



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

Case No: UI-2023-000996

First-tier Tribunal No: PA/53692/2021

THE IMMIGRATION ACTS

**Heard at Bradford
On the 12th February 2024**

**Decision and Reasons
Promulgated
16th February 2024**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE KELLY**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**BH
(ANONYMITY DIRECTED)**

Respondent

DECISION AND REASONS

Representation:

For the Appellant: Mr Diwnycz, Senior Presenting Officer
For the Respondent: Ms L Brakj, Solicitor

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 him. Failure to comply with this order could amount to a contempt of court.

Introduction

1. This is the second stage of an appeal by the Secretary of State (with permission) against the decision of First-tier Tribunal Judge Heap to allow the appeal of BH against refusal of his protection claim.
2. For ease of exposition, we shall hereafter refer to the parties by reference to their appeal status in the First-tier Tribunal.

The appellant's claim

3. The appellant's protection claim can be summarised by saying that he has a well-founded fear of being harmed by his paternal uncle on account of his refusal to marry his uncle's daughter. He cannot avoid the risk of such harm by relocating within Namibia due to his uncle's significant power and influence throughout its territory, and because it would in any event be unduly harsh to expect him to relocate given the linguistic and cultural obstacles that he would face as a member of the Herero Tribe.

The decision of the First-tier Tribunal

4. The judge found that the appellant had given credible evidence in relation to the primary facts of his claim [43 to 50] and that this gave rise to a real risk of future harm at the hand of his uncle should he return to his home area in Namibia [52, 53].
5. With regard to the prospect of the appellant relocating within Namibia, the judge found that he would thereby avoid his uncle's adverse attention given (i) the size of the country, and (ii) the absence of any evidence to suggest that his uncle would be sufficiently well-placed to find him within a wider area [54]. However, it would be unduly harsh to expect the appellant to do so given (a) members of the Herero tribe make up between only 6 and 10 per cent of the population, and (b) their markedly different language and culture from that of the rest of the population [55 to 57].

The grounds of appeal

6. The respondent appealed on two grounds, which can be conveniently summarised as follows:
 - (i) The judge "failed to appreciate" that the risk of harm that she found would arise upon the appellant's return to Namibia was posed by a specific individual (his uncle) rather by his membership of a particular social group (the Herero tribe), and she in any event failed to explain how fear of her uncle's "witchcraft" could be considered 'well-founded'.
 - (ii) In finding that the appellant's membership of the Herero tribe would provide an unreasonable obstacle to relocation within Namibia, the judge "failed to note" that (a) the appellant had in fact relocated to other areas of the country where he felt safe prior to coming to the UK, and (b) there was "no evidence" that his membership of a

minority tribe would of itself prevent his relocation given his experience of working in agriculture with cattle.

The Error of Law Hearing

7. The error of law hearing was conducted by Deputy Upper Tribunal Judge Jarvis at which the appellant was represented by Ms Brakaj as he was before us. Judge Jarvis upheld the judge's finding that the appellant's fear of her uncle was attributable to his membership of a particular social group [11 to 13]. Judge Jarvis did not however address the second limb of the first ground, namely, that the judge had failed to explain how the appellant's fear of witchcraft could be objectively described as 'well-founded'. This is a subject to which we shall return when reassessing the matter raised in the second ground (the adequacy of the internal relocation assessment). Judge Jarvis found the second ground to have been substantiated because background country information did not support the judge's conclusion that the appellant was reasonably likely to fall into a state of destitution were he to relocate within Namibia [19].
8. Judge Jarvis further indicated that only the First-tier Tribunal judge's findings in respect of internal relocation were to be re-determined, and that the rest of the her findings should therefore stand.

The Hearing

9. At the outset of the hearing, Ms Brajak indicated that she intended to adduce oral evidence from the appellant to the effect that he had received a "letter" (it transpired that it was in fact a text message sent by phone) from somebody in Namibia concerning his uncle's continued adverse interest in him. She indicated that the message was written in the Herero language and acknowledged that, absent a translation of it into English, the Tribunal would be unlikely attach significant weight to its contents. However, she at no stage sought to adjourn the hearing in order to obtain such translation. She also confirmed that the appellant did not rely upon any other further evidence beyond that placed before the First-tier Tribunal.
10. We thereafter heard oral testimony from the appellant that was given through the medium of an Herero interpreter, and this was followed by helpful submissions from the representatives. Those submissions were subsequently summarised to the appellant by the interpreter in the Herero language. We reserved our decision, which appears below.

Analysis of the evidence concerning internal relocation

11. There were two distinct limbs to Ms Brakaj's submissions, namely, (i) that the appellant's uncle would be able to trace him to wheresoever in Namibia he might relocate, and (ii) that there was a real risk that he would become destitute given the limited opportunities for

survival that are available to members of the minority Herero tribe in Namibia. We consider them in turn.

