



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002790
First-tier Tribunal No:
PA/52082/2021
IA/05106/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 16 May 2023**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**DJCN
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, of Counsel, in house advocate with Elder Rahimi Solicitors

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

Interpretation: Ms A Hurtado Monsalve in Latin American Spanish

Heard at Field House on 18 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and members of his family are 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 and his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nicaragua born in 1994, his wife, ER, is a dependent on his claim. In October 2018 he arrived in the UK as a visitor with his wife. He claimed asylum on 12th February 2020, and the application was refused in a decision dated 20th April 2020. His appeal against the decision was dismissed by First-tier Tribunal Judge Spicer in a determination promulgated on the 8th May 2022.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Handler on 17th June 2022 and I found, sitting on a Panel with Deputy Upper Tribunal Judge Woodcraft, that the First-tier Tribunal had erred in law for the reasons set out in our decision which appears at Annex A to this decision. In that decision we informed the parties that we retained the following findings from the First-tier Tribunal: the appellant is a citizen of Nicaragua, the appellant was a student at the university of Managua and went on an anti-government demonstration on 27th April 2018, and was stopped by the police a few days later. All other findings of the First-tier Tribunal were set aside.
3. We admitted the expert evidence of Dr Vanden submitted with a Rule 15(2A) notice by the appellant and agreed that the appellant could play a 5 minute video, which he says shows the raid on his wife's great uncle's home in November 2018, at the remaking hearing. The matter comes back before me pursuant to a transfer order to remake the appeal.
4. At the remaking hearing, however, Mr Hodson said he was not in a position to play the video on his computer due to a lack of ability to link that computer to the internet but referred us to the many stills taken from the video in the appellant's First-tier Tribunal bundle at page 20 onwards. He wished to proceed on the basis of this evidence. Ms Lecointe informed me that she could no longer access the bundles for the hearing due to being locked out by her computer, but said that she did not wish to apply for an adjournment as she had looked at everything already and was ready to proceed. The Upper Tribunal clerk provided her with a copy of Mr Hodson's skeleton argument which was before the First-tier Tribunal which she did not think she had seen previously.

Evidence & Submissions - Remaking

5. The appellant attended the Upper Tribunal, adopted his appeal statement and supplementary statement and gave oral evidence through the court interpreter whom he confirmed he understood. His evidence, in summary, is as follows.

6. As accepted above the appellant is a citizen of Nicaragua who had been a student at the university of Managua. He went on an anti-government demonstration on 27th April 2018 in Managua with some student friends. He was not part of any political group. On 1st or 2nd May 2018 he was stopped and searched by police near to the university campus. He was questioned by the police about the demonstrations, and they confiscated his bag including his student ID card. He spoke about this with the university after it happen, and told them he was not going to apply for another university ID but would simply memorise his university ID number and use this as he felt carrying a university ID put him at risk if he was stopped again by the police. The university accepted this as many students were fearful as they had attended the anti-government demonstrations and were in danger of being stopped by the police. He continued to attend university in person and online up to the point in October 2018 when he left Nicaragua, but felt happier when classes were online.
7. On 4th May 2018 the appellant and his wife applied for passports, and these were issued on 7th May 2018. The appellant and his wife moved from the house of his mother after his wife was followed home by a stranger, some five days after he was stopped by the police, who they suspected of having a connection to the authorities as this was his home address on his student ID card. They went to live at the house of G, who is the brother of his wife's grandmother GRR (who brought his wife up as a mother). They did not feel safe to remain in Nicaragua however as they believed that the appellant was now seen as someone who had acted against the government due to attending the demonstration, and also because he was related to JM, his wife's father, who had engaged in activities which made him an opponent of the government, (JM is now an asylum seeker in the UK). They were afraid of being detained and interrogated, and of what the police might do to them as there were killings and rapes.
8. In September 2018 the appellant and his wife applied for visas to enter Costa Rica which were granted on 27th September 2018, and on 16th October 2018 they travelled overland by bus to Costa Rica. On 19th October the couple took a flight from Costa Rica to the UK. They arrived in the UK on 20th October 2018 and were granted leave to enter as visitors until 20th April 2019. Since arriving in the UK the appellant and his wife have lived with GRR (his wife's grandmother) who has indefinite leave to remain in the UK.
9. On 21st November 2018 the appellant learned from G (brother of his wife's grandmother GRR) that there had been a raid on his home in Managua by the police asking for the appellant and his wife's father, JM. Following this raid G's son (J) was detained and ill-treated. On 7th December 2018 the Nicaraguan police attended the appellant's father's home in Managua, again seeking information about the appellant, and threatened the appellant's father with violence. The appellant contacted the Home Office to make an appointment to claim asylum in

