



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00564/2014

THE IMMIGRATION ACTS

Heard at Field House
On 8 April 2015

Decision and Reasons Promulgated
On 2 June 2015

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

CARLOS CARDONA-VASQUEZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V. Lovejoy, Counsel, instructed by Leonard & Co.,
Solicitors

For the Respondent: Mr P. Duffy, Home Office Presenting Officer

DECISIONS AND REASONS

Introduction

The history of this appeal has been set out in the reasons already provided to the parties for the Upper Tribunal's finding (Davis J and Upper Tribunal Judge Jordan) that the First-tier Tribunal panel erred in law. I repeat it now, adopting the same paragraph numbering:

The decision as to the error of law

1. "The Appellant is a citizen of Colombia. He was born in 1975. In 1997 he came to the United Kingdom and claimed asylum. His claim was based on his assertion that he was a leading member in the Liberal Party in Columbia and that attempts had been made by political opponents to

kill him in the period prior to his departure from Columbia. He claimed that he had a well-founded fear of persecution by reason of his political opinion.

2. His claim for asylum was rejected by the Secretary of State for the Home Department (“SSHD”) who refused him entry clearance. The Appellant appealed against that decision. In 2001 his appeal was allowed. The tribunal found that he had fled Columbia in fear of being murdered by political opponents and, as such, he had a well founded fear of persecution due to his political opinion. Part of the decision read as follows:

I had the advantage of having the appellant giving evidence before me and I was impressed by his forthrightness and apparent honesty and I have no reason to doubt that he was telling me anything but the truth. I have already indicated that I find the various documents submitted in support of his claim to be genuine. It is abundantly clear that this young man left Columbia in fear of his life....

3. In consequence of his successful appeal, the Appellant in 2002 was granted indefinite leave to remain in the United Kingdom. By that time he was already in a settled relationship with a lady of Columbian nationality who also had indefinite leave to remain. They had had a son born in 1999. They married in 2003.
4. In July 2009 the Appellant was convicted after a trial of an offence of possession of cocaine with intent to supply. He was sentenced to a term of eight years’ imprisonment. As early as February 2010 the SSHD wrote to the Appellant inviting him to give reasons why he should not be deported at the conclusion of that part of his sentence which he had to serve. The Appellant was liable to deportation under Section 32(5) of the UK Borders Act 2007 unless he fell within the exception under Section 33(2) of the same Act i.e. his removal would breach his convention rights or the obligations of the United Kingdom under the Refugee Convention.
5. On the 4th February 2014 the SSHD served her decision that the Appellant’s removal would not breach his convention rights and her decision to cease the Appellant’s refugee status. The latter decision meant that his removal prima facie would not breach the United Kingdom’s obligations under the Refugee Convention. The consequent deportation order was served on the same day.
6. The Appellant exercised his in-country right of appeal. By a decision promulgated on the 21st May 2014 the First-tier Tribunal dismissed his appeal against the decisions of the SSHD. The Appellant appeals against the decision of the First-tier Tribunal by leave of Upper Tribunal Judge Jordan. Leave was given on all grounds although it was indicated that

the arguable issues were likely to be restricted to those relating to the Appellant's refugee status.

7. At the outset of the hearing of the appeal, the SSHD's representative raised a jurisdictional issue. He argued that there was no right of appeal to the tribunal against the SSHD's decision to cease the Appellant's refugee status. Rather, any challenge to the cessation letter should have been by way of judicial review, the cessation letter itself making it clear that there was no right of appeal against the decision to cease refugee status. The only appeal was against the consequent deportation decision. Ms Lovejoy on behalf of the Appellant objected to the proposition that the tribunal could not consider the decision to cease refugee status. She pointed out that this argument had not been raised in the First-tier Tribunal which had considered the cessation decision on its merits. She relied also on the fact that the point had been raised only on the day of the hearing before us without any prior notice. We consider that the SSHD's argument is sterile. Even if there was no right of appeal against the cessation decision per se, proper consideration of the deportation decision was bound to require an assessment of the merits of the cessation decision. If a tribunal were to conclude that, on the facts of the case, removal of a foreign criminal would breach the United Kingdom's obligations under the Refugee Convention, it would be bound to allow any appeal against the deportation decision. The tribunal would not be prevented from reaching such a conclusion simply because the SSHD had made a particular decision to cease refugee status.
8. The SSHD's representative made a further submission allied to the jurisdictional issue, namely that the burden of proof was on the Appellant to show that his removal would breach his convention rights and/or any obligation under the Refugee Convention. Again, that is not an approach taken by the SSHD before the First-tier Tribunal. We consider that the SSHD adopted the correct approach at the first appeal. The burden of proof is on the SSHD to show that the Appellant no longer should have refugee status, per Lord Brown at [66] in *Hoxha & Anor v Secretary of State for the Home Department* [2005] UKHL 19 with whom the other members of the Committee agreed.
9. We note that the SSHD in her decision letter ceasing the Appellant's refugee status appeared to adopt the wrong approach to the burden of proof. At paragraphs 13 and 14 of the letter she used this phrase: "...you have adduced no credible evidence that you remain in genuine need of international protection due to your alleged fear of persecution in Columbia". This is suggestive of requiring the Appellant to prove that he still warrants refugee status. Whilst of academic interest only, this could well have been a proper basis for a judicial review of the decision.

