IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006722
First-tier Tribunal No: PA/55731/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

JNCR
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr D. Forbes, Lifeline Options (OISC Representative)
For the Respondent: Miss S. Lecointe, Senior Home Office Presenting Officer

Heard remotely at Field House on 6 September 2024

Order Regarding Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of JNCR who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

The Appeal

1. By the decision of the First-tier Tribunal (Judge Boyes) dated 11 October 2022, the appellant, a citizen of El Salvador, has been granted permission to appeal to the Upper Tribunal against the decision of First-tier Tribunal Judge Athwal ("the Judge") promulgated on 15 August 2022 dismissing his appeal against the respondent's decision of 25 November 2021 to refuse his claim for international protection. The appeal comes before me to decide whether the Judge erred in law.

The First-tier Tribunal Decision

The paragraph numbers in the decision are not sequential and nor are the pages numbered. For example, the paragraph numbering runs from paragraphs [1]-[48], but thereafter the numbering continues from [4]-[41]. In order to avoid confusion, where I refer to a paragraph number below it relates to the same numbering used by the Judge, which I identify by the corresponding page by number, designated to that paragraph in the decision.

2. The appellant's protection claim was primarily based on the claimed risk of gangs in El Salvador including gang MS-13. In short, he claimed that he received death threats following the gang murder of his wife's cousin. The appellant also described other gang incidents he experienced that were unrelated to this murder.

3. Before the Judge the appellant was represented, as he is before me, by Mr Forbes. The Judge at [30] (pp 5-6) set out the basis on which Mr Forbes argued the appellant's case. Mr Forbes expressly averred any reliance on the Refugee Convention and pursued the appeal principally under Article 15 (c) of the Qualification Directive (QD) on the basis that there was a state of internal armed conflict in El Salvador, and, on Article 3 and 8 ECHR grounds. The Judge further noted an addendum claim, namely, that as a practising Christian the appellant was *"at risk of unlawful gang killing owing to non-compliance with standard demands to pay protection money and otherwise co-operate with gangs' requirements".*

4. The Judge heard evidence from the appellant and a witness and received submissions from the parties' representatives. There is no dispute that the Judge correctly observed that neither the appellant in his evidence nor Mr Forbes in his submissions addressed the evidential inconsistencies relating to the appellant's fear that he would be killed by the gang (at [16] (p.13)). In consequence, the Judge did not accept the appellant had come to the adverse attention of gangs through his association with his wife's late cousin, and ultimately found the appellant had not established he was a *"…threat to any gang or that he [had] failed to comply with gang rules"*. As for the appellant's evidence concerning other unrelated gang incidents, whilst the Judge rejected these claims, she found, in the alternative, that the appellant's experience consisted of a single, isolated incident of extortion (at [13]-[19] and [22] (pp 11-12)). Accordingly, the Judge found the appellant was not entitled to international protection on the basis of his claim that he feared gang related violence.

5. The Judge next considered whether there was indeed a state of internal armed conflict in El Salvador. At [20]-[21] (pp 11-12) the Judge directed herself correctly in law and then proceeded to consider the appellant's claim that he was at risk of indiscriminate violence *"as evidenced by the extortion he was subjected to "a few days after A's death" in November 2014".* Whilst the Judge did not accept this incident took place, she nevertheless considered that *"…taken at its highest…"* this incident was *"insufficient to establish that the Appellant was at risk of indiscriminate violence"* (at [22] (p. 12)).

6. The Judge then considered *"several news articles"* relied on by the appellant to establish his claim under Article 15 (c) QD. There were three. The Judge summarised each in turn (at [23]-[26] (pp 12-14)). As to the first article the Judge was not satisfied that *"…this article establishe[d] that there is indiscriminate violence in El Salvador as a result of States actions against the criminal gangs" (*at [24] (p.13)), and, in respect of the other two, she observed that *"Mr Forbe* [sic] *did not clarify how these articles establish that the Appellant is as* [sic] *risk of indiscriminate violence* (at [27] (p.14))*.*

7. The Judge expressed her omnibus conclusion on this issue at [27]–[28] (p.14) in the following terms:

> *27…I have considered whether the Appellant would be at risk of arrest and death or harm in detention. The January 2021 CPIN states at 2.4.2 that gang members are usually youths/young men aged between 15 and 25 from poor background with little formal education or previous employment. The Appellant nor any member of his family falls within this profile. I am not therefore satisfied that the Appellant or his family would be at risk of arrest and detention.*
>
> *28. Whilst I accept that the actions of the current regime in El Salvador raises concerns about the use of the military and security forces. The evidence before me is not sufficient to establish that citizens are at risk of indiscriminate violence as a result of armed conflict."*

8. The Judge next turned to consider the appellant's Article 8 ECHR claim. The Judge's findings and conclusions in respect thereof are not challenged and I need say no more about it.

