



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: AA/12076/2015
AA/12077/2015

THE IMMIGRATION ACTS

Heard at: Field House
on 3 May 2016

Decision and Reasons Promulgated
on 19 May 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

D J N L
K R S S

ANONYMITY DIRECTIONS MADE

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr D Coleman, counsel (instructed by Law Land Solicitors)

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I continue the anonymity directions made by the First-tier Tribunal. They are to remain in place unless and until this Tribunal or any other appropriate court, directs otherwise. As such, no report of these proceedings shall directly or indirectly identify the appellants or any member of their family. Failure to comply with this direction could amount to a contempt of Court.

2. The appellants are nationals of Sri Lanka, born on [] 1984 and [] 1988 respectively. The respondent in the refusal letter dated 27 August 2015 identified the second appellant as the dependant of the first.
3. The appellants entered into a civil partnership on 3 March 2014 whilst resident in the UK.
4. They appeal with permission against the decision of First-tier Tribunal Judge Harrington, who dismissed their asylum and human rights appeals, in a decision promulgated on 15 February 2016.
5. The first appellant – 'the appellant' - claimed to have a fear of persecution in Sri Lanka as a gay man.
6. The appellant claimed asylum because of his homosexual relationship with the second appellant. His family do not want him to return to Sri Lanka and his parents and the villagers have threatened their lives.
7. He met the second appellant in October 2009 and the relationship commenced in May/June 2010. They began living together in May 2013 and decided to enter into a civil partnership. They awaited the outcome of the appellant's FLO application prior to claiming asylum. That application was refused in December 2014.
8. The second appellant contended that his parents have stated that they will kill them if they return to Sri Lanka. His father is a village head man - a government post. He does not know how his father found out about their relationship. His family will know where he is if he returns to Sri Lanka. It is a small island and it is easy to find people through contacts.
9. The respondent accepted that gay men in Sri Lanka constitute a particular social group. She also accepted the appellant's claim to be a gay man. It was not accepted that he has discharged the low standard of proof in relation to the threats he claimed were made.
10. Their fear is from families, who are non state actors. They could return to another part of Colombo and it is not considered that their families would be able to locate them if they did so.
11. At the hearing before the First-tier Tribunal it was accepted by counsel for the appellants (not Mr Coleman) that neither Appendix FM nor paragraph 276ADE of the Immigration Rules were relied on [22]. At the hearing the presenting officer confirmed that the respondent accepted the appellants' relationship in full and did not allege that there was a sufficiency of state protection.

12. The Judge concluded that there was nothing suspicious about the period of delay in making the claim. She found that the appellants were telling the truth about the threats they have received from their families [30].
13. She found that on the assumption that the appellants could be located by their families, they would seek to seriously harm them and the threats were not mere bluster [31].
14. She concluded however in reliance on LH & IP (gay men: risk) Sri Lanka CG [2015] UKUT 00073 (IAC), that the appellants cannot safely relocate to Colombo because there is a real risk that they will come to the attention of one or both of their families [35].
15. However, she went on to conclude that there is no real risk of the appellants' coming to the attention of either of their families if they relocate to another urban area, such as Kandy. There was nothing to show that the appellant's family have contacts outside the Colombo area, either by virtue of work or family; there is nothing to show that the second appellant's family have contacts outside their home area and possibly Colombo.
16. It was not accepted that the second appellant's father's post as a head man is sufficiently high level to allow him to search government databases because the second appellant did not allege that this was the case and because if this were the case, he would expect objective information dealing with the issue [36 (c)].
17. Whilst accepting that gossip travels in Sri Lanka, she concluded that there must be some overlap between groups for gossip to pass between them and she could see no overlap between the appellants' families and those who would be around them if they were to relocate to another urban area [36 (d)].
18. She concluded that internal relocation to an urban area would be reasonable and would not be unduly harsh [37].
19. She went on to consider the Article 8 claim, finding that they would return to Sri Lanka together and could continue family life on return. The failure by Sri Lanka to recognise the civil partnership is not a sufficiently serious interference with family life to constitute a breach of Article 8.
20. The interference was proportionate in the circumstances [43].
21. On 15 March 2016, First-tier Tribunal Judge Saffer, granted the appellant permission to appeal, stating that it was arguable that the Judge may have made unsafe findings on the option of internal relocation, given the accepted finding of

their same sex relationship, the societal approbation of such a relationship, the fact that they should not have to lie, the real risk of harm from their families and the prevalence of gossip travelling.

22. Mr Coleman relied on the grounds accompanying the permission to appeal. It was hard to conceive that gossip could travel between the UK and Sri Lanka and in particular to Colombo, yet could not travel between Colombo to Kandy, thus making it a safe place for the appellants to return to. Mr Coleman noted that Kandy was 70 miles from Colombo, pointing out that the Judge found that there would be a risk if they were to relocate to Colombo.
23. He submitted that she overlooked the fact that the appellants had come to such adverse attention whilst they were in the UK which was "a whole continent away". That was at a time when the families were not even looking for them.
24. He submitted that in coming to her conclusion at [36] the Judge ignored the level of approbation, particularly when having regard to the fact that the second appellant's father is a village head man.
25. Mr Coleman also submitted that the "largest mistake" made was that the Judge assessed the risk to them from family members but did not consider the risk from the local community which is a much broader basis.
26. In that respect he referred to the evidence of the appellant at paragraph 14 of his witness statement. There he stated that he received calls approximately once a week after they were seen living together as a couple since May 2013. The first threat was in January 2014.
27. He stated that "we also received calls from people in our village community." He stated at paragraph 18 of his statement that the reason he cannot return to Sri Lanka is that his life and his partner's life would be in real danger from his family and the community. The problem was that he had been "outed" by his friend and as such, their families, their parents, their relatives and the whole community were outraged.
28. Mr Coleman referred to the interview of the second appellant. At Q99 he was referred to background evidence about a large LGBT community in Sri Lanka. He stated that he did not know about other people. However, his father works for the government and his "home village people won't accept it." The Judge found his evidence in that respect to be credible.

