



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/02404/2020

THE IMMIGRATION ACTS

**Decided at Cardiff Civil Justice Centre
On 20 January 2022
Under rule 34**

Decision & Reasons Promulgated

On 31 January 2022

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**M A P H
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer

For the Respondent: Mr S Ibrahim, NLS Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) (the "UT Rules 2008") we make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the respondent (MAPH). This direction applies to both the respondent and to the appellant and a failure to comply with this direction could lead to contempt of court proceedings.

2. The respondent (who was the appellant before the FtT) is a citizen of El Salvador who was born on 29 December 1983. He arrived in the UK on 29 October 2019 and claimed asylum. His wife and two children are dependants on his claim. He claimed to fear the Mara Salvatrucha Gang (MS 13 gang).
3. On 26 February 2020, the Secretary of State refused the respondent's claims for asylum, humanitarian protection and under the ECHR.
4. The respondent appealed to the First-tier Tribunal. In a decision sent on 26 February 2021, Judge Suffield-Thompson allowed the respondent's appeal on asylum grounds and under Art 8 of the ECHR.
5. The Secretary of State appealed on the basis that, although the judge had accepted the respondent was at risk on return to El Salvador, she had also found that the risk was not as a result of a Convention reason. She was, therefore, wrong to allow the appeal on under the Refugee Convention.
6. On 6 April 2021 the First-tier Tribunal (Judge Loke) granted the Secretary of State permission to appeal.
7. The appeal was listed for hearing on 19 January 2022. In advance of the hearing, on 18 January 2022 the parties filed a 'consent order' in which they agreed the following disposal of the appeal:
 - (i) the judge erred in law in allowing the appeal under the Refugee Convention;
 - (ii) the judge should have allowed the appeal on humanitarian protection grounds;
 - (iii) the Upper Tribunal should set aside the FtT's decision and re-make the decision allowing the appeal on humanitarian protection grounds and under Art 8 of the ECHR;
 - (iv) the hearing on 20 January 2022 should be vacated and the appeal be determined "on the papers".
8. We conclude that the appeal can properly be determined in the interest of justice without a hearing under rule 34 of the UT Rules 2008.
9. We agree with the disposal of the appeal to which the parties consent.
10. The judge erred in law (at [50]) in allowing the appeal under the Refugee Convention in the light of her finding that the real risk of serious harm to the respondent did not arise from a "Convention reason" (at [15]).
11. However, in the light of the unchallenged findings that the respondent (a) is at real risk of serious harm on return to El Salvador ([44] and [51]), (b) cannot obtain a sufficiency of protection from the State ([47]) and (c) cannot reasonably be expected to internally relocate, the respondent is

entitled to humanitarian protection under para 339C of the Immigration Rules (HC 395 as amended).

Decision

12. The decision of the First-tier Tribunal to allow the respondent's appeal on asylum grounds involved the making of an error of law and that decision is set aside.
13. We remake the decision allowing the appeal on humanitarian protection grounds and under Art 8 of the ECHR.

Signed

Andrew Grubb

Judge of the Upper Tribunal
20 January 2022