Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00357/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th July 2017	**On 13th July 2017**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

J M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, of Counsel, instructed by Kidd Rapinet LLP
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Colombia. He arrived in the UK as a child in 1987 to join his mother but his status was never regularised at this time. Later he applied to remain as a spouse and on the basis of long residence although he was never granted leave on either basis.

2. In April 2005 the appellant was convicted of fraudulently evading the prohibition on importation of a class A drug and was sentenced to 13 years imprisonment. In March 2006 the appellant was notified of his liability to deportation. In September 2009 the appellant claimed asylum. In 2010 he was released from prison on

licence, and has remained in the community ever since without any further criminal convictions.

3. In March 2010 the appellant was notified of his liability to automatic deportation under the UK Borders Act 2007. On 4th February 2013 the respondent made a decision to proceed with deportation under s. 32(5) of the UK Borders Act 2007 and signed a deportation order against him. His appeal against the decision was dismissed on all grounds by First-tier Tribunal Judge Cockrill in a determination promulgated on the 19th May 2015. In a decision of Upper Tribunal Judge Chalkley dated 15th July 2016 it was found that the First-tier Tribunal had erred in law and the matter was remitted to be heard de novo by the First-tier Tribunal. The appeal was then heard by Designated Judge of the First-tier Tribunal Campbell, who dismissed the appeal in a decision promulgated on 10th February 2017.

4. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 1st June 2017 on the basis that it was arguable that the First-tier judge had erred in law in assessing the Article 3 ECHR risk to the appellant on return to Colombia as there had been a breach of confidentiality in the UK when the police sent the appellant's ex-wife's former partner a witness statement which disclosed he was an informer and given that he had suffered threats in prison in the UK which had led to him being segregated.

5. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions - Error of Law

6. The appellant argues firstly that the First- tier Tribunal erred because Detective Constable W, the police constable who dealt with the appellant's criminal case, sent a statement about his role as an informer regarding sophisticated Colombian drugs gangs involved with substantial amounts of money to his second partner's (Ms O's) former partner (Mr C) who was in a relationship with a Colombian national and asked for comments on the facts made within the statement. The appellant believes that given the animosity between the appellant / Ms O and this ex-partner (Mr C) that he might have shared information disclosed with the wider Colombian community. The appellant contends that this was a serious breach of the duty of care by the police, and it is argued that the First-tier Tribunal erred by finding that this does not lead to an Article 3 ECHR risk on return to Colombia for the appellant.

7. Secondly, it is argued that there was a failure to assess credibility properly. The First-tier Tribunal had accepted that threats had been made to the appellant's grandmother and aunts in Colombia, and that he was transferred and segregated whilst in UK prisons due to risk. The First-tier Tribunal found that the threats were not intense in the last part of his sentence however, and did not appreciate the impact of the authorities actions in reducing the threats, and failed to take into account the expert evidence from Dr Mathew Brown that the fact that threats had not been received in the UK did not mean that the appellant would not be at risk

of revenge in Colombia. The First-tier Tribunal did not accept that the appellant had received a threatening telephone call recently due to the delay in this threat being received and the failure to report it to the authorities by the appellant. It is argued that this was not a rational conclusion given the telephone threat was plausible in the context of the accepted historic threats to relatives in Colombia, and the fact that the cartel had lost £100,000 due to the appellant's actions in informing to the British authorities, and had been exposed in part of their methods of importation of drugs into the UK through his having given information.

8. Thirdly, it is argued that the First-tier Tribunal erred by not accrediting the public interest with requiring recognition of the appellant's role as an informer. The public interest is not a fixity and the appellant's actions are akin to those who make a contribution to the community. In this way it is argued that the Article 8 ECHR exercise has not been lawfully conducted.

9. The respondent did not supply a Rule 24 response.

10. I indicated to the parties at the start of the hearing that my initial view was that the findings of the First-tier Tribunal that Mr C had no intention to do anything malicious with the evidence of the appellant's information provided to the police and that the recent telephone threat to the appellant had not taken place were ones which were rationally open to the First-tier Tribunal to make and sufficiently reasoned. I also did not think the First-tier Tribunal had erred in relation to the treatment of the public interest. I indicted that I felt there was a more strongly arguable error that the First-tier Tribunal had erred in law when finding that the appellant would not be seen as an informer if returned to Colombia in light of the expert evidence and the Tribunal's accepted findings regarding the appellant. I asked that Mr Bramble address me on this issue.

