

decision was in turn reduced by the Court of Session by order of Lord Clark on 31 December 2021 for reasons set out in the Joint Minute.

The Hearing

3. The matter was listed before the Upper Tribunal to determine: first, whether permission should be given and, second, whether the decision of the First-tier Tribunal involved the making of an error of law. It was agreed between the parties that both issues would be considered together.

The Appellant's Case

4. The appellant is a citizen of El Salvador. He is accompanied by his wife whose claim is dependent on his. The appellant and his wife have three children.
5. The appellant's problems began in 2014. While working in IT management in El Salvador, he was the subject of threats to pay money and hand over valuables. After this he changed his address, email and landline number but continued to work for the same company, moving to another town. He worked there until July 2016 when he was made redundant. Five months later he found another job in La Calaca, also in El Salvador.
6. In January 2017 he received a threatening letter at his new house demanding 1,000 US dollars. A second letter came later but as he and his wife did not have the money, they ignored the letters. In November 2018 the appellant's nephew was killed (albeit in an unconnected incident). They sent one of the children to the UK and saved up enough money for the rest of them to leave as they were scared.
7. The appellant also fears that his children will be groomed by the gangs and that the police cannot protect people from them.

The Respondent's case

8. The respondent did not accept the appellant was targeted by gangs noting that after the threatening letters no further threats were received and the family were not targeted after he was killed.

The hearing before the First-tier Tribunal

9. The judge heard evidence from the appellant and his wife observing that there were no particular reasons why the gangs would have targeted him in 2014. No further threats were received from Gang 18 after 2014 and that despite the appellant not meeting the terms of the letters received in 2017, nothing further happened despite the appellant remaining at the same address for two years prior to leaving the country [17]. The judge noted that the appellant had not reported the threats in 2014 or the letters in 2017 to the police, finding that the appellant and his wife had had no problems with gangs in the two years prior to leaving El Salvador.

10. The judge accepted the appellant's account of handing over money and goods in 2014 and receiving threats in 2017 [18]. He did not accept that the situation in El Salvador is so bad as to engage Article 15(c) of the Qualification Directive as there was insufficient evidence to satisfy him to that effect; nor was he satisfied from the background information that as failed asylum seekers they would be at risk of serious harm so as to engage Articles 2 and 3 of the Human Rights Convention. He found that they were not at any more heightened risk than any other returning asylum seeker from the UK and noted that there was no adequate evidence to suggest that the children would be at any higher risk of being groomed as regards other children in El Salvador. He did not accept there is a systematic failure of the police to deal with complaints against gangs. He considered also that internal relocation would be a viable alternative.
11. The judge dismissed the asylum and Article 2 and 3 cases. He found no exceptional circumstances such that the decision would be a disproportionate breach of the appellant's rights under Article 8.
12. The appellant sought permission to appeal on the basis that the judge had erred:-
 - (i) in making no adequate assessment to the country information indicating that gangs do extort money from individuals regardless of whether they have means to pay and regardless of whether they are a member of security forces and thus erred in finding the appellant explained why he would have been particularly targeted in 2014;
 - (ii) in wrongly requiring the appellant or his family to be singled out for persecution, contrary to Jeyakumaran v SSHD [1994] Imm AR 45;
 - (iii) in concluding that the appellant's ability to live for more than two years prior to leaving the country was a sufficient basis to conclude that he would not be at risk on return given that past ill-treatment is indicative for future ill-treatment;
 - (iv) in reaching a finding that Article 15(c) was not engaged without an adequate assessment of the country information which indicates there is a high level of violence;
 - (v) in concluding that there was a sufficiency of evidence or that internal flight was reasonable without a proper assessment of the country information which indicates to the contrary;
 - (vi) in concluding that the children would not be at a higher risk in rejecting that aspect of the claim; that they would not be at a higher risk than other children in El Salvador was not relevant or a reason to reject the risk of forceable recruitment; and, failed properly to assess the best interests of the appellant's children with respect to paragraph 276ADE(1)(vi) of the Immigration Rules and or Article 8 failing to make a proper assessment for relevant factors;

(vii) that in refusing the application for permission the Upper Tribunal had erred in not holding the First-tier Tribunal to the correct standard as to how the background evidence should be assessed

13. I heard submissions from both representatives. At the end of the hearing I reserved my decision on both issues.

14. I deal with the grounds in turn.

Grounds (i) to (iii), (vii)

15. It is appropriate to take these grounds together as they have at their core a submission that the judge failed to have proper regard, materially, to the risks identified in the background evidence. That is in addition to the submissions that there was a failure properly to apply the law, again materially.

16. I find no merit in these grounds. While it may well be arguable that the judge erred in had he found that it was necessary for the appellant to have been targeted particularly, or for the family to be singled out, the judge nonetheless accepted the account of what had happened, but, even had he found that amounted to persecution in the past, it does not follow that there will be risk in the future. Previous ill-treatment is indicative of future ill-treatment, but it was manifestly open to the judge to note that after moving away these problems did not reoccur in the subsequent two years. It was open to the judge to find on the basis of these facts, that there was no real risk of reoccurrence and thus no risk of ill-treatment. That logic applies irrespective of how the events were categorised. And, this is not a case where the agents of the ill-treatment were agents of the state.

17. Bearing in mind that the appellant and the respondent were aware of what material had been considered by the judge as they were familiar with what was contained in the Inventories of Productions, it is sufficiently clear from the decision that the judge's approach to the evidence is adequate and sustainable. He was not required to refer to each bit of evidence in detail.

