



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/03309/2020**

**THE IMMIGRATION ACTS**

**Heard at : Manchester Civil Justice Centre      Decision & Reasons Promulgated  
On the 25 February 2022      On the 21 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**PH  
(Anonymity Order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Holmes, instructed by Broudie Jackson & Canter Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision refusing her asylum and human rights claim.

2. The appellant is a citizen of Honduras, born on 1 September 1989. She arrived in the UK on 6 August 2019 by aeroplane, with her husband and daughter, and claimed asylum on 23 August 2019. She has since had another child whilst in the UK. Her claim was refused on 11 May 2020 and her appeal

against that decision was dismissed on 27 May 2021, giving rise to these proceedings.

3. The appellant was born and lived in San Pedro Sula. The basis of her claim was that she feared a gang, "Gang 18" or "Maras No. 18", which had taken control of the district where she lived in December 2018. The gang had forced her to pay a 'security tax', which she paid, fearing that she would be killed if she did not pay. In March 2019 she found out that she was pregnant and she decided to move to another district in San Pedro Sula, one and a half hours from where she lived, as it was supposedly more secure than her previous area. She made the last tax payment on 15 May 2019, before moving to her new house, although she did not inform the gang that that was the last payment. In June 2019 she planned a holiday to the UK and was due to leave Honduras on 5 August 2019. However before then, on 21 June 2019, her car was stopped when she was driving with her husband and daughter and two masked men made them get out and they drove away her car. She did not know if that was Gang 18 so she reported it to the police who told her that they would investigate, although she did not hear from them. After coming to the UK, on 9 August 2019, she received threats to her life. Her mother had gone to her house to feed her cat and had found it ransacked. She was stopped by two Gang 18 members as she was leaving the house and was told that the car theft had taken place because the appellant and her husband had moved house without consent. The appellant said that her mother was told that if she (the appellant) went back she would be killed as she had reported the car theft to the police. The gang members hit her mother and said it was a warning. Her mother reported the incident to the police and, since then, had moved from place to place to protect herself. The appellant said that it was then that she decided to claim asylum.

4. The respondent considered that the appellant's account was consistent with the background country evidence and accepted that the incidents with gang members had occurred and that the appellant had been threatened through her mother since being in the UK. However the respondent considered that the appellant had failed to demonstrate that the gang had the means or ability to pursue her outside San Pedro Sula and considered further that she had not shown that it would be unreasonable to expect her to relocate to Choluteca or another location in Honduras where there was little gang presence. The respondent therefore concluded that the appellant could relocate within Honduras and would not be at risk on return.

5. The appellant appealed against that decision and her appeal came before the First-tier Tribunal on 21 May 2021 and was heard by Judge Mack. The judge had before her three reports produced by the appellant, relating to the car hijacking incident, to an assault incident on 18 March 2018 and to the incident of 9 August 2019 involving the appellant's mother. The judge accepted that the incidents took place and that the appellant and her family had been the victims of crime in the San Pedro Sula area, but did not accept that they had been specifically targeted by Gang 18, that Gang 18 had any particular interest in them and that they would be specifically targeted by Gang 18 on return. The

judge did not, therefore, accept that the appellant's subjective fear was objectively well-founded and concluded that they were not at risk of persecution. She dismissed the appeal on all grounds.

6. The appellant sought, and was granted, permission to appeal to the Upper Tribunal on the grounds that the judge had departed from concessions made by the respondent and gone behind agreed facts, imposed too high a standard of proof and had failed to take account of material matters.

7. In her rule 24 response, the respondent did not oppose the application for permission and conceded that there was material error due to procedural unfairness. The respondent invited the Tribunal to determine the appeal with a fresh (continuance) hearing to consider the issue of internal relocation.

8. In her submissions in response to the rule 24, the appellant requested that the Tribunal set aside the judge's decision in its entirety and asked that the case be remitted to the First-tier Tribunal for hearing afresh. It was submitted that remittal was the appropriate course because the judge's decision had been infected by procedural unfairness and the appellant had been deprived of a fair hearing before the First-tier Tribunal.

9. The matter then came before. It agreed by all parties that remittal was the appropriate course and accordingly I set aside Judge Mack's decision on grounds of procedural unfairness, for a fresh determination at a *de novo* hearing.

## **DECISION**

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Mack.

### **Anonymity**

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede  
2022  
Upper Tribunal Judge Kebede

Dated: 25 February