



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01995/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 16 November 2017

Decision & Reasons Promulgated  
On 7 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

RCBA

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Harris, of Counsel, instructed by Messrs Duncan Lewis & Co Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal Baldwin who, in a determination promulgated on 26 April 2017, dismissed the appellant's appeal against a decision of the Secretary of State to refuse to grant asylum.
2. The appellant is a citizen of Bolivia, born on 11 October 1975. He entered Britain in December 2006 as a visitor. He was encountered by Immigration Officers in 2013 and served with form IS151A as an overstayer. He made human rights applications on 19 April 2013, 31 October 2013 and 20 June 2014, all of which were refused. In

June 2015 he claimed asylum. His application was refused and certified as clearly unfounded in October 2015. It was then reconsidered and refused with a right of appeal in February 2016.

3. The appellant said that he had had no difficulties whatsoever when he lived in Cochabamba in Bolivia. He had come to Britain for economic reasons in 2006 as a visitor, intending to stay on. He had met a Bolivian woman here called C with whom he had a relationship and with whom he fell out. She and her brother, F, whom he asserted was a murderer, were also from Bolivia and after his relationship had broken up they had threatened him as to what would happen to him should he return to Bolivia. He also asserted that C had a cousin, I C, who is now in prison but who was member of the T gang, named after a man whom I had murdered, and that members of the T gang had threatened his mother in April/May 2013 and that at that time his sister and brother-in-law had been kidnapped for 8 or 9 hours by the gang.
4. The judge noted the evidence, which included a report from a Jorge Derpic, which he stated had the hallmarks of being “a fairly well-researched and very balanced document”. The judge concluded that on the basis of the evidence before him and the fact that C and F C, although they had displayed animosity to the appellant in the past, had not harmed him nor indeed had had contact with him for the last three or four years, there was no reason why he should fear them and, secondly, having analysed the report from Mr Derpic, he concluded that it was most unlikely that the appellant would be sought by the T gang or that they would have any interest in him as their interests centred around burglary, threats and extortion.
5. In any event the gang was based in Cochabamba and internal relocation would be open to the appellant should he return to Bolivia.
6. Moreover, the appellant has a partner here who is from Brazil and it was possible that he would be able to go to Brazil with her. He said there was no objective evidence to show that the appellant could not join his partner in Brazil or that they could not settle in due course in Argentina, Peru and Chile – possibilities mentioned by Mr Derpic in his report. He stated that the appellant would have a better chance if living and working in a country where Spanish was spoken given his very limited English.
7. When assessing the appellant’s credibility the judge took into account the fact that he had overstayed in Britain and that he had made three applications here on human rights grounds before applying for asylum. The judge found that the appellant had not made out a well-founded fear of persecution and therefore dismissed the appeal on asylum grounds. For similar reasons he dismissed the appeal on human rights grounds.
8. Lengthy grounds of appeal were submitted, the first being that the judge had not made clear findings in relation to whether or not the appellant’s former partner and her family had threatened “to have the appellant returned to Bolivia and killed/harmed on his return” and secondly whether or not family members had been kidnapped by their associates. The grounds argue that the judge had been wrong to

describe as a lack of “pursuit of or animosity towards the appellant” the attitude of C and F for the last three years in Britain and in so doing had failed to consider the nature of the threat against the appellant as the case was that he had been threatened in the event that he returned to Bolivia and that explained why he had not been targeted further whilst in Britain.

9. Secondly, they argue that the judge had been wrong to state that the fact that his former partner C had telephoned him after his release from detention to enquire how he was “which hardly suggests she remains antagonistic towards him” despite the fact that was not what had happened as C had rung him to “know what he was doing” which was not the same as asking how he was and was much more threatening. The grounds pointed out that in his statement he had stated that C had threatened him over and over again and that F5s family had threatened his family in Bolivia.
10. It was argued that the judge was wrong to describe a meeting between the appellant’s current partner and C as a chance encounter as it was the appellant’s claim that his partner had been watched by C’s sister and was wrong to rely on a lack of recent contact between the appellant and the Cs as indicating that he was not at risk on return. Moreover the judge had been wrong to exclude the consideration of risk other than the risk of killing and it was stated that he had misapplied the standard of proof. It was further stated that he had inappropriate reliance on credibility findings in relation to internal relocation and in his consideration the expert evidence in relation to internal reconciliation.
11. Ms Harris relied on the grounds of appeal and referred to the appellant’s witness statement regarding what had happened to his family in Bolivia. She argued moreover that the judge’s findings of fact were scant particularly given the complicated nature of this case and that there was clear evidence of the strength of the T gang and their ability to harm the appellant.
12. Mr Tufan argued that this was a simple and not a complicated case. The appellant would, whatever happened, be able to relocate within Bolivia. His only reason for not being able to relocate was that he had not lived in another city other than Cochabamba but the nature of the country meant that it was not unreasonable to expect him to relocate in Bolivia. Moreover, the appellant had not suffered in England and it was some time since there had been any contact between F and C or the appellant’s family and the Tancara gang in Bolivia.

