



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001101

First-tier Tribunal Nos: PA/54874/2022
LP/01070/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of November 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

ACH
(ANONYMITY ORDER MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan, Counsel, instructed by Averroes Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 1 October 2024

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 Appellant is a national of Honduras who claims to fear persecution on return to that country due to his former involvement in a gang. Prior to the error of law hearing on 31 May 2024 the Secretary of State granted the Appellant's partner and son refugee status, although no documentary evidence of the basis for this decision was then available. Following my decision finding an error of law (which is appended) I made directions on 19 September 2024 seeking clarification from the Respondent as to the basis of the decision to grant refugee status to the Appellant's partner and child and her subsequent position in relation to this Appellant and family life with his partner and child.
2. At the resumed hearing of the appeal on 1 October 2024, having taken time to consider the evidence and the skeleton of Mr Nathan on behalf of the Appellant dated 26 September 2024, Ms Cunha accepted that there would be an insurmountable obstacle to family life if the Appellant were required to return to Honduras and she therefore accepted that there would be an Article 8 breach. However, the Secretary of State maintained her position in respect of the asylum application.
3. I therefore proceeded to hear submissions, firstly from Mr Nathan, who relied on the expert reports of Dr Rivera dated 4 April 2021 specifically in respect of the absence of sufficiency of protection and any internal relocation alternative at paragraphs 36 to 38, 40, 42 to 45, 47 to 55 and 58 to 61. He further relied on the supplementary report of Dr Rivera dated 31 October 2023, having considered Judge O'Garro's determination and preserved findings of fact that there had been gang involvement between 2006 and 2009. On this basis, Dr Rivera found that the Appellant would still be at risk even if he had only worked for a local criminal gang: see paragraphs 3(f) and (g) of the supplementary report. Mr Nathan further noted that there had subsequently in November 2023 been a CPIN issued on Honduras by the Secretary of State and that that supported Dr Rivera's position that the Appellant would be at risk of persecution on return to Honduras.
4. In her submissions, Ms Cunha stated that the Secretary of State's position and the starting point was that the Appellant was able to return to Honduras in 2018 when nothing happened to him. This had not been dealt with by the expert and she submitted it contradicted the expert's position that the Appellant would not have been able to return as a former member of a criminal gang. The expert in the supplementary report considered the El Salvador gangs, e.g. M18 that had then moved to Honduras but also had a presence in the USA. The CPIN also refers to the fact that Honduras is now an enclave for drug trafficking *vis-a-vis* Mexico and that there is gang fighting. However, the Secretary of State's position is that the Appellant is not involved in that process, he might have been involved in the past but that is historical and he was able to return to and live in Honduras and would no longer be of any interest to gangs particularly as it was never argued that he was part of M18 or M13.
5. In relation to the Appellant's time in the US whilst he mentioned selling cannabis whilst there, his case was not put on the basis that he was doing so on behalf of a gang in that country. Consequently she submitted little weight should be attached to the expert reports. The Appellant was able to leave the criminal gang and travel to the US and then on to the UK without there being any retaliation. In relation to his claim that his cousin was killed whilst visiting the Appellant's mother, there is no evidence that this happened and ultimately the burden was on the Appellant to prove that that was the case, see TK (Burundi) [2009] EWCA Civ 40. She submitted an adverse inference should be drawn from

the lack of evidence. The First-tier Tribunal Judge was entitled to make an adverse finding which had been retained and that was also the starting point. Ms Cunha submitted the core factor is that the Appellant was not singled out, there is no evidence of him being at risk on return to Honduras and that whilst people do not trust the police this does not mean that the police would be unable or unwilling to provide him with protection notwithstanding corruption. There are people willing to fight against the cartels and there is protection for people if necessary. Ms Cunha submitted that the expert's findings were not based on the Appellant's case and so little weight should be given to her evidence given that he was not at adverse risk from government institutions or the military and that the factors relied on were not based on his particular facts. She submitted the Appellant's fear was not objectively evidenced and his appeal should be dismissed on asylum grounds.