10. If the Appellant ought to have retained his refugee status, there could be no proper basis for his deportation under Section 32(5) of the UK Borders Act 2007. He had the benefit of a clear finding on appeal in 2001. The issue for the First-tier Tribunal was whether proper application of Article 1C(5) of the 1951 Refugee Convention meant that the Appellant no longer should have refugee status. Article 1C(5) [which is incorporated in the Immigration Rules at Paragraph 339A] is in these terms:

[The person with refugee status] can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality

The First-tier Tribunal concluded that “the circumstances in connexion with which he has been recognized as a refugee” had ceased to exist. The Tribunal reviewed a substantial amount of objective material concerning the current political and social situation in Columbia. It also considered the Appellant’s personal position. It is the latter issue to which the appeal principally has been directed and where it is argued that the First-tier Tribunal fell into error.

11. The first ground of appeal invites consideration of whether Article 1C(5) and Paragraph 339A of the Immigration Rules are concerned only with a change in the country situation or whether they may also be concerned with the circumstances of the individual refugees, the implicit argument being that they should be concerned only with the former. This ground was not pursued with particular vigour in the course of the hearing. We consider that, insofar as this implied a concession that an individual’s circumstances may fall within the “circumstances” in the Convention and the Immigration Rules, this was a realistic concession. The ordinary and natural meaning of the words means that they could refer to the relevant circumstances of the individual having ceased to exist. Clearly it may be more difficult to prove such a change in circumstances of an individual than a change in country situation. The latter generally will involve clear objective evidence from independent sources whereas evidence as to an individual’s circumstances is likely to be more contentious. However, those are evidential issues. In principle, it may be the individual’s circumstances which change so that the basis on which he was granted refugee status has ceased to exist.
12. The second ground of appeal is of more significance. Accepting (as we do) that the circumstances of the appellant were relevant, did the First-tier Tribunal err in its approach to those circumstances? The Appellant argues that the First-tier Tribunal failed to apply the principles in *Devaseelan v SSHD* [2002] UKAIT 702 properly or at all. In particular, the First-tier Tribunal did not take the 2001 determination as the starting point in any true sense. That determination is referred to by the tribunal

in the decision which is the subject of this appeal but only in terms of the outcome. Nothing is rehearsed as to the findings of the 2001 determination in relation to the Appellant's activity in Columbia and the dangers which led him to flee the country. The First-tier Tribunal recited the Appellant's evidence put before the adjudicator in 2001 but not the adjudicator's view of that evidence. This would be of less importance in a case where the change in circumstances related to the country situation. Here the change in country situation was not such as to render the Appellant's return objectively safe. In any event the First-tier Tribunal did not base its decision on any change in country situation. Rather, the decision was based on an assessment of the Appellant's likely activity in Columbia were he to return and on his credibility vis-à-vis his declaration that he would not return to political activity through fear. The First-tier Tribunal was entitled to consider facts occurring since the 2001 determination. That is one of the principles in *Devaseelan*. However, it should have done so from the starting point of the 2001 determination i.e. the basis for and reasoning behind that determination. In our judgment the decision of the First-tier Tribunal on its face does not do so. That was an error of law. Given that error of law the decision on the appeal against the deportation order must be re-made. The proper forum for that re-making of the decision is the Upper Tribunal.

13. The third (and allied) ground of appeal is that no reasonable tribunal could have concluded that the evidence permitted the finding that the Appellant would not have engaged in political activity in Columbia for some reason other than fear i.e. lack of interest and inclination. The evidential basis relied on by the First-tier Tribunal was the lack of any political activity on the part of the Appellant during his residence in the United Kingdom. This was arguably a tenuous basis although it was linked to the apparent contradiction between what he said at the appeal hearing in 2001 and what had transpired in fact between then and 2014. Whilst this may not be a matter on which the Appellant would have succeeded in this appeal had it stood alone, the issue will have to be re-visited at the re-making of the decision by the Upper Tribunal.
14. The final issue relating to refugee status concerns the view taken by the First-tier Tribunal of expert evidence adduced on behalf of the Appellant. The tribunal accepted this evidence including the assertion that anyone in Columbia with an adverse interest in the Appellant could probably track him down if the Appellant returned and such return became known. However, the tribunal concluded that it was "bordering on the absurd" to believe that there could be any residual adverse interest in the Appellant. When re-making the decision the Upper Tribunal will have to consider the extent to which the evidence supports an inference of the kind reached by the First-tier Tribunal.

15. In our view the remaining grounds of appeal have no merit. The refusal to grant an adjournment as a ground of appeal falls away now that the decision on the appeal against the deportation order is to be re-made. Our directions in relation to the further hearing that will be required will allow the Appellant to do that which he wished to do over the period of any adjournment. The free-standing Article 8 claim in respect of the Appellant's supposed relationship with his son is without merit. The First-tier Tribunal concluded that the evidence demonstrated that, at least on balance, the best interests of the son would not be served by retaining the relationship with the Appellant. The available evidence was sufficient to justify a finding. The First-tier Tribunal concluded in the alternative that the son (by now 15) could move to Columbia in the unlikely event that his best interests would be served by close contact with his father. There was ample evidence to justify that alternative conclusion."