December 2019. The appellant formerly claimed asylum on 12th February 2020.

10. In his supplementary statement dated 28th March 2023 the appellant sets out details of the problems his parents have had working and living in Nicaragua, and the pressure that is placed on them to attend pro-government marches and the fact that without showing allegiance to the government by holding a “carnet de militante” showing support for the FSLN it is hard to get a job or healthcare. His father was arrested with his partner’s nephew and other family members in 2022 due to posting anti-government sentiments on social media, and the nephew was held in prison for a month and then fled with his family to the USA. G, the appellant’s wife’s great uncle, still has problems, particularly as the authorities refuse to renew his taxi licence (he is a taxi driver) for political reasons, and G’s son J has no work as he has no carnet de militant due to his arrest in November 2018. It was recently in the media that political prisoners were deported to the USA and deprived of their Nicaraguan citizenship.
11. In oral evidence the appellant added that he had very recently learned that at some date in 2022 the man who had taken the video of the raid on G’s home in November 2018, Roger, had fled to the USA to claim asylum. Roger is a family member of G through G’s late wife. The appellant believes that the local CPC informers had come to know about the video as it had been shared in the neighbourhood. The appellant knows that Roger had provided it to G, who, in turn, had sent it to his wife’s grandmother, GRR, in the UK. The appellant also explained that he could not find safety by relocating in Nicaragua because he was wanted by the state and the CPC assist the police in finding people, and so even those who have fled Managua to the villages have been found dead or have disappeared. It was risky if you did not take part in pro-government demonstrations in Nicaragua let alone if you showed any opposition.
12. In short summary the evidence of the appellant’s wife, ER, from her statement and oral evidence is as follows. She was brought up mainly by her paternal grandmother GRR and her father JM. She married the appellant in February 2018 and then went to live with him at his mother’s house. She was 17 years old at the time and continued with her school education after her marriage. Shortly after the appellant had attended the demonstration and been stopped by the police, and had his bag and student ID taken, she was walking home from school and realised that she was being followed by a man, she changed route and then started to run, and he followed her home but made no attempt to rob her. She found this very scary and told her mother-in-law and the appellant about it. Two neighbours had seen the man but not recognised him. They all believed that the man had something to do with the demonstrations and was an agent of the government. They did not report this matter to the police as they believed they were behind it, and in the context of the appellant having had his identity card taken

and having been questioned she did not trust the police. Her grandmother, GRR, advised that she and the appellant obtain passports as quickly as possible, and she sent money for them to do this on an expedited basis. They also decided to move in with her family, with G her great uncle, as they thought it would be safer. She and the appellant continued to attend school and university, but they did not feel safe, and her grandmother felt this also, and bought them tickets to fly to the UK from Costa Rica. She did the same for ER's father (JM) and children. ER and the appellant travelled overland to Costa Rica and came to the UK. She was not initially told about the attack on G and his son J in November 2018 as she had treated G as a father figure, and was horrified when she was eventually shown the video, which was taken by a relative called R, and pictures of the raid. She believes that police continue to circulate in G's neighbourhood since this time. She is very afraid of being returned to Nicaragua. R has left Nicaragua to claim asylum.

