



IAC-FH-CK-V1

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

Appeal Number: AA/01790/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 September 2014**

**Determination Promulgated
On 14 November 2014**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**M A A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Yeo, Counsel instructed by Fadiga & Co

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 20 June 1987. He was granted permission to appeal the decision made by First-tier Tribunal Judge Froom, who dismissed his appeal against the refusal of the respondent made on 18 March 2014 to refuse to grant him asylum in the UK.
2. At a hearing before me on 1 July 2014, I found that the judge made an error of law and therefore his decision could not stand. I made the following decision:

- “2. The judge accepted that the appellant is gay. He accepted the appellant’s account in its entirety. He is a Muslim from a rural area in Sri Lanka. The judge considered various background materials and found that the appellant would not be at risk of persecution if he were to be returned to Sri Lanka.
3. The judge had regard to **HJ (Iran) and HT (Cameroon) [2010] UKSC 31**. However, I find that the judge did not consider the second and third questions posed by the Supreme Court in its assessment of risk on return. Having accepted that the appellant is gay, the judge should have considered whether he was satisfied on the available evidence that gay people who live openly in Sri Lanka would be liable to persecution, and if so, what the appellant would do if he were returned to Sri Lanka. The judge’s failure to consider these issues led to an error of law in his decision.”
3. At the hearing, Mr Yeo placed reliance on the judge’s accepted findings. They are the appellant is a Muslim. He is gay and lives an open lifestyle in the UK.
 4. The issue before me is how the appellant will behave in Sri Lanka. If he is discreet, will it be because of social pressure or persecution because of his sexuality. Mr Yeo acknowledged that social pressure without a threat of persecution will not be sufficient to bring the appellant within the Refugee Convention.
 5. Mr Yeo placed reliance on the witness statement of Mr D dated 17 March 2014. Mr D was in court but did not give oral evidence.
 6. I heard oral evidence from the appellant. He spoke through a Tamil interpreter.
 7. The appellant relied on the witness statements he made on 14 May 2012 and 12 August 2014.
 8. In cross-examination the appellant said that his family in Sri Lanka did not know that he was claiming asylum in the UK. He speaks to his family three times a week. They used to send him money but do not anymore because his partner is helping him. Prior to coming to the UK, he was bullied by his colleagues because his ways were like that of a female. He worried about his sexuality. He saw people like him being arrested. He knows that in Sri Lanka being gay is not accepted. It is illegal. The police threaten and extort money from gay people. He is not aware of any organisation which supports gay people in Sri Lanka.
 9. The appellant said that if he were to return to Sri Lanka, he would have to return to the family home. He was staying with his sister when he was in Sri Lanka. He would like to work with his father and continue his father’s business. His family does not know he is gay. He would have to tell them. It would be difficult for them to accept him as a gay person. Homosexuality is not accepted in their culture.

10. He said he would like to continue the lifestyle he has acquired in the UK in Sri Lanka. He has a lot of gay friends he goes with to the cinema. He is able to visit gay websites. He has sex with other gay people as well as staying with his partner three days a week. He and his partner have not discussed going to live in Sri Lanka. They are committed to each other. His partner is in a civil partnership with another partner with whom he is living.

11. Miss Isherwood submitted that the objective evidence taken cumulatively did not show that homosexuals are persecuted in Sri Lanka. She first took me through the respondent's documentary evidence. The UKBA document entitled "Sri Lanka - Country of Concern" said with regard to LGBT rights that homosexuality remains illegal under Sri Lankan law. The British High Commission in Colombo marked International Day Against Homophobia in May with the presentation of a cheque to Equal Ground, a non-profit organisation seeking rights for the LGBT community. The High Commission also supported LGBT rights activities by raising concerns over harassment. A document issued by Equal Ground, Sri Lanka in December 2013, gave an example of two gay men who were arrested by police at a public restroom in Colombo and taken to a police station. At the station, the police officers explained their reason for the arrest using derogatory terminology for gay individuals and accused the two men of having sex in the restroom. The police then drove the two men to another location, where the men were forced to pay the police a bribe to be released. The same document says that notwithstanding the guarantees of freedom of expression and information, freedom to peacefully assemble and associate with others, the Sri Lankan LGBT human rights defenders and their organisations have been subjected to harassment and threats designed to suppress their advocacy efforts. These attacks, for which no-one has been charged, prosecuted or otherwise sanctioned, have had the effect of curtailing freedom of expression, assembly and association. Equal Group gave another example of attacks on LGBT activists and their organisations which took place in June 2013 in the town of Galle. The organisation also gave an example of assaults on freedom of expression and assembly involving a series of workshops on HIV/AIDS which led to the crackdown which began on 17 August 2013 when a state-controlled newspaper, Lakbima, printed an article titled "Male prostitution brothels run by homosexual groups". After the publication of this article officers from the Criminal Investigations Department visited the office of the partner organisation and questioned its executive director about the workshop and specifically about the topics that had been covered. The officers told the executive director that he could continue the workshops only on the condition that he would not discuss homosexuality, and human rights or Section 365A of the penal code. This ban effectively shut down the organisation's partnership with Equal Group in the district for a period of time. Ms Isherwood said that this evidence did not amount to persecution.

