



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/02091/2015**

Appeal Numbers:

AA/02143/2015

AA/02142/2015

THE IMMIGRATION ACTS

Heard at : UT(IAC) Birmingham

**Decision and
Promulgated**

Reasons

On: 7th June 2017

On: 15th June 2017

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SDDV (+2)
(ANONYMITY ORDER MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Holt, instructed by TRP Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, citizens of Venezuela, are husband, wife and their child. They most recently arrived in the United Kingdom on 16 July 2014. The main appellant claimed asylum on 30 July 2014, with the second and third appellants as his dependants. I shall hereinafter refer to the main appellant as “the appellant”. The appellant’s claim was refused on 16 January 2015 and a

decision was then made on 21 January 2015 to remove the family from the UK. The appellants appealed against that decision and the appeals were dismissed in the First-tier Tribunal, initially on 5 May 2015, but then following a remittal to the First-tier Tribunal, on 15 September 2016 by First-tier Tribunal Judge Thomas. Permission was granted on 30 November 2016 to appeal that decision. At an error of law hearing on 28 February 2017, I found that Judge Thomas had made errors of law in her decision such that the decision had to be set aside and re-made by the Upper Tribunal on a limited basis.

The Appellant's claim

2. The basis of the appellant's claim was that he feared persecution in Venezuela from pro-government militia, as a result of his uncle EV's high profile political involvement and his own political activities. His uncle had stood against Chavez as a Presidential candidate in 2006, but had been unsuccessful. The appellant had supported his uncle in that election. His uncle also published political blogs. The appellant claimed that he was a member of the Primero Justicia Party, which he joined in 2012, and was appointed by the National Election Commission (CNE), at election time, as an official at the polling station in his home area and on a third occasion as head of the polling station. He referred to three particular incidents in which he was threatened. The first, on 14 April 2013, during the polling, was when he refused access to Chavistas who were demanding that they fix a fault on the electronic voting system and wanted to attend his polling station to do so. On 17 December 2013 he received a call from an unknown source threatening him to stop posting against the government or he would be killed. He received further calls from unknown numbers which he did not answer. On 23 April 2014 he was forced to stop his car by two men on a motorbike whom he believed to be "*colectivos*", associated with the government, and who pointed a gun at him and ordered him and his uncle to keep quiet and stop their publications and public demonstrations. His uncle also received threats. He left Venezuela on 15 July 2014.

3. The respondent, in refusing the appellant's claim, did not accept that he was politically active in Venezuela and did not accept that he was at risk on return.

4. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Thomas on 20 July 2016. The judge accepted that the appellant was the maternal nephew of a Presidential election candidate in the 2006 elections in Venezuela, standing against Hugo Chavez who won the election, and that his uncle had written a number of documents and articles against the government. She also accepted that the appellant was a member of the Primero Justicia political party and attended rallies and meetings, although not of a high profile, and she accepted that he was appointed head of the polling stations in his home area. The judge accepted that the incident in April 2013 at the polling station took place, but considered that it was because of the appellant's position as head of the polling station and not because of his identity, relationship to his uncle or political opinion. She accepted that the

appellant received one threatening telephone call in December 2013 from an unknown source and accepted that the incident in April 2014 occurred. However, she noted that the appellant's uncle continued to reside in Venezuela and had not been harmed and concluded that his uncle's political profile was not at a level which would indicate that he or his family and supporters would be at risk. The judge found that the incidents were "random acts against him during a politically heightened election period, by pro-government militia, possibly *colectivos*". She did not find that there was insufficient state protection available for the appellant and she considered that he could relocate in Venezuela. She dismissed the appeal on all grounds.

5. At an error of law hearing on 28 February 2017 and I found the judge's determination to be materially flawed, for the following reasons:

"Having heard submissions from both parties I concluded that Judge Thomas' decision had to be set aside. There is merit in the assertion that the judge's finding that the three incidents were "random acts" was insufficiently reasoned and in the observation, in the grant of permission, that the judge did not address the cumulative nature of the threats together with the appellant's political profile and his links with his uncle. It is material, as Mr Holt submitted, that the judge's findings at [35] were incomplete, with part of the paragraph missing, so that there is an absence of full and proper reasoning in regard to the threatening telephone calls and the expert's view on that aspect of the case. Likewise, there is merit in the assertion that the departure by the judge from the conclusions of the expert in relation to sufficiency of state protection, in her findings at [40], was insufficiently reasoned. It seems to me that, in a case in which Mr Mills accepted that another judge may have reached a different decision, and where the events relied upon by the appellant were accepted, it is incumbent upon the deciding judge to give full and proper reasons to support the conclusions on risk on return. Such reasons are lacking in this decision and, as such, the decision has to be re-made."