6. In response Mr Nathan submitted whilst he was constrained by the nature of the re-making process, the Appellant had given evidence of risk to him on return in 2018 to Honduras albeit that had not been found to be credible. However, his former gang involvement between 2006 and 2009 had been accepted and it was based on that limited gang involvement that Dr Rivera had made her findings in her expert reports. Mr Nathan maintained the Appellant would be at risk of persecution on return to Honduras.

Decision and Reasons

7. I reserved my decision on asylum but indicated in light of Ms Cunha's helpful concession that the appeal would be allowed on Article 8 grounds.
8. The issue I have now to determine is whether there is a real risk that the Appellant would be at risk on return to Honduras in light of the preserved findings of fact by the First tier Tribunal Judges.
9. Put at its highest, the facts accepted by First tier Tribunal Judge O'Garro were that the Appellant may have gotten involved with the street gangs when he was deported to Honduras from the USA in 2006 and that he got involved in drug trafficking in Honduras between 2006 and 2009, but not with or on behalf of Los Zetas cartel. The FtTJ stated that she had no reason to doubt that the Appellant's father and friends had been killed but she was not prepared to accept, without more, that their killings were by street gangs or the Zetas gang. In her decision, First tier Tribunal Judge Gaskell rejected the Appellant's claim that his mother and cousin had been killed [23]- [24]. The error of law in that decision was the failure to consider whether the Appellant could access sufficient protection if returned to Honduras in light of the expert report and addendum reports of Dr Rivera.
10. Dr Rivera in her expert report of 4 April 2021 states materially *inter alia* as follows:

"26. In Honduras, there are many gangs and criminal groups that participate illicit activity. These gangs range from the two largest transnational groups, Mara Salvatrucha (MS-13) and the 18th Street Gang (M-18) to more local Honduran gangs operating in rural areas or urban contexts. There are also large criminal organizations such as the Zetas and the Sinaloa Cartel from Mexico operating in Honduras. These large criminal organizations use Honduras as a corridor to

transport drugs from South America. They also produce drugs in some parts of the country...

30. Another type of criminal groups are the transport groups or transportistas. They are made of Honduran families or tight business networks from the country who move legal and illegal goods. They work with other transport networks; they move shipments and store goods for periods of time. It is important to point out that though these transport groups work in network, there is a lot of rivalry and competition between them as each seeks to gain control of goods.²⁰

31. The third type of criminal groups operating in Honduras are local criminal groups and street gangs such as the maras and other local groups without particular names. These groups are involved in local drug distribution, extortion, kidnapping, and human smuggling.²¹

32. The competition to control the variety of criminal markets by the different criminal groups is what makes Honduras so violent. The groups are territorial; the control of territory ensures dominance of the residents and the illicit economies. This is one of the reasons why gangs and criminal groups subordinate residents to their authority.

33. Transport groups and some large criminal organizations have interacted with political and business elites, as well as with corrupt security officials who aid them move illegal goods in the country.

34. Based on my experience and research, large criminal organizations, the maras and local gangs are present in both urban and rural areas in Honduras. [.....].

35. Violence of criminal groups, local gangs, and maras takes many forms, including murders, executions, kidnappings, rapings, beatings, and, in some cases, they use torture to punish or retaliate against people or groups who they feel have somehow wronged them. Criminal groups, local gangs, and maras are usually wellarmed with firearms, blades, and even handmade weapons.²³

36. Regardless of the form of gang activity, it is clear that the Honduran government lacks resources, manpower, and willpower to control gangs and their activities. As discussed above, the lack of 1984 stable government control and an effective police force results in Hondurans failing to have even the most meager state protection. The people are vulnerable to gangs' extortions and, in general, their use of violence not only because the police force lacks any real enforcement ability, but also because the police force is slow to react if responsive at all.

37. Aside from the fragility in state institutions that aim to protect, it is important to point out that some officials of the Honduran government are corrupt and work with criminal groups to traffic drugs or launder drug money. Some officials of political parties have accepted bribes from the criminal organizations. This was the case of the Sinaloa Cartel whose members bribed members of the National Party, the party currently in power. The participation of political elites and officials of the Honduran government in criminal activity with criminal organizations has explained why there is unwillingness to protect victims of violence and threats of criminal organizations.

