



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

**Appeal Number: PA/54218/2021
(UI-2022-001972); IA/12501/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 12 October 2022**

**Decision & Reasons Promulgated
On the 14 November 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**C
(ANONYMITY DIRECTION MADE)**

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. Liew, solicitor advocate instructed on behalf of the appellant

For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

Anonymity:

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008:

Anonymity is granted because the facts of the appeal involve a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant, a citizen of El Salvador, appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 29 March 2022.
2. Permission to appeal was granted by FtTJ Boyes on 20 May 2022.

Background:

3. The history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle. The appellant is a national of El Salvador. He lived in that country with his mother and 2 sisters. In 2017 he moved to an area in El Salvador so that he could run his business which he opened in March 2017. The appellant claimed that after opening his business in 2017, towards the end of 2019 the gang known as "MS-13" began to control the area where he lived and where he ran his restaurant business.
4. On 7 December 2019, a gang member of MS 13 visited his shop/restaurant and after ordering some food from the appellant demanded \$1000 extortion money. The following week the gang member returned to collect the \$1000 extortion money. The following week the same gang member returned demanded \$3000 from the appellant. The appellant explained that he could not raise that amount of money at which point the gang member dragged him by the neck and said that he would have to find the \$3000. The pair returned to work following day and when the gang member visited him the appellant explained he could not raise the amount, the gang members started to destroy things in the appellant's business. He also threatened to harm his mother and sister.
5. On 29 December 2019, the appellant was on his way to the business when he saw MS - 13 gang members waiting outside. He abandoned his journey and returned home to hide. He then went to stay with a friend for a few days. He did not enlist the help of the police for fear of repercussions. The appellant left his friend's house in January 2022 his mother's home. He later obtained a passport and arranged flights so that he could leave El Salvador.
6. On 15 July 2020 he was approached by 2 men and reminded of the debt he owed to MS-13. The appellant left El Salvador shortly after that incident.

7. The appellant left El Salvador on 10 March 2020 and entered the UK on 11 March 2020. He claimed asylum on that day.
8. The respondent considered the claim and refused it in a decision of 13 August 2021. The respondent considered the factual elements of his claim and in the light of the respondent's CPIN El Salvador: fear of gangs version 3.0 dated January 2021. Whilst the respondent accepted that the appellant was a national of El Salvador, for the reasons set out in the decision letter, the respondent concluded that the appellant had not given a consistent and credible factual claim to be at risk of persecution or serious harm and refused his appeal.
9. The appellant appealed the decision to the FtTJ. In a decision promulgated on the 29 March 2022 the FtTJ dismissed the appeal. In the decision, the FtTJ set out her findings of fact and assessment of the evidence. The FtTJ found that the appellant's account of the method of extortion to be contrary to the country information and that his ability to stay at his friend's house and then return to his mother's house was not credible in the light of what was known about MS-13. The FtTJ was therefore not satisfied that the appellant was approached by MS -13 to pay extortion/rent monies and rejected his claim. The FtTJ also gave reasons as to why the claim did not fall within a Convention reason (see paragraphs 11 - 13 of the decision).
10. The appellant appealed on four grounds and permission to appeal was granted by FtTJ Boyes on 20 May 2022.
11. The appeal was listed for a hearing before the Upper Tribunal. Ms Liew, Solicitor advocate, appeared on behalf of the appellant and Mr Diwnycz, Senior Presenting Officer appeared on behalf of the respondent. Ms Liew relied upon the grounds as written and Mr Diwnycz relied upon the rule 24 response.
12. There are four grounds of challenge advanced on behalf of the appellant. Ground 1 relates to the FtTJ's assessment that the factual account did not give rise to a well-founded fear of persecution for a Convention reason. Ground 4 submits that in the alternative, even if the FtTJ was correct in her analysis that a Convention ground was not identified, the appellant could have succeeded on the basis that he would have been at risk of serious harm and would have been entitled to consideration of a grant of humanitarian protection.
13. In response to the first ground of appeal, the respondent submits that the FtTJ clearly considered the case of Gomez v Secretary of State for the Home Department (00/TH/02257), as set out in the headnote at paragraph 11 of her determination.
14. Furthermore, it is submitted that the appellant's criticism of the Judge's reasoning is not made out when the decision of Gomez is properly considered. Therefore the appellant failed to establish that the

alleged interest MS-13 had in him was anything other than financial. It is submitted that it cannot be said that there was any political motivation either in the gang attempting to extort money from the appellant, or in his inability to pay the money.