13. In short summary the evidence of the appellant's wife's grandmother, GRR, from her statement and oral evidence is as follows. She is a citizen of Nicaragua who has indefinite leave to remain in the UK, having entered the UK in approximately 2006 as a housekeeper to the Costa Rican ambassador. She explains how she formally adopted the appellant's wife (ER) as her child and brought her up in the extended family home. She remembers ER calling her about the demonstrations in 2018 and being told that the appellant had been stopped by police and his bag and student ID had been taken. She remembers suggesting that they move to live with G, her brother, so they would be safer as they would not be at the address the authorities had obtained. Her son JM, ER's father, had a history of being targeted by the police, including being shot in the stomach, and as things got worse, with students being arrested and killed, she suggested that the appellant and ER got passports, and then expedited visas for Costa Rica using her contacts, and she bought tickets for them to fly from Costa Rica to the UK. JM left Nicaragua and came to join her in the UK before the appellant and ER arrived.
14. After the appellant and ER had arrived in the UK she received a call from her brother G to say that he had been attacked and his arm broken when the authorities came to the house looking for JM and the appellant. They also arrested G's son J. R, a neighbour and relative of G & J's, filmed the incident and sent it to G who sent it to her via WhatsApp. Unfortunately, she deleted the messages but still had the video which was in her phone so she gave it to the appellant. R has since left Nicaragua for the USA due to his being wanted, she understands, as a result of taking the video. She believes that the authorities got to know about this through the local CPC informers. She believes that the police continue to conduct surveillance on G and R's houses. She believes that the appellant and ER would be at risk of arrest if they returned to Nicaragua, and might be killed.

15. Ms LeCointe relied upon the reasons for refusal letter and made oral submissions for the respondent. In summary the submissions addressing the remaining issues in the appeal are as follows. It is contended that the Nicaraguan authorities would have no interest in the appellant as he was not a member of a political group and was not arrested at the demonstration. It is argued that if he had been of interest he would not have been issued with a passport after the demonstration. It is argued that the raid on G's house in November 2018 is not credible as the photographs should be given little weight as they do not have date or location or identify the person attacked or reasons why the attack is taking place, and further the account of the appellant is internally inconsistent. It is argued that the raid on the appellant's father's house in December 2018 is not to be believed either because it is not plausible, and it is argued that there would have been a previous raid prior to these two in November/December 2018 if the Nicaraguan authorities had truly wanted the appellant. It is also argued that the appellant's claim is not credible applying s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 because he did not claim asylum at the earliest opportunity.
16. Ms LeCointe accepted that the appellant and the witnesses had given consistent evidence before the Upper Tribunal, and that if they were believed that the country of origin evidence and expert evidence before the Upper Tribunal suffices to show that the appellant is a refugee. She continued to argue however that the history should not be found to be plausible or credible for the reasons set out in the refusal letter and summarised above.
17. Mr Hodson relied upon his skeleton argument and made oral submissions for the appellant. In summary he submitted as follows.
18. It is argued that the raids on G's house and the appellant's father's house did happen. It is argued that reliance can be placed on the first hand-written testimony of G and the appellant's father, and stills from the video showing police brutality and the injuries to G's son J. The testimony of G is also supported by statements from the appellant, the appellant's wife (ER) and her grandmother (GRR), who support their statements with oral evidence. It is argued that the Nicaraguan authorities would have known the appellant had been living at G's house because of the operation of the Consejos de Poder Ciudadano (citizens power councils) or CPCs which provide intelligence to the authorities and are referred to in the Inter-American Commission on Human Rights report: Persons deprived of Liberty in Nicaragua. It is notable that the appellant's father-in-law (JM) has also travelled to the UK and claimed asylum on the basis of being wanted. The timing of the raid is also in line with the description of the repression which followed the protests in which the appellant took part: there were four phases, with the third phase which started in August 2018 which included the selective and mass criminalisation of demonstrators and students, and included human rights violations against member of families of those

targeted. It is clear, therefore, that arrests were not confined to the time of the demonstrations in April 2018 but continued for the rest of that year. In this context, it is argued, that it is entirely plausible that the police would have taken the appellant's student identity card when he was stopped for later investigation, given the staged process of repression.

