



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

Appeal Number: PA/12192/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 8 February 2019**

**Decision & Reasons  
Promulgated  
On 28 February 2019**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**J H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss G Thompson, Compass Immigration Law  
For the Respondent: Mr A Tan, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant, a national of El Salvador, has permission to challenge the decision of Judge Parker of the First-tier Tribunal (FtT) sent on 3 December 2018 dismissing her appeal against the decision made by the respondent to refuse her protection claim and that of her dependants.

2. The grounds are poorly drafted but assail two aspects of the judge's decision:
  - (1) his adverse credibility finding; and
  - (2) his findings in the alternative that even if her account was accepted as true she would have available protection either in her home area or in another part of the country.

3. As regards (1), I am persuaded that the judge's findings on credibility are vitiated by legal error. The judge's reasons for rejecting credibility, are set out at paragraphs 22-24:

"22. The respondent deals with the credibility of the appellant's claim to be at risk from gangs at paragraph 24, 25, 26 and 27.

23. They need not be repeated by me but they are persuasive. For example, it is the appellants evidence that the result of her actions several members of the gang came to her home with guns but the fact they came to no harm seems implausible given the ruthlessness of the gangs as betrayed by the appellant.

24. I agree with paragraph 27 when it concludes the evidence demonstrates the willingness of criminal gangs in El Salvador to use violence against those who do not comply with them. The appellants defied the gang over a long period of several months even though they knew where she lived. This account is externally inconsistent with the background evidence and in turn inconsistent with her claim that they have no mercy and respect for life."

4. Leaving aside that the judge's reasons are cursory and appear largely to be a mere endorsement of the respondent's, they are simply inadequate. There is no indication that the judge considered whether the appellant's account was or was not internally consistent (save in one respect) or demonstrated a sufficiency of detail. Although of the only two reasons given one is described as relating to external consistency, both were in fact considerations of plausibility only and both are problematic.
5. The fact that the appellant and her family said they came to no harm despite visits by several members of the alleged gang carrying guns, was certainly a consideration capable of possessing plausibility. However, on the appellant's account, although she had defied the gang members to the extent of not agreeing to hand over her son, she had paid the rent they demanded; indeed, under the weight of their threats to take her son, she had doubled her payments. Gang "protection" would lose its rationale if gangs members killed or harmed everyone they threatened. On the face of it their threats in relation to her son had achieved the purposes of

increasing their protection income. I cannot see that any of the background evidence before the judge was “externally inconsistent” with this claim. Nor can I see that her account about this was inconsistent with her claim that the gang members had no respect for life. The judge’s credibility findings were wholly inadequate.

6. However, I am only entitled to set aside a decision if satisfied it discloses a material error of law and in this case the judge made alternative findings regarding sufficiency of protection. I must therefore ask whether those alternative findings were sustainable.
7. As regards the issue of protection in the home area, I consider the judge’s approach was flawed. The only two reasons he gave concerned (i) the state of the evidence about general sufficiency of protection; and (ii) the appellant’s failure to approach the authorities on more than one occasion: In relation to (i), the background evidence cited by the judge, even if it lent some support for the view that the authorities were both willing and able to provide protection to citizens in general, also bespoke the fact of very significant levels of police complicity with gang members. That was something which in my view the judge should have borne in mind when addressing the appellant’s own explanation for why she had only sought help for the authorities on one occasion and had been fearful about doing so. There is no rule that a person must exhaust all protection remedies before leaving a country and in this case the judge should at least have considered the appellant’s explanation for being reluctant to seek police help.
8. As regards internal protection, the judge’s assessment is set out at paragraph 36:

“36. The appellant’s assertions that the gang members have connections all over the country have not been found to be objectively well-founded. The appellant has failed to establish the gang members in their home area would have any motivation to seek her out if she was able to relocate in another area of El Salvador such as San Miguel. In short the appellant has failed to demonstrate the power or influence to locate the appellant throughout El Salvador. The appellant has demonstrated considerable resourcefulness and adaptability in flying halfway round the world to come to this country. This country has an entirely different cultural background to El Salvador. The appellant is educated to degree level and has run her own business. Her husband has found employment in El Salvador. All these factors will assist them on return. I therefore find it would not be unreasonable to expect the appellant to return to El Salvador and relocate.”

9. If by the first sentence the judge meant that the appellant’s assertion had not been found objectively well-founded *by the respondent*, that did not

explain on what basis he agreed. If the judge meant as *found by himself*, then one looks in vain for the reason why. What was required was some identification of the background evidence showing that gangs do not have significant power or control in San Miguel or other specified areas. Further, the appellant's evidence was that she had been threatened not just by Gang 18 Surenos, but by "gangs" (plural) and she also said that she and her family had not taken police advice about moving elsewhere because there are gangs everywhere not just "18 gang and MS 13 gang".

10. Accordingly, I am not persuaded that the judge identified the "objective" basis for his stated conclusions either on protection in the home area or protection in an alternative area.
11. For the above reasons I conclude that the decision of the judge is vitiated by material legal error and must be set aside. I see no alternative to a remittal to the FtT (not before Judge Parker).
12. To summarise:

The decision of the judge is set aside for material error of law.

The case is remitted to the FtT.

I would direct that the respondent produces background evidence to support its position regarding internal relocation as stated at paragraph 51 (identifying San Miguel or La Paz as safe areas).

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:



Date: 25 February 2019

Dr H H Storey  
Judge of the Upper Tribunal