15. As to ground 4, the respondent submits that the appellant has not been found credible in his account and where no fear of the gang exists, there would be no need for humanitarian protection.

Discussion:

16. The materiality of those 2 grounds depend on whether grounds 2 or 3 or both are made out. Those 2 grounds concern the factual findings made on the appellant's account and the FtTJ's assessment of the credibility of the account. If there is no error of law in the FtTJ's factual assessment of the evidence and the factual findings made, grounds 2 and 4 are immaterial to the outcome as they only apply if the appellant has established the factual circumstances of his claim that he would be at risk of serious harm such persecution and return to El Salvador.
17. It is therefore necessary to consider those 2 grounds of challenge. Ground one challenges the factual findings made between paragraphs 14 - 16 of the decision. Ms Liew submits that the FtTJ has placed great emphasis on what she sees as the "logic" of the criminal gang MS13. The FtTJ considered that the criminal gang would not have asked for such a large financial demand from the appellant and his business risking the closure of the business and any future extortion that they may be able to obtain.
18. It is submitted that by the very nature of the MS13 being a criminal gang that they do not use logic when making such decisions and threats. Furthermore whilst the FtTJ has stated that the gangs would not act as claimed by the appellant the country information in the appellant's bundle demonstrated that contrary to the decision the appellant had been externally consistent. It was further submitted that heavy reliance is made on the CPIN and that all the objective evidence should be considered.
19. Ms Liew submitted that for the FtTJ to determine that a criminal gang such as MS13 would apply logic to threats of extortion, and the evidence given by the appellant was contradictory, is not only unrealistic but erroneous in law in the light of the country materials.
20. On behalf of the respondent, it was argued that the FtTJ was entitled to conclude that the account given by the appellant was illogical. The external evidence in the CPIN (p.82AB) states 'They usually have to pay a weekly, twice monthly or monthly extortion fee.' It was therefore open to the FtTJ to find that where a gang operates by extracting regular revenue from businesses, it would be illogical to make a demand for money that would put the business in jeopardy. This is all the more so

where the appellant's evidence was that the gang had 'researched' his business. The amount of money the appellant said was demanded from him (\$4000 in a two week period), was wholly inconsistent with the background evidence which suggests a figure of \$5- \$20 a day was the usual figure.

21. Having considered the submissions of the parties on this point, I am satisfied that the FtTJ fell into error in the assessment of the evidence between paragraphs 14 to 16. The factual findings within those paragraphs considered the appellant's account of the type of extortion carried out by MS 13 in the context of the country materials. However the FtTJ rejected the appellant's account as not being credible as the judge found that it was internally consistent with the material in the CPIN dated January 2021 at paragraph 9.3.11.
22. The appellant's account was that the gang member first requested one thousand dollars and following payment returned the next week to demand \$3000. The FtTJ found this was inconsistent with the CPIN which referred to "traditionally the major gangs have operated in a decentralised way usually financing to daily extortion promises which range from \$2-\$3 for small businesses and \$5-\$20 for medium-sized businesses and distributors." The FtTJ concluded that as the business generated between \$60 -\$100 a day "to request the sum of \$4000 in the space of a few weeks was ridiculous" (see paragraph 15). The judge went on to find "it should have been apparent to MS 13 the demands of several thousand dollars were ludicrous and would result in the closure of the business in a matter of days." Whilst the FtTJ set out the appellant's claim that MS 13 may simply wish to secure the business and therefore was making the business bankrupt to gain possession of it, the judge rejected this stating "this approach is at odds with the background country information and the means by which funds were generated for MS 13. The background country information states that MS 13 would approach business and generate funds by way of daily extortion promises."
23. At paragraph 16, the FtTJ returned to this issue stating that "it is not credible MS 13 would request such high sums when it was apparent that these were unrealistic, unattainable and would most likely lead to the closure of the business and therefore no funds being available to MS 13 on a regular basis."
24. Whilst it is argued on behalf of the respondent that the FtTJ was entitled to rely on the information set out in the CPIN, that does not adequately answer the point made in ground 2 that the FtTJ was factually incorrect in reaching the finding that the appellant's account was inconsistent with the external evidence and to reject the credibility of the account on that basis when there was evidence that supported the appellant's account of the nature of the extortion.

