



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

Appeal Number: PA/04485/2019

**THE IMMIGRATION ACTS**

**Heard at Leeds**

**On 13 January 2020  
Decision given orally at hearing**

**Decision & Reasons  
Promulgated  
On 26 February 2020**

**Before**

**THE HON. MR JUSTICE LANE, PRESIDENT**

**Between**

**CM  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Rodgers, Immigration Advice Centre Ltd

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of the First-tier Tribunal which, following a hearing at North Shields on 9 August 2019, dismissed the appellant's appeal against the respondent's decision to refuse the appellant's protection claim.

2. The appellant is a citizen of Honduras. He arrived in the United Kingdom in August 2017 with his partner and one of her sons. He claimed asylum the following day but the application was treated as withdrawn on 21 September 2017, as the appellant was alleged to have absconded.
3. On 24 July 2018, the respondent received further submissions from the appellant's representatives, which were treated as a fresh claim. This was considered but refused in a decision letter dated 9 April 2019. At paragraph 3 of his decision, the First-tier Tribunal Judge says this:-

"3. In deciding this appeal, I have considered all of the documentary evidence which had been submitted to me, as well as oral evidence from the Appellant, his partner [V], [another individual (G)] and [a third individual (H)]."
4. The judge then recorded the evidence given by the appellant and the nature of his international protection claim. He said that he had been forced to relocate from his home when he was a teenager because of gang problems and violence in Honduras. Aged 18, he began to work as a mechanic and then a driver. In 2013 he commenced his relationship with his partner, V, who has two sons, one of whom has refugee status in the United Kingdom.
5. At paragraph 6, the judge recorded the problems which the appellant said began when his elder stepson's girlfriend went to live with them. That family had had problems in Honduras, as a relative was a high ranking member of a particular gang. A person had been killed in 2004 and since then some sixteen other family members had been killed because of family links to him. Others had been forced to flee. The appellant said his problems began because of the family connection. He had received a letter at his house with two bullets. In addition, he had experienced issues at work. All of this led the appellant to have to leave his job and his home in September 2015. The family relocated to stay with a friend in Roatan Island. They remained there for about three months and the appellant was able to secure employment. They then managed to find accommodation of their own.
6. However, on 6 January 2017 some men from the gang went to the appellant's house armed with machetes. He said that they were looking for the family and the appellant's younger stepson. They wanted him to join the gang but the family refused. One of the men attacked the appellant's partner and attempted to rape her but the family dog was barking, so they eventually fled, but the family was warned that the gang would return. At this point, the family realised they could not remain in Honduras any longer. They reported the incident to the police but knew that the authorities would be unable to do anything to protect them. They stayed for a month with a friend before renting another apartment for four to five months, but they feared the gang would find them once more. The appellant told the judge that if he were to return to Honduras, his stepson would be forced to join the gangs or he would be killed. The family would

not be safe, as his wife's elder son was in a relationship with the family of another gang member.

7. The appellant was cross-examined. He was asked if he knew why the gang had not approached him until 2015, if they knew his identity in 2013. He said that he had remained hidden, going only from work to home and back. It was put to him that at his interview he said that everyone in his area knew where the gang members and killers were and he was asked how no one appeared to have known his identity. The appellant replied there was a mistake at that point. So again he kept himself hidden.
8. Cross-examination then turned to the attempts to extort money from the appellant's employer, which the appellant had also mentioned. The appellant said that the gangs asked for a form of work tax.
9. The representative of the respondent suggested there was an inconsistency between the appellant's 2019 statement, where he said he employer had refused this tax and his response to question 28 of the interview, where he said that the company did pay. The appellant replied that his employer had paid a certain sum per week, but took the opportunity to capture the gang member who was asking for money. He went on to explain he had refused the request to deliver the money on the basis he would have been complicit with the gang and liable for arrest as a result.
10. The Secretary of State's representative pressed the appellant on the discrepancy. The appellant said that the owner of the business paid 20,000 Lempiras per month but did not agree with it. When the gang member was captured, this sum of money was returned to the employer. It was pointed out to the appellant that he had made no mention of the arrest of a gang member in his original statement or of him being held responsible for this. On the contrary, he had said he had left work because his employer refused to pay the gang. The appellant repeated that he was threatened with death if he did not take the money that he had refused as he would be considered an accomplice. The appellant said he had not been inconsistent but he had perhaps not fully understood or something had been lost in translation.
11. At paragraph 12 of the decision, the judge recorded further cross-examination by the respondent's representative, who asked why in his interview the appellant had said the employer's business continued to operate in Honduras and why therefore it had not been targeted if the company was considered responsible for the arrest of a gang member and had refused to pay. The appellant said the employer had a lot of well-armed security guards who protected the business. He also said that when he and his family relocated to Roatan, he used a different surname so that he might be protected. He was asked why he had returned to La Ceiba to report the incident to the police if he had fled due to the gang. He said while he was in Roatan two men went to his house and were close to killing his wife. He therefore returned. It was put to him that at his

