



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-003151

First-tier Tribunal No:  
PA/54820/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

16<sup>th</sup> November 2023

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**DR**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Wood of the Immigration Advice Service.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 1 November 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Turner ('The Judge'), promulgated following a hearing at Manchester on 10 March 2023, in which the Judge dismissed the appellant's appeal against the refusal of his claim for international protection and/or leave to remain in the United Kingdom on any other ground.

2. The appellant is a citizen of El Salvador born on 27 February 1971. He claims he fears the gangs in El Salvador relying upon the decision in EMAP (Gang violence - Convention reason) El Salvador CG [2022] UKUT 00335 (IAC) which allowed him to argue his claim may now be considered for a Convention reason, contrary to the Secretary of State submissions.
3. Having considered the written and oral evidence the Judge sets out findings of fact from [48] of the decision under challenge before writing at [68]:
  68. I have stood back from the detail and considered the evidence in the round, weighing those matters that tell both for and against the Appellants' credibility as truthful witnesses. Having done so, I have overall concluded that there is not at least a reasonable degree of likelihood that he has given a truthful account of the events that led to them leaving El Salvador.
4. The Judge finds neither the appellant nor his family face a real risk of persecution on return to El Salvador by reason of an imputed political opinion, such that it would not breach the Refugee Convention to return him to that country [69].
5. The Judge does not accept the appellant has faced issues with Gang-18 on account of giving evidence against a gang member in 2009. The Judge accepts the appellant may have faced issues with the gang MS-13 in 2016 - 17 but that he was able to relocate to another area without facing further issues and is no longer of interest to MS-13 [70].
6. The Judge finds the appellant may have faced some level of extortion in the past, which is not uncommon, and that whilst they may face extortion on return they are not at higher risk of this than any other citizen of El Salvador, noting that even though he had faced issues in 2016 - 17 from MS-13, he was able to relocate after which he was able to live and work and face no other issues from the gang [71].
7. The Judge finds, in light of the above, there was no need to consider the issue of protection nor reasonableness of internal relocation and that the appellant has family members in El Salvador who can support the family on return if required [72].
8. The Judge finds the appellant and his family can return to El Salvador and reintegrate into the life he and his family had before, that the appellant can return to work, there was nothing in section 55 of the 2009 Act as it is in the best interests of the appellant's daughter that she remains with both parents and is raised in her own country and culture.
9. The Judges rejects the appellant's claim under paragraph 276ADE(1)(vi) of the Immigration Rules, does not accept there are exceptional circumstances in this case, and finds the appellant's daughter can access any relevant support in relation to her autism that she had access to prior to leaving El Salvador [73].
10. The appellant sought permission to appeal arguing, inter alia, the Judge made a material misdirection of law in not referring to the appellant's wife's evidence and not providing a reasoned conclusion on the credibility of the same, failed to adopt the approach set out in AK (Failure to assess witness evidence) Turkey [2004] UKAIT 230 which he argues vitiates the findings on the facts of the appellant's account as that evidence corroborated the appellant's account and was material to the assessment, and that had the judge not materially erred in law the First-tier Tribunal may have come to a different conclusion.
11. Permission to appeal was refused by another judge the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Lindsley on 4 September 2023, the operative part of the grant being in the following terms:

1. The appellant is a citizen of El Salvador who applies to remain in the UK on the basis of a protection and human rights claim.
2. This is a renewed application for permission to appeal against the decision of the First-tier Tribunal made at Manchester dismissing the appeal on all grounds.
3. The grounds of appeal contend, in short summary, that the First-tier Tribunal erred in law by failing to make any findings on material evidence, namely that of the appellant's wife which went to key matters such as the death of the appellant's brother, a police report and her own experience of gang violence. Given the material nature of the evidence this could have affected the outcome of the appeal.
4. The decision contains many detailed and reasoned findings as to why the appellant did not succeed in his appeal, and so any error of law by the First-tier Tribunal may ultimately not be material, but I find the grounds to be arguable as there is arguably no reference to the appellant's wife's evidence in any way and there is no doubt that she gave evidence before the First-tier Tribunal.

