



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

Appeal Number: PA/10721/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 1 November 2017**

**On 18 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**MR G P M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Fripp, Counsel, for Irvine Thanvi Nata Solicitors, London  
For the Respondent: Mr Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bolivia born on [ ] 1993. He appealed against the decision of the respondent dated 31 August 2016 refusing his application for asylum, humanitarian protection and on human rights grounds.
2. The appeal was heard by Judge of the First-Tier Tribunal Talbot on 12 June 2017. The appeal was dismissed on all grounds in a decision promulgated on 23 June 2017.
3. An application for permission to appeal was lodged and permission was refused by the First-Tier Tribunal. An application for permission to appeal was made to the Upper Tribunal and permission was granted by Upper

Tribunal Judge Rintoul on 12 September 2017. The permission states that it is arguable that the First-Tier Tribunal Judge erred in his assessment of paragraph 276ADE and the relevant fact finding. Grounds 3 and 4 were found to have less weight but the permission was not restricted.

4. There is a Rule 24 response on file which states that the Judge of the First-Tier Tribunal directed himself appropriately and made adequate findings of fact and gave adequate reasons for the findings in respect of the appellant's credibility. Reference is made to paragraphs 22 to 25 of the decision and the report states that the Judge's findings are neither perverse nor irrational and the grounds are merely a disagreement with the findings made by the Judge. The report also states that the Judge made adequate findings of fact in respect of paragraph 276ADE at paragraphs 32 and 33 of the decision.
5. I put to the parties that the main issue in this claim appears to be that paragraph 276ADE(1)(vi) of the Immigration Rules was not dealt with properly by the First-Tier Judge. Counsel submitted that risk has to be considered and humanitarian protection and human rights have to be dealt with.
6. He submitted that country conditions have to be considered. Bolivia is a very poor country with anarchic policing, a lot of crime and kidnapping risks. He submitted that if the appellant has to return, it will be known that his family is abroad and this in itself could put him in danger of the risk of kidnapping.
7. Counsel then went on to discuss paragraph 276ADE(1)(vi). He submitted that the Judge did not attach adequate weight to the problems the appellant would have integrating in Bolivia after the long period he has spent in the United Kingdom, and did not attach adequate weight to the young age the appellant was when he arrived in the United Kingdom. He submitted that the Judge failed to conduct a realistic assessment of the fact that on return the appellant will have no family links. He submitted that in the appellant's mother's appeal it was found that there were insurmountable obstacles to her and her new partner going to live in Bolivia. I was referred to the high level of crime in Bolivia which the Judge appears to have accepted and the expert report of Dr Erika Moreno and in this appellant's case, the endemic risk from criminals. He submitted that paragraph 276ADE(1)(vi) must apply in this case. He submitted that the concession made by Counsel at the First-Tier hearing, that Appendix FM was not satisfied will be withdrawn if a second stage hearing or re-hearing has to be carried out.
8. He submitted that the decision in the appellant's mother's case should be given considerable weight. The Judge refers to this at paragraph 31 of his decision and it was pointed out that although her human rights claim initially failed, because her partner was found to be unable to go to Bolivia with her EX1(b) applied and there were insurmountable obstacles to her and her partner having family life in Bolivia together. He submitted that

this is relevant as it is clear that the appellant, his mother and step-father, (who all live together in the United Kingdom), cannot live together in Bolivia. He submitted that although the appellant is over 18 years old he has no separate family life.