18. The material referred to in the grounds at [(i) and (iii)] identifies a large number of gun attacks; that there is a high rate of violence in the country; and, that the homicide rate is second only to Syria and overall rates of annual violent deaths. The focus of the appeal must be on a risk on return. And aside from the unconnected incident with the nephew, they did not experience gun violence.

19. This is a case in which the appellant and his family had been safe for over two years, having relocated. In that context, and in the light of the observations below, the judge gave adequate and sustainable reasons, for concluding there was no real risk of ill-treatment again in future.

20. It is not that the judge denied the level of violence. He addressed the material relating to the risk to those removed from the United States, specifically in the report "Human Rights Watch, deported to danger: United

States deportation policy exposed Salvadoreans to death and abuse". He was entitled to give it the weight he did. The report focuses on the specific situation for those from El Salvador who had been present in the United States. Whilst it is correct that Human Rights Watch found a clear link in 200 cases between the harm to the deportee on return and the reasons they had fled El Salvador, they found lack of evidence to establish in such other cases.

21. Whilst the report notes in discussing few of the cases the people returned to the same neighbourhoods where they had lived before. That is not the case here.
22. Further, it does not follow that the judge erred when assessing that there was a difference in the appellant's circumstances from those who have lived in the US as long term residents with the appellant. I bear in mind that as at the date of decision they had lived in the United Kingdom for a relatively short period and there was insufficient evidence to show that people in that position could be compared with people returning from the United States after a prolonged period. I accept that gangs in El Salvador may well exercise territorial control over specific neighbours and extort residents out of the country forcibly recruiting children then the people disappear and are abducted. In this analysis of the deportees who are killed there is no indication as to how many people are involved other than the three examples given at page 31. Two out of the three had to choose which appears to be a risk factor as identified elsewhere even if not gang related.
23. In essence, the appellant seeks to show that the judge had erred in underestimating the risk. That is, in effect, disagreement of interpretation with respect to the background evidence and it cannot be inferred that there is any error with respect to requiring people to be singled out was carried forward in the assessment of risk on return.
24. Accordingly, there is for these reasons no merit in grounds (i) to (ii) or (vii).

Ground (iv)-Article 15(c)

25. There is no proper indication in the material before me that submissions were made as to how Article 15(c) of the Qualification Directive was engaged in the circumstances of El Salvador.
26. Whether or not Article 15 (c) is engaged is a complex issue and it was for the appellant to demonstrate that it does. The principles to be applied are set out in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) at [203] to [207]. There is no need to repeat them here.
27. As a preliminary issue, it would have been for him to show that there was in El Salvador an "internal armed conflict" by reference to the material, and the relevant case law from the CJEU as well as domestically. Whilst I note the level of violence is sufficiently elevated to bring the homicide rate

close to the death rate in Syria, that is not in itself sufficient evidence of an internal armed conflict nor that the violence was indiscriminate nor was Mr Liaquat able to point me to any material indicative of the relevant tests being met, other than referring me to gang on gang or gang versus police violence.

28. Whilst I accept the submission was made, the judge was not addressed properly in submissions as to how Article 15(c) was engaged. The issues are, as is clear from the relevant passages in SMO, complex and required detailed submissions which were not made. Accordingly, I am not satisfied that this ground is made out.

Ground (v)

29. It was accepted by Mr Liaquat that, if the judge had found that there was no risk on return, then issues of internal relocation and sufficiency of protection did not arise. For reasons given above I consider that the judge was entitled to conclude that there was no risk on return given the fact that the family had been able to live in El Salvador without incident for years. The appellant himself admitted that the killing of a nephew was not connected. Accordingly, there is no merit in this ground

Ground (vi) Children's Best Interests - Paragraph 276ADE(I)(vi)

30. Although this ground of appeal was the focus of proceedings in the joint minute, Mr Liaquat was unable to direct me to any point which it was submitted that paragraph 276ADE was engaged nor was he able to point me to any submissions he had made on the "best interests" of the children. There appeared to have been no specific submissions made with regards to Article 8 either as expressed in the Immigration Rules or outside the Immigration Rules. Mr Liaquat accepted that in substance there was little to this point.
31. It cannot properly be argued that a judge erred in his approach to paragraph 276ADE or for that matter best interests of the children, if submissions to that effect are not met. That said, there is some evidence to support the submission the children are groomed to join gangs and it is sufficiently clear from the decision that the judge was aware of that point. Nonetheless, the judge found that that was not a particular risk factor in this case and it is perhaps indicative that there is no indication that attempts were made to groom the children whilst they lived in El Salvador.
32. Further, there has been no proper attempt to indicate what factors would have led to the appeal being allowed on paragraph 276ADE(1)(vi) or Article 8 grounds. The evidence from the appellant is effectively limited to that of his wife at paragraph [23] of her statement that the children cannot go out and they were picked up by gangs as either to join them or finish them and so they decided to flee as a family; it is also evidence that the appellant himself was scared for his children (see page 8AB).

33. Given the lack of any proper basis on which the arguments with respect to paragraph 276ADE or Article 8 were met, it cannot be argued that the judge's decision involved the making of a material error of law.
34. Whilst I note Mr Liaquat's submission the real question of whether it was proportionate to put the children in the situation they would be on return that is not a submission that was made previously.

Conclusions

35. Accordingly, for these reasons, I grant permission to appeal on grounds (i) to (iii) as they were arguable. I do not restricted the grant of permission.
36. For the reasons set out above although permission is granted, I am not satisfied the decision of the First-tier Tribunal involved the making of any error of law capable of affecting the outcome. I therefore dismiss the appeal.

Notice of Decision

- (1) Permission to appeal is granted.
- (2) The decision of the First-tier Tribunal did not involve the making of an error and I uphold it.

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 5 October 2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul