



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

Appeal Numbers: PA/05353/2018  
PA/05357/2018, PA/05385/2018  
PA/05387/2018, PA/06303/2018  
PA/05825/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice  
Centre  
On 8 November 2019**

**Decision & Reasons Promulgated**

**On 3 January 2020**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**M G P (FIRST APPELLANT)  
M F P M (SECOND APPELLANT)  
A V G M (THIRD APPELLANT)  
W G P (FOURTH APPELLANT)  
J E P M (FIFTH APPELLANT)  
M J G M (SIXTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms E Rutherford, Counsel, instructed by Duncan Lewis Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. These are the appeals brought by the Appellants above who are nationals of Colombia. They appeal against the decision of Judge of the First-tier Tribunal Bristow dated 11 December 2018. The appeal was involved, taking place over one and a half days at the Birmingham Civil Justice Centre on 4 and 5 December 2018. The Appellants appealed against the decisions made in relation to them refusing their applications for protection.
2. The basis of the Appellants' appeals were that they feared serious harm from the armed military group FARC in Colombia. The first to fifth Appellants had arrived in the United Kingdom in December 2015 and claimed asylum. The sixth Appellant arrived in December 2016. They are all related as set out at paragraphs 1 to 8 of the judge's decision. The Appellants gave accounts in their protection claims that some of them individually, and various members of their extended family had been seriously harmed by the FARC group. The family had been obliged to pay protection money to FARC which was a method of fundraising for the organisation to fund their military activities. It was accepted by the Respondent that a number of persons within the Appellants' extended family had been killed. It was not necessarily accepted that this had happened at the hands of FARC. The third and fourth Appellants had also themselves stated that they had been seriously harmed in or around 2013, suffering an attack which they asserted had taken place as an act of retribution for them seeking protection against FARC from the relevant authorities in Colombia. It was part of the Appellants' case that another family member had been killed by FARC in 2015 which had been the cause of their departure from Colombia to travel to the United Kingdom, and that the sixth Appellant had been attacked in 2016 prior to her departure.
3. In a lengthy and careful determination, the judge set out his findings. It was noted at paragraph 20 that various matters were agreed as between the parties. This involved the nature in which the Appellants were related to one another. It was noted that one relative of the family, G, was recorded as dying of "severe anaemia - lung injury - bullet firearm", and another relative, J, had died from "severe anaemia, abdominal vascular injury - gunshot wounds". It was also accepted that the Victims Support Unit in Colombia had recognised the Appellants' family as victims following an application by one of the family members following the death of G. It was accepted that the third and fourth Appellants had injuries consistent with their stated injuries, the third Appellant having been shot and the fourth Appellant having been injured by a knife.
4. Matters that remained in dispute between the parties were set out at paragraph 21. These included whether a relative W had originally been recruited into FARC; whether a relative D had been killed in 2015; whether those members of the Appellants' family who were known to have died had been murdered by FARC; and whether the third Appellant was shot, and the fourth Appellant stabbed after they approached the Colombian authorities for protection, and it was to be determined who had been

responsible for the attack upon them. Further, even if the Appellants' historical accounts were reliable, it needed to be determined whether FARC had now abandoned violence and whether the Appellants remained at any real risk of serious harm; whether effective protection would be available to the Appellants; whether internal relocation from Bucaramanga to Bogota was possible and would relieve the Appellants of any risk of harm; and whether it would be unduly harsh for the Appellants to relocate from Bucaramanga to Bogota.