25. Ms Liew referred the tribunal to page 40AB, where country information concerning how extortion was undertaken by MS-13 in El Salvador. It stated as follows:

“Extortion is reported to be pervasive in El Salvador and the regular extortion quotas imposed by the gangs can be crippling. Those subject to extortion demands for money, goods and services include, but are not limited to, persons involved in informal and formal commerce as business owners, their employees and workers, or as street vendors; public transport workers; taxi and moto taxi (tuc-tuc) drivers; public sector employees, [267]returnees who return from abroad with financial resources; children and adults who receive remittances from family members who live and work abroad; and even schoolchildren for the little money they may carry.[268] The level of extortion payments are reportedly often raised steeply and without warning by gangs, sometimes with the apparent intention of bankrupting a business so that the gang can take it over.[269]

Moreover, extortion victims may have to simultaneously pay extortion money to two or more gangs, especially where a business operates across one or more territories where these gangs practise extortion.[270]It is reportedly not unusual for victims to lose their livelihood due to excessive extortion demands by gangs, which are reported to have risen sharply since 2014.[271]Extortion demands reportedly sometimes take the form of a requirement to purchase at an inflated price (poor quality) goods or services from businesses controlled by the gangs.[272]

26. The country material set out above referred to the level of extortion payments raising steeply, without warning and with the apparent intention of bankrupting a business so that the gang could take it over. References also made to it not being unusual for victims to lose their livelihood due to excessive extortion demands by gangs. Thus the factual findings made at paragraph 15 and 16 did not take that evidence into account and undermined the factual findings made that the appellant’s account and explanation of the nature of the extortion was at odds with the background country information and that his account was not credible.
27. It would have been open to the FtTJ to consider both sources of the evidence, but the FtTJ did not do so nor did the judge give reasons for preferring the material in the CPIN at 9.3.11 to the other source.
28. It is right to observe that the FtTJ gave other reasons to reject the appellant’s account of the events in El Salvador. However the judge plainly disbelieved the appellant’s account concerning the extortion based on the lack of external evidence or that his account was inconsistent with the material referred to, which was not factually correct.
29. In those circumstances the adverse view taken of the appellant’s evidence may properly be seen as affecting other aspects of his credibility and thus the outcome of the appeal. Given the requirements of anxious scrutiny and given that the issue of credibility was central to the appellant’s claim, the error is material to the outcome.

30. Consequently the factual findings are unsafe and shall be set aside with no factual findings being preserved.
31. As to the issue of remaking the appeal, I am further satisfied that the appeal falls within paragraph 7.2 (b) of the practice statement. It is not the case that the appeal can be allowed as the grounds set out. It will be for the First-tier tribunal to undertake a fresh assessment of the evidence in respect of the protection claim and to assess the credibility of the appellant's claim. It will be necessary for the appellant to give evidence and for fact-finding and analysis to be undertaken, and whether the factual claim made by the appellant falls within a Convention ground. The Upper Tribunal is to promulgate a decision solely on this issue in due course.
32. For those reasons, the decision of the FtTJ involved the making of an error on a point of law and the decision is set aside. It is remitted to the First-tier Tribunal for a fresh hearing with none of the factual findings being preserved.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and therefore the decision of the FtT shall be set aside and remitted to the FtT for a hearing afresh.

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. 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 Upper Tribunal Judge Reeds

Dated 17 October 2022