29. At Question 192, when asked whether, apart from his family members, and his partner's family members, anyone else had threatened either of them, the appellant stated "also the neighbours in my village."
30. Accordingly, Mr Coleman submitted that the Judge had considered only the risk from their families but failed to consider risk from the larger community and neighbours. That is evident from her conclusions as to risks set out at [38] where she concluded that the appellants could safely relocate to an urban area to avoid the risk posed by their families. Similarly, at [36 (a)] her assessment of risk was limited: she found that there was nothing to show that the appellant's family have contact outside the Colombo area.
31. At [35] she concluded that he could not safely relocate to Colombo because of a risk that they will come to the attention of "their families."
32. In dealing with the risk of harm at [31] she concluded that assuming that they could be located by their families, their families would seek to seriously harm them.
33. There is nothing in the decision that assesses the risk to the appellants from the community. Although the Judge set out at [30] the threats that they have received from their families, she did not acknowledge that there had been threats from the community as well.
34. Accordingly, given that they would be living only 70 miles from Colombo, there was not only the family to be considered. There was also the internal gossip which could arise identifying the appellants, and which would be passed from the community to the families. She noted that the appellants cannot be expected to lie about their sexuality if asked. She also accepted that wherever the appellants live, those around them are likely over time to recognise their relationship, as their friends in the UK did, even before the appellants told them about the relationship [34].
35. The Judge found that relocating together to an area where they have no ties, family or work, raises obvious questions as to why they have chosen to live together. It cannot be claimed, as it could if they were working or studying locally, that it is purely a residence of convenience, so it will be clear it is a residence of choice which is likely to result in further inquiry [34a].
36. The Judge had regard to the submissions made on behalf of the appellants as set out at [27h] that the appellants would stand out in the community and so people would make enquiries. Internal relocation was thus not available.

37. The Judge found that there was nothing before her to show that the first appellant's family have contacts outside the Colombo area, either by virtue of work or family. Nor was there anything to show that the second appellant's family have contacts outside the area and possibly Colombo. She referred to LH and IP, supra at [119]. There it was found that if risk exists, internal relocation would normally be sufficient to enable an individual to avoid the risk, since risks are usually from family, friends or neighbours. There was no information about Kandy. That was submitted to constitute a material omission by the Judge.
38. In the circumstances, the case should be sent back to Judge Harrington where the risk of internal flight can properly assessed. This would include not only fear of discovery by family members but also the potential discovery by their families, arising out of identification and communication from members of the community. There may be such a connection arising from gossip in the community which would reach their family. It is accordingly a wider risk.
39. On behalf of the respondent, Mr Walker referred to [38]. Judge Harrington has looked at the country guidance decision in LH & IP. It is a question of fact whether a risk to a particular individual reaches the international protection standard, and in particular, whether it extends beyond their home area. 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 UK.
40. Accordingly there may be other large areas where they can safely relocate. The internal relocation option is not unreasonable in the circumstances.

Assessment

41. In a thorough and detailed decision, First-tier Tribunal Judge Harrington has concluded that the appellants could safely and reasonably relocate to an urban area to avoid the risk posed by their family.
42. I find that there is force in Mr Coleman's submissions that the whole emphasis by the Judge related to the avoidance of risk posed by their families. At paragraph [36] she concluded that there was no real risk of their coming to the attention of either of their families if they relocated to an urban area such as Kandy.
43. At [31] there was reference again to the risk they faced by being located by their families. At [35] they could not relocate to Colombo because there is a real risk that they will come to the attention of one or both of their families.
44. However, it is evident that the appellants claimed a wider risk, namely threats from the communities in which they would reside. That was a claim that they made as

part of the asylum interview and by the appellant in his witness statement. It was also asserted that he had in fact received threats from members of the community whilst in the UK.

45. I also find that the Judge did not give anxious scrutiny to the possibility that gossip from the community in Kandy could travel to their families in Colombo, some 70 miles away, thereby identifying the appellants' whereabouts. It is evident that gossip did travel between Sri Lanka and the UK. The possibility of such gossip ultimately reaching the families some 70 miles away was not assessed. The Judge should have considered the risk to return that might arise from the community itself.
46. I accordingly set aside the decision on that narrow basis. I accept Mr Coleman's submission that this is an appropriate case to be remitted to the First-tier Tribunal Judge Harrington to assess the risk of internal relocation posed by members of the community in which they live. The risk of their discovery in the local community is accordingly a wider risk which has to be properly assessed.
47. The further assessment can be made on the basis of evidence and submissions restricted to the availability of internal flight.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law, and is set aside.

The case is remitted to First-tier Tribunal Judge Harrington to consider the risk of the appellants coming from members of the community of an urban area, to which they relocate, including the risk of their coming to the attention of either of their families. Anonymity directions made.

Signed

Date 17 May 2016

Deputy Upper Tribunal Judge C R Mailer