5. The judge made further findings of fact at paragraph 26 onwards. At paragraph 39 the judge made the following findings:
- (i) The first Appellant had not provided sufficient detail to prove that W had been recruited to FARC. The judge was not satisfied that it had been proven that W was recruited to FARC (paragraph 39).
  - (ii) G was killed as a result of a gunshot injury (paragraph 41) on 30 September 1993.
  - (iii) J died on 19 June 1994 as a result of a gunshot wound (paragraph 42).
  - (iv) A further relative C died on 27 February 2005 (paragraph 43).
  - (v) Another relative GG was killed on 2 December 2006 as a result of a gunshot wound (paragraph 44).
  - (vi) The third Appellant showed a gunshot wound to his chest and the judge found that this injury was caused 'in the way he asserts' (paragraph 46).
  - (vii) The fourth Appellant showed scars typical of injury with a knife and the judge found that the injuries were caused 'in the way he asserts' (paragraph 47). It is to be noted, however that in respect of the third and fourth Appellants Ms Rutherford was only able to assert that the judge had accepted the *manner* in which these injuries were caused; by unknown persons shooting the third Appellant and injuring the fourth Appellant with a knife. Ms Rutherford did not assert that there was any evidence regarding the appearance of the assailants in these attacks, or in anything in what they may have said, which would identify who they were or what motivated them. The third and fourth Appellants had merely inferred that these attacks, taking place shortly after they had sought protection from the police against FARC, had been carried out by FARC. There is nothing within paragraph 47 which represents a finding that the attacks upon the third and fourth appellants were by FARC.)
  - (viii) The attacks on the third and fourth Appellants happened at the time they asserted in about June 2013 (paragraph 48).
  - (ix) The relative D had not been killed in February 2015 and it had not been established that he is deceased (paragraphs 49 to 52).
  - (x) The sixth Appellant was not attacked in 2016 (paragraph 53).

(xi) Dr Robert A Karl and Professor Mio Aguilar, who had prepared reports in the appeal, were both experts in relation to the country situation in Colombia (paragraphs 56 and 57).

6. The judge himself summarised his findings thus far at paragraph 59 as follows:

“59. I summarise my findings at this stage of my analysis of the evidence as follows:

- (a) it has not been proved that (W) was recruited by FARC;
- (b) several members of the Appellants’ family have died violently in Colombia over a period of years;
- (c) the third and fourth Appellants have suffered violence in Colombia in June 2013;
- (d) it has not been proved that (D) died in 2015. On that point I note Dr Karl’s opinion in paragraph 24 of his report that detailed death certificates can be difficult to obtain in Colombia. My finding that the Appellants have not proved that (D) is dead is not based on the lack of information in the civil registry of death document, it is based on the significant inconsistency and the first Appellant’s evidence and the fact that the sixth Appellant did not tell her partner about the death; and
- (e) it has not been proved that the sixth Appellant was attacked by the FARC or at all”.

7. The judge directed himself that it remained for him to resolve the issue as to whether the Appellants’ deceased relatives were murdered by FARC and whether the violence suffered by the third and fourth Appellants was suffered at the hands of FARC (paragraph 60). However, the judge noted at paragraph 61 to 64 the fact that the first Appellant and his immediate dependent family left Colombia on a number of occasions between 2000 and (it is not clear) approximately 2009 travelling to Spain, and then to Holland twice, on each occasion returning to Colombia. On the last occasion that the first Appellant travelled to Holland he did so to pursue an asylum claim but did not remain in Holland to await the outcome of that because “they told me I had to wait so I left”. The judge did not find it credible that the first Appellant would return to Colombia, expose himself to the risk that he asserted and to pass up the chance to obtain asylum in a safe country. At paragraph 66 the judge also noted that the asserted problems experienced by the family had been occurring over a period of some 27 years before they left in 2015 and the judge found that the delay in the family finally leaving Colombia to seek protection diminished the credibility of the claim to fear serious harm.

8. The judge held as follows at paragraph 69:

“69. I now return to the issue as to whether the Appellants’ deceased relatives were murdered by the FARC and whether the violence suffered by the third and fourth Appellants was suffered at the

hands of the FARC. The Appellants must prove to the lower standard that the FARC was responsible. I do not find for the reasons given the Appellants to be credible witnesses. The claim that the FARC were responsible depends in very large part on the evidence of the Appellants. I find that I can attach little weight to their assertion that the FARC were responsible”.