The remaking of the decision

16. It was for the above reasons that the Upper Tribunal concluded the First-tier Tribunal was in error. It is now left to me to re-make the decision. Before doing so, however, it is necessary to sound a note of caution.
17. When I granted permission, I cautioned myself against allowing any justifiable revulsion the Tribunal might feel against this appellant as a result of his conviction and eight-year sentence for cocaine smuggling clouding a proper evaluation of the appellant's successful asylum claim and the application of the cessation provisions. I repeated the caution similarly felt by UNHCR, recited by the First-tier Tribunal panel in paragraph 32 of its determination: "... they are right to be concerned that cessation of refugee status should not be triggered by a country's desire to rid itself of a particular refugee however odious the crime."
18. It only needs be said that had the appellant *not* been convicted of so serious a crime, there would have been no reason to re-visit the First-tier Tribunal's finding that he was entitled to asylum and the respondent's recognition of that fact by the grant of leave in the appellant's favour. However, the appellant's conviction is entirely immaterial to the issue of whether the appellant is a refugee and the associated consideration of whether the cessation provisions have come into effect. Exactly the same process of evaluation would be required if *no* offence had been committed and this appellant is entitled to the same evaluation as if no such offence had been committed. Adopting this approach, it is impermissible to apply the cessation provisions differently by reason of his conviction.
19. Nevertheless, it is inevitable that the appellant's conviction of so serious an offence would trigger the respondent's consideration of whether the cessation provisions might apply. Indeed, bearing in mind the

respondent's statutory obligations in relation to foreign criminals, it would have been surprising had she not done so. Ms Lovejoy accepted that the respondent was not acting unlawfully in making the decision to consider the application of the cessation provisions.

20. The decision to consider the application of Article 1C(5) is, however, quite distinct from the respondent's substantive decision in which she concluded the provisions applied, permitting the respondent to take steps to remove the appellant. It is the latter decision that is challenged in this appeal.
21. As the application of the cessation provisions is independent of the conviction, the re-evaluation must, in particular, exclude the fact of his conviction as a reason for undermining sustainable positive findings of fact. The subsequent conviction's only relevance is in relation to further evidence requiring my assessment. In that case, I am permitted to assess that evidence on the basis that the appellant does not come before me as a man of with an unblemished record. The appellant does not, therefore, have the benefit of an assessment of any later evidence on the basis that he is a man of good character. Subject to that limitation, his conviction has no part to play in the evaluation of the cessation provisions.
22. As one who has been acknowledged as a refugee, the appellant benefits from the finding that he was at risk of serious harm for a Convention reason. That finding remains unless displaced by the consideration of material that requires it to be re-evaluated.

Article 1C(5)

23. As the panel noted in paragraph 10 above, the issue before me is whether the appellant can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality. It is for the respondent to establish that the present situation amounts to the relevant circumstances. In effect, the burden is placed upon the respondent to establish the appellant is not at risk. Given the low standard of proof that the appellant has to establish in order to make out an asylum claim, the respondent has to establish that, even to that lower standard, the circumstances are now such that the appellant is not at risk.
24. The approach, therefore, is different from an appeal against the original determination which stands as the lawful determination of the position as it stood when the respondent acknowledged the appellant was entitled to protection by the grant of refugee status. By its very nature, if the appellant was properly regarded as a refugee, the circumstances must have changed if the respondent is to make out a case that the appellant is no longer a refugee, hence the use of the words, '*the circumstances have ceased to exist*'.

25. As we found when we set aside the determination of the Upper Tribunal, the circumstances are not limited to a change in country conditions, that is, the background information or what is sometimes called the 'objective' matter. Rather the Tribunal is permitted to consider the circumstances in the round, including the circumstances as they affect the individual.
26. The change however must not merely amount to a temporary change but an enduring one. Whilst no one is in a position to guarantee the future, within this limitation, it must be viewed as likely to be permanent. Ms Lovejoy rightly points out in her skeleton argument, the UNHCR '*Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*' which provides guidance on Article 1(C)5:

... cessation practices should be developed in a manner consistent with the goal of durable solutions. ... It should not result either in persons being compelled to return to a volatile situation... Acknowledging these considerations ensures refugees do not face involuntary return to situations that might again produce flight and a need for refugee status... conditions within the country of origin must have changed in a profound and enduring manner before cessation can be applied. [para. 6]

...

[clauses should be interpreted strictly][para. 7]

...

A]n essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information available in this respect, inter alia, from relevant specialized bodies, including particularly UNHCR.

The determination of the asylum claim in 2001

27. A primary step is to assess the basis upon which the adjudicator allowed the appellant's asylum appeal. The source of this is now limited to the determination itself, promulgated on 26 April 2001. Documents relied upon by the appellant are no longer available.
28. The appellant born on 29 December 1975 left school in 1990 at the age of 14 or 15. Subsequently he worked as a driver for 4 ½ years but the job finished in 1995 when he was aged 19 or 20 and he commenced poorly paid work in a materials company before starting as a garage mechanic.
29. The appellant had received 7 or 8 anonymous letters at least one of which consisted of words cut out of newspapers. The first one was received on 7 August 1996, now nearly 19 years ago. The adjudicator recorded in paragraph 5 of his determination that it was posted through his door, i.e. was delivered by hand, possibly or probably by the person who wrote it. It told him to get out of the city and that if he did not he

would pay the consequences. The next one was received on 15 September 1996 and said "you are a problem and we don't agree with you." He told the adjudicator that he did not know why the letters were sent to him but he had joined the Liberal party in December 1995, some eight months before.

