



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

Appeal Number: PA/06406/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> January, 2018**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> January, 2018**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MRMT  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

*For the Appellant: Ms Jegarajah of Counsel, instructed by KQ Solicitors*

*For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer*

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka, who was born on [ ] 1989, and who appealed to the First-tier Tribunal against the refusal of the respondent to grant him his claim to asylum, humanitarian protection or leave to remain in the United Kingdom on the basis of his human rights. The date of the respondent's decision was 7<sup>th</sup> June 2016.
2. The appeal was heard by First-tier Tribunal Judge M P W Harris, sitting at Hatton Cross on 20<sup>th</sup> July 2017. The judge considered the appellant's

appeal and concluded that the appellant had not shown that he was at real risk of serious harm from the Sri Lankan authorities by reason of his imputed political opinion. The judge went on to dismiss his claim based on his sexuality and dismissed the appeal on asylum grounds, on humanitarian protection grounds and dismissed the appeal on human rights grounds. He preserved and continued a direction of 23<sup>rd</sup> November 2016, made by First-tier Tribunal Judge N J Bennett, granting the appellant anonymity throughout these proceedings.

3. The appellant, dissatisfied with the determination of Judge Harris submitted grounds of appeal to the Upper Tribunal and First-tier Tribunal Judge Boyes granted permission, believing the grounds to be arguable.
4. The first ground of challenge suggested that in dealing with the risk on return to the appellant, the judge failed to resolve the tension between the country guidance case of *LH and IP (gay men: risk) Sri Lanka CG* [2015] UKUT 00073 (IAC) and an Upper Tribunal decision of Deputy Upper Tribunal Judge Saini, in Appeal AA/07983/2015.
5. In addressing me, Ms Jegarajah confirmed that there had been no grant of leave of the Upper Tribunal for the appellant to rely on the unreported determination of Deputy Upper Tribunal Judge Saini. I indicated that unless leave had been granted, it could not be an error on a point of law by Judge Harris not to have dealt with the issue. In any event, the determination of Deputy Upper Tribunal Judge Saini was an unreported decision, and in so far as it differed from the country guidance decision of *LH and IP*, the decision of *LH and IP* was the one which the First-tier Tribunal Judge was required to follow.
6. The second ground suggested that the findings of First-tier Tribunal Judge Harris on the risk to the appellant on return as a gay man were inconsistent and lacking clarity. At paragraph 86 of the determination, the judge stated:

“I consider the appellant does not demonstrate on the evidence in this appeal that it would be unduly harsh for him to relocate to Colombo *even if he is at real risk as an openly gay man in his home area.*”
7. Addressing me, Counsel suggested that the findings at paragraphs 85 and 86 of the determination were not clear as to the appellant’s sexuality if he were to be removed back to Sri Lanka. She explained that the evidence before the judge was that the appellant had entered into a civil partnership, a copy of that is at page 53 of his bundle, but by the time of the hearing there was also evidence in the form of written statements, and in particular a statement from the appellant starting at page 24 of the bundle, in which he makes reference to his sexuality. Counsel suggested that a clear finding as to the appellant’s sexuality was required and the judge had failed to make one.
8. Responding, Mr Jarvis referred me to paragraphs 50 to 59 of Judge Harris’s determination. At paragraph 50 the judge recorded that in the light of an

earlier decision by Designated Judge Manuell, it was not disputed by the respondent that the appellant was a gay man. The judge went on to find that while it is accepted that the appellant was gay, there is no real risk to him on his return to Sri Lanka.

9. Mr Jarvis pointed out that the judge had regard to the country guidance case of *LH and IP (gay men: risk) Sri Lanka CG* [2015] UKUT 00073 (IAC) and summarised paragraph 123 of that decision at paragraph 49 of the determination.
10. At paragraph 85 of his determination, the judge refers to statistical information which was not before the Upper Tribunal in *LH and IP* and to an article in the background material produced by the appellant, referring to incidents of serious harm in places outside Colombo, but not in Colombo itself. He referred to one article in which one interviewee was recorded as saying that she can live relatively openly in Colombo, albeit not in her home village near Jaffna.
11. At paragraph 86 of the determination, the judge concluded that the appellant does not demonstrate on the evidence in this appeal that it would be unduly harsh for him to relocate to Colombo, even if he is at real risk as an openly gay man in his home area.
12. Ms Jegarajah responded by suggesting that the issues go to the requirement for an assessment in the way in which the appellant will exercise his sexuality. At paragraph 89, the judge merely says that on the evidence before him he is not satisfied that the appellant has demonstrated that there is good reason for him to depart from the findings of Judge Manuell, but Judge Manuell did not consider the way in which the appellant lived and conducted himself either.
13. Mr Jarvis suggested that it was only if it could be shown that in Sri Lanka the background evidence shows a risk to someone being open about their sexuality, would detailed findings as to expression of sexuality be necessary. The judge has rejected the suggestion of a real risk of serious harm to someone openly gay in Colombo. The evidence did not show that people who are open about their sexuality are at real risk in Colombo. There was, therefore, he suggested, no need for the judge to examine the appellant's expressions of his sexuality. Ms Jegarajah suggested that clear findings needed to be made on all the evidence. I reserved my determination.
14. In addressing me, Ms Jegarajah told me that she only relied on ground 2 of her five grounds. It was only on grounds 1 and 2 that she addressed me.
15. As to the first ground, the Upper Tribunal have made it clear that reliance should not be placed on unreported determinations, unless first the Upper Tribunal have granted leave to do so. No leave was sought to rely on the unreported determination of Deputy Upper Tribunal Judge Saini. It cannot, have been error on a point of law for the judge not to have, as the grounds