### Discussion and analysis

12. As recently confirmed by the Court of Appeal in *ASO (Iraq) v Secretary of State the Home Department* [2023] EWCA Civ 1282:
  41. The starting point for this appeal, as for the appeal to the UT, is that the appellate courts are bound to recognise the special expertise of the F-tT. An appellate court must assume, unless it detects an express misdirection, or unless it is confident, from the express reasoning, that it must be based on an implicit misdirection, that the specialist tribunal knows, and has applied, the relevant law. The appellate court must also bear in mind, on an appeal on a point of law, that questions of fact and of evaluation are for the specialist tribunal, unless its approach is *Wednesbury* unreasonable.
13. It is clear that the Judge was aware that oral evidence had been given by the appellant's wife, for at [45] of the decision under challenge it is written that both the appellant and his wife gave oral evidence with the assistance of a Spanish Latin interpreter.
14. The Judge sets out the issues in the appeal at [47] in accordance with the guidance provided by the Upper Tribunal in TC (PS compliance, "issue-based" reasoning) [2023] UKUT 00164.
15. The Judge also specifically states that [46] "*I am bound to be selective in my references to the evidence by giving reasons for my decision. I nevertheless wish to emphasise that I considered all the evidence in the round in arriving at my conclusions*".
16. It is accepted that whilst the current thinking is towards shorter more focused determinations, in which it is unnecessary to record in detail the evidence given or submissions made, it is still an important principle that a reader of a determination must know why they won or lost and that all the evidence, once considered with the required degree of anxious scrutiny, has been factored into the decision-making process.
17. Mr Wood relied upon the decision in *AK (failure to assess witness evidence)* [2004] UKIAT 230.
18. In AK the adjudicator recorded in the determination that oral evidence was given before him, not only by the appellant but also by five other witnesses called on his behalf. Although the adjudicator referred to the evidence given by those witnesses the Tribunal found that the reference to the evidence was wholly inadequate as the adjudicator had not given any indication as to the nature and content of the evidence given by the witnesses.
19. At [9] of AK the Tribunal write:

9. At no stage has the adjudicator given any further indications to the nature or content of the evidence given by the five witnesses. Whilst there is of course no general requirement for an adjudicator to set out at length the oral evidence given before him, and in many cases no useful purpose would be served by doing so, nevertheless he ought as a matter of good practice to summarise at least the material parts of the evidence which he has heard so as to enable an informed reader to ascertain the nature and content of that evidence, and also to enable him to be satisfied that the adjudicator has directed his mind properly to the material aspects of the evidence. In general, it is not sufficient for an adjudicator merely to record that a witness has relied on his or her witness statement, although there may be particular circumstances in which that would suffice, e.g. where the evidence in question relates to facts which are not in dispute between the parties, or which are irrelevant to the issues on which the outcome of the appeal will turn.
20. I also note that the appellant did not succeed in AK on the basis of the treatment of the witness evidence, as at [10] is written:
10. In addition to his failure to summarise properly the evidence given by the five witnesses called on the appellant's behalf, the adjudicator has also failed to make any assessment as to the credibility or otherwise of that evidence, or to give any reasons for arriving at his assessment. Save in those exceptional cases where the material facts are not in issue between the parties, it is an essential part of an adjudicator's responsibility to make clear findings of fact on the material issues, and to give proper, intelligible and adequate reasons for arriving at those findings. An adjudicator who fails to do so is liable to find that his determination is vulnerable to challenge on appeal at the suit of the losing party. That is the position here.
  21. It was also noted the adjudicator also carried out no assessment of any of the psychiatric or medical evidence before him and gave no indication as to his conclusions regarding that evidence, apart from a brief reference.
  22. The first question to be considered therefore is whether the Judge has erred in law in failing to refer further to the evidence of the appellant's wife in the determination. Mr Wood argues that that evidence corroborated the evidence of the appellant.
  23. It is important to consider the nature of the evidence given by both the appellant and his wife.
  24. In their witness statements, which they confirmed to be true in their oral evidence, they make similar claims in relation to the alleged events that occurred in El Salvador (anonymised were relevant):

