



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

Case No: UI-2022-006683

First-tier Tribunal No: PA/52454/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 05 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**NT  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

**Heard at Field House on 18 October 2024**

**Order Regarding Anonymity**

**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 the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals against the decision of First-tier Tribunal Thorne, ('the judge'), promulgated on 6<sup>th</sup> December 2021 dismissing the appellant's appeal.

2. The appellant is a national of Namibia born on 10<sup>th</sup> March 1993 and claimed asylum on the basis he was gay and at risk of persecution should he be returned to Namibia including in his hometown of Windhoek from where he came. He stated that he was at risk of his father there and others associated with there and had experienced various infractions not least being expelled from school and attacked there.

### **Grounds of Appeal**

3. The grounds for permission to appeal were submitted on the following grounds. The judge accepted the appellant was gay but found that relocation was reasonable and lighted upon two alternatives Windhoek or Swakopmund. The appellant's home however was in Windhoek and where he had suffered past persecution. The appellant had been able to survive there for a short while through begging but that was no answer and the judge's decision which was perverse/illogical. Swakopmund was only mentioned by the judge because it was said that 'a Pride event' took place there. That fell far short of the level of anxious scrutiny required when looking through the lens of the test of 'unduly harsh' or whether it would carry a direct risk from the appellant's family and Swakopmund was only a 3 ½ hour drive from Windhoek
4. Permission to appeal was granted on the basis that it was arguable that at [46]-[47] the judge did not undertake an assessment of the appellant's particular circumstances in making the relocation assessment.

### **Hearing**

5. At the hearing the appellant appeared in person. He had previously applied for an adjournment on the basis that he no longer had legal representation but this was refused by the UTIAC lawyers not least because the appellant had had ample time to secure legal representation, there was no prospect of representatives being found, and considerable time had passed since the decision and the age of the appeal. I considered that to be fair in the circumstances. No renewal of the application was made and the appellant attended to address relevant issues. I explained to the appellant that there needed to be a material error of law in the decision and not merely a disagreement with the findings.
6. The appellant now submitted that he could obtain medical evidence as to his spinal condition and that his sister lived in Swakopmund and his father visited. That however had not been forthcoming before the First-tier Tribunal.
7. Ms Rushforth contended there was no error of law in the judge's determination. He had accepted that the appellant was gay but had reasonably assessed the appellant's circumstances and was entitled to find there was no undue harshness on the appellant's return to Namibia. I was referred to [20] of the decision which address the general country evidence in particular the Country Policy and Information Note Namibia: Sexual orientation and gender identity and expression Version 2.0 November 2021.

### **Conclusions**

8. I could find no reference to the appellant submitting before the First-tier Tribunal that his sister lived in Swakopmund (having considered his witness statement) and there was no medical evidence presented to the FtT of any significant medical difficulties. The legality of the decision must be considered

on the basis of the material which was actually before the judge and not material which was not provided and could be provided in the future.

9. Turning to the decision itself, the judge recorded that the appellant had lived in Windhoek, albeit surviving on begging for four months before he was assisted by his brother in his departure for the UK in 2019. The evidence recorded the appellant was also assisted by other people who lived on the street who gave him a mobile phone. There was no indication of any further interest from the father.
10. The judge however legitimately cited the Country Policy and Information Note Namibia: Sexual orientation and gender identity and expression Version 2.0 November 2021 which noted that legislation in Namibia criminalised acts such as sodomy but not sexual orientation or same sex relationships [2.4.1]. The nature frequency and violence and ill treatment of LGBTI persons was not documented and in general the information did not establish that openly LGBTI person faced a risk of persecution or serious harm from the state. Further Namibia was considered generally a tolerant society albeit many felt same sex relationships were taboo. There was growing tolerance. The judge cited extracts in relation LGBTI organisations which existed in Namibia and noted that they were predominantly - which does not equate with exclusively - in Windhoek.
11. In general the available information did not establish that openly LGBTI persons faced a risk of persecution or serious harm from non-state actors. Although the authorities did not, in general, take complaints of violence against LGBTI persons seriously, there was some evidence of the authorities responding to hate crime against LGBTI persons. The judge noted that in general the stated appeared able but unwilling to offer effective protection.
12. The judge turned however to internal relocation and although identified that there was an LGBTI community and active civil society in the capital Windhoek which hosted events he noted there was also a 'Pride # event in Swakopmund. The judge had noted that the appellant had lived in Windhoek albeit only for a short while despite the asserted persecution, apprised himself of the background from the CPIN and noted that tolerance of LGBTI was greatest in the larger urban areas.
13. Thus it was not just Windhoek or exclusively Windhoek or even Swakopmund to which the appellant could relocate. The judge specifically identified from 2.6.5 of the CPIN that 'in general there are parts of the country such as but not limited to Windhoek where an openly LGBTI person would not face persecution or serious harms and could reasonably relocate to'. That does not confine the relocation to Windhoek or indeed Swakopmund.
14. Against that background the further findings of the judge were open to him and without material error of law. The judge found that although the evidence indicated some gay men were discriminated against in the countryside and some tribes discriminated against them but there was no widespread state persecution of gay men and that in large urban areas men could live an openly gay life in safety [44].
15. The judge found it reasonable for the appellant to relocate away from his father and tribe and his home area and although the judge noted that legal and practical advice was available from organisations in Windhoek, there was no indication that the appellant could not access without living there. The judge

found that *'in general, there are parts of Namibia such as but not limited to Windhoek where an openly LGBTI person would not face persecution or serious harm and could reasonably reason to'*. On the evidence that finding was open to the judge who gave sound reasons. The judge specifically noted that the appellant had lived in Windhoek on the streets without persecution [47]. The judge was not stating that the appellant could live in Windhoek permanently but that he had not faced persecution there and indeed had been given money and a mobile telephone and helped with his passport.

16. Critically, the judge considered the circumstances overall on relocation and also stated at [47] *'the appellant is a well educated young man and there is no evidence of any health issues that would render it unreasonable for him to relocate and live safely in his home country'*. There was indeed an assessment overall of the country background material and the appellant's specific circumstances. The judge in his findings albeit in relation to his findings on article 8 noted the appellant had lived in Namibia, been educated there, could access adequate medical care and could obtain employment and accommodation. It is not arguable that these findings were not either explicitly or implicitly present in the findings on relocation or that the judge was not cognisant of the relevant issues and failed to apply the test of undue harshness.
17. I find no material error of law in the decision.

**Notice of Decision**

18. The decision of the FtT judge will stand and the appellant's appeal remains dismissed.

**Helen Rimington**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4<sup>th</sup> November 2024**