



Upper Tribunal

**(Immigration and Asylum Chamber) Appeal Number: PA/08082/2019 (V)
PA/11270/2019 (V)**

THE IMMIGRATION ACTS

**Heard by *Skype for Business*
At George House, Edinburgh**

**Decision & Reasons
Promulgated
On 14 October 2020**

Heard On 7 October 2020

Before

UT JUDGE MACLEMAN

Between

**ADELOS ADONIN AREVALO MARIN &
ELIAS MISAEL MARIN AREVALO**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr O Olabamiji, of DMO Olabamiji, Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:

- (i) The respondent's decisions dated 8 August and 11 November 2019.
- (ii) The appellants' grounds of appeal to the First-tier Tribunal.
- (iii) The decision of FtT Judge Montgomery, promulgated on 22 April 2020.

- (iv) The appellants' grounds of appeal to the UT, 1 - 3, stated in the application for permission to appeal dated 4 May 2020.
 - (v) The grant of permission by the FtT, dated 20 May 2020.
- 2.** I conducted the hearing from George House. Representatives attended remotely. The technology functioned well, enabling an effective hearing. I am obliged to both representatives for their submissions.
 - 3.** Having heard those submissions, I reserved my decision.
 - 4.** The grounds of appeal are:
 - (i) Inadequate assessment of risk on return due to past work as a police officer.
 - (ii) Failure to treat an expert report as an integral part of credibility findings.
 - (iii) Inadequate assessment of sufficiency of protection.
 - 5.** Ground (i) accepts that the judge considered risk based simply on the former occupation of the first appellant as a police officer, but alleges that the judge "overly emphasised the lack of past persecution". The ground cites case law on absence of past persecution not denying future risk, and cites background evidence that gangs target police officers, particularly lower ranking and poorly paid officers, and their families. It is said to be unclear how the judge weighed this evidence. Finally, the ground cites authority that even in the case of a person who has been completely disbelieved, there may be risk due to perception on return.
 - 6.** Submissions did not add significantly to this ground.
 - 7.** As Mr Whitwell said in reply, the legal principles and background evidence cited are not in dispute.
 - 8.** As the ground accepts, the judge did deal with the point, as explicitly as could be:

"[92]Having accepted that the first appellant worked as a police officer, I must consider whether he would be at risk on return to El Salvador merely on the basis of his former occupation."
 - 9.** The appellant has not referred to anything in the decision which runs against that approach, or from which it might be taken that the judge thought that her finding of no past persecution meant there could be no future risk. The tenor of the decision is to the contrary.
 - 10.** Ground (ii) cites authority on not dealing with a report as an "add on"; suggests that the report was not dealt with as an integral part of the credibility findings; and cites the report on the possibility of delayed action by a gang against an officer, on the bribing of judges, and on risk, based on a gang's knowledge of the appellant filing a police report before he left the country.

- 11.** Further to this ground, Mr Olabamiji emphasised [11] of the grounds, and [7] and [44] of the report by Professor Young, where he opined that the first appellant was in grave danger of retaliation, having filed a report of which a gang would be aware.
- 12.** I do not consider that ground (ii) fairly reflects the decision, which is clearly and meticulously explained. A judge has to adopt some order of treatment. She cites authority at [50] on how to approach credibility, and she applies that approach. Although the ground says that when dealing with external factors at [72] - [78] the judge did not deal with the report, she found at [75] that the claim was consistent with external factors. The features of the report cited in ground (ii) take that matter no further.
- 13.** Decisions are to be read as a whole. The judge says at [87], "In reaching my conclusions I had regard to the expert report". There is no reason not to take her at her word. She accepts that Professor Young is an expert, and accepts his evidence on the general situation in El Salvador at [88].
- 14.** The expert's views at [7] and [44] of his report were entirely conditioned on the truth of the appellant's claims, which was for the judge to determine. In that exercise, the expert's views were given full value.
- 15.** There is nothing in the expert's report whereby allegations to the police of invented incidents, designed to set up an asylum claim, might create a risk from anyone.
- 16.** On ground (iii), Mr Olabamiji said that the SSHD's latest guidance concedes that there is no sufficiency of protection in El Salvador. He accepted that the item emerged only post-decision, but he argued that the evidence of a high risk of persecution of police officers, along with the respondent's policy, required the UT to reverse the outcome of the present appeals.
- 17.** Mr Olabamiji did not refer directly to the policy, but Mr Whitwell was able to identify it and supply the link in course of submissions. It is the respondent's *Country Policy and Information Note - El Salvador: Gangs Version 1.0 February 2020*. It has a publication date of 24 February 2020, which is 2 days after the FtT's decision was promulgated. The relevant policy statement is at 2.5.13:

'In general, given the weaknesses in the criminal justice system and the size, capability and influence of the main gangs, while the state is likely to be willing it is unlikely to be able to provide effective protection. However, each case will need to be considered on its facts, taking into account the nature, capability and intent of the gang and the profile of person in fear of harm.'
- 18.** Mr Whitwell suggested that the policy should not be considered, because it post-dates the decision; is not part of the grounds or the grant of permission; and was not referred to in any form, prior to the hearing in the UT.

19. Those were well taken points; but in any event, the CPIN discloses no error by the FtT, even with the benefit of hindsight.
20. The evidence underpinning the policy statement is cited later in the document. There is no need to refer to it, because it has not been suggested that the policy is not soundly based on the evidence.
21. The policy is not quite as sweeping as was suggested for the appellants. Each case turns on its own facts, even where an appellant has shown risk from a gang.
22. Whether there is general sufficiency of protection against risks of the nature claimed is irrelevant, when the appellants have not shown that any gang has any interest in them.
23. The final submission for the appellants was that the finding that the first appellant was a police officer in El Salvador, taken with the background evidence of targeting of police officers by gangs, and the absence of sufficiency of protection, was enough to show that the outcome should be reversed. However, for all the above reasons, I find that the FtT was correct to find that those propositions go beyond the evidence.
24. The grounds do not show error on (i) assessment of risk to a police officer, (ii) integration of the report into the credibility assessment, or (iii) sufficiency of protection, based on materials before the tribunal; and (iii) was not, in any event, a decisive issue.
25. **The decision of the First-tier Tribunal shall stand.**
26. No anonymity direction has been requested or made.



8 October 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.