9. The judge was not satisfied that G had been murdered by FARC. The judge noted a document from the Public Prosecutors Office within the Appellants’ bundle which records that the perpetrators were unknown and it did not mention FARC. A further document relied upon by the Appellants, being a letter from the Commission for Justice and Peace, referred to “illegal organised groups”. Although FARC could be described as an illegal organised group, the judge found that document still did not name them. The judge was not satisfied that J had been murdered by FARC. Although the document from the Commission for Justice and Peace relied upon by the Appellants stated that J’s death was attributed to illegal organised groups, the judge placed weight on the fact that this did not mention FARC (paragraph 72). The judge did not find it proved that C had been murdered by FARC; a civil register of death did not record any mechanism of death (paragraph 73). The judge was not satisfied that GG had been murdered by FARC, as a criminal proceedings record referred to him being attacked by unidentified subjects, and FARC was not mentioned. At paragraph 75 the judge found that it was speculation on the part of the third and fourth Appellants that they had been attacked by FARC in June 2013 and there was no evidence to suggest that there was some sort of relationship between the police and FARC whereby the fact that they had sought the protection of the police would become known to FARC.
10. It is appropriate to set out the whole of paragraph 76:

“76. Dr Karl’s report as a whole is clear that FARC is not the only guerrilla or paramilitary group operating in Colombia. I accept his opinion on that too. It is clear that there are other violent groups and individuals in Colombia who might be instead be responsible for the deaths in the Appellants’ family and the violence suffered by the third and fourth Appellants. In coming to my decision that it has not been proved that the FARC are responsible. I have borne in mind Dr Karl’s opinion that ‘the nature of the threats and comments made against the members of the family by their attackers also suggests a single collective actor, namely the FARC, was responsible for the violence against the family’. It does not change my decision. The other evidence points away from the conclusion”.
11. The judge held at paragraph 77 that he was not satisfied that the Appellants had a well-founded fear of persecution from FARC by reason of their membership of a particular social group of their family.
12. At paragraph 80 to 87 the judge considered the potential for risk on return to Colombia, stating that he would consider the risk on return in case he

was wrong, and the Appellants had been persecuted by FARC. The judge referred to the evidence of Dr Karl that in August 2016 the Colombian Government and FARC concluded five years of negotiations intended to end their decades-long hostilities and that a peace accord was signed in November 2016 and FARC completed their demobilisation as an armed group in June 2017. The judge noted that these events took place after the first to fifth Appellants had left Colombia.

13. The judge noted at paragraph 83 that the current security situation and the resilience of the peace accord was mixed. The judge noted Dr Karl's evidence that between one and one and a half thousand of FARC's approximately eight thousand pre-demobilisation fighters had declared themselves dissidents in the peace process and continued to extort money.

14. The judge noted at paragraph 84 that the objective evidence provided by the Appellants painted a mixed picture and set out a number of quotes within that paragraph from the objective evidence:

"84. The objective evidence provided by the Appellants particularly that at tab B of the bundle dated 28 November 2018 again paints a mixed picture. For example, the article 'British delegation concerned over the Colombian peace accord and state of detainees' indicates that a UK delegation 'urged the Colombian authorities to guarantee imprisoned FARC ... rights to a fair hearing' and criticised the implementation of the peace accord as 'slow and still failing to reach many communities in former conflict zones'. The same article reported that the Colombian president 'campaigns on a tougher stance towards the peace agreement, frequently promising that members of the FARC would not be exempted from punishment for their actions'.

85. The Washington Post article 'Colombia's president on a wobbly peace with the FARC' which was in the format of a question and answer session with the president confirms the president's view that members of the FARC have gone back to fighting though he did not accept the number was 2,700. He described that they had gone back to 'criminal activities' and confirmed that they would be prosecuted. The president also confirmed his desire that people who have committed crimes will be brought to justice and would not be granted amnesty on the basis that they are political crimes.

86. Weighing Dr Karl's and the objective evidence together I find that the security situation in Colombia has improved significantly since the Appellants left. The FARC have completed demobilisation. Some FARC fighters are dissidents but the number is not particularly significant in a country with a population of around 49,000,000. The situation is far from perfect but the political will seems to be to fortify the peace accord and bring justice to those who commit crime whether they are associated with the FARC or not. The fact that the Appellants have family remaining in Colombia also indicates that the situation there is satisfactory. I

find that any risk to the Appellants on return is acceptable. This all of course assumes that the Appellants have previously been the victims of extortion and persecution by the FARC (and I have not found it proved that they were). In the absence of such persecution I find that they would be at even less risk on return”.