19. It is also argued that it was totally plausible that an expedited passport application made a few days after the demonstration would not have been blocked by the police having taken the appellant's identity card as it was not being acted upon at this time - and only became a focus once the third phase of mass criminalisation of student protestors started from August 2018 onwards. It also makes sense that the appellant and his wife do not report her being followed to the police a few days after his identity card was taken as they suspected that this may have been linked to investigations by CPC in support of the police, and thus would have worsened their situation not provided protection. The exit of the appellant and his wife over the border to Costa Rica took place at a time when thousands of other Nicaraguans left in this same way and so it was entirely plausible that he would not have been stopped, but it was also in keeping with the background evidence that the appellant did not feel safe to remain in Costa Rica as there were reports of raids over that border by the Nicaraguan authorities.
20. It is argued in the skeleton argument that the appellant remains at risk on return to Nicaragua for the following reasons. The Inter-American Commission on Human Rights, Persons deprived of Liberty in Nicaragua, report supports the contention that there is a human rights crisis in Nicaragua since the violent repression of protests in April 2018, which includes allegations of treason and solitary confinement in appalling conditions for those who are seen as government critics. The Amnesty International report "Silence at any Cost" also confirms that opponents are charged with fabricated crimes and held without trial in detention centres, and in their latest annual reports both Amnesty International and Human Rights Watch report on the intensification of state repression. It is argued that there is therefore a real risk of the appellant being arrested, detained and ill-treated as a result of his participation in anti-social reform protests in April 2018. Further it is clear that the appellant could not be expected to lie about his participation in the protests on return to Nicaragua on return should he be questioned.
21. The more recent human rights reports, particularly that of the OHCHR: Report of the Group of Human Rights Experts on Nicaragua dated 2nd March 2023 and the UNHCR Report: International Protection Considerations with regard to people fleeing Nicaragua dated 16th January 2023, make it clear that what might appear as minor political involvement such as attendance at an anti-government demonstration suffices currently to mean that a person such as the appellant is a political opponent in Nicaragua, and that attitudes have hardened and intensified since 2018 with the banishment of traitors whose citizenship

is then removed - as set out in the Amnesty International report: Nicaragua: Replacing prison by forced exile, Daniel Ortega's government's new pattern of repression 21st February 2023. There are reports of raids taking place on the homes' of family members which support the history of the two raids in November and December 2019 of G and the appellant's father.

22. Mr Hodson noted that Ms LeCointe, for the respondent, accepted before the Upper Tribunal that the appellant is at real risk of serious harm if his history is found to be credible. This is in keeping with the conclusions in the specific expert report of Professor Vanden dated 2nd August 2022 and also the UNHCR report: International Protection Considerations with regard to people fleeing Nicaragua dated 16th January 2023 which identifies risk groups as including those who are suspected of being anti the government and returnees who left Nicaragua in 2018. He therefore argued that the appeal should be allowed.
23. At the end of the hearing I informed the parties that I found that the appellant's history was credible and, given the concession by Ms LeCointe that in these circumstances the respondent accepted the appeal succeeded, and given the country of origin evidence that had been drawn to my attention, I would therefore allow the protection appeal. I did not give an oral judgement but set out my reasons in writing below.

Conclusions - Remaking

24. It is accepted by both parties, in light of the concession of Ms LeCointe at the hearing, that if the events set out in the appellant's history took place then in accordance with the country of origin evidence the appellant has a well founded fear of persecution based on his actual and imputed political opinions. It is clear, particularly from the UNHCR report of January 2023 that mere suspicion of anti-government sentiment and having left Nicaragua following the protests in 2018 suffices to make a person at real risk of arbitrary detention and ill-treatment. The question that I must determine therefore is whether the appellant's history is credible.
25. It is accepted by Ms LeCointe that the appellant and his witnesses gave entirely consistent testimony with each other and with their written statements. There is no basis to disbelieve the appellant based on inconsistency therefore, but simple consistency between three witnesses does not mean that the history is to be believed and this must therefore be placed in the context of the other evidence. It is clear also that the appellant did delay in claiming asylum, not claiming immediately on entry to the UK but waiting over a year before making his claim, and that this is a factor which counts against his credibility. I will weigh these factors, one positive the other negative, in the round with the other evidence when coming to the ultimate conclusion as to whether the appellant's protection claim is to be believed.

