



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-001045

First-tier Tribunal No: PA/00752/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

15<sup>th</sup> September

2023  
**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**GD**  
**(Anonymity Order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Wood, Immigration Advice Centre (Manchester)  
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 7 September 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Namibia born on 3 December 1994. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claims.
2. The appellant arrived in the UK on 10 February 2019, travelling on his own Namibian passport. Following an interview with an immigration officer at the airport, in which he claimed that he was in the UK for the purpose of a business trip and family visit and would be returning to Namibia on 19 February 2019, he was refused leave to enter the UK. He claimed asylum the same day, on the basis of being at risk on return to Namibia owing to his sexuality.

3. The appellant claimed to have had a sexual experience with a male in February 2015, at the age of 21 years, in Namibia. He claimed to have been discovered being intimate with his partner and to have then been threatened by his neighbours and the traditional authorities who decided to make him marry his cousin and arranged a marriage for him on 13 May 2019. He fled Namibia on 9 February 2019 and decided to come to the UK because the UK was open-minded about the LGBTI community. He claimed to have had a few relationships since coming to the UK and to have been open about his sexual orientation here and to have been to some LGBTI clubs. The appellant claimed that if he went back to Namibia he would be forced to marry his cousin and he would be beaten or killed by his community, friends and neighbours.

4. In a decision dated 9 March 2021, the respondent accepted the appellant's claim about his sexual orientation and accepted that he was a member of a particular social group for the purposes of the Refugee Convention. However the respondent did not accept the appellant's account of having been threatened by his family, tribe and community because of his previous relationship with a male and did not accept that he would be at risk on return to Namibia. The respondent considered that even if the appellant was at risk in his home area, he could safely and reasonably relocate to another part of the country. The respondent concluded that the appellant was at no risk on return and that his removal would not breach his Article 2 and 3 human rights. As for Article 8, the respondent noted that the appellant had not referred to any partner or other family members in the UK for the purposes of Appendix FM of the immigration rules and considered that he did not meet the requirements of paragraph 276ADE(1) on the basis of his private life in the UK or that his removal would breach Article 8 outside the immigration rules.

5. The appellant appealed against that decision to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Kelly on 1 February 2023. Judge Kelly observed that the appellant had produced various documents for the appeal evidencing his relationship with a female British citizen and his joint parentage with her of a child aged 15 months, but he noted that the appellant's representative accepted that those raised a "new matter" requiring the Secretary of State's consent, and that that consent was not given. The judge noted that the appellant's sexuality had been accepted by the respondent but he found that the appellant had grossly exaggerated, to the point of fabrication, the degree of hostility that was engendered within his local community when his relationship with his male partner was discovered. The judge concluded that the real reason for the appellant having come to the UK was to assist his uncle in his business whilst also escaping family pressure to marry his cousin and that it had nothing to do with fleeing persecution on account of his sexuality. The judge found that the appellant was not at risk of persecution in his home area, but that he could, in any event, relocate to a more liberally-minded area of Namibia if he so wished. The judge concluded by confirming that he had not reached any conclusion with regard to the appellant's recent claim on Article 8 grounds since that was a 'new matter' for the purposes of section 85 of the Nationality, Immigration and Asylum Act 2002 and had first to be determined by the Secretary of State. The judge dismissed the appeal on all grounds.

6. The appellant sought permission to appeal against the judge's decision on two grounds, namely that the judge had failed to take account of background evidence which was material to the question of risk on return, and that the judge had failed to make a finding on the appellant's private life under Article 8.

7. Permission was granted in the First-tier Tribunal on all grounds, but primarily on the basis of the second ground. The respondent produced a Rule 24 response opposing the appeal.

8. The matter then came before me for a hearing. Both parties made submissions and those are addressed in the discussion below.

## **Discussion**

9. It was Mr Wood's submission, in relation to the first ground of appeal, that Judge Kelly had failed to take account of material matters, namely extracts from the Home Office Country Policy and Information Note (CPIN) "Namibia: Sexual orientation and gender identity and expression" dated November 2018 which showed that there was evidence of a sufficiently significant proportion of men having sex with men (MSM) who had experienced human rights abuses in Namibia so as to establish a real risk of persecution, in terms of the test in HJ (Iran) [2010] UKSC 31. Mr Wood criticised the judge's interpretation of the statistics given in the CIPU report, as quoted at [14] of the appellant's skeleton argument and as referred to at [19] of the judge's decision. He submitted that the judge had been wrong to find that no statistical distribution had been provided for the different forms of human rights abuses when that had been provided, and that the judge had failed to consider a subsequent paragraph of the CPIN, quoted at [6] of the grounds, which referred to statistics for MSM experiencing rape and violence. Mr Wood submitted further that the judge had failed to have regard to the Home Office Policy and Information Note, "Namibia: Sexual orientation and gender identity and expression" dated November 2021 which accepted that there was in general no sufficiency of protection.