Permission to Appeal

9. The grounds of appeal are not delineated into separate heads of challenge. They comprise of four paragraphs which are directed towards the Judge's assessment of Article 15 (c) QD. I shall identify each paragraph as a ground of appeal in my analysis below. In summary, the grounds assert that the Judge's decision is inadequately reasoned; that she failed to consider relevant background evidence; she omitted to consider key facts and restricted her consideration of the facts solely to her assessment under the Refugee Convention.

10. I observe that in his grant of permission Judge Boyes stated:

> *"It is difficult in the circumstances to assess permission requests as one does not have access to the notes of hearing. That is not a reason to grant permission per se.*
>
> *However, in light of the material provided and the objective material which is not referred to or seemingly considered, it is appropriate in this instance to grant permission to appeal on the basis that it is arguable that had the Judge given a more full appreciation of the omitted material, the outcome may have been different."*

The Rule 24 Reply

11. In a rule 24 reply dated 19 October 2022 the respondent opposed the appeal.

The Hearing before the Upper Tribunal

12. By consent the parties appeared remotely via MsTeams. There were no technical difficulties. I was satisfied that the hearing was completed fairly, with the cooperation of the parties. Following the helpful submissions of both representatives, I reserved my decision to be given in writing, which I now do.

Discussion

13. I begin with the following observations. First, the appellant's challenge to the decision is narrow and essentially relates to the Judge's consideration of Article 15 (c) QD. Mr Forbes in his submissions, as observed at the hearing, strayed in part beyond the grounds on which permission was granted. In fairness Mr Forbes acknowledged that. I have confined my consideration to the grounds as pleaded taking into account the submissions made in respect thereof by the representatives. Second, the Judge heard this appeal prior to the reporting by this Tribunal of its decision in EMAP (Gang Violence – Convention Reason) El Salvador CG [2022] UKUT 03355 (IAC). Whilst Mr Forbes referred to it in passing, and Ms Lecointe rightly drew my attention to several distinguishing features of the facts in that case which do not apply here, there was no suggestion by the representatives that the decision in EMAP is relevant to my assessment of whether the Judge erred in law. It is, however, likely to become relevant if that question is answered affirmatively.

14. I remind myself of the guidance given by the Court of Appeal to the approach to be adopted by appellate judges considering challenges to decisions of judges below. A person challenging a decision of a judge of the First-tier Tribunal must have regard to the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462. This approach has been repeated in the more recent decision of the Court of Appeal in Hafiz Aman Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 in which LJ Green in giving the lead judgement, with which the other members of the Court agreed, wrote:

> UT's jurisdiction and errors of law

> 26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:
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> (i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];
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> (ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 at paragraph [45];
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> (iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 at paragraph [25];
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> (iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see UT (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 1095 at paragraph [27];
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> (v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see AA (Nigeria) v Secretary of State for the Home Department [2020] EWCA Civ 1296 at paragraph [34];
>
> (vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see MM (Lebanon) v Secretary of State for the Home Department [2017] UKSC 10 at paragraph [107].”

15. Paragraph one of the grounds is essentially a reasons challenge. Mr Forbes did not expressly amplify this ground in his submissions so I consider the ground as pleaded. The point is briefly stated and suggests that the Judge’s rejection of the appellant’s evidence seeking to establish that there was an Article 15 (c) risk “*…appears weak and insufficiently argued…”*. The grounds then set out brief extracts from the news articles I referred to at [6] above. There is no further elucidation of the point. I find there is no merit in this ground which is simply a disagreement with the Judge’s findings. At [23]-[26] (pp 12-14) the Judge set out in detail the contents of the news articles relied on by the appellant inclusive of the extracts referred to in the grounds. At [24], [27] and [28], which ought to be read together, the Judge gave reasons explaining why she was not satisfied the evidence was sufficient. I note that the Judge then proceeded to consider the January 2021 CPIN and gave reasons why neither the appellant nor any family member would fit the profile of a gang member at [28]. Those reasons are brief but they ought to be considered within the

context of Mr Forbes inability to clarify to the Judge how these news articles established the appellant's case. I am satisfied that the Judge was entitled to find that the appellant had not established a risk, a conclusion that was supported by adequate reasons on the evidence made available to her (see: Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC)).