30. He then spoke of the murder of his cousin on 9 November 1996. It was at this point that the appellant decided to resign his position in the Liberal party. According to paragraph 5 of the determination, this suggests an involvement between December 1995 and November 1996. Although the paragraph later states that he met the president when he handed in his resignation on 17 March 2000, the year '2000' must be an error as the adjudicator repeated the date as 17 March 1997 in paragraph 9, which makes better internal sense since he arrived in the UK on 1 April 1997. Hence, the appellant's involvement with the Liberal Party lasted, at most, for a period between December 1995 and March 1997, a period of some 15 months. When asked, he was unable to name the vice president, secretary and treasurer of the Liberal party.
31. The appellant stated that there were seven in the group in which he was involved and he described the room that his group operated from.
32. The work that the appellant performed was in a drug addiction campaign in which he met with a group of addicts. This was not full-time work. In paragraph 2 of a statement he made (undated) at pp 3-10 of the appellant's bundle, he said:

"We used to speak to homeless people and drug users and offer support. I was heavily involved in all matters and used to chair meetings. We used to support poor and homeless people and assist them in rebuilding their houses."
33. Mr Melvin, on behalf of the Secretary of State, made submissions on the basis that this was paid employment but it is not clear to me whether this was paid or voluntary work. The issue remains unresolved.
34. The appellant did not know who murdered his brother; he provided only limited information about the circumstances of his death. In paragraph 6 of the determination, it is recorded that the appellant did not *know* who had murdered his brother but it *could* have been the delinquents, as he termed them, who had sent the letters to him. He described them as "*going about looking for people who are involved in politics.*" In paragraph 7 he said the appellant said that he assumed his cousin was killed because he belonged to the Liberal Party. After he had moved address he received a third letter and it was at this point that he resolved to come to the United Kingdom.
35. He told the adjudicator that he had reported the matter to the police who had done nothing but, given the paucity of the material that was

available to them, that is not altogether surprising. They had no means of identifying the sender.

36. At paragraph 10 of the adjudicator's determination, it is recorded that, after his arrival in the United Kingdom, he was informed by his elder sister that his younger sister, Maria, was killed in Pereira on 10 December 1998. The adjudicator noted "*He says that he believes she was killed because the family were strong supporters of the party.*" However the adjudicator also went on to say that the appellant had no idea who shot her. However, in paragraph 12 the appellant is recorded as saying that there were "*many people in Colombia who did not want the Liberals in power.*" In answer to questions provided in cross examination, he confirmed that his family was not involved in politics, apart from his cousin who was killed in 1995.
37. On the basis of this material, the adjudicator concluded:

I had the advantage of having the appellant give evidence before me and I was impressed by his forthrightness and apparent honesty and I have no reason to doubt that he was telling me anything but the truth. I have already indicated that I find the various documents lodged in support of his claim to be genuine. It is abundantly clear that this young man left Columbia in fear of his life. He had received seven or so death threats, some of which (but not all) referred to his political activities and made it clear that he should desist from them and should leave the country. He reported this matter to the police who advised him that he should leave for his own safety and after agonising over it and discussing the matter with his father he decided that he had no alternative but to go. It is a fact that he cannot say for certain who sent his death threats, but I am satisfied that the appropriate standard that those threats were sent by persons who were opposed to his political stance and political activities.

I have considered with care the objective and material put before me and it is clear that the situation in Colombia is volatile, that crime is rife and the murder is common, particularly for political reasons. The government may be doing the best that it can but in my view it is not sufficient to protect the appellant.

I accept that the appellant fled in fear of being murdered by political opponents. He did not receive protection sufficient to allow him to remain in hand, for all the reasons set out above, I am satisfied that he has a well founded fear of persecution for eight Convention reason and accordingly I find that the United Kingdom would be in breach of its obligations under the Refugee Convention were he to be returned and I allowed its appeal.

38. This was a ringing endorsement of the appellant's credibility and his claim to be in fear of persecution in April 2001. Neither of these matters is now capable of being reopened. Nor should they be. As I have stated, his subsequent conviction cannot undermine the positive credibility finding made in his favour. Thus, in the application of the cessation

provisions, the determination of the adjudicator stands as the authoritative assessment of his case some 13 years ago.

A summary of key findings

39. There are, however, certain key facts which can be properly taken into account in assessing the current situation and whether the situation has now changed:
- (a) there was no evidence as to the identity of the writer or sender of the threatening letters;
 - (b) nothing within them identified the writer or sender;
 - (c) those letters which told him to distance himself from the Liberal Party were clearly related to his work in providing support and help to the local community;
 - (d) the letters were hand-delivered by a person or persons who lived locally;
 - (e) there was no satisfactory evidence as to the circumstances of his cousin's murder which the appellant assumed was because he belonged to the Liberal Party although there was no evidence of the role he played in it;
 - (f) there was no satisfactory evidence that the death of his younger sister Maria was as a result of political activities carried out by her, far less that this was a revenge killing where he was the intended victim; whilst in paragraph 10 of the determination he stated he believed that she was killed because the family were strong supporters of the Liberal Party, he confirmed in paragraph 13 that his family was not involved in politics, apart from his cousin;
 - (g) the appellant himself is poorly educated and this is reflected in the work that he performed in Colombia as well as the fact that he was working as a cleaner in the United Kingdom at the time of the adjudicator's determination;
 - (h) the appellant cannot properly be regarded as a politician in the sense of having espoused well-developed ideas about the political future of his country or having the capacity to express them;
 - (i) his work in Pereira was local community work conducted by a small group, part-time, from a room in Pereira offering help to those in the area who were homeless or drug addicts;
 - (j) although you adjudicator described this as his "political activities" it was political only in the sense that the scheme was supported by the Liberal Party;
 - (k) whilst the appellant reported the threats to the police in December 1996, there was little in reality they could do on material that was placed on before them;
 - (l) the high levels of crime in Colombia, and in Pereira in particular, place those persons who are at risk of targeted assassination without a sufficiency of protection;
 - (m) the Liberal party was (and remains) the dominant party in Colombia;

- (n) no consideration was given as to the potential for internal relocation.
40. These considerations do not detract from the adjudicator's ultimate conclusion that the appellant left Columbia in April 1997 in fear of his life and was, therefore, entitled to be recognised then as a refugee.