Submissions – Error of Law and Remaking

11. Mr Bramble argued, in summary, that the First-tier Tribunal had found that the appellant had not been subject to any threats as a result of his information provided to HMRC in the UK since May 2010 and that nothing had happened to any family members in Colombia since 2005, when they had managed to evade such problems by moving to Bogota. He argued that the First-tier Tribunal was able rationally to say that distance in time since these threats meant that the appellant would no longer be seen as an informer and was no longer at risk as such on return. Further the expert report focused on people who had informed in Colombia against drugs gangs there and the appellant had never done this. He drew my attention to paragraph 4.1 of the report of Dr Brown which referred to those who had "informed the police about drugs trafficking in Colombia" not being able to live safely, and the fact the journalist Luis Carlos Cervantes, mentioned at 3.11 of the report, was someone whose problems had seemingly arisen in Colombia and involved no element of problems arising abroad. Mr Bramble questioned why the appellant would be at more risk in Colombia than in the UK, and pointed out that in the UK he had experienced no problems for 7

years. He pointed out that the First-tier Tribunal had found that there was no evidence that Mr LG, the co-defendant who had received the longest sentence, had not been shown to have any continuing interest in the appellant or any influence in Colombia. It was therefore open to the First-tier Tribunal to rationally conclude that the appellant was not going to be seen as an informer by drugs dealers in Colombia or as a person with any adverse interest in that country, as is done at paragraph 108 of the decision, and thus to discount the report of Dr Brown as irrelevant.

12. After hearing these submissions I informed the parties that I found that the First-tier Tribunal had erred in law on the basis of failing to sufficiently reason why the appellant would not be seen as an informer about drugs dealing if returned to Colombia, as is done at paragraph 108 of the decision, and thus for failing to give sufficient reasons why the report of Dr Brown did not evidenced him being at real risk of serious harm if returned to Colombia. I give my full reasons for this decision below. I said that I would remake the appeal myself on the basis of the factual findings of the First-tier Tribunal but reconsidering the issue of whether the appellant remained an informer in the eyes of those who might wish to subject such persons to serious harm in Colombia, and whether he would be at real risk of serious harm in light of the totality of country of origin evidence before the First-tier Tribunal. I asked for any further submissions on remaking. Mr Bramble relied upon his submission as set out above. Mr Lewis made the following further submissions.

13. Mr Lewis submitted that the First-tier Tribunal do not dispute that the appellant's grandmother and aunt were subject to threats as a result of his conviction and informing in Colombia in 2005 which compelled them to move to Bogota. It is accepted that the appellant was targeted in prison by drug gang members due to his informing behaviour in 2008. Details of these threats are set out in documents from probation and a solicitor who wrote on the appellant's behalf to the director of Rye Hill prison, which appear at pages C1 and C6 of the Supplementary Index for Use at the Hearing on 4th and 5th October 2016.

14. The expert evidence of Dr Brown, which is in no way challenged or disputed as from a proper expert, states at paragraph 3.3 that "groups involved in drug trafficking have long memories, and pride themselves in bearing and maintaining grudges." It is clear that the evidence of the appellant's conviction and lesser sentence is publicly available via the internet, see paragraph 3.13 of the report. It is also clear from paragraph 3.13 that violence from Colombian gangs is "less frequent in the UK", indicating that the UK authorities provide more protection than other states and are probably therefore deterring current threats. From paragraph 3.11, and the example of Luis Carols Cervantes, it can be seen that when protection is withdrawn, even after a period of many years, revenge can be taken against someone who is seen as having informed on drug traffickers. It is also clear that the appellant would be unlikely to be provided with protection in Colombia due to his low social status and lack of political clout, see paragraph 3.7 of the report.

15. It is absurd to submit that drugs traffickers would take a different view on those who inform to the authorities abroad compared to those who inform to the police in Colombia as drug trafficking is by its nature a cross-border activity. It is clear that the crime the appellant committed was an importation of a very large quantity of cocaine from Colombia to the UK, see letter of the criminal solicitor who dealt with the matter at page 20 of the Supplemental Bundle for use at Hearing on 11th February 2014, and that at the point of the trial and after sentence the appellant had been understood by his co-defendant's to have informed to the authorities and suffered threats in prison as a result. It is clear from this solicitor's evidence the appellant's information lead customs to discover hidden cash of more than £100,000. Further the expert report gives examples of those who have been returned to be killed in Colombia from abroad, see paragraph 3.13 of the report which comments on vendettas and murders of those returned from the USA to Colombia. The report also expresses the view that those who are informers are not just at risk from their own gangs but also from other drugs cartels, see paragraph 4.6, so even if there is a lack of evidence of the current interest of the appellant's own gang members this does not mean he would be safe.

16. The report of Dr Brown is in conclusion categoric that those, like the appellant, who have informed about drugs trafficking cannot live safely in Colombia, see paragraphs 4.1 and 5.1 of the report. As a result, Mr Lewis submitted the appellant's appeal should be allowed.