26. It was found by the First-tier Tribunal that the appellant was a Nicaraguan student at the university of Managua who attended a student anti-government protest in April 2018, and was stopped by police a few days later. I preserved these findings. The events which are pertinent to the claim and disputed are as follows:
- Whether the police took the appellant's student identity card with his address when he was stopped a few days after the demonstration.
 - Whether it was plausible and relevant that the appellant's wife was followed home by an unknown man to their home a few days after the appellant was stopped by police about attendance at the anti-government protest.
 - Whether it was plausible that the appellant and his wife could obtain expediated passports a few days after the appellant attended the demonstration.
 - Whether it was plausible that the appellant and his wife could cross the border into Costa Rica in October 2018 if participation at the demonstration in April 2018 meant the appellant is now at real risk of serious harm from the Nicaraguan authorities.
 - Whether the raids on G's home and the appellant's father's home took place and are indicative of the appellant being wanted for his political opinions by the Nicaraguan authorities.
27. I find that it is entirely plausible that as it is accepted the appellant was stopped in connection with the demonstration by police shortly after it had taken place that they would take his student identity card for further investigation, and particularly so as it gave his address which they could then use to find him. There is no reason why this would not have happened, and, I find, it would be a logical adjunct to stopping and questioning students. It is impossible to tell whether the person who followed his wife had any connection with the authorities, through the CPC or otherwise, but I find that it was entirely plausible that the two events would have caused the appellant and his wife to change their address to go and live the appellant's wife's great uncle G where she had grown up with her grandmother, GRR. It is clear that there was an atmosphere of heightened political tension in Nicaragua at that time with political arrests and detentions taking place, and that the family were not and are not supporters of Daniel Ortega's regime. This move is also in keeping with the fact that the appellant and his wife applied for expedited passports at this time, which were issued just a few days later.
28. When considering whether these passports would have been issued and why there were no further steps taken against the appellant in the six months that he remained in Nicaragua living with his wife's great uncle, G, the evidence of the Inter-American Commission on Human Rights Annual Report 2020, Persons Deprived of Liberty in Nicaragua is of key relevance. This report explains a four stage process of repression. The third of these phases commenced in around August 2018 and is

described as a consolidation of repression with “both selective and mass criminalization of demonstrators, human rights defenders, students, social leaders, and opponents of the government”. This phase also saw violations of human rights against members of the families of those who were targeted by the authorities. I find therefore that the delay between the appellant’s participation in the anti-government demonstration in April 2018 and any action to find him, which according to him only took place in November and December 2018 after he had left Nicaragua with the raids on G’s home where he had been living and his father’s home, to be in keeping with the country of origin evidence. In these circumstances it also makes sense that passports could have been issued in May 2018 at a time when the Nicaraguan state had not got around to identifying and addressing persons they considered opponents such as the appellant.

29. When considering whether the appellant and his wife would have been able to leave Nicaragua undetected or stopped by the Nicaraguan authorities, using their own passports in October 2018, I find that this is also credible given the background evidence that from 2018 to 2021 according to UNHCR (In the paper: UNHCR Calls for More Support for Nicaraguans Forced to Flee dated 16th April 2021) 108,000 people fled Nicaragua, with 85,000 going to Costa Rica. With such a mass exodus it would have been unlikely that the authorities would have identified the appellant, particularly as they had not got around to using intelligence to raid the houses with which he had a connection at that time.
30. I now turn to the raids on the appellant’s wife’s great uncle’s (G’s) home and the appellant’s father’s home in November and December 2018 respectively. The raid on G’s home is supported by stills from a video of the event, which, whilst they do not show a direct link to the appellant or the direct identity of anyone involved, are consistent with what is said to have taken place, and the fact of the raids having taken place are supported by letters from G and the appellant’s father. The history of the raid on G’s home is given consistently by the three witnesses orally and in their statements; the raids take place at a time consistent with the country of origin evidence when the mass criminalisation of student demonstrators was taking place. The country of origin evidence (for instance the Inter-American Commission on Human Rights ‘Persons deprived of liberty in Nicaragua’) records that raids have been carried out leading to detentions using lists of suspects compiled from CPC intelligence and thus confirms the existence of the CPC government informer network which the appellant puts forward as the way in which the addresses would have been found to be ones connected to him. Applying the lower civil standard of proof, I find that the evidence before me suffices to show that these raids took place.
31. Whilst bearing in mind the fact that the appellant’s delay in claiming asylum negatively impacts on his credibility, I find that the appellant has shown that his claim is credible, given my findings with respect to the various components of his case as set out above, and I find,

