



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02907/2017

THE IMMIGRATION ACTS

Heard at Field House
On 21 February 2018

Decision & Reasons Promulgated
On 23 March 2018

Before

UPPER TRIBUNAL JUDGE PITT

Between

XA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Caseley, Counsel, instructed by the Migrant Legal Project

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. This is an appeal against the decision dated 11 July 2017 of First-tier Tribunal Judge Fowell which refused the protection claim of XA.
2. There is a somewhat lengthy history to the appellant's claim but for the purposes of this decision I can focus on the outstanding ground of appeal which concerns the appellant's connection to his cousin, YA, whose appeal was heard on the same day before Judge Fowell and who was found to be a refugee. This was because YA was found to have shown a real risk of mistreatment on return at the hands of criminal gangs in El Salvador. Her account, accepted as credible, was that her brother, ZA, was killed by a gang after he refused to pay protection money. A death threat was then made to YA.
3. The consideration of YA's claim is set out in [50] to [76] of the First-tier Tribunal decision. The final paragraph indicates:-

“... Essentially, the gang could find her if they were committed to do so, but otherwise internal relocation is possible. Their commitment in this case is very doubtful, for very much the same reasons as I concluded that she does not come within the risk category of witness. She is no particular threat to the gang, as a witness or informant might be, and has not challenged them in any direct way. She was not present when they demanded the rent from the business, and have not sought to obtain further payment from her or to harm her, beyond giving her the threatening message. At all times they knew where she lived and did not approach her again. The business has closed or been taken over, so there is no obvious gain to them in making further demands of her. On the other hand, I have also found that her brother was actually killed by them and I accept her evidence that she was approached by these two gang members and told that she would be next. Although it seems unlikely on balance that they would in fact exert themselves to track her down, the balance of probabilities is not the correct test here either, and I conclude that there is, given their tight territorial control and network of communication, still a real possibility that she would be located and seriously harmed on return.”

4. The appeal of XA, on the basis of being a relation of YA, was addressed by the First-tier Tribunal at [48]:

“48. The final basis on which he brings this further claim is that there is (sic) a family member of the first appellant's brother, he would also now be at risk on return. Again, the same question arises - what reason would [the gang] have in pursuing him as the family member of [ZA]? His cousin was living in [B] in the far west of El Salvador and was murdered in March 2016. The second appellant and his family were, until 2011, living in [C], which lies on the coast about 30 miles southwest of [D] and (from the map provided at page 44 of the appellant's bundle) nearly 50 miles in a direct line from [B]. They left [C] and moved to a rural area in the mountainous region inland, but again, far from [B]. And at the time of his cousin's death he had been in the UK for over two years. Whether his home area is regarded as [C], or its rural hinterland, no reason has been suggested why, if he returned there, he would be connected in any way with his cousin's death, or that this would provide any motive for further threat of harm. Whilst I accept the

general proposition that family members of gang targets may be at risk, I have seen nothing to suggest that they would be hunted down in different parts of the country, years later, in the absence of any obvious purpose.”

5. The appellant’s ground of appeal is that the country materials did not allow for a conclusion that there would not be a real risk to him on return as a family member of his cousin. Further, the reliance on factors such as the geographical distance and need for “any obvious purpose” for a risk of harm to arise from gangs were not identified as relevant or material factors in the country materials.
6. As indicated by the First-tier Tribunal in [48], there was certainly material in the extensive country evidence provided showing that family members of those of adverse interest to gangs could be at risk because of the strong and widespread presence of gangs across the country. Those materials were identified in the skeleton argument provided to the First-tier Tribunal. They were also highlighted in a “Schedule of Essential Reading” which is at pages 1 to 43 of the appellant’s bundle of country materials.
7. In that Schedule, attention was drawn to page 61 which is the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador dated 15 March 2016. That document describes on page 61 how gangs operate in El Salvador:

“Despite being the smallest country in Central America, El Salvador is the nation reported to be the most affected by the violence of street gangs (*pandillas*) and reportedly has the highest concentration of gang members of any country in the region. Across most of the departments that make up the territory of El Salvador, many hundreds of local street gangs are reported to operate in both urban and rural zones, with between 30,000 and 60,000 active members in total. These gangs are considered to be the main force that has been driving the increase of violence in El Salvador over the last decade and the surge in murders and population displacement over the past couple of years. Official statistics show that 65 per cent of the murders registered in the country between January and mid-November 2015 were committed by gang members.”

8. Page 3 of the Schedule of Essential Reading identified a further extract from the UNHCR Eligibility Guidelines set out on page 63 of the country materials bundle. This stated as follows:

“The authorities estimated that in 2013 there were 470,000 people affiliated with the gangs in El Salvador, as family members, friends or others; by mid-2015 this figure had risen to between 600,000 and 700,000 people (i.e. 10 per cent of the population).