15. The judge also addressed the issue of internal relocation at paragraph 88 as follows:

“88. I also find that internal relocation would be an option for the Appellants. They could move away to another area of Colombia. They have family in Colombia who could assist with this. They are a family who have been mobile within Colombia and internationally. They have demonstrated the fortitude and personal resources to seek to relocate to the UK and had travelled to the UK. With the exception of the fourth Appellant, all told me that they were in good health and in the case of the fourth Appellant he told me that he had been able to obtain treatment for his condition in Colombia (*he had some mental health problems*). If the Appellants are at risk (and I have not found that they are) then they could relocate to an area where the peace accord is functioning adequately. In all the circumstances I do not find that it would be unduly harsh to expect the Appellants and their relations to relocate”.

16. The appeal was dismissed.

17. The Appellants appeal against the judge’s decision in renewed grounds of appeal dated 20 March 2019. The grounds argue that the judge erred in law, in summary, as follows:

- (i) failing to make specific findings in relation to the evidence of the second, third, fourth and fifth Appellants;
- (ii) in considering the family’s delay in leaving Colombia, failing to take into account an explanation given by the Appellants that they were only able to leave after certain visa restrictions imposed on Colombians in the Schengen travel area were eased;
- (iii) further, that when the first and second appellant were outside of the country as noted by the judge there was a degree of protection available from harm from FARC because the remaining family in Colombia continued to pay protection money to them;
- (iv) in rejecting the proposition that some family members had been harmed by FARC, and in relying on documentation in relation to those incidents referring only to ‘illegal organised groups’, the judge approached the evidence irrationally or failed to give adequate reasons for finding that the assailants were not FARC, given that they were an illegal organised group;
- (v) proceeding unfairly and determining a matter of credibility without regard to country expert evidence, having concluded at paragraph 6 that his view that “this does not change my opinion” and that the

judge had completed his credibility assessment before properly turning his mind to the relevant evidence (see Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367);

- (vi) in finding that there had been a material change of conditions in Colombia such that any risk of harm had now diminished, the judge failed to have any or adequate regard for the country information brought to his attention and had given inadequate reasons for his findings;
  - (vii) in particular, failing to have regard to evidence in the reports of both Dr Karl and Professor Aguilar that FARC continued to have a presence in Colombia and that some of those who were members of FARC had joined other organisations such as the ELN and were continuing in criminal activities such as extortion;
  - (viii) in finding that there was sufficient protection and internal relocation available to the Appellants the judge had failed to consider properly the views of the experts who had expressed their opinions that sufficiency of protection and internal relocation were not viable options.
18. Permission to appeal was granted by Upper Tribunal Judge Gleeson in a decision dated 22 August 2019 finding that the grounds of appeal were arguable.
19. I have heard the submissions from both parties today. Ms Rutherford relied upon her grounds of appeal and expanded upon them. She helpfully drew my attention to a number of documents within the Appellants' bundle that emanated from the Colombian prosecution authorities and to various extracts within Dr Karl's evidence and in the country information. Her arguments were essentially the same as those set out above.
20. Mr Mills resisted the appeal arguing that there had been no error of law in the judge's decision that it was not established that FARC had been responsible for the deaths in the family or for the attacks upon the third and fourth Appellants. Further and in any event, it was clear that there had been a significant improvement in country conditions in recent years in Colombia and the findings of the judge made in the alternative (even assuming that they had had historical problems with FARC) was that the risk of serious harm had diminished and in the further alternative that effective protection and internal relocation were available to the Appellants, and that the Appellants' attack upon those findings was simply not made out.

## **Discussion**

21. Sympathy must be extended to the Appellants who have clearly experienced a number of traumatic incidents, including the deaths of various family members. However, I find that the grounds of appeal are not made out.