**The appellant's expert evidence -
Professor Aguilar's first report**

41. The appellant had adduced expert evidence from Professor Aguilar in relation to whether circumstances have changed in Colombia since the adjudicator made his decision. The first report is dated 6 May 2014. This material was placed before the First-tier Tribunal. Professor Aguilar is director of the Centre for the Study of Religion and Politics at the University of St Andrews and, since 1996, has been involved in the coordination of the Scotland-Colombia link. He has visited and lectured in Colombia and published a large number of books on Latin America including a history of Colombia.
42. In paragraph 10 of his first report, Professor Aguilar refers to the 2013 Amnesty International Report which spoke of the formal peace talks between the government and FARC, the first such talks in a decade. Nevertheless, all parties to the long-running conflict continue to be responsible for serious human rights abuses. This is amply supported by newspaper reports in which, for example, a newly elected senator had been threatened with death along with members of the Justice and Peace Commission. There are reports of violence from armed gangs and kidnapping. In Pereira, statistics show a higher rate of violent deaths than the national average for Colombia. The figure for Pereira was 82 deaths per 100,000 people.
43. In paragraph 16 of his report, Professor Aguilar stated that it was his opinion that those who killed members of the appellant's family would be able to ascertain the whereabouts of the appellant wherever he might relocate and then kill him. This presupposes the ability to identify those who killed members of his family. The reason he gave for this sweeping assessment was that residence in a particular area of Colombia requires registration in order to have access to housing or health care and those wishing to find others "*could bribe administrative personnel in order to find details of residence of another person if they want to do so.*" Inevitably, this would require an investigator to know that the appellant has returned to Colombia and then to approach every registration area or district and pay a separate bribe to each official. Accordingly, Professor Aguilar's broad assertion that anybody can be located in Colombia is not supported by the reasoning he provides.
44. In paragraph 17, Professor Aguilar spoke of the Liberal Party of Colombia supporting the re-election of the current President who

spearheads the peace process in Colombia. Not surprisingly, Professor Aguilar identified such a policy as being unpopular amongst some within the paramilitary groups and the drug dealers. As a result, he concluded that Colombia remains a very violent place where people are killed because of their political ideas and where the past is remembered.

45. It was on this broad basis that he concluded the appellant would not be able to settle anywhere in Colombia and would not be able to avoid those who wanted to harm him in the past. However, inevitably, Professor Aguilar was hampered by the fact that no one is able to identify the individuals who originally made death threats to the appellant in 2001. There is no evidence to suggest that they are members of FARC or that this is a reasonable inference to be made. The appellant himself does not state that he was ever involved in drug dealing in Colombia and is at risk from drug dealers by reason of that. Accordingly, the conclusion of Professor Aguilar in his first report that people are killed because of their political ideas is insufficient to establish that all those who have political ideas face a reasonable likelihood of assassination or that every facet of an individual's past is "remembered". Professor Aguilar's conclusion that it is an easy matter for an individual to ascertain the whereabouts of another by bribing an official in the registration area in which that other person lives is a wholly impractical solution unless the identity of the pursuer can be stated with some certainty and his ability to reach out to any part of Colombia is adequately established by credible evidence.
46. Whilst it may be open to me to consult the register of electors in order to ascertain the whereabouts of all those on the electoral roll in the United Kingdom, that is a far cry from maintaining that it is a practical proposition to do so or that any individual has the will and the means to do so, particularly if the information is only likely to be provided by bribery. It also presupposes some advance knowledge of the appellant's return to Colombia (and therefore his registration for housing and health care). Accordingly, I am satisfied so that I am sure that the conclusion of Professor Aguilar misses the mark by a wide margin. It suggests to me that his report lacks common judgment in relation to the reality of the risk that such individuals face. It is one thing to say that there is large scale violence, quite another to assert that all those living in Colombia are at risk of it to such a high degree as to merit international protection. No-one suggests that the situation in Colombia is one of such widespread disorder as to place the appellant at risk of Article 15(c) serious harm sufficient to amount to '*a serious and individual threat to his life or person by reason of indiscriminate violence in situations of international or internal armed conflict*'.
47. Similarly a policy supported by the Liberal Party which advances the cause of peace and reconciliation may well foster animosity on the part of political opponents or those, such as criminals and drug dealers, who

benefit from the current instability. Once again, however, such a broad proposition does not support the conclusion that every member of that political party or those supporting its aims and objectives, faces a reasonable likelihood of persecution.

48. Having read Professor Aguilar's first report, I am left with the uncomfortable conclusion that, whilst he has reliably identified relevant traits in the background material, the conclusions that he draws from that material lack realism. I do not regard them as tenable.