12. In our judgement, the first limb needs to be considered within the context of the background country information quoted at paragraphs 56 to 60 of the letter explaining the respondent's reasons for refusing the appellant's protection claim. In summary, that evidence shows that Namibia extends to an area of 824,292 kilometres (approximately 3.37 times the size of the United Kingdom) and has a population of over 2.6 million. The national capital (Eenhana) had a population of over 24,000 in 2015, and the provinces of Ohangwena and Erongo, 250,000 and 42,000 respectively. The economic activities of the former include agriculture and cattle farming, and its business is thriving due to income generated from tourists. The income of the population of the latter is largely derived from tourism. The province of Oshana is situated in the northern parts of Namibia and has a population of over 175,000. The largest number of businesses are located in this province, which relies on agriculture to sustain its economy. Its capital, Oshakati, has a population of over 30,000 and is located 525 kilometres from the appellant's home town.
13. The appellant gave evidence at the hearing that a member of his church in Namibia had sent him a message by telephone in November 2023. This was to the effect that his uncle was continuing to make strenuous efforts to find him. As we noted at paragraph 9 (above), whilst the appellant gave oral evidence as to the contents of this message he did not place it in evidence and neither did he provide an English translation of it from the original Herero. We accordingly place little weight upon it as evidence of the continued adverse interest in him of the appellant's uncle at a point that is now approaching some five years after the appellant left Namibia on the 13th May 2019.
14. Ms Brakaj submitted that the background country information, beyond that summarised above, demonstrates that there is a real risk of the appellant's uncle tracing him were he to relocate to any of the above areas. She primarily based this submission on a report relating to the Herero people in Namibia compiled by the Immigration and Refugee Board of Canada (20th March 2012). This suggests that the Herero constitute between 6 and 10 per cent of the Namibian population. It also quotes two sources (a Herero staff member at a Legal Assistance Centre, and a professor of language and literature at the University of Namibia) as stating that some Herero people live in urban areas but nevertheless keep in close contact with their home communities, and that others travel back to their home community to practice in holy fire rituals or to participate in wedding ceremonies. Ms Brakaj submitted that this evidence, when combined with the fact that the appellant belonged to a well-known touring church choir, gave rise to a real risk of the site of the appellant's relocation finding its way back to his uncle were he to seek employment. Whilst we acknowledge that all this is theoretically possible, we do not consider that it gives rise to a 'real risk' that the appellant's uncle would be able to trace his whereabouts within the various highly-populated urban centres of Namibia. The statistical

chance of the appellant seeking employment from a person who happened to be acquainted with his home town, let alone his uncle, appears to us to be vanishingly small.

15. We have noted in this context that, by his own account, the appellant resided in another village (Otjinaeerwa) from Christmas 2016 so as to avoid his uncle, and that he only returned home at the beginning of 2018 because there was nothing for him in Otjinaeerwa [replies to questions 196 to 201 of his asylum interview]. We have also noted that he claims to have resided in “another town” for a period of six months, between November 2018 and April 2019, before his uncle found him and threatened to shoot him [paragraph 16 of his witness statement, dated 10th June 2020]. He does not however provide any detail as to how far away this ‘other town’ was from his hometown, and neither does he provide any clue as to how his uncle was able to locate him there. Finally, we note that the appellant was able to tour extensively with the church choir throughout Namibia, Botswana, and South Africa, without coming to the adverse attention of his uncle. Overall, this history does not tend to suggest that the appellant’s uncle has a web of personal connections that enable him to trace the appellant outside his home area of Namibia.
16. This brings us to the incident that would appear to have precipitated the appellant’s decision to leave Namibia altogether rather than to relocate within it; namely, the serious car accident in which he was involved in early May 2019. The appellant believes that this accident was the result of a curse (witchcraft) that his uncle had placed upon him. This is also what apparently led the leader of his local church (possibly the Secretary General, Steve Mavipi, who wrote the supporting letter of the 19th August 2019) to advise him that he needed ‘to cross water’ in order to escape the curse, and why it was therefore necessary for him to leave the African continent. Whilst we of course respect the appellant’s right to believe in witchcraft, we feel bound to observe that there is no objective evidence before us to support its existence. We accordingly attach little weight to it as a reason for the appellant’s decision not to relocate within Namibia.
17. We turn briefly to the second limb of Ms Brakaj’s submission, namely, that there is a real risk that the appellant would become destitute upon relocation given the limited opportunities for survival that are available to members of the minority Herero tribe in Namibia. We have previously noted that in holding the First-tier Tribunal judge had erred in upholding that submission, Judge Jarvis found that, “the background material does not support the Judge’s contention that it is reasonably likely that the Appellant would fall into a state of destitution if he had to internally relocate outside of his home area” [19]. Given that the appellant has not sought to place any additional material before us upon this issue, we feel able to adopt the reasons that Judge Jarvis gave for reaching that conclusion. These may conveniently summarised by saying that (i) the background material establishes that English is an official language in Namibia, and the appellant has moreover confirmed that he is able to speak

it, (ii) whilst one source has claimed that 50% of Herero households contain an unemployed young person, only one source indicates that most jobs go to elite groups i.e. majority groups who dominate politics, (iii) the Herero group live in urban areas as well as rural ones, and (iv) there is no direct mention of the Herero living in destitution in their home areas or outside of it [paragraphs 17 to 19]. We also adopt the respondent's argument that the appellant's personal history would suggest that he has transferable skills, both as a barber and livestock farmer.

18. Having considered the individual aspects of the evidence in some detail, we have stood back and considered it as a whole. We have thereby concluded, as did the First-tier Tribunal judge, that the reach of the appellant's uncle does not extend beyond his immediate home area in Namibia. However, unlike the First-tier Tribunal judge, we have also concluded that it would not be unduly harsh or unreasonable to expect the appellant to relocate to an area of Namibia beyond that reach.

Notice of Decision

The appellant's appeal against the respondent's refusal of his protection claim is dismissed.

Signed: David Kelly
Deputy Judge of the Upper Tribunal

Date: 12th February 2023