12. Ms Isherwood referred to a document entitled "Traveller Resources: Sri Lanka" issued by the LGBT Group, Utopia Asia. This document gives an overview of travel by gay people and gay couples to Sri Lanka for a holiday. The same document gives a list of meeting places for gay travellers which, Miss Isherwood said contradicts the appellant's evidence that there are no such facilities for gay people in Sri Lanka. The document also mentions that Negombo is the only city in Sri Lanka with relaxed everyday gay life. It is a peaceful Oceanside resort just fifteen minutes' drive north from Colombo's International Airport.
13. The respondent's bundle contained an article from The New York Times regarding a LGBT perspective "31 places to go to in 2010". Sri Lanka is described as this small, beautiful island national of the southern tip of India as an active LGBT community working hard to change laws and attitudes. Ms Isherwood referred to information from Equal Ground that there was a Rainbow Pride beach party on 7 June 2014. She also referred to a document entitled "Ceylon Today" which features Rosanna Flamer-Caldera, founder of Equal Ground, an organisation seeking human and political rights for the LGBTIQ community of Sri Lanka. She states that Equal Ground is hosting the Colombo Pride once more for the eighth consecutive year in 2012 to be held from 7 to 14 June at a time when vibrant rainbow kites over Mount Lavinia Beach and Colombo comes alive with music and colour. The weeklong celebrations include an art photo exhibition, film festival, party and kites festival; all guaranteed to entertain, educate and bring together anyone and everyone in solidarity and peace. A youth workshop based on future leadership within the LGBTIQ community is an addition to the agenda this year. The article goes on to say that when they celebrated the first Colombo Pride in 2005, it was only a party. But they still had 350 attendees and the event was a big success. After that they have been holding the Colombo Pride annually for the past seven years. It gives the LGBTIQ community a chance to stop being afraid and hidden away. They provide a safe space for everyone to come together.
14. Ms Isherwood submitted that although homosexuality carries ten years' imprisonment in Sri Lanka, the law is not enforced. She relied on HL (Malaysia) [2012] EWCA Civ 834 in which the Court of Appeal considered HJ (Iran). She submitted that HL (Malaysia) decided that the Convention does not guarantee universal rights and that the Convention was not directed to reforming the level of rights in the country of origin. Indeed Lord Hope said that the Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where pluralist liberal values are less respected, even much less respected, than they are here. It is there to secure international protection to the extent agreed by the contracting states.
15. Ms Isherwood referred to an article entitled "The Status of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka" which was prepared by Women's Support Group. The article stated that on 25 June 2010, The Daily

Mirror in Sri Lanka carried a news article quoting the Prime Minister as having said that *“it is not wrong for the gay community to seek rights but we must know what exactly they want. They must communicate to us.”* However, to this date they have not received a response to their letter. In light of this evidence Ms Isherwood said that the government was not ignoring gay rights.