Appellants statement	His wife's statement
<p>1. I am DR DOB 27/02/1971. I am a national of El Salvador. I currently reside in Stoke-On-Trent. I am the Appellant in this matter and I make this statement in support of my asylum appeal.</p> <p>2. In the UK, I have my wife AE, DOB 06/08/1965 and my daughter GT, DOB 26/12/2007 who are both dependents on my asylum claim. My daughter GT has learning difficulties.</p> <p>3. I have three other children from previous relationships. Their names are EE, 19 November 1980 who lives in El Salvador, SE, 03 January 1990 and DE 22 February 1992 who both live with my ex-partner</p>	<p>1. I am AE, DOB 06/08/1965. I am a national of El Salvador. I am married to DR, and I am a dependent on his asylum claim. I currently reside at [ ], Stoke-on-Trent, [ ] I make this statement in support of my husband's asylum appeal.</p> <p>2. In the UK we also have my daughter GT, DOB 26/12/2007. My daughter GT has learning difficulties.</p> <p>3. I have been in a relationship with DR for 32 years, but we have been married for 10 years.</p> <p>4. In El Salvador I worked as a secretary.</p>

(their mother) AV, in the USA. To my knowledge they do not have residence in the US.

4. My problems began on 23rd March 2007, while I was living in Lourdes, Colon, with my partner. My brother lived nearby. Gang 18 members came to my home, and handed me a phone. This is a common method gang members use to extort people. The gang members handed me a phone, and I spoke to their boss who demanded I pay \$250 a month in extortion. I could not pay this money. When I said this to the gang, they were angry, and said I had to pay or they would kill me and my family if we did not comply with their demands.

5. The gang also tried to extort my brother, JE. JE told me that the Gang had tried asked him for money, but like me he could not afford it. He told me the gang had threatened him. He went missing soon after on the 31/03/2007. Due to the threats made against me, and against my brother, I reported his disappearance to the police on the same day.

6. My brother's body was found 3 days later on the 3rd April 2007. He had been killed. I was required to identify my brother's body. His death certificate is included in my evidence.

7. On 23 April 2007 the police informed me that they had captured some gang 18 members, who they suspected of being involved in my brother's murder. The police asked me to identify them. I went to the police station at the police's request, and identified two gang members out of a police line-up who had threatened me and my brother previously. I was behind police glass during this, as is protocol, but the gangs are known for having links and informers in the police, so they would have been able to discover that it was me who identified them.

8. I later gave evidence in court. The gang were found guilty of killing my brother and were sent to jail. During this time, I moved to stay with a friend in Lourdes, as me and my partner did not feel safe in our own property. We stayed with this friend until we left Lourdes.

9. For some time, we did not have any problems with the gangs, because the gang members we feared had been put in prison,

5. Our problems began on 23rd March 2007, while me and DR were living in Lourdes, Colon. Gang 18 members came to my home and spoke to my husband. They extorted him for money. He was asked to pay \$250 a month in extortion. When DR explained he could not afford this money, the gang said he had to pay, or they would kill me and DR if we did not comply with their demands.

6. Around the same time, my husband's brother, JE, visited our home. JE lived locally, and he told us that he had also been targeted by the same gang members to pay 'rent'. He told us that he was paying \$500 weekly, but the demands had gone up, and that he had been told he had to pay in 5 days, or they would kill him. DR dropped JE at home that evening at the entrance of the area where JE lived, there was 2 gang members named Duende and Demenpe. JE identified these two gang members to DR as the ones who threatened him. JE went missing soon after on the 31/03/2007.

7. Due to the threats made against us, and the threats made against JE, DR made a police report and reported JE's disappearance. JE's body was found 3 days later on the 3rd April 2007.

8. DR was required to identify JE's body, and then to identify gang members involved at the local police station.

9. During the police investigation, we were advised not to return home. The gang tried to intimidate us to withdraw our police report, so we respected the police advice, and we went and lived with a friend in a different part of Lourdes. We did not tell anyone where we were living. We remained living at my friends until 2009.