6. I directed that the case be listed for a resumed hearing in the Upper Tribunal for consideration of the question of risk on return, on the basis of the facts as accepted by the judge, which were to be preserved.

Appeal hearing and submissions

7. The appeal then came before me on 7 June 2017, by which time further evidence had been produced by the appellant in support of his claim as to an ongoing threat from the Venezuelan authorities. That evidence consisted of a transcription of an interview with the appellant's uncle on Venezuelan television which took place on 11 August 2016, in which he made serious allegations about the legitimacy of the Venezuelan presidency, together with confirmation of consequential threats made to the appellant's brother, D, leading him to flee Venezuela and relocate to Mexico.

8. Mr Mills advised me that there was no challenge to that evidence, nor to that of the witnesses whose evidence had not previously been disputed. He accepted that the evidence showed an ongoing threat to the appellant's family

and the expert evidence confirmed that the situation in Venezuela had seriously deteriorated. He had nothing to add.

9. Mr Holt provided a summary of the relevant parts of the evidence supporting the appellant's case and, in light of Mr Mills' helpful indication, I allowed the appeals. Mr Mills advised me that he was content for my decision to be brief, given the uncontentious nature of the proceedings. I therefore provide brief reasons for allowing the appeals.

Consideration and findings

10. The preserved findings of fact made by the First-tier Tribunal are, in summary, that: the appellant is the nephew of EV who stood against Chavez in the 2006 Presidential elections and who had written a number of documents and articles critical of the government; the appellant was a member of the Primero Justicia political party and attended rallies and meetings; the appellant was appointed head of the polling stations in his home area in 2012 and 2013; and the appellant was threatened on three occasions - firstly in 2013 when he denied *colectivos* access to the electronic voting system at the polling station, secondly when he received at least one threatening telephone call in December 2013, and thirdly when he was stopped and threatened by armed men on a motorbike in April 2014.

11. Whilst the First-tier Tribunal considered the three incidents to be confined to their circumstances at the time, it is clear that that is not the case and that the threat to the appellant has always remained, particularly as a result of his family ties to EV. That is indeed illustrated by the more recent evidence of the experiences of the appellant's brother, D, who received a threatening telephone call following their uncle EV's television appearance, whereby a demand for money was made and mention was made of the appellant himself, and further calls were received, although not answered. D's experiences, and his subsequent move to Mexico, are explained by the appellant in his statement of 16 February 2017 and are supported by a letter from D's former employer. That evidence was accepted by Mr Mills.

12. It is plain from that evidence that, whilst EV has managed to remain in Venezuela, his family members have been the subject of threats and continue to be so. That they are at risk on such a basis is confirmed by the expert Dr Brown in his reports of 15 April 2015 and 15 July 2016. In his report of 15 April 2015 at [3.12] Dr Brown referred to the *colectivos*, identified as armed pro-government urban militia, as becoming increasingly active since the 2014 protests, and at [5.2] he referred to the risks to family of opposition leaders. In his second report, of 15 July 2016, he referred at [3.1] and [3.2] to the increased risk to individuals linked to key opposition figures and to the risk being exacerbated by the subsequent months of economic deterioration and political instability.

13. The most recent expert report from Julia Buxton refers to the serious and significant deterioration in the economic and human rights situation in

Venezuela leading to an elevation to emergency status and to concerns for the international community. At [2.1] she opined that the risk on return to the appellants “cannot be overstated” and at [3.1] that “it is unconscionable to me that the client and his family can be removed to a safe location within Venezuela”. At [3.4] she referred to the inability of the appellant to return to any area of Venezuela to live anonymously, given that accessing state controlled food distribution would lead to him being immediately brought to the attention of the *colectivos*.

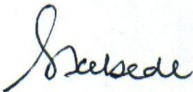
14. In light of that evidence and for all of these reasons, as acknowledged by Mr Mills, it is plain that the appellant and his family would be at risk on return to Venezuela and that they could not relocate to another part of the country to avoid such risks. The question of sufficiency of protection does not arise, given that their fear is of the state or state agents. In the circumstances I find that the appellant has been able to demonstrate, to the lower standard of proof, that he and his family would be at risk of persecution if returned to Venezuela and their appeals are accordingly allowed on asylum grounds and Article 3 human rights grounds. As such they are not entitled to humanitarian protection.

DECISION

15. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. I re-make the decision by allowing the appellants’ appeals on asylum and Article 3 human rights grounds.

Anonymity

The anonymity order previously made is continued, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 
Upper Tribunal Judge Kebede

Dated: 7 June 2017