



**Upper Tribunal  
(Immigration and Asylum Chamber  
PA/09483/2016**

**Appeal Numbers:**

**THE IMMIGRATION ACTS**

**Heard at Liverpool**

**Decision & Reasons**

**On 25 April 2017**

**Promulgated**

**On 19 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**MR. I E R N**

**(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs Chauduery, Counsel, instructed by Lawrence Lupin Solicitors

For the Respondent: Mrs M.Aboni, Home Office Presenting Officer.

**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.**

**DECISION AND REASONS**

Introduction

1. The appellant has permission to appeal the decision of First-tier Judge Froom who, following a hearing in October 2016, dismissed the appeal.
2. The appellant claimed protection on the basis he was a police officer in El Salvador and was at risk from gangs operating there. He said he was involved in an undercover police operation in 2015 when money was handed over to a gang. As a result of the operation one of the gang members was killed and others were arrested. The appellant became fearful that members of the gang had identified him and so he started to vary his schedule and told his employer of his fears.
3. In February 2016 his daughter had an altercation at school with another pupil. That pupil's mother was involved with a gang and she learned of the appellant's occupation.
4. In June 2016 the appellant was at home when he noticed three men with guns trying to gain entry. He contacted the police. One of the men almost immediately received a telephone call and signalled to the others and they left. The appellant believed they had a lookout. The police arrived after 10 minutes. The appellant took his wife and their 9-year-old daughter to his father's house some 20 minutes away. Two days later he told his supervisor of his fears. He was allowed to take a leave of absence.
5. On 7 July 2016 he resigned from the police. He returned to his home afterwards to collect belongings. He saw children whom he believed had been planted to observe goings-on.
6. He flew to the United Kingdom on the 30th July 2016. He was interviewed by immigration officials and was refused entry. He was detained overnight with the respondent intending to return him the following day. He then made a claim to protection and was released.

### The refusal

7. In refusing his claim the respondent accepted that he was a police officer from El Salvador. The claim did not engage the Refugee Convention. In any event the respondent did not believe his account and concluded it lacked credibility. It was not accepted he had been targeted by any gang members. The respondent also said that there was sufficiency of protection for the appellant in his home country.
8. In refusing his claim the respondent referred, amongst other things, to his account of three men attempting to break into his house. The respondent questioned how the intruders could have known immediately that the police had been contacted given that on his account it took them a further 10 minutes to arrive. He had

submitted a document said to relate to the incident which is dated 4 June 2016.

9. If the claim were true there was sufficiency of protection. Furthermore, he appellant could relocate. On his own account, his family had been able to live at his father's without incident.

### The First tier Tribunal

10. Both parties were represented before First-tier judge Froom. The judge heard from the appellant and had the appeal documents, including an expert report on country conditions. The judge commented on the country information at paragraphs 18 through to 29. At paragraphs 30 to 33 the judge sets out the burden and standard of proof applicable.
11. In a section headed 'Discussion, findings and reasons' the judge sets out the factors favouring the appellant. The judge referred to the acceptance he was a police officer and the background evidence indicating a police officer could find themselves a target of gang members. The judge refers to the appellant giving a detailed and largely consistent account.
12. The respondent had rejected the claim of the appellant being wanted by gangs. In considering this the judge focused upon the account he gave of three men coming to his home. The respondent had questioned the timeframe. The judge refers to the clarification sent following interview by his representative as well as the appellant's statement on this. However, the judge found the appellant appeared to be changing his account by extending the time frame to make it look more plausible. Related to this, the judge questioned how a lookout would know that the departure of a police car had anything to do with the appellant.
13. The judge also referred to documents submitted by the appellant in relation to the incident and the report to his superiors. The judge said on the face of it they corroborated the claim but the fact he had made a complaint did not necessarily mean the claim was true. The judge referred to the absence of evidence from the police officers directly involved. The judge referred to seeing the originals at the hearing.
14. The judge then commented on the appellant's subsequent return to his home on three occasions to collect belongings. The judge question why, if he was in such danger, he would go back. The appellant said he was accompanied by other men but the judge was not convinced pointing out that the gangs would have no scruples in attacking in that situation. The judge also commented on his wife leaving his father's house on several

occasions to collect information to support the claim. The judge was sceptical as to why she would go out if in such fear.

15. The judge also questioned why the family had not moved after the claimed altercation in February 2016 involving his daughter with a gang member's daughter if they were in fear as claimed.
16. The judge concluded that looking at the totality of the evidence they were not satisfied, on the low standard of proof applicable, that the claim was true. The judge concluded by stating that the generic risk to police officers was not enough to entitle him to protection.

### The Upper Tribunal

#### The application for permission

17. The application for permission to appeal contended the judge had applied too high a standard of proof to the evidence presented.
18. It was suggested the judge should have put to the appellant his concerns about the time frame of the three men being warned.
19. In questioning the likelihood of lookouts knowing about the dispatch of police following a call the judge failed to have regard to the expert report on such occurrences.
20. In the reasons for refusal letter the respondent had referred to his report of the incident. It was said that the document referred to him being subjected to 'threats with aggravation' and later refers to the 'reasons being unknown'. The respondent commented that the 'reasons unknown' was not consistent with his claim he was being threatened by gang members because of his work and his daughters altercation. The judge at paragraph 40 accepted there was an error in translation and that it should read 'threats by persons unknown' as opposed to 'unknown reasons'. The judge said he therefore regarded the respondent's point as neutral. The grounds contended that rather than being neutral the document submitted supported the appellant's claim.
21. The judge commented on evidence sent by the appellant's wife pointing out from the envelope she had given her home address rather than that of the appellant's father. The judge also noted that the appellant was described as working in the complaints department rather than a squad tackling extortion and gangs as he claimed. The judge commented that there was no opportunity to put these matters to the appellant as they were only

noticed by the judge afterwards. These points were not raised in the refusal letter. It was suggested in the grounds the judge should have given the appellant an opportunity to comment, either by reconvening the hearing or inviting written responses.

