



**Upper Tribunal
(Immigration and Asylum Chamber)
001293**

Appeal Number: UI-2022-

PA/07917/2019

THE IMMIGRATION ACTS

**Heard at George House,
Edinburgh
on 28 September 2022**

**Decision & Reasons
Promulgated
on 18 November 2022**

Before

**UPPER TRIBUNAL JUDGE MACLEMAN
& DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

C E S M

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co,
Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Background

1. The Appellant, born on 18 October 1998, is a national of El Salvador. He sought international protection because he fears violence from gangs. The respondent refused his claim. His appeal to the First-tier Tribunal was firstly dismissed by a decision promulgated on 24 October

2019. That decision was set aside by the Upper Tribunal in a decision promulgated on 13 April 2021. The case was remitted to the First-tier Tribunal with specified findings preserved.

2. In a decision promulgated on 15 November 2021, First-tier Tribunal Judge Komorowski dismissed the appeal on all grounds.
3. Grounds of appeal were lodged by the appellant and on 10 June 2022 Upper Tribunal Judge Rintoul gave permission to appeal stating:

It is arguable that... the Judge erred in concluding that there was not before him material indicating that the appellant would be at risk if questioned, or on the way from the airport. It is also arguable that there is an apparently contradictory finding as averred at 1(vii).

The Hearing in the UT

4. Mr Winter moved the grounds of appeal. He told us there is no real dispute that the primary facts and that the appeal focused on what is likely to happen to the appellant on his journey from the airport to his home area, and on risks in that area.
5. Mr Winter reminded us of the preserved findings of fact and drew our attention to background materials which were placed before the Judge. He told us that the Judge found a real possibility that the appellant will be stopped and questioned. He said that the Judge gave inadequate reasons for finding that the appellant's peaceful responses to gang members would be sufficient to remove the threat of violence.
6. Mr Winter told us that the expert report by Prof Young, together with the background materials, provided the Judge with persuasive evidence of a real risk to the appellant, and that the Judge gave inadequate reasons for the finding that the appellant was not at real risk of violence from gang members.
7. Mr Winter argued that the Judge gave inadequate reasons for finding that there was no risk in the appellant's home area. He relied on background information and the key passage index found in the appellant's fourth inventory of productions. Mr Winter argued that it had been accepted that the appellant had been questioned by gang members, and that finding should have led the Judge to the conclusion that the appellant has a well-founded fear of persecution.
8. Mr Diwnycz opposed the appeal by adopting the reasoning set out in the respondent's rule 24 note.

Analysis

9. After narrating the procedural history of this appeal at [5] of the decision, the Judge succinctly summarised the preserved findings of fact which created the starting point for consideration of the appellant's appeal. In essence, the appellant had one frightening

encounter with a gang member from MS 13 in October 2018. That happened because the appellant's place of employment was in an area controlled by MS 13, and the appellant lives in a neighbouring area, which is controlled by Barrio 18. The appellant has two uncles who are members of the police. The appellant has not encountered difficulties within his home area and had neither difficulties nor further enquiries following his encounter with MS 13 in October 2018. Future risk arising from the appellant's uncles' employment was very low.

10. At [14] the Judge takes the appellant's witness statement as a sincere account, but correctly directs himself that he must assess whether the appellant's fear is objectively well-founded. The Judge then turns his attention to the expert report, which he considers in detail between [15] and [26] of his decision.
11. Between [29] and [35] the Judge carries out a holistic assessment of the evidence. At [29] he clearly takes account of six claimed risk factors which include the appellant's prolonged absence from his home area and the risk of travelling from the airport in El Salvador to his home area.
12. The second ground of appeal ("*risk in home area*") does not succeed in light of the careful analysis contained in [30] & [31] of the decision. There, the Judge quite clearly considers any risk there might be to the appellant in his home area. In assessing the risk the Judge takes account of the background materials and Prof Young's expert report.
13. The first ground of appeal ("*travel from airport to the appellant's home area*") also fails. At [32] the Judge considers the appellant's journey from the airport to his home area. The Judge specifically considers travelling through different gang territories. The Judge explains his reasoning for finding that the appellant would not be at risk on the journey from the airport to his home area.
14. The Judge sets out good reasoning for his findings of fact. The Judge carefully analysed the evidence and directed himself correctly in law before reaching a decision well within the range of decisions available.
15. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

16. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all the evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The decision does not contain a material error of law.
17. We also find ourselves in agreement with the respondent's line of analysis in the rule 24 response, which was maintained in submissions. The appellant did not show that he is at any greater risk outside his home area of gang control than any other citizen travelling within the country, to or from the airport, or anywhere else. Gang violence is widespread but does not reach the pervasive level of risk to all citizens which qualifies them for international protection.
18. Parties did not address anonymity. There is no apparent ongoing need to depart from the principle of open justice. However, as a precaution, the anonymity order previously made is maintained until appeal rights are exhausted. If there is any onward appeal then any application to extend, amend or vary the anonymity order must be made to the UT or to the Court.

DECISION

19. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 15 November 2021, stands.

P Doyle

5 October 2022
Deputy Upper Tribunal Judge Doyle

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.