10. We had to leave Lourdes after the Gang 18 started trying to extort us again. They asked us to pay 'rent' as they were before. They threatened my husband and told him they would kill me and my daughter if he did not pay the rent. My husband phoned me and said we need to leave the house immediately.

11. After my husband phoned me, I left the house with my daughter and started driving. I could see that the gang members were following me in the car. We - me and my daughter - were very frightened and I decided that we had to move. My husband reported the threats to the police, but the

and we had moved house. We - me and my partner, and later our child GT- stayed lived in friend's house.

10. One day the gang members phoned me, and said that we are in front of the house where your wife and daughter are. If you do not pay 'rent' we will kill your wife and chop up your daughter. I was frightened by this threat, and phoned my wife and said we needed to leave the house.

11. I reported the threat and extortion to the police, but the police did not help me. They said that they did not have the resources to help, and that I should either pay the extortion, or move. The police told me they did not have the resources to protect everybody.

12. Following this threat, we moved to Metapan on 10 May 2009. Metapan is a MS 13 area, a different area from Gang 18 where we lived in Lourdes. Because I had been working in Metapan for some time, I believe the local gang already knew what I looked like, and I think they believed I was local to the area. We were able to live in Metapan for some time and were able to avoid interest from the gangs.

13. Then, after a time I started to experience problems with MS gang who controlled the area. Gang members came to our house and demanded that we pay 'rent' because we lived in Metapan. To begin with we were able to afford the 'rent', but the gang kept increasing the money until we did not have the means to pay it.

14. The fee steadily increased until the gang was demanding \$300 a week and I could not afford this. On 16 December 2016, the gang came to ask for money and I could not pay it. They told me they would return. Then they returned 21 December 2016 and demanded the money. I said I couldn't pay. The gang then beat my wife and threatened my daughter. I refer the Tribunal to my wife's statement for detail of this.

15. I reported this incident to the police on 21 December 2016. The police said they were going to investigate. The police took details of the incident, and took a police report, but nothing came of the investigation and police didn't seem interested in helping us. It is known in El

police were not able to do anything to assist or protect us. We stayed with another friend for a couple of days, but I did not leave the house because I was afraid of the gangs. Then we moved to Metapan.

12. Following this threat, we moved to Metapan on 10 May 2009. Metapan is a MS 13 area, a different area from Gang 18 where we lived in Lourdes. Because my husband had been working in Metapan for some time, we were able to move to the local area without any significant interest from the local gang. We were able to live in Metapan for some time and were able to avoid interest from the gangs.

13. Then, after a time the MS gang started targeting us for extortion. Gang members came to our house and demanded that we pay 'rent' because we lived in Metapan. To begin with we were able to afford the 'rent', but the gang kept increasing the money until we did not have the means to pay it.

14. The fee steadily increased until the gang was demanding \$300 a week and we could not afford this. On 16 December 2016, the gang came to ask my husband for money, and he could not pay it.

15. Then they returned 21 December 2016 and demanded the money. I was at home without my husband. I was doing the ironing; my husband had taken my daughter to Church. They arrived at around 5.30 pm and the gang members knocked on the door and told me that I needed to pay \$300. There were not any dollars in the house. When I could not pay, they beat me badly. They went round the house looking for money. They fractured my ankle and beat me.

16. I lost consciousness. I woke up around 8pm and I was outside near a ditch- they had taken me out of the house. believe the gang thought they had killed me. I was wet, and I realized I was covered in blood. I did not know where I was. I tried to walk up or down, I was not stable, I was walking. I left the house, and I did not know where I was, I saw rivers and that is how I knew. I went to the nearby house, and the people in the house took me to the hospital. I was treated for a broken ankle (left ankle). I had multiple bruises and cuts from the beating. My face and my legs were black and blue from the beating.

Salvador that police do not have the resources to stop the gangs, and they did nothing to follow up on the report.

16. I lived in fear that the gang would return for more money, and for retribution for reporting them to the police, so I sold my car to get money, and I moved with my family to Santa Ana on 05 January 2017.