Gangs are reported to exercise extraordinary levels of social control over the population of their territories (and, to a lesser extent, over other territories where they practise extortion). In these zones, inhabitants are reportedly required to ‘look, listen and keep quiet’ (*‘mirar, oir, callar’*) and often face a plethora of gang-imposed restrictions on who they can talk with and what

about, what time they must be inside their homes, where they can walk or go to school, who they can visit and who can visit them, what they can wear, and even, reportedly, the colour of their hair. It is equally forbidden for inhabitants to show 'disrespect' for the gang, a subjective evaluation on the part of gang members that can reportedly encompass a multitude of perceived slights and offences, such as arguing with a gang member or refusing a request, resisting a child's recruitment into the gang, or rejecting the amorous attentions of a gang member."

9. The Schedule of Essential Reading also indicated on page 12 that at page 596 of the bundle a report on gangs in El Salvador from 2010 stated:

"Our interviews revealed that gangs increasingly target people outside their own territory, including neighbourhood residents who happen to be in the wrong place at the wrong time, local businesses, or those who do not comply with gangs' demands for *renta*. Gang violence has greatly limited the freedom of movement for ordinary people, who often live in fear of moving around or outside their neighbourhoods and who face violence because of their residence in gang-controlled areas. Former gang members and community residents interviewed by our researchers reported that residents of area controlled by gangs are constantly subjected to extortion and threats of violence by gang members."

10. The Schedule of Essential Reading on page 16 referred again to the UNHCR Eligibility Guidelines on page 63 which went on to say:

"Gangs in El Salvador are reported to achieve this degree of social control principally through the use of threats and violence to create a pervasive atmosphere of fear among inhabitants, especially amongst those without family or other links to the local gang."

and:

"Persons who resist the authority of the local gang or who even just inadvertently cross it, or who collaborate with the security forces or with rival gangs, are reportedly subjected to swift and brutal retaliation from the gang. Not only are such persons killed by the gangs but their family members are often targeted as well."

11. The Essential Reading Schedule goes on, on page 16 to highlight extracts from the UN High Commissioner for Refugees (UNHCR), Guidance Note on Refugee Claims Relating to Victims of Organized Gangs dated 31 March 2010. At page 104 of the country materials bundle, that document states:

"Gangs may direct harm at individuals who in various ways have resisted gang activity or who oppose, or are perceived to oppose, the practices of gangs. Members of this group need to be understood in their specific country and societal contexts. In areas where criminal activity is widespread and law enforcement is incapable of protecting people from gang violence, a person

expressing opposition to gangs will often stand out from the rest of the community. Such 'gang-resisters' may be grouped broadly into the following categories:

- ...
- c. business owners and others unable or unwilling to meet extortion or other unlawful demands for money or services by gangs;
- ...
- g. other individuals who are, or are perceived to be, a threat to gangs or as not conforming with their practices, including ethnic and sexual minorities."

The same report goes on, on page 106 of the country materials to refer to the risk family members:

"Family members of the above categories may also be routinely targeted by gangs. Typically, families could be subjected to threats and violence as an act of retaliation or to exert pressure on other members of the family to succumb to recruitment attempts or extortion demands. Even though the applicant may not have personally opposed the gangs or does not share the views of his/her family members, the gang or in some cases agents of the State may attribute such resistance or views to the applicant. For example, a woman (or girl) could be exposed to harm due to being perceived by gangs as holding the same anti-gang views as her father, husband, son or brothers."

12. On page 114 of the country materials bundle at paragraph 40, the same report indicates:

"An applicant who is a family member of a 'gang resister' (or gang member) could also be persecuted for reasons of his/her family membership, for example, where the family has a known record of being opposed to a gang. In such cases, the applicant's 'family' may be regarded as a relevant particular social group. Family members may also experience persecution because of their imputed membership in any of the above-mentioned groups."

13. The Schedule of Essential Materials also identifies relevant extracts from the country materials concerning the ability to relocate internally. These materials discuss the manner in which the gangs control the population over a wide area. On page 36 of the Schedule there is reference to page 133 of the country materials which is a Canadian report, entitled "Canada: Immigration and Refugee Board of Canada, *El Salvador: Information Gathering Mission Report – Part 1. Gangs in El Salvador and the Situation of Witnesses of Crime and Corruption*, September 2016". On page 133 that document states:

"Another way of controlling territory is by detaining people and asking for their identification documents (Documento Único de Identidad, DUI). For example, when teachers must travel to a school in another neighbourhood where they are employed, gangs detain them, ask them to produce their DUI,

and interrogate them in order to obtain information about the neighbourhood where they live, who their family members are, and what is the purpose of their presence in the neighbourhood. Gangs also routinely ask visitors or strangers to produce their DUI to find out where that person comes from and which gang operates there. They also post closed circuit TV cameras outside neighbourhoods to monitor and control the movement of people.”