38. *Based on my experience and research, members of criminal gangs and groups retaliate against any person who opposes their authority or rule of the governance they have established...*

40. *Many Hondurans who are targeted by illicit groups are afraid to seek protection from the police or tell the police that a gang member or a member of a criminal group has extorted, beaten, raped, or killed them or a member of their family, because these retaliate against persons who seek protection from the police or law enforcement. Filing a complaint with the police is perceived as a form of treason and a way of defying criminal groups. Members threaten, follow, beat, torture, and/or murder people who file police complaints.*

41. *Even in cases where a target of the gangs or a criminal group leaves Honduras and then returns years later to a different neighborhood, members use their connections with the police and law enforcement to track down and murder the returning target. In 2015, the Honduran government suspended 81 police officers who had collaborated with the maras, the M-18 and MS-13. They provided information about people the gangs were looking for and provided firearms to both maras.²⁴ Despite this effort, there are police officers and high member government officials working with gangs and criminal groups...*

62. *Mr. A C H fears that he will be brutally harmed and killed by the members of a criminal group that forcibly recruited him if to return to Honduras. Based on my research on Honduras, it is my expert opinion that he has a good reason to fear that this will happen.*

63. *If returned to Honduras, Mr. C H will most likely return to his hometown as most deportees do. Upon returning, the members of the criminal group will track him down and kill as a form of retaliation for refusing to work with the criminal groups and fleeing.*

64. *This form of retaliation is common in criminal groups. In Mr. C H's case, he has been singled out because he refused to work with the criminal group and fled. It is important to point out that the different types of criminal groups in Honduras, i.e. transnational organizations, transport groups, and maras and street gangs, seek territorial control and generally forcibly recruit members to work for them and participate in illicit activities. The fact that Mr. C H was forcibly recruited by a criminal group to work on illegal activities such as drug trafficking is consistent with my research and studies on organized crime, criminal groups in Honduras and Central America. It is very difficult, when a criminal group has territorial control over an area, to not follow the rules and orders of a criminal group. Not doing so generally leads to threats and then, after some days or weeks, to beatings. If the person continues to resist, he or she is generally killed. It would have been impossible for Mr. C H to resist the forced recruitment of the criminal group he worked for from 2006-2009.*

65. *Criminal groups, such as the one described by Mr. C H, retaliate against persons who refused to obey their orders and who flee. Victims escape and return years later believing they are safe; after a few days, these persons have been found murdered. During fieldwork, I encountered members of a family of a person targeted by the gang who had left, fleeing gang violence and retaliation. The person returned to his hometown roughly ten (10) years later, believing that it was safe to return. The criminal group killed him the following day."*

11. In an addendum report dated 31 October 2023, Dr Rivera reiterated her previous opinion and further stated:

“f. It is important to point out that Mr. A H C would not be able to leave a local criminal gang even if this gang has no connections to the Zetas or any other large criminal organization. It is not possible to leave a criminal gang without being punished. Gang members retaliate against persons who leave the gang or refuse to subordinate to them with death...”

j. The Honduran state is in part responsible for the displacement of persons who are victims of violence of criminal gangs. It is unable and unwilling to protect persons who are victims of gang violence. The state’s response to the violence and crime in the country has caused displacement. Some state security agents harass people (including residents) and abuse their power in areas that are controlled by criminal groups. This increases fear and mistrust towards state institutions. 4

k. If returned to Honduras, there is the high likelihood that members of criminal gangs will punish and retaliate Mr. Arcides Hernandez Cruz for fleeing the gang because he refused to work for them.”