Professor Aguilar's second report

49. Professor Aguilar's second report is dated 1 September 2014 and is a critique of the determination of the First-tier Tribunal in its resolution of the appellant's appeal in May 2014. He maintains the validity of his conclusion in the earlier report which, for the reasons that I have already given, I have rejected. Inevitably, this approach taints the reliability of his subsequent evidence. First, he criticises the First-tier Tribunal's consideration of the passage of time, now some two decades, as a material consideration. In doing so, he relies upon an increase in murders between 2012 in 2013 as a result of the provincial Mafia known as the Cordillera taking control of the drug trade and eliminating those who oppose them. On the basis of this tangential piece of material, Professor Aguilar concludes in paragraph 14 of his report that anybody who was of interest to political and violent groups would be of adverse interest to the drug gang Cordillera within Pereira.
50. This sweeping conclusion, which is a non-sequitur, inevitably presupposes that the appellant was of adverse interest to the provincial Mafia, the Cordillera. However, such a starting-point is entirely speculative. An individual who is involved in assisting the homeless and drug addicts cannot, inferentially, be assumed to be the target for recrimination on the part of the Mafia even if the treatment of drug addiction may be adverse to the interests of the drug barons. Such reasoning, however, does nothing to undermine the First-tier Tribunal's consideration arising from the passage of time.
51. If (and this is entirely supposition) the threats were made by the Cordillera Mafia, I find it surprising that they did not identify themselves in the threats. To have done so would have immeasurably increased the threat. The most one can permissibly say is that an individual produced the various threatening letters. That does not establish that individual would maintain a continuing interest in the appellant, given the passage of such a significant period of time.
52. Furthermore, Professor Aguilar's reasoning depends upon the threat emanating from a highly organised, ruthless and commercially-motivated organisation such as the Cordillera Mafia treating all

individuals in Colombia who may be adverse to their interests in a similar fashion. It is one thing for the Cordillera to sanction the assassination of another drug baron or a senator who is opposed to their actions, quite another for the Cordillera to use their resources to trace, hunt down and assassinate a community worker whose activities ceased in 1997. This is not remotely possible or likely. Once again, Professor Aguilar has used the background material to support a conclusion that it cannot rationally sustain.

53. For similar reasons, I reject Professor Aguilar's assertion in paragraph 15 of his second report that, when it comes to relocation, drug dealers and gangs are part of national networks able to trace anybody anywhere in Colombia. Once again, this extraordinarily broad statement of opinion depends upon the appellant having first established that he was pursued by drug dealers who were part of a national network. The appellant never made such a claim. If he had done so, I am quite satisfied the claim had no evidential foundation. For the reasons I have already given, it is simply impossible for Professor Aguilar to state with confidence that even a well-financed organisation such as the Cordillera has the means, the sophistication, the will or the ability to trace an individual like the appellant who for a period of 15 months 20 years ago was performing community work. The conclusion leaves reality far behind it. His reasoning to support this claim is that the appellant has relatives in Pereira who would eventually know if he is back in the country. With the greatest respect to this argument, it simply holds no persuasive effect at all.
54. Finally, Professor Aguilar speaks of whether there is a sufficiency of police protection. I entirely agree that the background material demonstrates the police were unable to protect the 7474 murdered victims who died between January and April 2013. However, this case does not revolve around the adequacy of protection for those who have been targeted by an identifiable organisation with the will and the opportunity to carry out its threats. The issue in this case is whether such a risk now exists.

Professor Aguilar's third report

55. Professor Aguilar has written a third report, this dated 6 April 2015. In paragraph 11 he records that Colombia is a large country but the network of drugs, violent cartels and information shared by criminal gangs makes it a small country where it is possible to locate people very easily. Once again, he makes a fundamental error of asserting that the appellant established his pursuers were criminal gangs and part of a network of drug dealers whose organisation is so extensive as to permit information sharing at such a level that a person of the appellant's profile, derived from events that took place long ago, will readily be ascertained. He extends the extraordinary but unsupported ability of the

drug cartels to target individuals as including all those who have spent time abroad and are on a wanted list by these criminal networks. No prior material has been provided that such a wanted list is in existence or that the list would include a person like the appellant. Nevertheless, on this slim basis, Professor Aguilar permits himself to conclude that it is very likely the appellant's return to Colombia will become known to his past persecutors.

56. This is a wholly illusory. His reason for doing so is that an individual who has previously been persecuted would remain of residual adverse interest because his persecutors have not changed their criminal interests or their location in Colombia. Once again, this is a non sequitur. Just because a criminal gang continues to operate cannot be used, inferentially, as a reason for concluding that the gang maintains the same level of interest in an individual threatened many years ago.
57. On the basis of this reason reasoning, Professor Aguilar provides his opinion that because those who persecuted the appellant are still operating in Pereira, regardless of the passing of time, the appellant would be "*of considerable interest to them and that there would be a residual adverse interest on him.*" In my judgment this is perverse. His conclusion, therefore, that any Colombian citizen who has been marked by criminal networks and persecuted is most likely to be in danger of violence and kidnapping in the future regardless of the passing of time. I see no basis on which Professor Aguilar could properly reach that conclusion. In any event, his entire thesis rests upon the appellant having been marked out by a well-organised criminal gang as a result of activities such as to merit a continuing interest in him. That is far from the reality as we know it to be.
58. For these reasons none of the three reports provided by Professor Aguilar offer a persuasive body of evidence which establishes a continuing interest by the person or persons who wrote a number of threatening letters in 1996.

Analysis - general principles

59. I begin my analysis by reminding myself of the very limited circumstances in which it is permissible for the State (or the Tribunal in an appeal from one of its decisions) from invoking the cessation provisions. The recognition that an individual is a refugee is a significant factor in the process of permitting a victim of persecution to re-settle in a secure environment without the risk that the state will reverse its decision at some point in the future. Such a victim needs stability and the reasonable assurance that he will be permitted to put down his roots in his new home. However, these principles have their limitations. In particular, I am satisfied where the host state becomes aware of serious criminal wrongdoing, it is not only permissible but proper that an

individual's refugee status should be reconsidered. Such cases will happen only very rarely and do not endanger the vast majority of those who have been acknowledged to be refugees. The insecurity which this engenders to the individual and his family has to be balanced against the seriousness of the offending and the fact that the individual alone is responsible for the position in which he finds himself.