16. She referred to a document which gives an analysis of the legal protection for LGBT in Sri Lanka. The analysis conducted a total of 109 interviews in thirteen districts of Sri Lanka. She also referred to a research conducted by Equal Ground and an analysis of the data collected with the aid of a questionnaire from 119 LGBT individuals. The document said that there was a lack of information about the LGBT community of Sri Lanka. This study was not concerned only with whether or not discrimination harms LGBT people but also the levels at which discrimination is prevalent in this minority group. The report said that state-sanctioned discrimination remains prevalent in Sri Lanka. Coupled with cultural, religious and social ideologies, LGBT persons remain extremely challenged, faced with discrimination. Out of the 119 people that were questioned, only 7.56% said they were unemployed. More than half were in full-time education. 40% were in a committed relationship and some of them were in a long-term relationship. 84% said that they had never been excluded from social activities. 103 of them said that they had never been excluded from religious places or activities in the past two years. 93% said that they had not been excluded from family activity and 45% said that they had experienced verbal insults, harassment and/or threats a few times. 95 of them said that they had never experienced physical abuse. 90 of them said that they had not changed residence or were unable to rent accommodation in the last two years. One of five said that they had never been refused a promotion or have had the nature of their work or job description changed. The section on access to healthcare and services said that LGBT people’s rights to employment, housing, education and healthcare is challenged although the challenge in health services and education is less experienced than that of employment and housing. 44.54% of these families have been victims of stigma. Only 17.64% of the respondent’s families have not faced any form of discrimination or stigma based on their sexual orientation and/or gender identity in the last 24 months.
17. Ms Isherwood relied on paragraph 3.14.8 of the respondent’s OGN which states that homosexuality is illegal in Sri Lanka but there is no evidence of systematic state persecution. Opportunistic targeting, societal hostility and discrimination against LGBT persons does exist and in individual cases may reach the Article 3 threshold. However, given the level of social hostility, internal relocation in such places is unlikely to be a viable alternative. The OGN states that the personal circumstances of the individual applicant should be considered carefully when assessing whether it would be unduly harsh to expect them to do so. Ms Isherwood argued that although homosexuality is illegal in Sri Lanka, homosexuals have not been persecuted for 50 years. She submitted that the appellant is from a middle class family who live in Kandy. We have no evidence of what his family’s reaction to his homosexuality would be. There

are facilities in Sri Lanka where his current lifestyle can be conducted in Sri Lanka. On this evidence the appellant has not established that on return to Sri Lanka the discrimination he might suffer will reach the persecution threshold.

18. Mr Yeo relied on extracts from his bundle of documents which contrast the extracts relied on by Ms Isherwood. He relied on a report in the USSD Country Report on Human Rights Practices in Sri Lanka 2013. The report states that according to country reports 2010, events for the LGBT community are held throughout the year. In particular, Pride events are held every year. However, ILGA notes that Pride events are held "*without parades or demonstrations*" noting that the public event involves flying rainbow kites in the park.
19. Mr Yeo asked me to accept that the appellant has given his evidence in good faith. The appellant's experience of being gay in Sri Lanka is authentic. He knows more about it than we do. He said that there is underreporting of attacks and discrimination against gay people. The FCO report in the respondent's bundle sounds like there is recognition in that gay people suffer discrimination but there is no suggestion that things are getting better. The travel organisation was shut down in 2010 after harassment and intimidation of its workers and police action. He said that the information in the Traveller Resources by Utopia Asia is directed to gay western tourists. We do not know what research went into producing this document. It is aimed at an entirely different audience. He said that the word "persecution" is not used because it is not a refugee document. At paragraph 9 of the appellant's first witness statement he said that he would often go to internet cafes and would watch gay porn movies. He would pay 20 rupees for an hour and would get a box room so that no-one could see what he was watching. Despite how he felt he knew he could do nothing about his attraction to men because he feared being arrested.
20. Mr Yeo also referred to the report entitled "The Status of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka". It is a report by the NGO to the Committee on the Elimination of All Forms of Discrimination against Women. The document was earlier referred to by Ms Isherwood for its report that on 25 June 2010 The Daily Mirror in Sri Lanka had carried a news article quoting the Prime Minister as saying that it was not wrong for the gay community to seek rights but the government must know what exactly they want. Mr Yeo relied on the extract for its assertion that the WSG along with two other organisations working on LGBT rights in Sri Lanka had responded to this news article by writing a letter dated 1 July 2010 to the government requesting an appointment with the Prime Minister but to date they have not received a response to their letter. Mr Yeo referred to other articles which he said point to the fact that things are getting worse for homosexuals in Sri Lanka. According to the Gaystarnews report dated 7 September 2013 Sri Lanka had begun systematic targeting of gays. The present government is now orchestrating a smear campaign against the community to project its members as criminals and paedophiles and alienate them from civil society, according to human rights

defenders. Rights groups had informed the Geneva Meet that the LGBT community in Sri Lanka faced rape, battery, discrimination and exclusion from social events. Equal Ground says that the more visible the LGBT are the more increase there is for homophobia. He relied on paragraph 6 of his skeleton which highlighted passages from various reports.