17. Until October 2019, we had no issues with the gangs. Then, on 16 October 2019 a Gang 18 member came to my home and handed me a phone to speak to their boss. I took the phone as I had no choice. The man on the phone told me that he was the man who killed my brother. Then when I took the phone, I hear that they asked me "do you know who I am? I am the one who killed your brother, you dog. Do you remember me." And I said no. And he said "I am Duende, and you reported that I have killed your brother. And you see I am out now. I am out of jail. And the same thing I did to your brother, I am going to do to you, you dog, and your daughter." He said "I know where you live, I know what you do, I know where your daughter is studying at, and to prove that it is true I am opposite the school where your daughter goes to. I am opposite the Colegio Reverendo Juan Bueno."

18. I begged him not to do anything to harm my daughter. He asked for \$10,000. I knew I could not pay the money, but I agreed because I was desperate to keep my daughter safe and I had no choice, so I agreed to pay the money and begged him to leave my daughter alone. He gave me 2 days to make the payment, and said if I did not pay it he would kill me and my daughter.

19. As soon as I was off the call, I grabbed important belongings and documents from my house, and went immediately to my daughter's school to collect her. I called my wife and informed her of what had happened.

20. I then went to a friend's house and stayed in a friend's house until 03 December 2019. None of us left the house, as we were terrified the gang would locate us and find us if we did. Whilst we were in hiding my friend helped my wife sell her car and with the money we brought travel tickets to the UK. The only time we left the house was to go to the airport.

17. We then made a report to the police.

18. We were afraid that the gang would return for more money, and for retribution for reporting them to the police, so my husband sold his car to get money, and we moved to Santa Ana on 05 January 2017.

19. Until October 2019, we had no issues with the gangs. Then, on 16 October 2019 a Gang 18 member came to spoke to my husband on the phone and threatened our daughter. The gang member had just come out of prison and identified himself as Duende - the person who was responsible for killing my brother-in-law. He told my husband he knew exactly where my daughter was at school. The gang member asked for \$10,000. And my husband was given 2 days to make the payment.

20. I was at work when this threat happened. My husband rang me as soon as he got off the phone with the gang and told me what happened. This was a nightmare situation for me. I said that we had to leave, we could not risk GT. My husband went to collect my daughter and then we immediately fled to a friend's house.

21. I then went to a friend's house and stayed in a friend's house until 03 December 2019. None of us left the house, as we were terrified the gang would locate us and find us if we did. Whilst we were in hiding the friend helped me sell my car and with the money, we brought travel tickets to the UK. The only time we left the house was to go to the airport.

22. We flew from El Salvador to UK, with a transit stop in Spain, and claimed asylum on 4/12/2019

23. I was surprised when our case was refused. The gang 18 are targeting my husband directly because of his past with them, and because we have informed on them to the police. The gang will not tolerate this, especially as it is the second time Gang 18 have targeted us directly. We will be killed for sure if we return to El Salvador. We came to the UK with the hope that we would be helped and protected as human beings. All I ask the Tribunal is that they help us keep my daughter safe and let us provide stability and safety for my daughter.

24. In response to 46 of the Home Office

21. I flew from El Salvador to UK, with a transit stop in Spain, and claimed asylum on 4/12/2019. I had my substantive interview on 13/04/2022. My case was refused on 26/10/2022.

22. I would like to say the following in response to the Home Office's reasons for refusal:

23. In response to 44 of the refusal letter, my brother's death certificate details the names of my parents. I have enclosed my birth certificate and other official documents which show the names of my parents. It is clear from these documents that the names of my parents' NAMES are the same as the names recorded on my brother's death certificate. As the official documents show that me and JE have the same parents, I believe this shows that we are brothers as I stated. In addition, the death certificate details that my brother died HOW. I state this is consistent with my account above, and as given in my home office interview. I ask the court accept the document is the death certificate of my brother, and that he died in a gang attack as described.