17. At the end of the hearing I reserved my determination.

Conclusions - Error of Law

18. The key issue is whether the First-tier Tribunal decision, made at paragraph 108, that there is no real risk the applicant would be seen, if returned to Colombia, as an informer, is viable. The First-tier Tribunal found that Dr Brown's report was of no relevance because there was insufficient evidence that this would be the case. This is in turn said to be the case because the incidents in prison cannot be linked directly with any issue of the appellant being an informer; because there is little known about the leader of the appellant's gang; because there is nothing to suggest this leader has an on-going interest in the appellant or reach in Colombia; and because nothing has happened in terms of threats to the appellant or his family since 2008.

19. The expert, Dr Brown, provides evidence that if googled the appellant's name brings up details of his drugs conviction and the fact that his sentence was lesser than his co-defendants. It is accepted by the First-tier Tribunal that: "The sentencing remarks made in 2005 show that the assistance given to HMRC in locating the secret compartment and the funds was reflected in the shorter sentence given to the appellant, thirteen years rather than the longest imposed of nineteen years", see paragraph 102 of the decision. It is accepted by the First-tier Tribunal that threats were made against the appellant in prison, see paragraph 104 of the decision, and that he was moved to "safe locations on more than one

occasion", but it was said that even if these were caused by suspicion that he had assisted the authorities they had "manifestly run their course during the appellant's sentence and were not maintained with any intensity at all in the last part of it". It would appear that the last incident in prison was in 2008, and the appellant was released from prison in 2010. The First-tier Tribunal does not appear to dispute that the appellant's aunt and grandmother were threatened in Colombian between 2003 and 2005 and had to move to Bogota, but it is clear that the First-tier Tribunal thought that these threats were now irrelevant, and did not indicate a current risk, due to lapse of time, see paragraph 109 of the decision.

20. It is accepted by the First-tier Tribunal that the appellant's history of being an informer was provided to Mr C who is married to a Colombian and who had a "modest media presence in the past" and who is a "film distributor" but not that he was intent on disclosing this information to the appellant's detriment, see paragraph 103 of the decision. I find that this finding is properly reasoned. It is not believed that the appellant received the recent telephone threat in January 2017. I find that this finding was for cogent reasons relating to a lack of complaint or report to the police, see paragraph 105 of the decision.

21. There is no doubt the appellant is Colombian, that he was involved with a drugs gang with other Colombians and was convicted in the UK of drugs importation from Colombia via Spain in April 2005 of the importation of £2,500,000 of pure cocaine. The expert evidence of Dr Matthew Brown is that drugs traffickers who get caught by the authorities are held personally liable for the loses (paragraph 3.3 of his report at page 7B of the appellant's bundle) and that "revenge through violence" is one of the means commonly used (paragraph 3.4, 3.6 and 3.13 of the same report). He also states that "Informers are not solely at risk from those they inform upon but, as the sources cited here attest, there are many cases where informers have been targeted by other gangs, or other groups, as punishment for the act of informing, or to prevent other compromising information being passed on", see paragraph 4.6 of the report. Further that the state protection scheme does not provide sufficiency of protection, see paragraph 3.9 – 3.11 of Dr Brown's report as it cannot be seen to "offer any reliable level of protection to 'ordinary people' who report threats or blackmail, or who inform on the activities of the organised criminal networks." It is categorically said to be "impossible to live safely and publicly in Colombia as someone who had informed the police about drugs trafficking in Colombia", see paragraph 4.1.

22. I find that the report of Dr Brown finds that there is a real risk of serious harm to anyone who "has informed to the police about drugs-trafficking in Colombia." Dr Brown does not put a time limit on that risk. I find that the First-tier Tribunal erred in law in concluding without reference to other evidence or greater reasoning than is set out in the decision that the appellant was not at risk because any risk which might be indicated by the initial adverse action by co-defendants in the UK and threats to Colombian relatives has become negligible with the elapse of time.

Conclusions - Remaking

23. I remake this decision only in relation to the Article 3 ECHR ground of appeal as no challenge is made to the legality of the Article 8 ECHR findings and conclusion. My remaking is based on the key factual findings of the First-tier Tribunal that the appellant did receive a lesser sentence because he provided information to HMRC about the whereabouts of a large amount of drugs money; that he did receive threats in prison (the last of which were in 2008) during his sentence which may well have related to this fact; and that his grandmother and aunt in Colombia had to move from their home area of Cali to Bogota (about 300km away) in 2005 due to threats as a result of his actions. It is not accepted that the appellant has evidenced any threat arising from the passing of information by the British police about the appellant's informing role to Mr C; it is not accepted that he recently received a threatening telephone call in January 2017; and there is no evidence provided to the Tribunal that the leader of the drug's gang in which the appellant was involved has expressed any on-going interest in the appellant since he left prison in 2010 or has any particular power or involvement with any type of organised violence in Colombia.