16. I shall consider paragraph 2 and 3 of the grounds together as these essentially relate to Mr Forbes central submissions. These were the subject of Judge Boyes observations in granting permission and were the focus of Mr Forbes submissions. The contention here is that first, the Judge *"appears"* to have overlooked background evidence and second, that she failed to consider all relevant personal risk characteristics in her assessment of whether the appellant, in light of them, faced an enhanced risk of being exposed to indiscriminate violence.

17. Turning to the first point, it is settled law that the Judge is not required to set out and rehearse all the interstices of the evidence and submissions. A worthy reminder is given at paragraph 49 of MA (Somalia) [2010] UKSC 49, where it was said that, "*[w]here a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned".* More recently, the Court of Appeal reminds us in Volpi (supra) that even if a Judge has not mentioned all the evidence, that does not mean that I should conclude that the Judge has failed to consider that evidence, unless there is compelling reason to the contrary. I am not satisfied that there is compelling reason to conclude that the background evidence cited at paragraph 2 of the grounds, namely, an article from The Guardian dated 22 November 2019, an article from Americas Quarterly dated 15 December 2021, and paragraph 2.3.13 of the respondent's CPIN of February 2021 was not considered by the Judge.

18. First, at [36], the Judge stated that she had considered all the evidence referred to by the parties *"whether or not mentioned specifically in these reasons*". The Judge repeated that direction in similar terms at [38], and at [39], stated that she had also considered all the submissions (pp 6-7). Whilst I acknowledge the Judge did not explicitly reference these articles and nor did she cite paragraph 2.3.13 of the February 2021 CPIN, it was not incumbent on her to do so and the self-direction at [36] plainly adheres to the guidance in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC).

19. Second, it is not entirely clear whether these two news articles were in fact drawn to the attention of the Judge as relevant, material or otherwise, to the appellant's claim. The Judge summarised Mr Forbes submissions at [32] (p.6). The Judge noted Mr Forbes reliance on pages 170 to 190 of the appellant's bundle. As the Judge noted at [36], the appellant had failed to provide a consolidated bundle and index, and so the Judge's earlier reference to an appellant's bundle is likely to be a reference to the hearing bundle (sometimes referred to as a stitched bundle). Pages 170 to 190 of

the hearing bundle do not include the articles referred to at paragraph 2 of the grounds. They appear at pages 96 to 110 of the hearing bundle. No record or notes of the submissions given at the hearing have been adduced and I note for myself that none of the articles are referenced in Mr Forbes skeleton argument that was before the Judge. It has not been established therefore that these news articles were drawn to the attention of the Judge and she cannot be criticised for failing to make reference to them in the circumstances.

20. Third, should I be wrong about that, Mr Forbes was in difficulties in explaining to this Tribunal (as he was before the Judge in respect of the news articles referred to at my [6] above) how the evidence referred to at paragraph 2 of the grounds would have made a material difference to the outcome. Having considered that evidence for myself I am far from being persuaded that it would have done so.

21. Fourth, the Judge was clearly aware of the appellant's reliance on the respondent's February 2021 CPIN, she referred to it at [36]. The Judge further took in account the respondent's January 2021 CPIN. The Judge was thus plainly aware of the country conditions as evidenced by the background evidence drawn to her attention and reached findings not in a vacuum, but within the context of the evidence as a whole, including the appellant's personal characteristics. While Mr Forbes submits that the Judge failed to take into account factors such as the appellant's work history, his claims of bankruptcy and his history of extortion demands by the gangs alike, this ignores a more fundamental point that the Judge rejected the core of the appellant's claim, gave adequate reasons for doing so, and these findings go unchallenged. I agree with Ms Lecointe that these grounds are no more than a disagreement with the Judge's findings and seek to reargue the appellant's case.

22. I find there is no merit in paragraph 2 and 3 of the grounds.

23. Lastly, paragraph 4 of the grounds makes a very brief point that the Judge erred in considering facts *"solely"* in terms of the Refugee Convention as opposed to an assessment of personal risk factors under Article 15 (c). The alleged error here is difficult to discern as it mis-states the position. The appellant did not rely on Refugee Convention grounds before the Judge. The Judge considered the agreed issues and made findings that were reasonably open to her on the evidence. There is no merit in this ground either.

Conclusion

24. For the reasons outlined above, no error of law is disclosed in the making of the decision of the First-tier Tribunal.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands.

R.Bagral

Deputy Judge of the Upper Tribunal
Immigration and Asylum
Chamber

6 October 2024