9. Counsel submitted that the Judge did not properly consider the facts of the case. When the appellant's mother came to the United Kingdom there was a failed kidnapping attempt against the appellant. He submitted that because the appellant's mother was abroad it was thought that she would have money and this was the reason that the attempt was made against the appellant. He submitted that this could well happen again. The objective evidence refers to people with connections abroad having problems with criminal elements in Bolivia. He submitted that if it is accepted that this happened to the appellant this reflects the credibility of the witnesses.
10. Counsel made reference to past persecution indicating a well-founded fear of future persecution and I was referred to paragraph 339K of the Immigration Rules. He submitted that based on this event this appellant should have been granted humanitarian protection in the United Kingdom. I was asked to consider paragraph 7 of the decision, then paragraph 19 and paragraph 20 relating to Section 8 of the Asylum and Immigration (Treatment of Claimants Etc) Act 2004. He submitted that at paragraph 21 the Judge refers to the appellant's protection claim and goes on to state that the evidence of this event is vague and inconsistent. Counsel submitted that all this happened a long time ago. The appellant was very young and his mother's version of events was based on hearsay. She was in the United Kingdom when this incident happened. He submitted that there is no contradiction in the evidence and the appellant's mother could have been referring to a different incident when she gave her evidence.
11. I was asked to consider the expert report which supports the view that on return the appellant, who has previously faced threats and attempted kidnapping, would face a high probability of continued threats as he is likely to be viewed as wealthy.
12. He submitted that the Judge did not properly consider that 14 years have passed since the kidnapping attempt and the expert report finds the appellant's account to be perfectly plausible. At paragraph 25 of the decision the Judge refers to the high rate of violent crime in Bolivia, but finds that any incidents which might have happened to the appellant and any threats against the appellant have been greatly embellished. He submitted that the Judge did not properly deal with credibility relating to the attempted kidnapping and this is extremely relevant to the remainder of the claim. At paragraph 33 of the decision the Judge states that the appellant can only succeed if he can establish that there would be very significant obstacles to his integration in Bolivia. The Judge accepts that the appellant has established a private life in the United Kingdom. The Judge does not accept the appellant's evidence that his Spanish is no longer good or that his mother will have no contacts left in Bolivia. The

Judge also notes that there is family property in Bolivia and finds that the appellant's mother and step-father will help the appellant financially if he has to return. Because of this the Judge finds that the very significant obstacles test has not been met. Counsel submitted that although the case of ***Kamara*** [2016] EWCA Civ 813 is referred to at paragraph 33, the Judge has not properly considered its terms as this case is consistent with the said case of ***Kamara***. Counsel submitted that the Judge failed to consider whether the appellant was enough of "an insider" to fit in on return to Bolivia. Counsel submitted that there must be very significant obstacles to this appellant returning there and integrating after the length of time he has been in the United Kingdom. This is an appellant who is integrated into the United Kingdom. Counsel submitted that the Judge does not deal with the expert report which states that the appellant will be seen to be affluent on return.

13. Counsel then referred to Article 8 of ECHR which is now incorporated into the Immigration Rules. The Judge rejected family life at paragraph 32 of the decision but Counsel submitted that this appellant is a young adult who stays with his mother and stepfather in the United Kingdom and he submitted that the claim should have been considered outside the Rules. He submitted that there must be more than normal emotional ties between him and his mother. They live in the same house, he has grown up there and until he was 18 he had family life. Counsel submitted that he still has family life with his mother and stepfather. He submitted that the Judge misdirected himself in his family life finding.
14. I was referred to the proportionality assessment at paragraph 35 of the decision relating to Article 8 outside the Rules. Counsel submitted that when the rights of the appellant and his mother are considered and weighed against public interest, public interest cannot succeed. He submitted that there are errors in the Judge's reasoning and he has not dealt with the expert report adequately. He should have given this report more weight. I was asked to consider his findings relating to Article 3 and humanitarian protection paragraph 276ADE(1)(vi) of the Rules and Article 8 outside the Rules.
15. The Presenting Officer made his submissions relying on the Rule 24 response.
16. He submitted that paragraph 276ADE(1)(vi) is the main issue. The Judge clearly has in mind that the appellant was only 11 when he came to the United Kingdom. With regard to ground 1 and the facts of the case, the attempted kidnapping was properly dealt with by the Judge at paragraphs 21 and 22 of the decision. The Judge notes that there are inconsistencies in the evidence and notes that the appellant's mother's evidence was different from the appellant's evidence. He refers to the appellant's mother's evidence being purely hearsay. At paragraph 23 the Judge makes significant points, noting that when the appellant's mother heard about the attempted kidnapping she did not return to Bolivia, even when her status in the United Kingdom ended. Neither did she make an asylum

claim, but remained unlawfully in the UK. At paragraph 23 the Judge also found it significant that the appellant had never made an asylum claim until March 2016 following his arrest and detention as an overstayer. The Judge finds that his credibility is damaged because of this and the Presenting Officer submitted that he was entitled to this finding.