22. It is right to acknowledge that the specific adverse findings on credibility were directed to the evidence of the first and sixth Appellants. I agree with a point made by Mr Mills that this was a case involving a number of different Appellants and voluminous evidence and it cannot be expected that the judge make a finding of fact on every item of evidence before him. Such an approach would also be inconsistent with the approach seemingly recommended by the appellant's representative before the judge: 'Miss Rutherford agreed that I should approach the question of the appellant's account as a whole. That is the approach I have taken' (paragraph 77). I agree with Mr Mills that the judge had determined the appeal in a careful and structured decision setting out matters that were accepted, matters which remained in dispute and then went about determining the matters that remained in dispute in a coherent way. The fact that there is no specific finding as to whether the judge found the evidence of the second to fifth Appellants credible or not credible is not material to the outcome of these appeals.
23. Further, insofar as it is suggested that the judge is deemed to have commented on the credibility of the second to fifth Appellants at paragraph 69 "I do not find for the reasons given the Appellants to be credible witnesses", without adequate reasoning, no material error is disclosed. It is accepted on behalf of the Appellants that the third and fourth Appellants were unable to give any evidence identifying their assailants in June 2013. Their evidence has in fact been accepted. What has been rejected was the nature of the inference which they had drawn from their experiences. That is not in fact to have rejected any part of their evidence and their evidence has not been dismissed by the judge. Rather, the judge had for reasons given in the decision found that the Appellants had not made out their case as to what inferences ought to be drawn from their factual account. I find no material error in the judge having stated at paragraph 69 that the Appellants were not credible.
24. I find that the judge was entitled to take into account the movements of the various family members over extended periods, with the first and second Appellants departing from Colombia and returning a number of times, whilst other members of the family remained in Colombia. The Appellants have not demonstrated that the judge was not entitled to take that pattern of behaviour into account as suggestive that the family was not at real risk of serious harm at the relevant times.
25. The Appellants' submission that the judge erred in rejecting that various attacks had taken place at the hands of FARC, and such a finding was inconsistent with certain documents suggested that attacks had taken place by 'illegal organised groups', is in essence a rationality challenge. I do not find it irrational for the judge to have rejected the proposition that the documents established that the attacks had taken place at the hands of FARC. I do not find that the judge gave inadequate reasons for the finding that the attacks were not carried out by FARC.

26. I agree with Mr Mills that the Appellants' argument that Dr Karl's evidence was only considered *after* the judge had concluded his deliberations is not made out. The judge considered Dr Karl's evidence at various stages in the decision and even after he had made the comment at paragraph 76 that Dr Karl's evidence 'does not change my decision', the judge referred again to Dr Karl's evidence and re-stated that he had taken all the evidence into account in the round. There is no adequate basis, considering the decision as a whole, to suggest that the judge had closed his mind to any particular matter before considering the expert evidence.
27. The Appellants' final submission, that the judge had erred in law in relation to his assessment of the current risk faced by FARC, the availability of effective protection and internal relocation is, I find, a mere disagreement with the judge's conclusions. It is clear that the judge considered the country information regarding the diminished position of FARC. Ms Rutherford drew to my attention during the course of the hearing to the passage within Dr Karl's evidence as follows:
- "19. Given the ongoing presence of remaining FARC elements throughout Colombia and their ties with other armed and illegal groups I believe that there is a real and continued risk of serious harm for Mr (GP) and his family if they are returned to Colombia. I also believe that internal relocation within Colombia is not an option".
- Ms Rutherford informed me that Dr Aguilar had come to a similar conclusion although she did not quote any passage from Dr Aguilar's evidence at all during the course of her submissions.
28. I find that the statement by Dr Karl at paragraph 19 is something of a broad-brush statement which lacks particularity supporting his proposition that the Appellants would remain at risk of serious harm from FARC at the present time. Further, his assertion that internal relocation was not an option is given without any reasoning whatsoever. The judge's findings that effective protection was available, and internal relocation was also available, were findings which were clearly open to him on the evidence. There is nothing within paragraph 19 of Dr Karl's evidence, drawn to my attention by Ms Rutherford, to demonstrate that the judge's assessment of the current country conditions was erroneous. The evidence was rather vague and unsubstantiated. I find that the evidence which is drawn to my attention does not demonstrate that the judge erred in any way in his assessment of the current risk posed by FARC in Colombia.
29. I therefore find that there is no material error of law in the decision.

### **Notice of Decision**

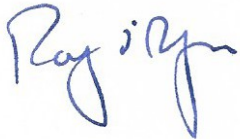
The decision did not involve the making of any material error of law.

I do not set aside the judge's decision.

The Appellants' appeals are dismissed.

Signed

Date 17.12.19

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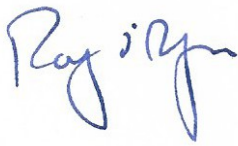
Deputy Upper Tribunal Judge O'Ryan

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 17.12.19

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O’Ryan