60. These considerations are voiced by the UNHCR in its guidelines on international protection and the cessation provisions. Paragraph 10 speaks of the fundamental character of change. Paragraph 11 states:

Where indeed a "particular cause of fear of persecution" has been identified, the elimination of that cause carries more weight than a change in other factors. Often, however, circumstances in a country are inter-linked, BD's armed conflict, serious violations of human rights, severe discrimination against minorities, or the absence of good governance, with the result that the resolution of that one will tend to lead to improved an improvement in others. An end to hostilities, a complete political change and return to a situation of peace and stability remain the most typical situation in which Article 1 C (5) ... applies.

61. It is clear from this passage that the UNHCR was principally considering a fundamental change in the country conditions. Inevitably, where this has occurred, through no fault of the refugee himself, there is a tension between the principle that the refugees should not have his status periodically reviewed with every change in the circumstances of the country from which he fled and the justification for the host state reconsidering the individual's refugee status when he is no longer at risk. Nevertheless, the principle remains that if the host state establishes there has been a change in circumstances so that the erstwhile refugee is no longer at risk, his removal cannot constitute a violation of his Convention rights.

Article 8

62. The appellant's conviction and sentence demonstrates a heinous crime which amply supports the respondent's decision to remove him, notwithstanding a claim that his Article 8 rights would be violated. The appellant's submissions that it is disproportionate to remove him bearing in mind the period of time he has been in the United Kingdom and the existence of family life in the United Kingdom when weighed against the compelling and almost overwhelming public interest in his removal do not merit further scrutiny. To adopt the parlance of section 117C of the Nationality, Immigration and Asylum Act, 2002 as inserted by section 19 of the Immigration Act 2014, it would not be unduly harsh to remove the appellant.

The respondent's claim that the appellant is no longer at risk

63. This leaves only the issue of whether the respondent has properly established the appellant is no longer at risk in Colombia.
64. We have already established that, in principle, the individual's circumstances may have changed so that the basis on which he was granted refugee status has ceased to exist. The adjudicator's decision was based on an assessment of the appellant's likely activity in Colombia were he to return and upon the truthfulness of his declaration that he would not return to political activity through fear. I am entitled to consider the facts occurring since the 2001 determination using the adjudicator's reasoning as the starting point.
65. I approach the assessment on the basis that the appellant will engage in the same activities as he did before, namely, local community work in helping the homeless and drug addicts in schemes organised or supported by the Liberal Party. Indeed, as the party in power (or sharing power) it would be surprising if such schemes were not funded or supported by government. I disregard the tenuous basis on which the First-tier Tribunal rejected the likelihood of his further engagement in such activities by reason of his not having engaged with political activity on the United Kingdom. There is no reason for him to become politically involved in supporting the Liberal Party in the United Kingdom, indeed, no evidence of its having any profile in the United Kingdom; it is not a party in opposition where *sur place* claims may have some relevance.
66. Whilst the adjudicator found in 2001 the appellant discontinued that activity through fear, rather than a lack of interest or inclination, the issue before me is whether that fear is currently and objectively well-founded. I disregard for present purposes whether the Liberal Party or any other local organisation would want to use a convicted drug-dealer to man their community schemes. I will assume they will because he is a person more than any other who could help drug addicts and the vulnerable.
67. Having considered the basis upon which the decision was made in 2001 to acknowledge the appellant as a refugee, I am satisfied the respondent has discharged the burden of establishing the appellant is no longer at risk. Whilst the appellant has sought to resist the respondent's case by adducing evidence from Professor Aguilar that the appellant continues to be at risk, I reject that evidence for the reasons I have given, namely, that it fails to have proper regard to the evidence that was before the adjudicator and reaches conclusions which are not properly supported either by relevant evidence or adequate reasoning.

68. The appellant did not give evidence before me in the course of the re-making of the decision, relying instead upon the burden placed upon the respondent to establish the changed circumstances. Clearly the passage of time, in itself, does not negative a sustainable finding that an appellant was at risk of persecution on a previous occasion. If the country conditions have not substantially changed, the passage of time may have little or no impact upon the risk faced by an appellant. However, these cases are fact sensitive. The leader of an opposition group who was well known within the country of his nationality for his anti-regime views is unlikely to be viewed any differently when he returns many years later than at the time of his departure if conditions have not otherwise changed. However, in the case of an individual who establishes only a minor involvement in politics at a local level, the Secretary of State or the Tribunal is entitled to ask itself the question whether the circumstances that prompted his departure many years ago establish a reasonable likelihood that he will be at risk on return two decades later.
69. The appellant was involved in community work, albeit community work described by the adjudicator as amounting to political activities, for about 15 months. He was threatened by a local individual in circumstances where it cannot be inferred this individual was a member of a well-organised group whose profile establishes violent opposition to such activities. There is no credible evidence, notwithstanding Professor Aguilar's claim that such people 'have memories', that whoever then targeted the appellant has an individual or collective memory, recorded and engrained, that now places him at risk. For this reason, time is a highly persuasive factor to be taken into account in considering current risk. If that is correct then the appellant is no different from any other person doing community work on behalf of, or supported by, the Liberal Party. There is no evidence that these individuals are currently at risk such as to merit international protection.
70. The background evidence establishes that notwithstanding talks between the government and FARC, all sides are responsible for serious human rights abuses. But the evidence of violence shows, in many cases, a targeted approach. Thus, a senator or members of the Justice and Peace Commission may face a risk but that should not be equated with a generalised level of risk for much broader categories of Colombian citizens. Violence and kidnapping occur but even a higher death rate in Pereira (82 deaths per 100,000 people) does not show a generalised risk. There is evidence of an increase in murders between 2012 in 2013 as a result of the Cordillera taking control of the drug trade and eliminating its opponents. That does not establish the appellant, with his profile as we know it to be, is at risk. It is impossible to elevate the level of risk (notwithstanding the peace process, those opposed to it and the violence that exists in Colombia) to such a degree that it poses a risk to all those who involve themselves in, or support, the Liberal Party to whatever

extent and at whatever level either in the present or in the past, especially the long-distant past.