## **Discussion**

13. There is little merit in the grounds of appeal. It is simply incorrect to suggest that the judge did anything other than employ an appropriate standard of proof which he clearly set out in paragraph 23 of the determination. He did properly consider all the evidence and his analysis of the report of Mr Derpic is lengthy and considered. Moreover the report itself is, as the judge says, a balanced report and the judge

follows that and the conclusions therein and having weighed up those conclusions was entitled to find that the appellant would not be at risk in Bolivia but that, in any event, internal relocation was open to him. He was entitled to take into account the length of time since the appellant had had any contact or indeed his partner had any contact with C and F here. Clearly if they wanted to harm him, and from the evidence it is clear that there is very substantial bad blood between him and C and F, they would have been able to do so here: the appellant had not suggested that F is able to exert self control and had stated that F has been violent in this country. The reality is that the threats and the violence he claims all took place in the aftermath of the breakup of the appellant's relationship with C and appear to be, in part, threats to make the a sure ensure that the appellant did not do anything which could lead to F being deported. With regard to the telephone call and also the meeting in the street when the appellant's wife met C, the reality is that the call and the meeting were not followed up by any act of violence. Moreover, taking the appellant's assertion that his sister and brother-in-law were detained in Bolivia it is not asserted that they were harmed, that incident was over 4 years ago and there is nothing to indicate that any interest had been shown in them since that time. The fact that the judge did not specifically mention that part of the claim is not material given the assertions as to what happened and the passage of time.

14. In any event, there is no reason why C and F should wait to arrange for him to be harmed in Bolivia and it is certainly not the case that they could arrange for him to be sent to Bolivia. Moreover there is no reason why the gang itself should wait for him to return and then endeavour to harm him in Bolivia – that does not appear to be their interest or their *modus vivendi* in Cochabamba.
15. I would add that I consider the judge was fully entitled to find that the appellant would be able to relocate in Bolivia let alone be able to go to another South American country where he would be able to get work. There is nothing to suggest that he would not be able to relocate in Bolivia and he gave no reason for doing so. The judge's conclusions were reached after taking into account the report of Mr Derpic which it is clear that he had read. Although Mr Derpic refers to the "gamble" of internal relocation that was taken into account by the judge and, in any event, appeared to be in relation to the appellant trying to obtain the protection of the police through an "official guarantee" through the police, but there is no indication that the appellant would consider drawing attention to himself in that way. I would add that he appears to refer to threats to the appellant and his family over the last 3 years – that appears to be in error as the threats were clearly not continuing and, as Mr Derpic states in paragraph 19 the appellant has not heard from or had contact with the C family since 2013.
16. The assertion that the judge ignored any danger other than killing when he considered the appellant's claim is lacking in merit: the reality is that the judge did not consider that the appellant would come to harm and that conclusion is clearly not limited to the appellant's fear of being killed.

17. Finally, I find that the judge was fully entitled to be sceptical about the appellant's claim given his immigration history and the fact that he made three applications for leave to remain on human rights grounds before claiming asylum. That has been blamed on his previous solicitors but there is no evidence whatsoever of any complaint about them and there seems no reason why the appellant would not have told them of his fears. In all I consider that this is a well-balanced and thorough judgment. Moreover, I would emphasise that no reasons whatsoever have been given to show that the appellant could not relocate internally within Bolivia or indeed that he could not live in another Latin American country should he wish.
18. I therefore find that the judge reached findings and conclusions which were fully open to him and that he reached those conclusions after a proper and detailed consideration of the evidence. The judge was entitled to dismiss this appeal on asylum grounds and for the same reasons to dismiss it on human rights grounds. His decision should stand.

**Notice of Decision**

The appeal is dismissed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Date: 5 December 2017

Deputy Upper Tribunal Judge McGeachy