17. At paragraph 28 the Judge refers to the expert report and deals with the kidnapping and the background evidence at paragraphs 25 and 26. He has accepted that the expert is an academic expert in Latin America and he has accepted that there are high levels of crime and lawlessness in Bolivia and that wealthy individuals are likely to face particular risks, but he goes on to find that her report carries little weight in terms of the risks that this appellant could face on return. He refers to the report, stating that it makes a sweeping assertion that it is likely that the appellant suffered an attempted kidnapping, but he finds that this assertion is not based on a detailed examination of the specific evidence put forward by the appellant. The appellant will not be returning as a wealthy individual and at paragraph 28 the Judge states that aside from the expert report the appellant has provided little in the way of country specific evidence to support his claim that he faces a real risk of persecution and serious harm if he returns to Bolivia from abroad after a lengthy period of absence. He submitted that the Judge has properly considered the expert report and has given it the weight he believes should attach to it.
18. He submitted that Counsel at the First-Tier Hearing made a concession on family life and at paragraph 33 the Judge focusses on private life. He makes reference to the said case of ***Kamara*** and the ***Razgar*** test and he submitted that there is no misdirection. The Judge was entitled to the findings he made on Article 8.
19. With regard to paragraph 276ADE(1)(vi) and integration into Bolivia, he submitted that based on the Judge's other findings this is not an exceptional case or so compelling that the appellant, an educated man who will get help financially from his mother and step-father in the United Kingdom on return, will be unable to integrate in Bolivia.
20. Counsel then submitted that the Rule 24 response did not take into account the points raised in the grounds of application.
21. He submitted that the expert evidence has not been properly considered and the issue of risk on return has not been properly considered based on the expert report. He submitted that this is a valid ground of appeal and there would be a real risk to this appellant on return. He submitted that although the appellant will be returning and will not be wealthy, he will be perceived as wealthy on return and the expert refers to the private security measures in Bolivia being insufficient.
22. Counsel submitted that the Presenting Officer has stated that relating to ground 3 and particular dependence, the Presenting Officer finds that the Judge did not misdirect himself. He submitted that the Judge has

misapplied the case of ***Kugathas*** and not only has he not properly considered the interests of the appellant, he has not considered the interests of his mother and step-father. I was asked to remit the case to the First-Tier Tribunal for rehearing. Counsel submitted that if that is done the concession made at the First-Tier Hearing will be withdrawn.

### **Decision and Reasons**

23. The permission is not restricted but it is clear from the permission that the main issue is the Judge's assessment of paragraph 276ADE(1) (vi) and the relevant fact finding.
24. I shall go through the grounds. The Judge accepts that there are high levels of crime and lawlessness in Bolivia. He has considered the background evidence and the expert report and it is clear from the decision that he is aware of the length of time that has passed and the age of the appellant when the supposed attempted kidnapping took place. This is an appellant who states that he fears return to Bolivia and yet he did not claim asylum until 2016, ten years after he arrived in the United Kingdom. The Judge has taken this into account and has also taken into account the fact that his mother remained illegally in the United Kingdom for a considerable period and made no attempt to contact the Home Office. Counsel for the appellant's argument is that on return the appellant will be perceived as being wealthy because he has a parent who lives abroad and so will be in danger of kidnapping. The Judge finds credibility to be an issue because of inconsistencies in the appellant's and his mother's evidence, although he realises that the incident took place a long time ago and his mother is relying on hearsay evidence. He notes that Section 8 of the Asylum and Immigration (Treatment of Claimants Etc) Act 2004 applies and this goes against the appellant's credibility. There are inconsistencies in the appellant's evidence and in the appellant's and his mother's evidence. The Judge finds it significant that if this incident happened the appellant's mother did not immediately return to Bolivia. (She states that her father said it would be too dangerous for her to return). In spite of this, as is pointed out by the Judge, neither the appellant nor his mother claimed asylum in the United Kingdom for some considerable time after that, and this goes against their credibility. The Judge is not satisfied with the police report produced. He refers to discrepancies and vagueness in the evidence and finds that if there were any incidents they have been greatly embellished. After the supposed attempted kidnapping the appellant did not leave for the UK for a year. The judge does not believe that the appellant's mother remained in the United Kingdom because she was afraid to return to Bolivia. He believes she wanted to stay in the United Kingdom and he does not believe that it was because of the attempted kidnapping that the appellant left Bolivia. It was because he wanted to be reunited with his mother. The appellant is now in his 20s and he was only 11 when the supposed kidnapping attempt took place. This has to be taken into account when all the evidence is assessed in the round.

