



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13279/2018**

THE IMMIGRATION ACTS

**Heard at Manchester
On 8 August 2019**

**Decision & Reasons Promulgated
On 15 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR GABRIEL ALBANO GALATEO LORCA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Venezuela. He arrived in this country on 08 August 2017 and claimed asylum on 19 January 2018. The respondent refused his application on 9 November 2018 and the appellant appealed on 21 November 2018 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
2. His appeal came before Judge of the First-tier Tribunal Foudy and in a decision promulgated on 09 May 2019 she dismissed his appeal.
3. Permission to appeal was given by Judge of the First-tier Tribunal Saffer on 17 June 2019 who found it was arguable that the Judge may have erred by

misapplying the test regarding the availability of adequate protection from non-state agents of persecution and whether the option of internal flight would be unduly harsh.

4. No anonymity direction is made.
5. Neither the appellant nor his representatives attended the hearing and three calls were made to the appellant's representatives by the Tribunal. The appellant's representative, Sarah, stated that she had written to Field House on 6 August 2019 advising the appellant was withdrawing his appeal and was seeking a voluntary return to Venezuela. A check with Field House revealed no such letter but Ms Pettersen confirmed the respondent's system recorded he had applied on 31 July 2019 for assisted voluntary return for himself and his family.
6. I requested the representatives send a copy of the letter to Ms Pettersen to enable me to deal with the matter under Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 which states "a party may give notice of the withdrawal of its case or any part of it by sending or delivering to the Upper Tribunal a written notice of withdrawal". Rule 17(2) goes on to state "Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal".
7. The appellant's representatives were given until 12.45 to provide the letter failing and having waited 45 minutes for the email, I indicated the appeal would be dealt with on the papers in the appellant's absence as I did not have the relevant paperwork to deal with the appeal under Rule 17.

SUBMISSIONS

8. The grounds argued that the Judge erred in her assessment of sufficiency of protection for the appellant and his family and also failed to consider internal relocation.
9. Ms Pettersen opposed the application and submitted this could only be an appeal under article 3 ECHR and the Judge had considered the evidence and concluded there was sufficiency of protection and gave adequate reasons. Having made that finding there was no need to consider internal relocation.

FINDINGS

10. The appellant and his family had sought protection and the respondent refused the application finding no Convention reason and rejecting the claim that there was insufficiency of protection.
11. The Judge listened to the appellant's oral evidence and found the account to be credible but she further found that despite the country conditions

there was sufficiency of protection and the appellant and his family faced no different difficulties to the rest of the country.

12. Lord Justice Auld in R (Bagdanavicius) [2003] EWCA Civ 1605, summarised the position under both Conventions and said, amongst other things, that both sufficiency of state protection, whether from state agents or the non-state sector, means a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill treatment of which the claimant has a well-founded fear. The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just the punishment of it after the event. Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear but are unlikely to provide the additional protection his particular circumstances reasonably require ... the threshold of risk required to engage Article 3 or reach the level of persecution depends on the circumstances of each case, including the magnitude of the risk, the nature and severity of the ill treatment risked and whether the risk emanates from the state agency or non-state actors).
13. The Judge considered the country situation and gave adequate reasons to support her finding that the police could offer protection. In rejecting the appellant's claim the Judge noted the appellant had never sought any protection from the police and could hardly argue that such protection was not available.
14. I find the Judge engaged with the country evidence provided and reached a finding that was open to her. The appellant had to demonstrate there was insufficiency of protection and whilst the situation in Venezuela is not the best at the moment, there was evidence the police were still functioning and providing protection. The situation in Venezuela has not reached the level that article 3 is engaged.
15. Having satisfied herself that there was sufficiency of protection I am satisfied she did not need to consider internal relocation.

NOTICE OF DECISION

I dismiss the appeal and uphold the original decision.

Signed

Date 09/08/2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal no fee award can be made.

Signed

Date 09/08/2019

A handwritten signature in black ink, appearing to read "SPALIS", with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis