



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004609

First-tier Tribunal No: PA/56518/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 12 February 2025**

Before

**UPPER TRIBUNAL JUDGE JACKSON
DEPUTY UPPER TRIBUNAL JUDGE KUDHAIL**

Between

**PA
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jaisri, Counsel, instructed by TNA Solicitors

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Heard at Field House on 9 January 2025

Order Regarding Anonymity

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008,
the Appellant is granted anonymity.**

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

DECISION AND REASONS

Introduction

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Jepson ('the Judge') promulgated on 12 August 2024, in which the appellant's appeal against the decision to refuse his asylum and human rights claim dated 14 February 2020 was dismissed.
2. The appellant is a national of Brazil, born on 29 April 1992, who claims he was attacked by strangers as he is gay. Accordingly, he fears return as he claims he is at risk from both society and his family, as a consequence of his sexuality. He claims that the state does not provide adequate protection and due to nationwide societal attitudes he is unable to internally relocate.
3. The respondent refused the application the basis that whilst it was accepted the appellant is gay and that he was assaulted, it was not accepted the attack was due to the appellant's sexuality. The respondent did not accept the appellant's account that those involved in the attack knew the appellant was gay. The respondent relied upon external information to find state protection was available and internal flight was a viable option.

First Tier Tribunal Decision

4. The Judge dismissed the appeal in a decision promulgated on 12 August 2024. The Judge found that the appellant's delay in claiming asylum upon arrival was damaging. Particularly as the appellant claimed he had fear upon arrival, he had intended to seek asylum, he had the support of a friend upon arrival but also chose to return to Brazil after his first arrival in 2020 and only claimed asylum after coming to the United Kingdom a second time. Further, it was noted that the appellant's claim was made upon arrest. The Judge found the appellant's account that he was identified as being gay due to the way he walked, his manner of talking, his locality being a small village and a derogatory term was used by his assailants, was not credible. With regard to the derogatory term, the Judge found the appellant's failure to mention this in interview was damaging. Additionally, the time frame for the attack, suggested at least a year followed without any incident before the appellant left for the UK. The Judge found that the evidence indicated that the appellant's mother was still supportive of him. There was no evidence to suggest the family would pursue him elsewhere. The Judge was not persuaded that if the appellant remained in his home area the family would pose a risk.
5. The Judge accepted the appellant had a subjective fear as he believes he is genuinely at risk due to his sexuality. He found there had been a degree of embellishment in the terms of the claimed use of homophobic language, as the appellant did not raise this during his interview. With respect to the actions of the police, this was limited to inappropriate comment and laughing off the assault. On the issue of whether the appellant's fear is objectively well founded, the Judge took into account the lack of a further attacks post 2019, any police action was not adverse or persecutory and the country expert report of Dr Andrea Allen. The Judge accepted that the country evidence supported that in some areas of Brazil, the appellant would have an objectively well founded fear of persecution due to his sexuality. However, based on report of Dr Allen, other parts of Brazil such as in Sao Paulo and Rio, the risk would be sufficiently reduced. The appellant's concern that he would face the same treatment throughout Brazil was not supported by the objective evidence presented. Dr Allen's report in reply to the respondent's review was at odds with her original report in this respect. The original report and external evidence supported a lower level of risk existing in certain parts of Brazil, by contrast the supplementary report seeks to suggest

risks exist regardless of location and that there is nowhere safe for the LGBT community. Accordingly, the Judge found there were areas where the appellant could relocate which have greater tolerance and additional protections which address sufficiency of protection.

6. The Judge was not persuaded that internal relocation would be unduly harsh as the appellant is a relatively young man, in good health, he has spent the majority of his life in Brazil and worked there. Although the country evidence reported a lack of economic opportunity in Brazil, there was little to show the appellant's position would be any worse than anyone else. Despite his ethnicity, also cited as a barrier, the appellant would be able to maintain employment. Therefore, the protection appeal was dismissed as the appellant does not have an objectively well founded fear of persecution at least in certain parts of Brazil. Further, that a sufficiency of protection exists were he to move from his home area to these areas. The Judge further found that there were no very significant obstacles to reintegration. He accepted there was a family life with the current partner. However, he found that there was not a disproportionate interference with the appellant's Article 8 rights.