21. He also relied on paragraph 3.14.8 of the respondent's OGN in which the respondent accepts that some claims may reach the Article 3 threshold. He said that this matches the UNHCR guidelines that LGBTI individuals may, depending on their individual circumstances, be in need of international refugee protection. He took me through the various reports of instances of violence and abusive treatment meted out to homosexuals which will amount to persecution for a Convention reason.
22. Mr Yeo then referred to the private study which he said was an anthropological and social study of a small group of homosexuals. He submitted that the breakdown of the report was according to age, ethnicity, religion, education and employment. The analysis was not representative of the general LGBT population or gay lifestyle in general. The analysis does not tell us what the people have done to achieve no exclusion or from being ostracised by society or their families. According to **HJ (Iran)** if they are living discreetly then they are refugees whether they are in employment or not. Mr Yeo submitted that the objective evidence is enough to generate persecution and well-founded fear of persecution if a gay person lives openly and has a gay lifestyle. The police would react and arrest and beat up that person, blackmail and seek sexual favours. Homosexuals face discrimination, being ostracised by their families and live a miserable lifestyle. The appellant cannot now live in the closet now that he is out of it. There is a real risk that he would be exposed to persecution and discrimination on his return to Sri Lanka in order to avoid persecution.

Evidence of Appellant and Mr D

23. In his witness statement dated 14 May 2012 the appellant said that he was born in Kandy and lived there with his parents and two sisters. His father owns a restaurant in Kandy. He worked in his father's restaurant when he was at college and continued to do so after he completed his studies. He then went to live with his sister Rushda who had moved to Colombo when she got married. He lived with his sister in Colombo for about 4 years. From 2005 to 2007 he studied HND in Computing. He graduated in 2008. In 2009 he applied for a visa to come and study BSc Computing in the United Kingdom.
24. He did not have any relationships in Sri Lanka because he knew it was illegal. He was afraid that he would be put in prison and worried that he might be raped in prison. Because of this fear he did not tell anyone about his sexuality and did not enter into any relationships. There was one occasion in Colombo when he went to the public toilet and saw two men who he thought were having sex. Suddenly the police entered and arrested the men. After that

incident he did not go to the public toilets as often because he was afraid that he would be arrested for either being gay or suspected of being gay. He would often go to internet cafes and watch gay porn movies. He would pay 20 rupees for an hour and would get a box room so that no one could see what he was watching. He would sometimes spend an hour or two hours, two to three times a week watching porn at the internet café. Despite how he felt, he knew he could do nothing about his attraction to men because he feared being arrested.

25. He was granted a student visa from December 2009 to May 31 2010 initially to study BSc Computing but did not complete the course for various reasons. He was granted a year's leave to study Travel and Tourism from 15 June 2010 until 15 June 2011. He half completed the course and could not pass the exam. Prior to the expiry of his last leave he made a further application to study but this was refused. He asked his solicitors if there were any other options for him to remain in this country as he could not return to his country. He did not tell his solicitor about his sexuality because he did not think it was relevant. His solicitor advised him that if he had a girlfriend, he could marry her and obtain leave to remain. He did not have a girlfriend. By this time he had already had a number of sexual encounters in the United Kingdom. He was relieved that he could finally express himself as a gay man.
26. At the end of 2010 he bought an iphone which he used to download the GRINDR application and met even more people through this application. He had lots of casual relationships and one night's stands. He met a fellow Sri Lankan at work and it was a relief to have someone he could talk to about his sexuality.
27. In May 2011 he moved to Norwich where he met people and became more active on Grindr. On 1 April 2012 he met Mr D and they have become close. Mr D is his boyfriend.
28. On 20 March 2012 he married Tania who was from Portugal and had an EU passport. He and Tania did not live together in a subsisting relationship. Nevertheless with the help of solicitors he applied for a residence card. His application was refused following a visit by the Home Office who believed that he was in a sham marriage. He knew this was the case but he was desperate to remain in the United Kingdom so he appealed the respondent's decision. Tania attended the hearing with him. His appeal was dismissed by a judge. He made a fresh application for a residence card with the help of his solicitor. Eventually, he was arrested and detained by the respondent with the intention of removing him from the United Kingdom. Mr D visited him while he was in detention and arranged a solicitor for him. The solicitor made an application for asylum on his behalf on the basis that if he returned to Sri Lanka he would be persecuted because of his sexuality.
29. Mr D submitted a witness statement dated 17 March 2014. He confirmed that he has known the appellant since 1 April 2012 when they met on a gay application