12. In November 2023 the Respondent issued a CPIN in respect of Honduras: Gangs. This provides *inter alia* at 14.1.7:

“14.1.7 The ACCORD response December 2022 citing María Luisa Pastor Gómez of the Spanish governmental Institute for Strategic Studies who spoke about leaving a gang: “Once in [a gang], the new members accept a series of strict rules and values and find themselves forced to develop strong ties of belonging, unity, loyalty and solidarity with the new ‘family’ while simultaneously weakening their links to their own families and to society. In principle, joining a gang is an irreversible process, as the leaders do not allow anybody to leave, unless this is achieved through joining some evangelical church”... “If done without permission [leaving a mara]... implies certain death, and obtaining the leaders’ blessings involves long and arduous negotiations...”

And at 19.2:

“19.2 Current and former gang members

19.2.1 IDMC in a March 2019 report stated: ‘Street gangs demand absolute loyalty from members and their partners and families, and from people who live in the areas they control. Perceived acts of betrayal carry extreme risk and may be punished with death. Such acts include owing money, particularly for people who collect extortion payments or sell drugs, refusing the recruitment of a child and refusing sexual involvement with a gang member. People accused of betrayal tend to flee rather than filing a report, which may aggravate the threat even after displacement.’ 124

19.2.2 IDMC further noted: ‘Because gangs perceive failure to comply as an act of betrayal, the risk of those who flee being sought out and persecuted is high, making safe options within the country extremely limited.... The murder, attempted murder, disappearance, violent assault or rape of a relative, partner or friend perceived to have committed and [sic] act of enmity or betrayal often

triggers the displacement of whole households, because its members fear the risk will extend to them.’ 125

19.2.3 The AIR/FIU report 2020 stated: ‘According to the survey results, nearly 33 percent of former gang members said they or their families had been threatened by the gang. During the indepth interviews, former gang members explained that the immediate challenge they faced as they tried to leave the gang was death. Across respondents who were formerly in a gang and among community leaders, 20 of the 36 respondents said that former gang members perpetually fear being killed by a rival gang or their own former gang, in cases in which gang members perceive that a person who disengaged from the gang leaked information... ‘Relatedly, respondents said another consequence of desisting is having to leave the community or country in an attempt to escape the threat of being killed. One community member from La Ceiba said, “You could say that it is advisable for them to start a life in a different place, a different environment” (Interview 30, community member).’

And at 19.9.4:

‘Several other sources also report cases of migrants to the US who were deported to Honduras and killed shortly after their return. Among those sources are Just Security, an online forum for analysis of US security based at the New York University School of Law, The San Diego Union-Tribune, San Diego’s largest media company and an older article of 2015 by UNHCR, all of which report that killings of returnees are not exceptional events:

“Santos Chirino pleaded with an immigration judge to not return him to Honduras, where he feared he would be killed by the gang members against whom he had testified in court. The judge denied his asylum claim and he was shot to death less than a year after being deported. Chirino’s case was unusual only in that his fate upon return was documented.” (Just Security, 17 February 2022)

“[...] Yovin Estrada Villanueva returned to his family home just months after fleeing for his life [...]. His attempt to win asylum in the United States had failed. Just over a year later, shortly before his 28th birthday, Villanueva was killed by the very people he fled. He was shot while driving his mototaxi — a dangerous occupation in neighborhoods under gang control. [...] Villanueva’s decision to seek asylum [...] began with a murder — he witnessed a fellow mototaxi driver get killed. Details of what happened that day are not safe to talk about and remain unclear. [...]”

13. Most tellingly, section 4 Protection provides:

“4.1.1 In general, the state is willing but owing to a lack of resources and competence, and high levels of corruption, is unlikely to be able to provide effective protection. Each case must be considered on its facts, taking into account the nature, capability and intent of the gang and profile of person.”

14. I find that the evidence contained in the CPIN chimes to a large extent with that set out by Dr Rivera in her expert reports. I find in light of that evidence coupled with the accepted fact that the Appellant is a former gang member that there is a real risk that he would be killed or subjected to serious harm amounting to persecution and/or treatment contrary to article 3 of ECHR in circumstances

where the Honduran authorities would be unable to provide him with sufficient or effective protection.

Notice of Decision

15. The appeal is allowed on both protection and human rights grounds (articles 3 and 8).

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 October 2024