screening interview he had said that following the September 2015 attack the family left their home and relocated, since when they had not been contacted again; but in his substantive interview he had complained of the machete attack in 2017. The appellant said there was another mistake here and insisted he had been consistent. He said the interviewer in the screening interview had stopped and the appellant had said that he was going to explain other facts in his substantive interview. He complained he had not been afforded the opportunity in his screening interview to provide further information as it was “capped” abruptly.

12. The appellant said he had been at work at the time of 2017 attack. Other people had informed him of the incident and he ran home. By the time of his arrival, the men were gone and his wife was crying. It was pointed out to him that it had taken him and his family four days to report the incident to the police. The appellant denied this and said there was an error and it was reported the following day. He did not know why the report was dated four days after the incident.
13. The appellant told the judge he had relocated on the same day as the incident in January 2017, finding a new job, and that he was happy to be working. However, he had decided to come to the United Kingdom as he had been threatened with death. He was asked by the respondent’s representative if he had received any further threats after the January 2017 incident. He admitted he had not.
14. After re-examination, the judge then heard evidence from the appellant’s partner who adopted her witness statement. She produced the original police reports and confirmed she had provided them when the asylum claim was made. When asked if she knew why she and her son had been targeted in 2017, she said it was related to her husband’s problems with the family, adding that she did not allow her son so much freedom that he could become involved with other people. She was asked by Mrs Rodgers why the gangs would target her son, to which she replied she never had any other problems.
15. In cross-examination, she confirmed that the January 2017 incident had been reported to the police on 10 January because she was afraid and not want to leave her house. Asked why the appellant should say that it was reported on the following day, she said he may have forgotten.
16. The judge then heard evidence from G, who adopted her witness statement. She produced, amongst other things, a family tree showing those who had been killed. She said she arrived in the United Kingdom in 2002. Prior to that she did not know the appellant. She had been aware of the family but they were not in contact.
17. The final witness was H. She adopted her witness statement of June 2019 and she confirmed that she had lived with the appellant and his wife in Honduras from April to September 2013. At that point she came to the

United Kingdom because her family was experiencing problems with the gangs. H was not cross-examined.

18. Having set out the submissions and the relevant law, the judge began at paragraph 28 of his decision to consider the credibility of the appellant's account. He looked at the account by reference to the background evidence. His consideration of that extended to an examination of an UNHCR paper to which he was referred by Mrs Rodgers. At paragraph 40, the judge noted that the respondent's representative did not challenge the appellant's evidence that H had lived with his family up to September 2013. She and her mother had been recognised as refugees. The judge therefore considered that their evidence was largely historical, given that neither was in the UK at the time of the appellant's alleged problems. The judge considered it reasonably likely that H's family had links to the gangs. However, he reminded himself that she had left the appellant's home in September 2013. The appellant said that he had not experienced any problems between 2013 and 2015, his explanation being that he was hiding.

19. The judge noted the record of interview where the appellant was said to have explained that people knew one another in the community, the inference being that it would be easy to identify gang members and those who were sympathetic to them, as well as potential targets in those opposed to the specific gangs. The judge then said:-

"I reject the Appellant's assertion that he did not make this comment. There was no satisfactory evidence before me to show that the interview record was not an accurate transcript of what was said. Nevertheless, he said that he was able to go out to work. I do not consider that to be evidence of maintaining a low profile over a two year period as he suggested. I do not find it credible that, if the gangs wished to target him due to his association with the family of a rival gang, he would have waited for two years to do so."