called Grindr. Over the past two years he and the appellant have become very close. The appellant visits him at his house in Oak Hill Farm, Suffolk and stays over. Mr D said he has a partner called Mr J and they have an open relationship. His partner Mr J has met the appellant on many occasions. Mr J also occasionally sees other people and he is aware and comfortable with the strength of his feelings for the appellant. Mr D said he was concerned about the appellant's application to regularise his stay and although he was not trying to hide it, he did not think that the appellant genuinely knew or understood what his solicitors were doing to help him.

30. Mr D said that appellant told him around October 2013 that he had married on 20 March 2012 and that the marriage had ended. Prior to that the appellant told him nothing about his wife or about their relationship. At no point did he suspect that the appellant had a wife or even that he was heterosexual. The appellant made it quite clear from the onset of their relationship that he was gay. Mr D also mentioned the appellant's arrest and detention by Immigration Officers; his visits to the appellant in detention and obtaining the services of Fadiga & Co solicitors to assist him with his application for asylum. Mr D ended his statement by saying that he would be very upset if the appellant is returned to Sri Lanka. He is desperately worried about him and would request that the appellant is granted asylum.
31. In his witness statement dated 12 August 2014 the appellant said that he was in an open relationship with Mr D. He is happily and openly living freely in the United Kingdom and is able to express his sexuality. He did not even know if there were any gay clubs and pubs in Sri Lanka. If there were any, they would be hidden or not really something gay people would be openly aware of. Celebrations like Gay Pride do not take place in Sri Lanka. He went to Gay Pride this year on 26 July. He does not believe that there is any way for him to express his sexuality which is an integral part of who he is, in Sri Lanka.

Findings

32. I find from the evidence that the appellant was prepared to use deception with the help of solicitors to enable him to remain in the United Kingdom. I do not accept Mr D's evidence that the appellant did not know or understand what his solicitors were doing to help him. The appellant's evidence at paragraph 25 of his first witness statement indicated that he knew exactly what he was doing when he got Tania to help him. Tania had agreed and gone ahead with the marriage in the full knowledge that she and the appellant did not have a genuine and subsisting marital relationship. He said he and Tania had never lived together and yet they maintained the charade throughout the court proceedings and through the further applications he made with the help of solicitors in his desperation to remain in the United Kingdom. I find that the appellant's behaviour was thoroughly dishonest.

33. It has been accepted that the appellant is gay. I accept that he has not told his family about his sexuality. I also accept that he was not open about his sexuality when he was in Sri Lanka. He lived discretely because of his fear of being arrested by the police. He gave the example of witnessing the arrest of two gay men at a public toilet by the police. His account mirrors the example given by Equal Ground of the arrest in December 2013 of two gay men arrested by the police at a public restroom in Colombo. According to Equal Ground, the men were subsequently released after they were forced to pay a bribe to the police.
34. The appellant is now living an open gay lifestyle in the UK. I accept that he is in an open relationship with Mr D. He is able to meet other gay people and have gay relationships and freely express himself without any fear. He would like to replicate this lifestyle in Sri Lanka.
35. My attention was drawn to a wide variety of objective material. I accept in the light of paragraph 3.14.8 of the respondent's Operational Guidance Note (OGN) and other objective evidence that homosexuality is illegal in Sri Lanka. The OGN goes on to say however that there is no evidence of systematic state persecution. The respondent accepts that individual cases may reach the Article 3 threshold because opportunistic targeting, societal hostility and discrimination against LGBT persons do exist. It matches the UNHCR guidelines that LGBTI individuals may, depending on their individual circumstances, be in need of international refugee status.
36. In his skeleton argument Mr Yeo submitted that there is considerable evidence that some gays in Sri Lanka experience persecution and, probably, that more would if they were open about their sexuality. He relied on the Country Report on Human Rights Practices 2013 in Sri Lanka. The report states that members of the LGBT community face social discrimination and some instances of official harassment, and same-sex sexual activity is criminalised, though rarely prosecuted. The same report states that police harassed and extorted money or sexual favours from lesbian, gay, bisexual and transgender (LGBT) individuals with impunity and assaulted gays and lesbians. The same report states that although same-sex sexual activity is punishable by a prison sentence of up to 10 years, in practice, the criminal provisions were rarely enforced. Consequently, I find that if the appellant were to be arrested in Sri Lanka for living an open gay lifestyle, he is not likely to be prosecuted. The most that will happen to him is harassment from the police, extortion, sexual favours or assault. I am not persuaded that this ill-treatment amounts to persecution for a Convention reason or reaches the high threshold of Article 3 ill-treatment.
37. It was apparent from the appellant's evidence that he has not researched the facilities that are available to gay people in Sri Lanka. The founder of Equal Ground said in 2012 that Equal Ground was hosting the Colombo Pride for the eighth consecutive year from 7 to 14 June. Equal Ground is an organisation that is seeking human and political rights for the LGBTIQ community in Sri Lanka.

