



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001351
UI-2023-001352

First-tier Tribunal No: PA/51209/2022
PA/51232/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd November 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ZRBS
JEC
(ANONYMITY ORDER MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Hashmi, Counsel.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 25 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellants, citizens of El Salvador born on 14 May 1988 and 8 November 1988 respectively, appeal with permission a decision First-tier Tribunal Judge Hillis, who in a decision promulgated following a hearing at Bradford on 17 February 2023 dismissed their appeals on protection and human rights grounds.
2. The basis of the appellants claims is that they face a real risk of being persecuted or ill treated on removal to El Salvador by the MS-13 gang given an adverse political opinion being attributed to them, resulting in them also being members of a Particular Social Group. The appellants claim the gangs in El Salvador have control and influence over the whole country, internal relocation is not a viable option, and that the gangs have infiltrated all aspects of the El Salvador Government and its agencies, resulting in there being no State protection available to them on removal to El Salvador.
3. The Judge notes there is no dispute in relation to the appellant's ages, gender and nationality. Judge refers himself to the decision of the Upper Tribunal in EMAP (Gang violence - Convention Reason) El Salvador CG [2022] UKUT 00335 (IAC) together with documentary evidence and oral evidence given.
4. The Judge did not find it credible the first appellant would leave the children behind in El Salvador, even with her partner, if she genuinely feared that they might be at risk of harm from MS-13 gang members, nor that was credible that the first appellant would agree to the second appellant coming to the UK 13 months later without the children if they both genuinely believed that the children still might be at risk from MS-13 gang members [22] [24].
5. The Judge also did not find it plausible that MS-13 gang members would threaten the first appellant in the manner she claimed if they suspected her of being an informant for the police and then left in her home while they checked out whether she was in fact an informant. The Judge refers to the CPIN and country material relied upon by the appellants showing gang members are totally ruthless in their treatment of even suspected informants. The Judge finds it more credible that the first appellant would either have been shot or killed, a stance the Judge finds is supported by the second appellants claim that he will be killed by MS-13 within two days of removal to El Salvador.
6. The Judge also finds it implausible the first appellant was not robbed by the gang members at the time she claimed they threatened her at gunpoint in light of the country information.
7. The second appellant's claim that during the 13 month gap between the first appellant and second appellant leaving El Salvador gang members were constantly looking for him at his home, but did not discover him, the Judge finds lacks credibility. It is found that if gang members were looking for the second appellant they will simply force away into his home because they suspected he was in hiding.
8. The Judge did not find it credible the appellants would have reported the threats to the police on 3 November 2019 when they would have been aware of the gangs having members, contacts, and influence in the local police force, resulting any complaint likely to have been confirmed to the gang members and the gangs being told the appellants are police informers. The Judge also finds it inconsistent with the first appellant's evidence of leaving El Salvador on 5 November 2019 as there would have been little or no point in reporting the matter to the police [30].
9. The Judge, for the reasons set out in the determination, finds the claim to lack credibility and that the appellants face no real risk on return to El Salvador due to an adverse political opinion or being a member of a Particular Social Group [32]. The Article 2 and 3 claims fall in line as did the claim for Humanitarian protection, although the Judge notes no submissions were made or that they pursued such as a Ground of Appeal, that any family life can be continued by

returning to El Salvador and being reunited with their children, and that removal does not breach any rights under Article 8 ECHR [38].

10. The appellants sought permission to appeal claiming the Judge has based his findings on the assessment of the prospects of the account being true but not balanced it against the objective evidence.
11. Permission to appeal was granted by another judge of the First-tier Tribunal on 18 April 2023.

Discussion and reasons

12. It was submitted on the appellant's behalf that the Judge had erred in failing to consider what the appellant had said by reference to the available evidence, referring to the country material in the appellant's appeal bundle.
13. The difficulty with this submission is that the Judge clearly considered the evidence with the required degree of anxious scrutiny and has not been shown, by reference to any specific part of the country material provided, to have made a decision that was contrary to the evidence or one outside the range of those reasonably open to the Judge on the evidence.
14. Reference by Ms Hashmi to what the appellant claimed in his witness statement or what was pleaded in the skeleton argument does not assist, as these were sources of information that were before the Judge and properly considered by him.
15. There was mention during the hearing of further evidence that had been obtained including a country report. There was no evidence of permission being given to admit the same and it was confirmed by Ms Hashmi that the report was not even in existence at the date the decision was made.
16. It transpired having considered the submissions made and consider the discussions undertaken in court, that it was accepted that the findings of the Judge were correct on the basis of the evidence he had been asked to consider and that the core submission was that it was on the basis of the new evidence, i.e. the new report, that it was claimed the Judge had got it wrong.
17. The Judge clearly considered the available evidence with the required degree of anxious scrutiny. The Judge sets out findings in the determination which are adequately reasoned. The core finding of the Judge, having compared the appellant's evidence to the country material, is that the claim was not credible as it was not in accordance with what the Judge had been told about the conduct of the MS - 13 gang and how they deal with individuals.
18. The appellant was advised that if there was evidence that had not been made available previously there was always the possibility of a fresh claim. I find that to be the appropriate way to proceed as they are arguing the case should succeed on a completely different basis evidentially than that put before the Judge.
19. I find on the basis of the evidence the Judge was asked to consider the appellants have not established the findings made are outside the range of those reasonably open to the Judge on the evidence. On that basis no legal error material to the decision is made out.
20. I mentioned at the outset to Ms Hashmi whether the alleged error was material (even if made out) in any event as a result of the actions taken by the president of El Salvador, extensively covered in the international press, of having arrested and imprisoned a substantial number of members of the gangs in El Salvador, and the resultant reduction in gang activity in the country. There was, however, no need to explore this matter further in light of the primary finding that the Judge had not erred in law in any event.

Notice of Decision

21. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber
25 October 2023