25. The Judge has explained his findings, having taken into account the expert report and the objective evidence and has referred to discrepancies and vagueness in the accounts given to him. His findings were open to him.
26. The second ground deals with paragraph 276ADE(1)(vi). This is the main issue in the grounds and the ground states that the Judge's self-direction is deficient. The Judge deals with the said case of **Kamara**. The grounds state that he failed to conduct a realistic assessment of whether the appellant faces very significant obstacles by reason of his long absence from Bolivia coupled with other factors, such as the absence of any family link or identifiable continuing contacts and isolation from his mother and step-father. The Judge takes into account the appellant's mother's asylum decision and notes that there were found to be insurmountable obstacles to the appellant's mother and step-father continuing their family life together in Bolivia. Counsel stated that when a proportionality assessment is carried out it is clear that public interest must lose but the appellant's mother has a house in Bolivia that she is going to sell. If she lived in Bolivia for the whole of her life it is not credible that she would have no contacts there and this is the Judge's finding. The Judge refers to the expert report by stating that she makes a sweeping assertion which is not based on a detailed examination of the specific evidence put forward by the appellant but on the fact that these sorts of acts (kidnapping) are not uncommon across Bolivia's larger cities including La Paz. The expert believes that the appellant will be at risk on return but the Judge finds that the appellant's main concern is that he will be returning to an impoverished country with poor prospects of making a living there. This is not a reason for asylum being granted. The Judge notes that his mother and step-father are prepared to help him financially on return. The Judge notes that there is little evidence apart from the expert report to support the claim that the appellant faces a real risk of persecution or serious harm if he returns to Bolivia from abroad. He points out that the Foreign Office advises caution to British travellers but not against travel to Bolivia. The Judge has dealt with this issue properly and clearly finds that paragraph 276ADE(1)(vi) cannot be satisfied.
27. The Judge has made adequate findings about this and has given proper explanations for his findings.
28. With regard to the third ground the Judge has dealt with family life, finding that there is none and this was accepted by Counsel at the First-Tier hearing. The Judge has dealt properly with this based on the evidence before him and the fact that the appellant is an adult in his 20s, although he is still staying with his mother and step-father.
29. With regard to the fourth ground and Article 8, the appellant's private life, I have considered the case of **R (Agyarko)** and it is clear from the Judge's decision he does not find that for the appellant to be returned to Bolivia would result in unjustifiably harsh consequences. The Judge finds that there are no exceptional circumstances and I find that the Judge has dealt appropriately with this matter. Counsel has referred to the appellant

being a young man who has never left his mother's house but he is in his 20s, is educated and has the support of his mother and step-father if he returns to Bolivia. All of this has been noted by the Judge. I find that he was entitled to reach the decision he did.

**Notice of Decision**

30. There is no material error of law in the Judge's decision promulgated on 22 June 2016. All his findings have been properly explained and he has considered all the evidence before him at the hearing. He was entitled to reach the conclusions he did based on this evidence.

31. Anonymity has been directed.

Signed

Date 18 December 2017

Deputy Upper Tribunal Judge Murray