applying the lower civil standard of proof, that the history he presents took place. It is accepted for the respondent that in these circumstances the appellant is at real risk of serious harm on return to Nicaragua for reason of his political opinion. I find that he has a well-founded fear of persecution because of his actual (which are anti-government) and imputed political opinions, and also as Mr Hodson has pointed out, because he left Nicaragua in 2018 which is identified by UNHCR as a risk factor. He therefore is entitled to refugee status and his return to Nicaragua would amount to a breach of Article 3 ECHR for the same reasons.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. The decision of the First-tier Tribunal was set aside.
3. I remake the appeal by allowing it in accordance with the Refugee Convention and on Human Rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant and his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant and his family from the contents of his protection claim.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19th April 2023

Annex A: Error of Law Decision:

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nicaragua born in 1994, his wife, ER, is a dependent on his claim. On 20th April 2019 he arrived in the UK as a visitor with his wife. He claimed asylum on 12th February 2020, and the application was refused in a decision dated 20th April 2020. His appeal against the decision was dismissed by First-tier Tribunal Judge Spicer in a determination promulgated on the 8th May 2022.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Handler on 17th June 2022 on the basis that it was arguable that the First-tier judge had erred in law in firstly failing to give adequate reasons as to why confiscation of the appellant's student identity card was not an indication of interest in the appellant by the authorities. Secondly, it is found to be arguable that there was failure to deal with material evidence regarding the appellant and his wife leaving Nicaragua with their own passports. Thirdly, it is found to be arguable that the supporting letters from relatives were in fact signed and dated contrary to the findings of the First-tier Tribunal. Permission was granted to argue all grounds.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to decide whether any such error was material and the decision should be set aside.

Submissions - Error of Law

4. In the grounds of appeal and in oral submissions from Mr Hodson it is argued, in summary, as follows.
5. It is accepted by the First-tier Tribunal that the appellant is a citizen of Nicaragua, was a student at the university of Managua and went on an anti-government demonstration on 27th April 2018, and was stopped by the police a few days later.
6. It was not accepted by the First-tier Tribunal that the appellant was of interest thereafter to the authorities, and specifically it was not accepted that the authorities sought him in November/December 2018 via visits to his family.
7. Firstly, it is argued, in coming to this negative conclusion the First-tier Tribunal failed to consider important evidence that the Nicaraguan authorities had confiscated the appellant's student ID card when he was stopped by police a few days after the April 2018 protest. The evidence of the appellant was not that many other students had their identity cards taken, but simply that others were stopped and questioned. This

was an essential matter, identified by the appellant as such at his asylum interview, that needed a finding as it distinguished the appellant from other students and enabled him to be traced thereafter.