The Colombo Pride involved flying rainbow kites over Mount Livinia Beach. The founder said that Colombo comes alive with music and colour. The weeklong celebrations include an art photo exhibition, film festival, all guaranteed to entertain, educate and bring together anyone and everyone in solidarity and peace. It gives the LGBTIQ community a chance to stop being afraid and hidden away and provides a safe space for everyone to come together. I find that Colombo Pride is not comparable to the Gay Pride event that takes place annually in London. However, the fact that Colombo Pride takes place at all in a country where homosexuality is illegal shows a degree of tolerance by the authorities and the society in general. I also find the quote from the Prime Minister which appeared in the Daily Mirror in Sri Lanka also indicates that the government is not ignoring the issue. Mr Yeo submitted that according to the Gaystar News, the government is now orchestrating a smear campaign against the gay community. According to rights groups the LGBT community faced rape, battery, discrimination and exclusion from social events. This evidence does not match the conclusions of the anthropological study. I accept that the anthropological and social study was of a small group of homosexuals and that it may not be representative of the general LGBT population but it is informative in that most of the people in the group did not suffer exclusion or discrimination and were not ostracised by society or their families. The majority were able to lead a normal life in Sri Lanka.

38. A document entitled "Travel & Resources: Sri Lanka" issued by Utopia Asia this year, advises that although Homosexual activity between consenting adult males remains technically illegal in Sri Lanka, gays are more visible than ever in culture, politics and local sidewalk cafes. It gives an overview of travel by gay people and gay couples to Sri Lanka for a holiday. It also gives a list of places where gay people can meet including gay-friendly nightlife and lodging options. In 2010 Sri Lanka was the New York's No.1 pick. The article said that although officially Sri Lanka is not very gay-friendly, it described Sri Lanka as a small beautiful island nation off the southern tip of India that has an active LGBT community working hard to change laws and attitudes. The document mentions that Negambo is the only city in Sri Lanka with relaxed everyday gay life. It describes Negambo as a peaceful Oceanside resort just fifteen minutes' drive north from Colombo's International airport. In light of the objective evidence above, I find that there are facilities for gay people who want to live an open lifestyle to do so. I accept that Equal Ground has said that the more visible the LGBT are the more increase there is for homophobia. However, I do not find on the documentary evidence that the homophobia has led to the persecution of gay people.
39. The appellant has not told his parents about his sexuality. Therefore we do not know what their reaction might be; whether they will ostracise him or not. He has not said that his parents are putting pressure on him to marry. It may be the reason for this is that they know of his marriage to Tania. This is speculation on my part. In any event the appellant is an educated man. He did not complete his studies in the UK. He has a qualification, HND in Computing

which he obtained in Sri Lanka. If he is not able to work with his father in his restaurant, he should be able to obtain employment on his return to Sri Lanka. On the documentary evidence he would not have to live discretely as a gay man. While he may suffer some form of discrimination and harassment from the police, I do not find that the discrimination and harassment identified in the objective evidence reaches the threshold of persecution for a Convention reason or the high threshold in Article 3 of the ECHR.

40. The appellant's appeal is dismissed.

Signed

Date **13 November 2014**

Upper Tribunal Judge Eshun

Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

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 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.