24. In response to 45 of the Home Office letter, I identified the individuals who killed my brother out of a police lineup. I was taken into a police station, and there was a lineup of individuals behind police glass. I was asked by the police to point to the individuals I recognized, which I did. My brother was killed in 2007, and in 2007 the gang members who killed him dressed as I described. I provided a detailed description of the gang members who killed my brother in my asylum interview, but I was being asked to describe people from 15 years ago. I think the Home Office are unfair to say that my account of their appearance lacks detail. Describing someone verbally, and identifying someone in a physically in a police lineup are two different things and I don't think the Home Office considered this when making their decision.

25. In response to 46 of the Home Office letter, I did not live in my home in Lourdes for 2 years, me and my wife lived in a friend's house in Lourdes, until we started to be extorted again. During the trial the police advised me to move, but I could not financially afford it, so I stayed with my sister who lived in another region. I then

letter, I want to make it clear we did not live in my home in Lourdes for 2 years, we lived in a friend's house in Lourdes, until we started to be extorted again. We did not tell anyone where we were staying, for our safety. I do not know if Gang 18 visited our home because we did not return there. I believe this is how we were able to avoid the Gang, until they started to extort us again.

25. The reason we had to move from my friend's house in Lourdes is because the gang started to extort us again. After what happened to my brother-in-law could not risk staying in Lourdes after Gang 18 had started showing an interest in us again. We fled to Metapan.

26. In response to 52: Me, my husband and GT stayed in hiding at my friend's house and did not leave until we left El Salvador. The only reason we were not targeted is because we were in hiding. In addition, I do not understand why the Home Office say that the fact we were able to use our own passports to leave El Salvador means we are not at risk from the gang. This does not seem to be connected to the gangs.

27. 66: contrary to what the Home Office says, me and my family are at direct risk in El Salvador, over and above what other citizens face. This is because my husband informed on The gang 18 members following JE's death and refuse them a second time in running away and not paying the \$10,000 extortion money. We have reported MS 13 to the police as well, and this is not acceptable. If we return to El Salvador the gangs would kill me.

28. We cannot relocate in El Salvador, as I have done this multiple times previously, and the gangs always found and located us. It will only be a matter of time before they do again.

29. We cannot rely on the police to protect us. They did not protect us previously, and when we reported that they extort and attack to the police, they did not do anything to help us other than making a report.

30. Finally, my daughter has learning difficulties. Her situation is bad, she cannot leave the house without us. She is waiting to be assessed by a professional, so we do not know if her difficulties are linked to her



stayed with other friends and family members, and after the trial me and my wife lived with our friend. We did not tell anyone where we were staying, for our safety. I do not know if Gang 18 visited our home because we did not return there. I believe this is how we were able to avoid the Gang, until they started to extort us again.

26. The reason we had to move from my friend's house in Lourdes is because the gang started to extort me again, and threatened my wife and child. After what happened to my brother I could not risk staying in Lourdes after Gang 18 had started showing an interest in us again. We fled to Metapan.

27. In response to 48: We moved to Metapan to escape Gang 18 members. Gang 18 does not control Metapan, which is why we moved there. My job was in Metapan, and I commuted to Metapan daily from Lourdes. Therefore, I believe the MS gang believed I lived in Metapan, and had not shown any interest in me. When we moved to Metapan permanently I believe they did not show any interest because they thought we had lived in Metapan previously. It is only in 2009, when they started to extort me and ask for regular rent payments that they started threatening me.

28. In response to 50: I have explained my movements throughout El Salvador above. I also believe that the gang member's release from prison was the catalyst for him personally targeting me and my family again.

29. 51: I begged the gang member not to kill my daughter. He made it clear that if I did not pay, he would kill my daughter. The gang member also clearly had surveillance and knowledge of me and my family, so likely felt that if he didn't get the \$10,000 he would be able to kill us anyway. The gang likely assumed that due to my job as a lorry driver, I had access to money. In addition, the gangs don't care if you have the ability to pay what they ask for or not - they ask for the money and if they don't get it they kill you. Often people take out loans, or sell everything they have to meet the gang's demands, because people in El Salvador know the consequences if they don't.