8. There was also a failure by the First-tier Tribunal to consider the evidence of the appellant's wife that she was followed after the appellant was stopped and searched by the police, and further the First-tier Tribunal failed to make credibility findings on the appellant's wife and his wife's grandmother who appeared as witnesses at the appeal. It is also argued that the First-tier Tribunal wrongly discounted letter evidence, which ought to have been given some weight, from the great uncle and father of the appellant on the basis it was not signed and dated when it is in fact signed and accompanied by identity cards for the two men.
9. Secondly, it is argued, that the First-tier Tribunal, in concluding that it was against the appellant that he could leave Nicaragua on his own passport, failed to consider the evidence that he and his wife applied for their passports using an accelerated process less than a week after he was stopped and searched. It is clear from the passport copies in the respondent's bundle that the passports were issued less than a week after it was accepted that the appellant was stopped by the police, and he says that his identity card was taken. This error was compounded by a failure to consider whether it was plausible that the appellant would not be spotted leaving Nicaragua given that he had left on a bus which travelled overland to Costa Rica at a point in time when UNHCR estimates that about 110,000 others had fled in the same way - UNHCR evidence being before the First-tier Tribunal and high-lighted in the skeleton argument for the appellant. The background evidence used to support the negative findings of the First-tier Tribunal regarding the implausibility of the appellant's departure from Nicaragua relates to a small number of people with high profiles being stopped leaving via airports, and is not supportive of the proposition that the appellant could not have plausibly left in the way he claimed whilst being wanted as a low level activist.
10. Thirdly, it is argued, that the First-tier Tribunal failed to look at relevant evidence relating to the plausibility of the appellant being sought after he had left Nicaragua. Evidence going to this issue was set out in detail in the appellant's skeleton argument, which included evidence about CPCs (a type of neighbourhood watch for the authorities) which would have enabled the authorities to discover the appellant had been staying at an uncle's house and also evidenced the fact that the authorities went through a number of phases of repression: firstly crushing the demonstrations, secondly putting authoritarian provisions in place and thirdly arresting and detaining people. It is argued that this last phase coinciding with the time the appellant left and with the time of the claimed raids on the uncle's and his father's house.

11. Ms Leconte accepted, in light of the submissions and grounds for the appellant, that the decision was not ultimately sufficiently well-reasoned given the country of origin evidence set out in the appellant's skeleton argument that was before the First-tier Tribunal, and so conceded that the decision of the First-tier Tribunal should be set aside.
12. In light of the concession by Ms Leconte we informed the parties that we found that the First-tier Tribunal had erred in law and that we would be setting aside the decision dismissing the appeal. The parties agreed that the remaking should take place in the Upper Tribunal. The remaking had to be adjourned due to there being no Spanish interpreter present. We admitted the expert evidence of Dr Vanden submitted with a Rule 15(2A) notice by the appellant as we concluded that it might assist the Upper Tribunal with remaking the appeal, and further Ms Leconte did not object to it being admitted. We agreed that the appellant could play a 5 minute video, which he says shows the raid on his wife's uncle's home in November 2018, at the remaking hearing. As this cannot be uploaded to the Upper Tribunal or the respondent's computer systems for technical and cyber safety reasons we agreed that this would be played on the appellant's representative's computer in the hearing.
13. We informed the parties that we would retain the following findings from the First-tier Tribunal: the appellant is a citizen of Nicaragua, the appellant was a student at the university of Managua and went on an anti-government demonstration on 27th April 2018, and was stopped by the police a few days later. All other findings of the First-tier Tribunal are set aside.

Conclusions - Error of Law

14. We find that that the First-tier Tribunal erred in law for the reasons set out by Mr Hodson above. In summary that there was a failure to make a findings of fact relating to the claimed taking of the appellant's identity document by the police; there was a failure to consider the oral and witness evidence of the appellant's wife going to her being followed before they left Nicaragua; there was an error in dismissing the evidence of family members on the mistaken basis the letters were not signed; there was a failure to consider the timing of the applications for passports by the appellant and his wife when considering whether they would plausibly have been issued were he wanted; there was a failure to give reasoned consideration to the background evidence when considering the plausibility of their departure without detection from Nicaragua overland to Costa Rica; there was a failure to give reasoned consideration to the background evidence when considering the plausibility of the appellant being sought at the family's home at the particular time this took place and going to risk on return to Nicaragua.

Decision:

4. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
5. We set aside the decision of the First-tier Tribunal and all of the findings bar those set out in paragraph 13 above.
6. We adjourned the remaking of the appeal.

Directions:

1. Any further evidence on which either party wishes to rely must be filed with the Upper Tribunal and served on the other party ten days prior to the hearing date.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant and his family from the contents of his protection claim.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7th February 2023