The appeal

7. The appellant appeals on the sole ground that the Judge failed to address the appellant's ethnicity as a factor increasing the risk of persecution, and that this was material to his conclusion that the appellant could obtain sufficiency of protection and/ or that internal relocation was available. Reliance was placed upon the appellant's ethnicity being raised as a factor within the skeleton argument and a feature in the expert report of Dr Allen.
8. On behalf of the appellant, Mr Jaisri accepted that the Judge mentions ethnicity on a number of occasions in the decision which indicates at least it was in mind. He submitted the expert report was not engaged with on this aspect, particularly on issues of risk on return and internal relocation when determining if it would be unduly harsh. Mr Jaisri, drew our attention to Dr Allen's report specifically paragraph 14 (e), which he argued identifies the safer areas of Brazil as having the highest rates of homicides and violent assaults against LGBTI residents who are often urban dwellers, single and black. However, he accepted that it was difficult to tell whether this was a matter of correlation or causation as the report did not identify these features specifically as risk factors. He accepted that the supplementary report from Dr Allen did not set out this as an aggravating factor expressly, but did refer to the LGBTI+ population experiencing persecution throughout Brazil and irrespective of region or urban/rural divide, there was a risk of violence, particularly for those of African descent like the appellant. Again, it was accepted that this was not entirely clear on whether it was a matter of local population or a risk factor. Mr Jaisri accepted that there needs to be further clarification from Dr Allen given the two reports, such that the appeal should be remitted back to the First Tier Tribunal to resolve the tension between the reports.
9. On behalf of the respondent, Ms Everett argued that the Judge was fully aware that the appellant's ethnicity formed part of his claim, as she rehearses it at paragraph 33, 34 and 46. This she argued pointed to the fact that the Judge had a full understanding of the nature of the claim and all factors to be considered when looking at whether the appellant could internally relocate. The Judge acknowledged the tension between the two reports of Dr Allen. The Judge was entitled to resolve that tension by looking at the entirety of the objective

evidence, when making the finding that the appellant could internally relocate to the larger cities. The Judge accepted it was a complicated mixed picture and carefully examined the background evidence, to reach their reasoned decision.

10. We reserved our decision.

Findings and reasons

11. There is agreement between the parties that there was some tension between the two reports by Dr Allen. The Judge at paragraph 42 resolves that tension by evaluating the external evidence, which supports the finding that a lower level of risk exists for LGBTI+ persons in certain parts of Brazil. The Judge does identify that the appellant's ethnicity is a factor to be considered as at paragraph 30, he notes it as an aggravating factor relied on in the skeleton argument. At paragraph 34, the Judge rejects the respondent's assertion that Dr Allen's report was not specific to the appellant, given there was some reference to elements particular to the appellant such as his ethnicity. We are also persuaded that at paragraph 46, the Judge does have regard to the appellant's ethnicity when considering internal relocation as he makes reference to it being relied on as a barrier but found that this had not been established on the evidence. Accordingly, we find the Judge did have sufficient regard to the appellant's ethnicity as a factor when considering risk on return and internal relocation.
12. We have also had regard to the expert reports of Dr Allen and find in any event the reports do not identify the appellant's ethnicity as a single aggravating factor. The initial report refers to the high rates of homicide and violent assaults against LGBTI+ residents in Sao Paulo, Bahia and Rio de Janeiro, who are often urban dwellers, single and black; but does not express any causative link between those factors and any risk in the states in those particular places and we consider the references to characteristics here therefore simply reflects the local populations in those areas. The response to the respondent's review does not identify ethnicity as an aggravating factor as such, nor does it deal with the tension with the first report which were ultimately relied upon by the Judge.
13. Accordingly, we find there is no error of law and the findings were properly open to the judge based on the evidence before him.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

S K Kudhail

Judge of the Upper Tribunal
Immigration and Asylum Chamber

06 February 2025