30. 52: Me, my wife and my child stayed in

trauma or to any other reason. However, in the UK, she is doing much better than she was in El Salvador - she is engaging in school and learning, which she was not able to do previously. She needs stability in her life, which in El Salvador she would not be able to receive due to the gangs. I ask the Judge to think about my daughter and to protect her.

31. I ask the Tribunal to read my account and supporting evidence and find that I am at risking El Salvador if I were to return.

32. I made this statement in multiple appointments with my legal representative with the assistance of a Spanish interpreter.

33. I believe that the facts stated in this witness statement are true. I understand the proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest believe in its truth.

hiding at my friend's house, and did not leave until we left El Salvador. The only reason we were not targeted is because we were in hiding. In addition, I do not understand why the Home Office say that the fact I was able to use my own passport to leave El Salvador means I am not at risk from the gang- the gang do not control the state or passport control, so me being able to leave the country without issue is not relevant to whether the gang were targeting me.

31. 54: I provided a description of MS gang members in response to questions of my interview. Gang members can look like anyone, and I described what they looked like. The gang members who came to my home were wearing long sleeved shirts and long trousers to the knee. One wore a cap and wore a chain necklace. I refer the Tribunal to my interview where I have been consistent in this matter, and did my best to answer all Home Office questions openly and directly.

32. 55 and 56: I have submitted documents demonstrating that I have made police reports as described. These are the documents that I was given by the police. I will bring the originals to my hearing. In addition, it should be noted that whilst my wife was beaten on 16 December 2016, the police report was made on 21 December 2016, which is where this date comes from. I ask the Tribunal to find the reports are consistent with my account and that I have provided whatever evidence I was able.

33. 57-58: I have detailed my account above, and in my interview. The MS gang did not target me and my family following the attack on my wife, and we moved shortly afterwards. I ask the Tribunal to accept my account.

34. 59: The dates the Home Office have for my travel are different to the dates I traveled abroad. MS gang did not pursue me or my family members, and when I was travelling, I had no issues or interaction with gang members. I am only at risk in El Salvador.

35. 62-63: I had a transit stop in Spain, I did not leave the airport or interact with any immigration officials. Gang members do have links with Spain, and I did not want to put my family at risk again. Logically, due to the lack of language barrier in Spain it

would have been easier for me and my family to relocate and integrate there, but gang members do have links in Spain, and so I did not want to put my family at risk. We claimed asylum at immigration control in the UK.

36. 66: Contrary to what the Home Office says, me and my family are at direct risk in El Salvador, over and above what other citizens face. This is because I informed on Gang 18 members following my brother's death, and I refused them a second time in running away and not paying the \$10,000 extortion money. I have reported MS 13 to the police as well, and this is not acceptable. If I returned to El Salvador the gangs would kill me.

37. I cannot relocate in El Salvador, as I have done this multiple times previously, and the gangs always found and located me and my family eventually. It will only be a matter of time before they do again, and my long absence from El Salvador will draw additional attention from the gang.

38. I cannot rely on the police to protect me. They did not protect me previously, and they did not prevent my brother being killed. When we reported the extortion and attack on my wife to the police, they did not do anything to help us other than making a report.

39. I ask the Tribunal read my account and supporting evidence, and find that I am at risk in El Salvador if I were to return.

40. I made this statement in multiple appointments with my legal representative with the assistance of a Spanish interpreter.

41. I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth

25. The Judge clearly made detailed findings by reference to the evidence.
26. It is not made out that the Judge did not understand the evidence or the issues requiring determination. The Judge specifically records those issues at [47].
27. The Judge noted the appellant's claim to have experienced problems with Gang 18 in 2007 at [48] which led to the Judge to considering the country guidance relating to El Salvador gangs from [49].
28. The Judge considered the appellant's claim that his brother had been killed by reference to a death certificate [51]. The Secretary of State had raised the point that the appellant had failed to show he was related to the person named on the

death certificate which was an issue the Judge did not find the appellant had satisfactorily addressed, resulting it been found that the appellant had not provided sufficient evidence to link him with the person named on the death certificate. The Judge also noted the name of the father of the deceased on the death certificate was left blank and so was of no use in cross-referencing. That aspect was a material element in the appellant's claim as he argues that various adverse consequences flowed from the same, as did his wife. There is no specific challenge to that finding by the appellant and his wife's evidence does not, arguably, assist in establishing legal error in the Judge's assessment of the documentary evidence. The conclusion at [51] is within the range of findings reasonably available to the Judge.

