



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/12513/2019

Appeal Number:

**THE IMMIGRATION ACTS**

**Decided without a hearing**

**Decision & Reasons  
Promulgated  
On 24 September 2020**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**R G T E  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS (P)**

1. The appellant is a national of St Kitts and Nevis who was born on 8 November 1996. He appeals, with permission granted by First-tier Tribunal Judge Boyes, against a decision which was issued by First-tier Tribunal Judge Buckley on 9 March 2020, dismissing his appeal against the respondent's refusal of his claim for international protection.

**Background**

2. The appellant arrived in the UK on 22 May 2016 but he did not claim asylum until 26 April 2019. He stated that he was at risk from dangerous gangs and that he could not turn to the police or internally relocate. The respondent refused the application on 2

December 2019, concluding that the appellant's claim was a fabrication but also that he had failed to exhaust avenues of domestic redress before seeking asylum.

### **The Appeal to the First-tier Tribunal**

3. The appellant appealed and his appeal was heard by Judge Buckley ("the judge") on 4 March 2020. The appellant was represented by a solicitor, the respondent was represented by a presenting officer. The judge heard oral evidence from the appellant and submissions from both representatives. After the submissions he reserved his decision.
4. In his reserved decision, the judge accepted that the appellant's account was externally consistent with the background evidence. He considered, however, that the appellant's account was of a one-off incident, involving an incident at a party, and that the appellant had taken no steps to report the incident to the authorities. The judge considered that the appellant's credibility had been undermined by his failure to relocate internally immediately after the incident. He also considered the appellant's credibility to be undermined by his failure to claim asylum for just under three years after arriving in the United Kingdom. The judge proceeded to make detailed findings in the alternative at paragraphs 32 - 42 and he concluded, having reviewed the background material in some detail, that the appellant would be able to avail himself of a sufficiency of protection 'to the Horvath standard'. At paragraphs 43 to 48 he concluded that the appellant could relocate internally, notwithstanding the size of his country of nationality, so as to obviate the risk to him in his home area.

### **The Appeal to the Upper Tribunal**

5. Permission to appeal was sought on two grounds. The first is that the judge failed to undertake any assessment of the appellant's claim under Article 8 ECHR. The grounds note that the judge stated at paragraph 14 see that the appellant is in a relationship with Georgia Hewitson, a British national, and that they were expecting their first child. Notwithstanding that observation, the judge had failed to turn his mind to the appellant's private and family life under Article 8.
6. The second ground of appeal is that the judge erred in his consideration of the appellants credibility Because he attached significance to the appellants failure to claim asylum at an earlier stage in the United Kingdom. In doing so it was submitted that the judge had adopted an approach which contravened the authorities including SM (Iran) [2005] UKAIT 116.

7. Permission to appeal was granted on both grounds by Judge Boyes. His decision was sent to the parties on 8 June 2020. On 6 July 2020 Upper Tribunal Judge Kopieczek issued directions to the parties with a view to progressing the appeal to the Upper Tribunal. Judge Kopieczek directed the parties to file and serve written submissions dealing with the merits of the appeal and whether, in accordance with Judge Kopieczek's provisional view, the appeal was suitable for resolution on the papers. To date there has been no compliance with those directions by either party.

### **Discussion**

8. I consider first whether it is appropriate to determine this appeal without a hearing, under rule 34(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. In considering that question I have borne in mind the overriding objective in the 2008 Rules, of dealing with cases fairly and justly. I have also considered what was said by the Supreme Court in *Osborne v Parole Board* [2004] 1 AC 1115. The scope of the issues before me is narrow. My resolution of this case does not the credibility of a party or a witness. Both parties were given a full opportunity to lodge further submissions in writing. Judge Kopieczek's directions were sent by email to the appellant's current representatives and to the Secretary of State on 9 July 2020. Nearly six weeks have passed. In all the circumstances, and in the exercise of my discretion under rule 34 of the 2008 rules, I consider it appropriate and in accordance with the overriding objective to consider the appeal to the Upper Tribunal without a hearing.
9. I consider the grounds of appeal in reverse order.
10. As I have noted, the second ground of appeal is that the judge erred in his consideration of the appellant's credibility. I reject that submission. The judge was fully entitled to attach significance to the appellant's inaction in the face of what was said to be a serious threat whilst he remained in his country of nationality. The observations he made at paragraph 30 in that connexion were properly open to him, and he was entitled to find that the appellants inaction in 2015 to 2016 undermined his claim of an ongoing risk. Equally, it was plainly open to the judge to conclude that the appellant's significant delay in claiming asylum between his arrival in May 2016 and his international protection claim in April 2019 was a matter which undermined his credibility still further.
11. Be that as it may, the reality of this case is that the judge's primary conclusions hinged not on the appellant's credibility but on his consideration of the background evidence insofar as it

bore on the questions of sufficiency of protection and internal relocation. As I have mentioned above, the judge reached cogent findings, supported by detailed reasons, that the appellant could avail himself of a sufficiency of protection in Saint Kitts and Nevis and that he could in any event relocate internally so as to avoid any threat from the gang which was supposedly targeting him. The appellant's grounds of appeal make no challenge to these findings which are in any event cogently reasoned and insofar as the appellant seeks to challenge the judge's assessment of his international protection claim, that challenge is wholly without merit in the absence of a challenge to these particular findings.

