 1 (IAC) as to how country guidance case are to be treated and that it was for the party seeking to challenge the country guidance to justify departure from it and it was a question of whether there were very strong grounds and cogent evidence provided to disagree with the country guidance and that had not been done here.
12. By way of reply, Mr Paramjorthy argued that he was not trying to persuade the Tribunal to depart from the country guidance but to bear in mind that it was dated 2015 and the CPIN was November 2021 and was echoed by the expert

report. He referred to paragraph 2.4.35 of the CPIN, which made it clear that there was discrimination against LGBT people, including harassment and emotional and verbal abuse. Most gay people did not live as such openly and there was social stigma as referred to in paragraph 2.4.37 and there was frequently discrimination with regard to such matters as housing and health. Therefore, as was said at paragraph 2.4.31, if a material reason for a person living discreetly on their return would be a fear of the persecution which would follow if they were to live openly then, other things being equal their application should be accepted. A person would not be able to avail themselves of the protection of the authorities, as was said at paragraph 2.5.5, and the state was often unwilling to offer effective protection. Each case was to be decided on its own facts and in this case the appeal should succeed.

13. I reserved my decision.
14. As Mrs Nolan pointed out, the judge's findings of fact remain undisturbed. Thus, at paragraph 74 of her decision she found that she was not satisfied from the evidence that the first appellant had been subjected to any threats from his family due to his relationship. There was no specific evidence of threats and such information, which he did provide, simply indicated a level of disapproval. Although, when he had moved to the United Kingdom, his family attempted to encourage him to return to Sri Lanka the evidence again did not indicate that he was subjected to any serious threats. As regards the second appellant, his parents found out about the relationship in 2008. He continued to live in the family home until coming to the United Kingdom in 2011 and during this time he worked with his father. Again the evidence indicated that there was a level of disapproval but the judge was not satisfied that the evidence presented indicated that he was subjected to threats from his family.
15. In his report at paragraph 5, as I have noted above, Dr Smith says that the direction of travel on gay issues would seem to be positive and there had, in recent years, been several constructive dynamics including the absence of prosecutions for more than 50 years for same sex relationships. The appellants are as a consequence unlikely to be prosecuted on return. He pointed to a few examples of people who claim to have been detained and from this and also a reference in Sri Lanka Brief to instances where people have been detained purely as a result of their assumed sexuality, so in his opinion there is sufficient material evidence available to indicate that the situation on the ground, rather than within government, makes gay individuals and couples extremely vulnerable to arbitrary and persecutory behaviour especially on the part of the police.
16. I do not consider that the few examples given in the earlier paragraphs of Dr Smith's report bears out the conclusion to which he comes. There is clearly a significantly improving attitude as regards gay issues in Sri Lanka and the existence of two to three illustrations of ill-treatment in detention does not to my view justify the conclusion that gay couples and individuals are extremely vulnerable to arbitrary and persecutory behaviour. In this regard though it is relevant to bear mind what Dr Smith says is the inherent conservatism of Sri Lankan society and the different views of religious faiths, Buddhists being more tolerant than the Catholic Church, it seems. Dr Smith also mentioned the risk of vigilante actions against gays, without any evidence of any actual action taking place.

17. It is important however to bear in mind the key finding in the country guidance in LH and IP that in general the treatment of gay men in Sri Lanka does not reach the standard of persecution or serious harm and it will be a question of fact whether for a particular individual the risk reaches the international protection standard, in particular whether it extends beyond their home area. It is also necessary to bear in mind that there have to be strong grounds and cogent evidence to justify departing from country guidance, though Mr Paramjorthy emphasised that he was not asking for there to be a departure from the country guidance; rather that within it, together with the more recent evidence, there was enough to enable these appeals to succeed. The CPIN Report accepts that there is frequent discrimination against gay people in accessing employment, housing and health services and sexual harassment at work. It also suggests that relocation to a gay friendly city such as Colombo would avoid the risks. Dr Smith refers to the risk from the family which might make the appellants unsafe in Colombo, but that matter is addressed by the findings of the judge, set out above, that no threats or serious threats were ever made. It is not made clear why the appellants would stand out as a cohabiting gay couple in Colombo, bearing in mind the several constructive dynamics identified as emerging especially in Colombo and it is entirely speculative, particularly in light of the judge's findings that if the appellants' families came to know about their return they might track them down because of Colombo being a city that thrives on gossip and innuendo in its dissemination.
18. I do not consider that the evidence in the CPIN comes at all close to justifying departure from the country guidance, nor that it identifies points that show that in these individual cases the appellants face a real risk on return. There is reference at paragraph 2.4.10 to ill-treatment in detention of members of the LGBTI community by the police, paragraph 2.4.20 states that the incidents of harassment, assault, extortion and the few cases of ill-treatment do not in general establish that a person who is open about their sexual orientation is likely to face treatment that is generally sufficiently serious by its nature and repetition as to amount to persecution or serious harm. Relative to the estimated population of people who identify as LGBTI in Sri Lanka, the scale and extent of incidences of prosecutions and mistreatment is low. It may be that a person can establish a real risk of persecution or serious harm but in general LGBTI people are unlikely to be subject to treatment by the state that is sufficiently serious by its nature or repetition to amount to persecution.
19. It is clear from paragraph 2.4.34 that anti LGBTI sentiment is deeply ingrained in Sri Lankan culture, but a recent study suggested that attitudes may be changing and a more positive attitude developing at least from people under 30 years old living in urban areas and educated to tertiary levels or higher. There remain positive and negative perceptions depending upon the particular issue and context. Most LGBTI people do not live openly as such due to social stigma but treatment of the members of the community varies. There is frequently, as noted above, discrimination in accessing employment, housing and health services and the report repeats the point made earlier that the level of societal discrimination and abuse faced by LGBTI people in Sri Lanka is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm. It is however necessary for decision makers to consider whether there are particular factors relevant to the person including their ethnic or religious background, socioeconomic factors, age and family background which might make the treatment serious by its nature or repetition. As was found in the

country guidance case there is a significant population of homosexuals and other LGBT individuals in Sri Lanka, in particular in Colombo.

20. As regards protection, there is no antidiscrimination legislation and effective protection in individual cases is often unavailable and in general the state appears able but unwilling to offer effective protection. Internal relocation, it is said, would normally be sufficient to enable an individual to avoid the risk of serious harm or persecution since the risks were usually from family, friends or neighbours and it may in particular be possible to relocate internally to Colombo.
21. Bringing these matters together, I consider that a real risk of persecution is not made out on the particular facts of this case. The country guidance in its general provisions states that gay men are not generally at risk of persecution or other serious ill-treatment or harm in Sri Lanka other than on the individual circumstances of the case. The circumstances of this case are simply that the appellants would return to Sri Lanka as two gay men who are a couple but the evidence does not show that they would not be able to locate or relocate to Colombo in particular. Their past experiences fall well short of persecution, and the judge's finding on risk from the family are sound and are not materially damaged by the absence of specific reference to the first appellant's claim that his mother would commit suicide if he returned to Sri Lanka. There is no evidence to show that either family would become aware of their return. I accept that the background evidence identifies an absence of protection, but in the absence of risk that is not a matter of materiality.

Notice of Decision

22. As a consequence these appeals are dismissed.

David Allen

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27th January 2023