22. The expert report referred to the risk of harm to former and current police officers. The judge's comment that the generic risk for policeman was not enough, did not adequately address this.

### At hearing

23. At hearing, Mrs Chaudhery repeated that the judge materially erred in applying too high standard of proof; that the judge failed to put adverse matters to the appellant; that the decision was at odds with the expert report.
24. Regarding the standard of proof she submitted that the volume of evidence and its quality, including the expert report, should have led to a successful outcome.
25. Regarding the observations made by the judge after the hearing, she pointed out that at paragraph 43 of the decision the judge did not state he was not taking these into account.
26. She submitted there was a failure by the judge to properly consider the expert report. This was reflected at paragraph 53 where the judge commented that the appellant faced nothing greater than the generic risk faced by all ex-police officers. The expert indicated police officers were at specific risk.
27. In response, the presenting officer relied on the rule 24 response and highlighted the reasons given in the original refusal of leave by Upper Tribunal Judge Deans. She submitted that the judge directed himself appropriately. Regarding putting matters to the appellant, the judge had commented at paragraph 43 what he had noticed after the hearing but no specific findings were made. She submitted in the circumstances there was no error of law by the judge not recalling the parties and putting these matters to the appellant.
28. She also submitted there was no material error of law the reference to the generic risk to police officers. The expert report had not commented on a specific risk to all police officers.
29. Both representatives were in agreement that if I found a material error of law the matter should be remitted to the First-tier Tribunal.

### Consideration

30. I cannot see anything from the decision that indicates the judge did not appreciate the low standard of proof applicable. At paragraph 30 the judge correctly self-directed himself as to the relevant burden and standard of proof. The judge also refers to the decision of Karanakaran on the assessment of credibility. There is reference at paragraph 34 where the judge makes allowance for innocent mistakes which can occur and the dangers inherent in views as to plausibility absent from the background. Reference is made to the case law in relation to documentation and the correct burden of proof.
31. There had been an issue about the document of complaint submitted by the appellant. It was accepted there had been an error in translation and so an apparent inconsistency raised in the Refusal did not exist. The comment by the judge that he was therefore treating this as a neutral point did not mean the judge was disregarding the evidence. The judge indicated the complaint could be authentic but it did not mean it was true. What the judge was indicating is that the adverse credibility point raised in the refusal letter had been resolved. The same point arises in respect of paragraph 52. This was not been raised by the parties but illustrates what the judge is conveying. The judge has commented that the appellant only sought protection when he was about to be removed. The judge points out the respondent have not raised this and the precise details of his interview were not available. The judge therefore said he was treats this as a neutral point, meaning no adverse inference is being drawn.
32. It can happen when a judge reviews the evidence in preparing the decision that additional points are noted. If those points will make a material difference and have not been put there is a requirement in fairness to give the parties an opportunity to respond. However, I find the judge's comments at paragraph 43 are by way of observations. There is nothing to indicate these were such central issues that further comment was required. There is nothing in the decision to indicate any adverse inference was drawn on these matters.
33. I find the judge has properly balanced the evidence. The judge refers to favourable credibility points at paragraph 35. The judge comments on the background information and that police officers could be a target for gang members. The judge refers to considering the claim against the background evidence provided and refers to the increasing reach and violence of organised criminal gangs. The judge referred to gangs being assisted by family members and young children from the neighbourhood who are not members but who act as lookouts. Those that crossed a gang were subjected to swift and brutal retaliation which extended to their family members. The judge referred to specific police units being a

priority for targeting by gangs. It is clear from the judge's comments there was an appreciation of the background evidence of gangland violence. The judge quotes from the background information dealing with former members of the police force and that lower ranking officials living in the same neighbourhoods as gang members are vulnerable.

34. The judge recorded the UNHCR view that members of the police force could be considered a particular social group. The judge did not find anything about the appellant's situation as a police officer which placed him at particular risk beyond the norm because of his job. There is nothing to suggest that former police officers from El Salvador qualify for protection simply because of the former occupation. I can see no fault in the comment made.

35. The judge sets out details from the expert report and accepted she was qualified to comment on the claim being made. Based upon her knowledge of El Salvador the account given was entirely plausible and consistent with what is known about the country. She acknowledges that gang members could be alerted to the arrival of police either by other members of the gang being on the lookout outside the police station or corrupt officials. She also addresses the question of sufficiency of protection and relocation. Her comments are set out in the in the judge's decision. However, it was for the judge to sift through the facts of the case and any specific claim. I do not find a material error of law demonstrated by any of the points raised and it is my conclusion they amount to no more than a disagreement with the judge's findings .The decision indicates it was carefully prepared with the judge appreciated the issues arising and looking at all the evidence. The judge dealt with the appeal appropriately, focusing on the credibility issues central to the claim.

### Decision.

No material error of law has been shown in the decision of First tier Judge Froom. Consequently, that decision, dismissing the appeal shall stand.

Deputy Upper Tribunal Judge Farrelly

19th June 2017