put it, “failed to resolve the tension” between that determination and country guidance. Judges are required to follow country guidance cases, unless there is clear evidence to the contrary and in doing so Judge Harris has not erred in law.

16. Counsel’s submissions to me changed slightly. Initially she told me that there were no clear findings as to the appellant’s sexuality if removed to Sri Lanka and she pointed out that there was now evidence that he was in a civil partnership and a statement from him indicating that he was gay. However, it is perfectly clear from the determination that this had previously been accepted by the respondent and was recorded at paragraph 50 by the judge.
17. She then suggested that there was no assessment of the way in which the appellant expressed his sexuality and without such an assessment the risk to him on return could not be properly assessed. Mr Jarvis pointed out that it was only if it could be shown that in Sri Lanka the background evidence shows a risk by somebody open about their sexuality that detailed findings as to expressions of sexuality would be necessary. The judge rejected the proposition of a real risk of serious harm to somebody being openly gay. The evidence simply did not show that people who were open about their sexuality were at real risk in Colombo and the issue is made clear in paragraphs 85 and 87. There was no need therefore for the judge to examine this appellant’s expression of his sexuality. What the judge said at paragraphs 84, 85, 86 and 87 is this:-

“84. As regards risk from the authorities arising because of his sexuality, the appellant relies on the findings in the Upper Tribunal appeal of AA/07983/2015 to say there is a good reason for me to reach a different finding to that of Designated Judge Manuell. The Upper Tribunal decision is one made by a court of record, albeit that it is not a reported case. It is a decision I accept I should take into account: it points to background evidence contained in the respondent’s own published material of acts of violence by the police against gay and lesbians in Sri Lanka. Nevertheless, the country guidance case law applicable remains that of LH and IP.

85. I read Designated Judge Manuell’s findings as being that, in line with the country guidance, the appellant would not be at real risk in Colombo as a gay man and so internal relocation is available there to the appellant. The statistical information regarding police violence against gay people that was not before the Upper Tribunal in LH and IP does not specify the location of the acts of violence reported. The background material produced by the appellant (contained in his first bundle) refers to incidents of serious harm in places outside Colombo, but not in Colombo itself. Indeed, I note that in the article, “*Still a crime to be gay in Sri Lanka*”, one interviewee is recorded as saying she can live relatively openly, albeit not in her home village near Jaffna.

86. Given my concerns about what information was made known to Dr Persaud, such as the appellant’s activities with TGTE, and what is

missing from his assessment of the appellant, I have not attached a great deal of weight to the doctor's opinion that in effect, the appellant could not cope with return to Sri Lanka. The appellant grew up in Sri Lanka. He would not be a stranger to the country on return. I consider that the appellant does not demonstrate, on the evidence in this appeal, that it would be unduly harsh for him to relocate to Colombo, even though he is at real risk as an openly gay man in this home area.

87. On the evidence before me, I am not satisfied that the appellant has demonstrated there is good reason for me to depart from the findings of Judge Manuell."
18. Earlier, at paragraph 49 of his determination, Judge Harris had set out in summary form, paragraph 123 of *LH and IP*.
19. I have concluded that there is no material error of law in the judge's determination. It was accepted that the appellant was gay and the judge considered the country guidance and also considered other evidence in the appellant's own bundle suggesting that he could live as an openly gay man in Colombo and it would not be unduly harsh for him to be expected to do so.
20. I have concluded that the judge did not materially err in law in his consideration of this appeal. I uphold his determination. The appellant's appeal is dismissed on asylum grounds, dismissed on humanitarian grounds and dismissed on human rights grounds.

**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.

***Richard Chalkley***  
**Upper Tribunal Judge Chalkley**

Date: 23 January 2018