24. I place reliance in my assessment of risk on the expert report of Dr Matthew Brown, Reader in Latin American Studies at the University of Bristol who was commissioned to write his report by the appellant's solicitors. I am satisfied that Dr Brown is an appropriate expert who has relevant experience and research including working with the Colombia embassy in the UK and with Foreign and Commonwealth Office, and making trips to Colombia and meeting with Colombian contacts including academics, politicians and those working non-governmental organisations. He has been provided with full information about the appellant's case and confirms that he understands his duty to the court.

25. Mr Bramble did not draw my attention to any other relevant country of origin materials or make any submissions that it was not appropriate to give weight to the report of Dr Brown. I have however reviewed what is said in the reasons for refusal letter dated 4th February 2013 and the country of origin sources cited in that letter. Most of the material cited is from the US State Department Report on Human Rights Practices in Colombia for 2011 and supports what is stated at paragraph 33 of the letter: "that the security forces in Colombia suffer problems of corruption and commit human rights abuses, and that the legal system suffers from serious problems which led to a high rate of impunity." Perhaps the most significant contention is that the appellant could find safety by internally relocating as Colombia is a large and populous country.

26. The findings at paragraph 23 above are such that the appellant should be seen as someone who has informed against a Colombian drugs gang to the authorities, and as someone about whom this has been publicly known or strongly suspected. The evidence of the appellant's conviction and lesser sentence remains publicly available via the internet, see paragraph 3.13 of Dr Brown's report.

27. I do not find that the evidence of Dr Brown is supportive of a conclusion that lapse of time of a period of years (it is now nine years since the last problems experienced by the appellant and his family) means that there would be no risk to him as someone who had informed against a gang of Colombian nationals who imported drugs from Colombia. At paragraph 3.3 of his report it is stated that "groups involved in drug trafficking have long memories, and pride themselves in bearing and maintaining grudges." It is also clear from paragraph 3.13 that violence from Colombian gangs is "less frequent in the UK". I am satisfied that this indicates that the UK authorities provide more robust protection than other states and are probably therefore deterring anyone who might currently wish to make threats, and thus in turn lack of threats in the UK is not probative that they would not take place in Colombia. From paragraph 3.11 of Dr Brown's report, and the example of Luis Carols Cervantes, I accept that it can be seen that when protection is withdrawn, even after a period of many years, revenge can be taken against someone who is seen as having informed on drug traffickers. I also find that the appellant would be unlikely to be provided with sufficiency of protection in Colombia due to his low social status and lack of political clout, see paragraphs 3.7, 3.9 – 3.11 of Dr Brown's report as Colombia cannot be seen to "offer any reliable level of protection to 'ordinary people' who report threats or blackmail, or who inform on the activities of the organised criminal networks." The report also expresses the view that those who are informers are not just at risk from their own gangs but also from other drugs cartels, see paragraph 4.6, so the accepted lack of evidence of any current interest of the appellant's own gang members does not mean that the appellant cannot show a real risk of serious harm.

28. I do not accept Mr Bramble's argument that drugs traffickers would take a different view of those who inform to the authorities abroad compared to those who inform to the police in Colombia. As Mr Lewis has submitted, drug trafficking is by its nature a cross-border activity. The crime the appellant committed was an importation of a very large quantity of cocaine from Colombia to the UK, see letter of the criminal solicitor who dealt with the matter at page 20 of the Supplemental Bundle for use at Hearing on 11th February 2014. The report of Dr Brown also gives examples of drugs traffickers who have been returned from the USA after years abroad to be killed in Colombia, see paragraph 3.13 of the report. Further the risk Dr Brown identifies in his final conclusion is reliant on the appellant having "informed to the police about a drugs-trafficking matter" not having informed to the Colombian police, although clearly there should be a link (which I find exists in this case) to drugs trafficking in Colombia, as is evident from what is said at paragraph 4.1 of the report.

29. In light of the evidence of Dr Brown I do not find that the appellant could find safety by way of internal relocation. No area has been identified where drugs gangs do not have the ability to operate within Colombia, and I find that the risk he faces extends throughout the territory.

30. I therefore accept Mr Lewis's submission that the report of Dr Brown is clear in its conclusion that those, like the appellant, who are known to have informed about issues of drugs trafficking in Colombia to the authorities cannot live safely in

Colombia, see paragraphs 4.1 and 5.1 of the report. The evidence presented by Dr Brown is that this would lead to a real risk of the appellant facing violent attacks, torture and murder. I am satisfied that the return of the appellant to Colombia would therefore represent a real risk of serious harm to him.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal.

3. I re-make the decision in the appeal by allowing it on the basis that the deportation of the appellant would be a breach of the UK's obligations under Article 3 ECHR.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant and the appellant's children from the contents of his protection claim.

Signed: *Fiona Lindsley* Date: 11th July 2017
Upper Tribunal Judge Lindsley