10. Such assertions are, in my view, essentially little more than a disagreement with the conclusions reached by the judge on the background evidence and an attempt to re-argue the matter. It is relevant to note that, in granting permission to appeal, Judge Hamilton in the First-tier Tribunal found that there was limited merit in that particular challenge to the judge's decision. In any event, I reject the suggestion that there was anything materially lacking or inadequate in Judge Kelly's consideration of the country evidence. On the contrary, the judge gave detailed and careful consideration to the background information, having regard to a range of country evidence, and formed an overall view, noting that the evidence demonstrated that attitudes to LGBT issues varied widely in Namibia, from vocal disapproval in some communities to tolerance and acceptance in others. He was entitled to note the limitations of the objective evidence, as he highlighted at [19], and was perfectly entitled to accord the weight that he did to the reports, noting that the extracts from the country evidence relied upon by the appellant did not detail statistics in relation to the individual types of abuse, and the sources of the abuse, so that only a limited context was provided. It seems to me that, having carefully considered and analysed the background evidence, the judge was fully and properly entitled to reach the conclusions that he did.

11. In any event, as Mr Tan submitted, the judge noted particular weaknesses in the appellant's evidence as to his own experiences and account of events and life in Namibia, concluding that his account of being threatened and abused by members of his community because of his bisexuality was a fabrication and that the reaction to his bisexuality was not the motivation for his departure from Namibia. None of those findings have been challenged by the appellant. They were entirely open to the judge to make. On the basis of those findings, and the conclusion that the appellant had experienced nothing more than some limited verbal abuse from some of his local community, it was entirely open to the judge, having assessed the appellant's case

against the background evidence, to conclude that he would not be at risk on return to Namibia by reason of his sexuality. The grounds asserting to the contrary are without any merit and the first ground is accordingly not made out.

12. Mr Wood's submission with regard to the second ground of appeal was that even if the judge found that the appellant was not at risk of persecution in Namibia on account of his sexuality he ought nevertheless to have gone on to consider whether he would experience treatment in terms of prejudice and discrimination that would constitute very significant obstacles to his integration in Namibia. The judge's failure to consider Article 8 in the context of the appellant's private life and on such a basis was, it is argued by Mr Wood, a material error of law.

13. It is indeed the case that the judge, having found that the evidence relating to the appellant's claimed family life in the UK was a 'new matter' which was not admissible as a ground of appeal, omitted to consider that the matter of his private life, aside from his relationship with his partner and child, was not a new matter and was therefore a matter to be assessed and determined. It is also the case that the appellant had raised the matter of his private life in his skeleton argument, claiming that there would be very significant obstacles to his integration into Namibia owing to the discrimination he would face in finding work and housing due to his sexuality, the lack of support he would experience and the risk of attack from the community, such that returning there would leave him destitute.

14. However I fail to see how, on the very limited evidence before the judge, the appellant could possibly have succeeded in establishing that he met the requirements of paragraph 276ADE(1)(vi) of the immigration rules or in demonstrating that there were any compelling or exceptional circumstances justifying a grant of leave outside the immigration rules. On the findings made by the judge, the appellant had not provided any credible evidence of problems experienced previously in Namibia on account of his sexuality other than verbal abuse from some of his community, despite his homosexual relationship having been known for nearly a year prior to his departure from the country. The judge had found that there was nothing in the appellant's account of his own circumstances or in the reports about the country situation as a whole which would lead to him being at risk on return to his home area and considered that he would, in any event, be able to relocate to a more liberally-minded area of Namibia if he did not wish to return to his home area. There was no evidence before the judge to support a claim of there being other reasons which would provide a significant obstacle to the appellant's integration in his home country and, in the circumstances, it is difficult to see how the appellant could have succeeded in his Article 8 private life claim. Accordingly any arguable failure by the judge to consider the appellant's private life claim was not material to the outcome of the appeal and does not justify the setting aside of the judge's decision.

15. For all these reasons the challenges made in the grounds are not made out. The judge considered all relevant and material matters, had full regard to the evidence, applied the appropriate legal tests and made clear and cogent findings on the evidence before him, reaching a decision which was fully and properly open to him. I therefore uphold his decision.

### **Notice of Decision**

16. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
8 September 2023