71. Registration as a prerequisite for residence in any part of Colombia and the risk that this information may become available on payment of a bribe fails to establish that a returnee's presence in Colombia will become known or that anybody can be located in Colombia. Certain drug dealers and gangs, doubtless, may form part of a national network which will be able to reach out in a way that a lone criminal will not but not all those who have any dealings with them, in however tangential a way, will be at risk. As part of this assessment, the Tribunal is permitted to take into account the formidable logistical problems that would inevitably face criminals in maintaining a data-base (a) of those of interest to them, (b) making it available across the country, (c) monitoring all those who return to the country and (d) recording how long they have been absent and (e) then distinguishing between those of interest to them and those not. The appellant's claim to be at risk is unsupported by any persuasive evidence that such an information-gathering system exists capable of creating a data-base or that the information is disseminated. Such a structure is speculative enough but it goes beyond mere speculation to suggest that there is a reasonable likelihood that the appellant would become a victim of the system such as to put his life or welfare at risk.
72. I am completely persuaded that, were the appellant to return to Colombia, he would not be at risk were he to resume activities at the former level. The only conceivable way in which this appellant might be at risk is if the unidentified writer of the threatening letters becomes aware of the appellant's return to Colombia and maintains an adverse interest in the appellant which would be, on its face, inexplicable. Even adopting the lower standard of proof it is simply speculation to infer that there is a reasonable likelihood of history repeating itself.

Internal relocation

73. When the appellant's appeal was determined in 2001, the adjudicator made no findings in relation to the appellant locating himself in another part of Colombia. It was an issue which would have benefitted from his consideration. On the evidence before him, it could not be inferred that the writer of the threatening letters was part of a complex web of individuals opposed to persons, like the appellant, who acting on behalf of the Liberal party were performing community work. Unless there was evidence that the reach of the person or persons targeting the appellant extended throughout Colombia, internal relocation was a potential issue. There was no express reference to it being unreasonable for the appellant to re-locate to another large urban centre and nor can it be inferred.

74. The UNHCR Guidelines on the “Ceased Circumstances” Clauses notes:

Refugee Status can only come to an end if the basis for persecution is removed without the precondition that the refugee has to return to specific safe parts of the country in order to be free from persecution. [17].

75. On its face, this is a somewhat surprising provision. It contemplates the situation where a person who was formerly recognised as a refugee nevertheless remains entitled to be recognised as a refugee even though he no longer fulfils the requirements for recognition as one by reason only of his being able to return in safety to a place in his own country where it would be reasonable for him to relocate. Doubtless the justification for this is the recognition (touched upon in paragraph 58 above) that an individual who is a refugee and entitled to re-settle in a secure environment should not face the risk that he will be required to re-settle once again in a different location (a second re-settlement) at some point in the future. In essence it operates as a conclusive finding that it would not be reasonable for him to re-locate for a second time. This is to be contrasted with the situation where the danger that caused him to flee no longer applies in any part of his own country. In such a case, he can return to his home, a place familiar to him, unlike a place where it is possible for him to re-locate.

76. Thus, although I would have found that internal relocation is available to this appellant and that it would be reasonable for him to avail himself of it (not unduly harsh) that outcome is not permissible under the Guidelines. No argument was addressed to me as to the whether I am bound by the Guidelines as a matter of law. (I think not: a ‘Guideline’ is just that: a guide but not an obligation). However, they are plainly of persuasive effect and I would not depart from them unless satisfied that there are serious reasons for doing so. In the circumstances of this case, if the respondent had wished to raise an alternative flight option he might have done so in 2001 and the absence of consideration of the point in the 2001 determination suggests that it was not raised. Further, whilst there may be cases where it would be reasonable to raise an internal flight argument in a cessation case, such cases will be rare and the absolute bar upon raising it suggested by UNHCR may represent a reasonable and proportionate response to striking the balance between affording a person recognised as a refugee with appropriate stability and an (over-)rigorous, periodic, re-assessment of risk.

77. For these reasons, the appellant’s relocation to a different part of Colombia does not form part of my consideration in the re-making of this decision.

Conclusion

78. I am satisfied that the respondent has discharged the burden of establishing that there is no reasonable likelihood that the appellant is currently at risk of serious harm were he to return to his home, notwithstanding the findings made by the adjudicator in 2001 on the basis of which the respondent recognised the appellant as a refugee. Accordingly, he no longer establishes he is entitled to asylum or humanitarian protection or protection pursuant to Articles 2 or 3 of the ECHR. Absent such a risk, the interference he and his family will face with their private and family life will be justified on an assessment of its proportionality bearing in mind the seriousness of the appellant's offending and the respondent's justifiable reliance upon the strength of the public interest in his removal.

DECISION

The First-tier Tribunal made an error on a point of law and I substitute a determination dismissing the appeal on all the grounds advanced.

ANDREW JORDAN,
UPPER TRIBUNAL JUDGE
17 April 2015