29. In relation to a further document provided which the Judge states "appears to be some form of document to confirm someone has participated in criminal proceedings and is at risk", dated September 2009, the Judge notes the name of the victim is stated as 'illegible' in the translation and the full name of the person participating in the proceedings is not cited. The Judge's conclusion that that document did not enable the appellant to demonstrate he was involved as a witness in criminal proceedings against the gangs is a finding within the range of those reasonably open to the judge on the evidence, a finding not undermined by the written and oral evidence from the appellant or his wife.
30. The Judge's finding at [53] that the appellant's claim he had not been approached and was safe until the gang member who he helped conflict was released from custody in 2019 lacked credibility, as the gang member convicted was only one person in a gang who controlled the area in which the appellant lived, meaning there will be many other gang members at large to take revenge for one of their own being sent to prison, is a finding within the range of those reasonably open to the Judge on the evidence and in accordance with the country information relating to the behaviour of gang members against those who act as informants or provide evidence against them in court. The evidence of the appellant and his wife does not establish legal error in this finding which is made against the available background evidence.
31. The Judge makes a number of other adverse findings in the following paragraphs by reference the country material which are not undermined by the subjective evidence of the appellant or his wife.
32. The Judge refers at [57] to the appellant claiming he had moved to a different area, without issue, as the area he had moved to was one controlled by the MS 13 gang. The Judge note the appellant claimed that he and his family were able to relocate to Santa Ana in January 2017 and live there without issue until October 2019 despite that being a Gang 18 controlled area. The Judge's finding that the appellant lacked credibility in light of the fact the appellant had, allegedly, give evidence against one of the gang members, and the country information relating to how the gangs operate, has not been shown to be finding outside the range of those available to the Judge on the evidence. A finding which is relevant to the weight that could be given to the evidence of the appellants wife.
33. The Judge analyses the appellant's claim to have moved, to be subject to extortion, to have remained in hiding, and considered the witness statement provided by the appellant's friend, but did not accept, by reference to country information and an assessment of the evidence as a whole, that the appellant's claim is credible. That has not been shown to be finding outside the range of those reasonably open to the judge on the evidence.
34. I do not find the appellant has established any misdirection of law or failure of the Judge to consider the evidence with the required degree of anxious scrutiny. I do not find the appellant has established that the Judge's findings on the

evidence have been shown to be irrational or not within the range of those reasonably open to the Judge on the evidence.

35. I therefore find that the appellant has not established procedural unfairness sufficient to amount to a material error of law on the basis of the claim the Judge failed to properly assess and factor into the decision-making process the evidence of the appellant's wife.
36. I do not find the appellant has established legal error material to the decision to dismiss the appeal for any other reason.
37. On that basis I dismiss the appeal.
38. A further relevant issue in this appeal is the declaration of the state of emergency by the President of El Salvador which has resulted in over 64,000 arrests and detention of thousands of gang members within El Salvador. An article in the Guardian newspaper dated 20 February 2023 records one of the senior gang bosses declaring that the government "have ruin the gangs as you knew them".
39. Two notorious street gangs who dominated in El Salvador, the MS-13 and 18<sup>th</sup> Street gang have both been targeted with an aim to put an end to gang violence and human rights violations. As a result many street leaders were either imprisoned or forced to flee.
40. Events relied upon by the appellant and his wife occurred prior to the state of emergency and arrest of the gang members, as they left El Salvador in 2019. The hearing before the Judge occurred on 10 March 2023 and the decision was promulgated on 14 March 2023 which is the relevant date for assessing whether legal error has been made.

### **Notice of Decision**

41. No material legal error in the determination of the First-tier Tribunal has been made out. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**10 November 2023**