14. On page 43 of the Schedule, the difficulties for those returning to El Salvador are referred to and an extract from the UNHCR Eligibility Guidelines referred to and which is contained at page 79 of the objective materials bundle:

“Deportees are reported to be easily identifiable by gang members at the point of return to El Salvador, putting deportees who had left El Salvador because of specific problems with a gang at particular risk. In some cases, deportees and other returnees who left the country due to insecurity or threats have been killed by gangs shortly after arrival in El Salvador. Deportees and returning migrants who bring resources from overseas are also reported to be an identifiable target for extortion by the gangs and thus face heightened threats, as are children and other persons in El Salvador who receive remittances from family members living and working overseas.”

15. The Schedule of Essential Reading also identifies an extract on page 133 of the bundle from the Canadian Immigration and Refugee Board report which states:

“Gangs exert their influence all over the country. Authorities have lost control over territory to gangs, as the latter decide who enters and who leaves from neighbourhoods. Gangs are very vigilant in controlling their territories and they question whoever enters these territories. According to El Faro, people in El Salvador know which gang exerts its influence in the neighbourhood in which he or she lives.”

16. The appellant’s challenge is that the country material did not afford for any other conclusion other than that he would be at risk on return because of his connection to his cousin who had been killed by a gang and his cousin, YA, who had received death threats from the gang. The country materials made extensive reference to the risk to family members of those even perceived to be in some way opposed to a gang and gave no indication that any “obvious purpose” or reason at all would be required for this adverse interest to arise regarding a family member. The judge had noted “extensive evidence” of the “territorial control” which gangs exert and the difficulty of anyone being able to relocate in order to avoid a risk.
17. The challenge was also put on the basis that the country material provided no objective basis for the judge’s conclusion that a period of time would be sufficient for the risk to diminish. The appellant’s cousin had been killed only a year and four months prior to the hearing and this was not found to be a relevant criterion such as to be able to diminish the risk to his cousin, YA.

18. Further, the respondent's Rule 24 letter sought to argue that the appellant could not succeed because the evidence of the cousin had been that her mother and grandmother remained in El Salvador and this undermined the risk to him. There was also the matter of the appellant being a cousin of the refugee relative and not a sibling, the relationship which had led to the cousin herself being recognised as a refugee. As indicated for the appellant by Ms Caseley, neither of these factors were matters which the First-tier Tribunal Judge relied upon here when finding no risk on return for the appellant. Nor, it was maintained, in the face of the appalling objective evidence on the country situation in El Salvador, could they be said to be factors capable of showing a sufficiently material reduction in risk to the appellant.

Discussion


19. It is my judgment that the country material was sufficiently cogent so as to show a material error of law in the First-tier Tribunal's conclusion in [48] that there was no risk on return to the appellant. In this part of his appeal, there is no issue of credibility. His cousin, YA, was found credible as regards the murder of her brother and the threats of murder to herself. The appellant's relationship to her is not in doubt. The appellant is a family member of someone who would face a continued risk of serious harm from a gang on return to El Salvador. The risk arose less than 2 years ago. The risk to someone merely on the basis of a family relationship is clearly identified in the materials which do not identify only immediate family members as being at risk. The country evidence does not refer to there needing to be more than a family relationship for a gang to act.
20. Further, the country evidence of the very extensive "tight territorial control and network of communication" operated by criminal gangs across El Salvador indicated a real risk of identification, additionally so as a returnee or if going to a new area. The country materials, describing country-wide malign gang activity and control and their strong information and communication operations, did not permit the finding that the geographical distances and different home towns was capable of showing a diminished risk to the appellant.
21. I therefore set aside this aspect of the decision of the First-tier Tribunal. The parties were in agreement that the appeal could be re-made in the Upper Tribunal on the basis of the materials already provided. I therefore proceeded to re-make the decision.
22. The re-making is relatively straightforward given the narrow compass of the issue, whether the relationship to YA and ZA would lead to a risk to the appellant in the context of gangs in El Salvador. Further, the relevant country materials have already been analysed above. My conclusion is that the appellant's profile is sufficient for him to show a real risk of harm on return for a Refugee Convention reason, being a family member of someone murdered by a gang and having another relative threatened with serious harm by a gang in El Salvador. His profile is reasonably likely to become known because of the pervasive geographical spread of the gangs and their information gathering techniques and control of the civilian population.

He is additionally likely to be of adverse interest as a returnee, whether he goes to areas where he is known or to new areas. The simple fact of his association with YA and ZA, following the country materials provided here, is sufficient for him to be found to face a risk of serious harm. The strength of the country material is such that I remain of this view even after taking into account that the evidence did not indicate that YA's mother and grandmother who have remained in El Salvador have been harmed. That is also my conclusion after considering the passage of approximately 2 years since the death of the cousin, the passage of time not being identified in the materials as material and where the applicant will be of heightened interest merely on account of his return.

23. I therefore find that the appellant succeeds in his appeal on both refugee and Article 3 grounds.

Notice of Decision

24. The decision of the First-tier Tribunal discloses an error on a point of law.
25. The appeal is remade and allowed on protection grounds.

Signed: 
Upper Tribunal Judge Pitt

Date: 21 March 2018