20. At paragraph 31, the judge found inconsistencies in the evidence relating to the appellant's employer. In his most recent statement the appellant had said his former employer refused to pay the form of tax imposed by the gang. However, in his substantive interview he said his employers had in fact paid something which resulted in the capture of one of the gang members. The judge said:-

"I found that the Appellant was unable to provide any satisfactory explanation for this significant discrepancy in his account. I would not have expected such an inconsistency had he been recounting his experiences."

21. The judge said that if the employer had not paid, then there would have been no possibility of any gang member being entrapped. Furthermore, he did not believe the appellant would have been open to an allegation of collusion with gangs if he had merely delivered the money to them. He was unable to accept Mrs Rodgers' submission that this was a case of details emerging to clarify the account. On the contrary, the judge found

that the inconsistencies “undermined it. This detracts significantly from the appellant’s overall credibility as a witness”.

22. At paragraph 32, the judge considered the appellant’s explanation for the discrepancy over the date of his last problem with the gangs. In his screening interview he said he had been forced by two gangs to take money from his employer and give it to them. He went on to say that he and his family had left their house in September 2015 and relocated “since when the gangs had not contacted him again”.

23. The judge contrasted this account with the subsequent evidence of the 2017 attack. The judge said:-

“I cannot accept his explanation that the screening interview was stopped or “capped” as this was information which he was clearly able to volunteer during the interview. This casts substantial doubts over his evidence and that of his partner concerning the 2017 attack. This is especially so, given that she agreed with the contents of his witness statements.”

24. At paragraph 33, the judge noted the appellant as being adamant that the 2017 incident was reported to the police on the following day but his partner had said it was reported some four days afterwards. Her evidence was consistent with the documents before the judge, but obviously inconsistent with the appellant. In the police report of the incident on 6 January 2017 the appellant’s partner made reference to “her dogs”. In his statement however the appellant said that the dogs belonged to someone else.

25. At paragraph 34, the judge considered the delay in the appellant claiming asylum. He considered that that further reduced the credibility of the appellant’s account. At paragraph 35 we find the following:-

“Documents have to be considered in the round. Given that I have rejected the core of the Appellant’s account, I am not prepared to attach any real weight to the letters from neighbours in terms of reliability. One of the police reports is of no value whatsoever as it fails to mention any name.”

I shall return to that paragraph in due course. It is the subject of specific criticism by Mrs Rodgers on behalf of the appellant.

26. At paragraph 36, the judge found that if the appellant’s account had been found to be reasonably likely to be true, then the judge accepted that the police in Honduras struggled to provide adequate protection from gangs. However, the judge would not have found that there was a sufficiency of protection. In the case of the appellant, however, he said to the judge that he had not experienced any problems in the four to five months prior to his departure when he and his wife rented a property on Roatan Island and he was able to secure work. He said he was happy with this employment and no further threats were made against him. The judge found that:-

“Internal flight to Roatan would therefore have been a reasonable option particularly bearing in mind the background evidence of the geographical

separation and the lower crime rates. However, I stress that my principal finding is that the appellant's account is not reasonably likely to be true and so I dismiss it in its entirety."

27. The grounds of challenge to the decision are as follows. Ground 1 contends that the judge failed to consider what was described as the second police report submitted in support of the appeal. This report named the appellant's wife and the circumstances of the incident and was material evidence to corroborate that the claimed event occurred. The judge was said to have materially erred as he failed to make an assessment of the document which was relevant to the credibility of the appellant. Reference was then made to paragraph 35, which I have set out. Although the first police report may have been rejected due to it not having names, the grounds said that the second police report had to be evaluated. The First-tier Tribunal Judge failed to give any consideration to the document and its failure led to material errors as the document was relevant to the finding about the incident and to credibility overall.
28. The second ground deals with the evidence of H. It is pointed out that as the judge recognised in his decision H was not cross-examined and therefore it is said that her evidence stood unchallenged. She confirmed she had lived with the appellant up to 2013 but, according to the ground, she had also provided evidence that despite leaving Honduras she remained in touch with the appellant and his family. It was contended that this evidence had to be weighed in the balance, when coming to a conclusion on the credibility of the appellant and his wife, as it was not challenged by the Secretary of State; and in failing to deal with the evidence, the judge materially erred in law.
29. The grounds of challenge found arguable favour with the First-tier Tribunal. The judge who granted permission considered it was arguable that, in his consideration of the documentary evidence, the judge had made an error such as was identified by the Court of Appeal in Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367 in reaching a conclusion on credibility before surveying all the evidence relevant thereto. The second ground the granting judge considered to be more of a disagreement with the First-tier Tribunal Judge's assessment of the weight to attach to the evidence of H. Nevertheless, all grounds were said to be able to be argued.
30. Before me, Mrs Rodgers relies upon the grounds. We spent time looking at the police reports in particular. One of those does not give any names but the other one does give the name of the appellant's wife. It records her account of the crime as being that she was at home doing chores when she heard "my dogs barking" so she went outside and there were two men with machetes. One of them put a machete to her neck and the other entered the house and asked if her son worked in a particular place. They searched the house and were said to be looking for a pistol. The men said that they would come back for her son's head "and if it wasn't for the barking dogs they would have raped me".