12. That leaves the challenge based on Article 8 ECHR. In resolving that complaint, it is necessary to examine the evidence which was before the respondent and the FtT. The appellant made no reference in his claim for asylum to any relationship with an individual in the UK. At 3.4 of his screening interview, the appellant listed family members in the UK and any other European country. He made no reference at that stage to a partner in the United Kingdom. The appellant had a substantive asylum interview in Liverpool on the 6th of November 2019. He was asked, at question 12 of that interview, what family he had in the United Kingdom. He responded that he had his 'great nan, uncle and auntie, and cousins'. Again, he made no reference at that point or at any stage in the rest of the interview to having a partner in the United Kingdom.
13. When the respondent came to consider his protection claim in the refusal letter, she noted at paragraphs 102 to 104, that the appellant had made no reference to a partner in the United Kingdom. I can find no reference in the grounds of appeal which were sent to the First-tier Tribunal to the appellant having any family life in the United Kingdom. He was sent a pre-hearing review questionnaire in advance of that hearing. He was asked at question 4.1 of that questionnaire whether there were any new matters which he sought to raise at the substantive hearing. He was asked specifically whether there was anything in his personal or family circumstances in the UK or abroad that he had not told the respondent which he wished to raise at the full hearing. The response to that question was in the negative. That was the basis upon which the appeal proceeded to a full hearing, therefore.
14. At the hearing before judge Buckley the appellant's solicitor relied upon a bundle of 14 pages. That bundle contained a chronology, a witness statement, a skeleton argument, and three items of background material. It was in the appellant's witness statement, at paragraph 6, that he stated that he was in a relationship with a British national and that they were expecting their first child. There is no further reference to the appellant's

relationship in his witness statement. Nor is there any reference to any Article 8 claim in the skeleton argument which appears at pages 5 to 8 of the same bundle.

15. The judges Record of Proceedings is typed. It is detailed, and clearly contains a full record of the submissions which were made to him. It is clear from those submissions that the appellant's representative said nothing at all about Article 8. In fact, it is clear that the judge initiated a discussion between the representatives concerning the scope of the issues. The appellant's then solicitor, Mr Oborn, informed the judge that the issues before him were sufficiency of protection and internal relocation. The Presenting Officer who represented the Secretary of State agreed with that analysis. The judge is then noted to have asked Mr Oborn whether he was relying on Article 8 or not. Mr Oborn's response was that he was not.
16. The appellant's first ground appeal cannot succeed in these circumstances. There are three difficulties with the submission. The first is that the judge was specifically told that the appellant was not relying on Article 8 at the hearing. There is no obligation upon him to consider any such claim in those circumstances.
17. The second difficulty is that there was simply no adequate foundation, whether in the evidence before the judge or in the submissions made by the representatives, for a reasoned Article 8 ECHR assessment to have taken place. The judge had been told that the appellant was in a relationship with a British citizen and that they were expecting their first child but there was no evidence at all from the British citizen in question. There was no way in which the judge could assess the strength of that relationship, or whether it could continue in Jamaica, or whether the appellant's removal would be in breach of Article 8 ECHR. In the event that the judge had embarked on any such analysis it is clear that his resolution of it would have been adverse to the appellant on the evidence presented.
18. The third difficulty, which might have been apparent to the appellant's then solicitor, is that even if the appellant had wished to raise Article 8 ECHR in front of the judge, he would have been prevented from doing so without the respondent's consent, given that this was a new matter as defined in part 5A of the Nationality, Immigration and Asylum Act 2002.
19. In the circumstances, there can be no doubt whatsoever that the judge was lawfully entitled to find against the appellant on his protection claim. Equally, there can be no doubt whatsoever that the judge was not at fault in not dealing with Article 8 ECHR. Should the appellant wish to rely upon an Article 8 ECHR claim, the proper route is for him to make further submissions to the

respondent. He would be well advised, given the events at the hearing before Judge Buckley, to make submissions explaining why any such claim should not be certified under section 96 of the 2002 Act.

**Notice of Decision**

There was no error of law in the decision of the First-tier Tribunal and that decision shall stand.

**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 his 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.

M.J.Blundell

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

21 September 2020