31. The judge who granted permission made reference to the Court of Appeal authority in Mibanga. That case is indeed authority for the proposition that findings on credibility must be taken in the round. The issue here, therefore, is whether the First-tier Tribunal Judge made his findings in the round or whether, having found the appellant not to be credible for the reasons given, he improperly disregarded all other evidence that might tend to a contrary conclusion.
32. At paragraph 3, as I have already noted the judge said in terms that in deciding the appeal he had considered all the documentary evidence submitted as well as all the oral evidence. There is in my view no reason not to take the judge at face value in that regard.
33. Paragraph 35, which is the subject of criticism by Mrs Rodgers, in fact reiterates the point that the judge was aware that documents have to be considered “in the round”, together with the other evidence. There is a danger of Mibanga being misunderstood. One has to start any forensic examination of evidence at a particular point. One cannot throw all the ingredients into the hypothetical mixing bowl together. That is a recipe for a problematic outcome. In taking the issues as he did, and making adverse credibility findings regarding the consistency of the appellant as between his various accounts, the judge did no more than what he was entitled to do. It was for him, weighing the evidence, to decide whether those inconsistencies were such as to show in the round that the appellant’s account was not capable of belief. That I find is what the judge did.
34. So far as the witness statement of the appellant’s wife is concerned, relating to the incident of January 2017, as we can see from paragraph 33 of his decision, the judge was specifically aware of that evidence and he refers to it. He refers to the reference made therein to “her dogs”. The judge contrasted that with the evidence from the appellant, who said that the dogs had belonged to someone else. It is therefore not the case at all that the judge overlooked that particular document; quite the contrary. But, even if he had not made any specific reference to it, for the reasons I have given the judge would not have erred in law.
35. The second ground is in my respectful view of no materiality. H was not cross-examined. That did not in any sense mean the respondent was taking the view of that anything she had said about her conversation with the appellant from the United Kingdom when he was still in Honduras had to be taken as representing the truth of what the appellant told the respondent were his difficulties at that time in Honduras. In any event, her evidence was, at best, second-hand in nature. It is manifest that the judge had regard to it, together with all the other evidence. It is not remotely conceivable that the judge would have taken a different view of the appellant’s credibility if he had decided specifically to refer to that particular aspect of H’s evidence in his decision.



36. Thirdly, as pointed out by the respondent in the rule 24 response, there is a finding at paragraph 36 that the appellant could internally relocate. Even if one accepted his difficulties up to that point, matters ended for him in Honduras in the following way: he was able to live for several months; he and his family rented property and he was also able to secure work. No further problems were faced by him. The judge noted that difficulties on the mainland in Honduras regarding gangs are not, according to the background evidence, encountered to the same degree offshore. Since there is no challenge in the grounds to the judge's internal relocation finding, it follows that, even if there had been problems relating to the judge's assessment of credibility, they would not have been material. However, for the reasons I have given, the judge's assessment of the appellant's credibility is devoid of legal error and I therefore dismiss this appeal.

### **Notice of Decision**

The appeal is dismissed.

### **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 21 February 2020

The Hon. Mr Justice Lane  
President of the Upper Tribunal  
Immigration and Asylum Chamber