



IAC-BH-PMP-V2

**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Numbers: **PA/03583/2019 (V)**  
**PA/03515/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard at Bradford IAC by Skype for  
business  
On the 18 November 2020**

**Decision & Reasons  
Promulgated  
On the 01 December 2020**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**JV AND KH  
(ANONYMITY DIRECTION MADE)**

Appellants

**AND**

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

Respondent

**Representation:**

For the Appellant: Mr D. Katani, Solicitor advocate instructed on behalf of the appellants

For the Respondent: Mr M. Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction:**

1. The appellants are citizens of El-Salvador.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. Their appeals against the decision of the respondent refusing their protection claims were dismissed by First-tier Tribunal (Judge Buckwell) (hereinafter referred to as the "FtTJ") in a decision promulgated on the 24 September 2019.
4. The FtTJ accepted that gangs operated throughout El Salvador and that extortion also took place, and when reaching a conclusion on the appellant's claim, he accepted the incident that had taken place in 2010 involving the bus being set alight and that the gang that had been involved. However, the FtTJ did not accept that the appellants would be of interest to the gangs if returned to El Salvador given the length of time that had elapsed of eight years. In the alternative, he found that there was sufficiency of protection and that it was reasonable for the appellants to relocate to a different area in El Salvador. The FtTJ therefore dismissed their appeals.
5. Permission to appeal his decision was issued on the 7 October 2019 and permission was refused however on renewal to the Upper Tribunal UTJ Judge Finch on 22 May 2020 granted permission to appeal stating:-

"Having accepted in paragraph 125 of his decision that the objective evidence mirrors the account given by the appellants; First Tribunal Judge Blackwell then failed to exercise the anxious scrutiny needed when considering the appellants' accounts in the context of this evidence.

The appellants were applying for asylum from a country from which few people apply for protection in the United Kingdom. Therefore, detailed, and anxious scrutiny should have been given to the very detailed expert report provided by Joseph Wiltberger.

Mr Wiltberger was clearly very well qualified to give an opinion on the risk that the appellants would face if removed El Salvador and the first-tier Tribunal judge gave no cogent reason for doubting the expert's opinion. In his report, the expert clearly explained that gang members continue to pose a threat to those they had targeted many years after an initial incident which may have brought the individual to the attention of the gang.

As a consequence, there were material errors of law in the first-tier tribunal Judge Blackwell's decision and it is appropriate to grant permission to appeal."

6. In a decision promulgated on the 16 October 2020, I set out my reasons for reaching the conclusion that the decision of the FtTJ involved the making of an error on a point of law. That decision is attached and marked ( "Annex 1").
7. Following that decision, the appeal was listed to be remade before the Upper Tribunal. Neither party sought a face- to- face hearing or to call any oral evidence and advised the Upper Tribunal that the decision could be remade on the evidence before the Tribunal alongside the submissions of the parties.
8. The hearing took place on 18 November 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video as did the appellants. There were no issues regarding sound, or any technical issues and I am satisfied both advocates were able to make their respective cases by the chosen means.
9. In relation to the evidence relied upon by the appellants, I have the bundles of documentation that was before the First-tier Tribunal. The first bundle (pages 1-100) and second bundle (1-33). The two bundles of documentation comprised of articles and reports relating to El Salvador, to the operation of gangs in the country and to the government and police operations. In the second bundle, there was a second police report dated 4/2/19 with the translation, other documentary evidence of actions taken by or on behalf of the first appellant, an appeal statement of the first appellant and copy of family photographs. In addition, the appellant relied upon an expert report by Joseph Wiltberger concerning country conditions, an email from the appellant's representatives and clinical summary together with a certified translation certificate confirming her death on 31/1 2019. In respect of the second appellant, the first bundle mirrored that of the first appellant. Second appellant also provided a witness statement.
10. In addition, Mr Katani submitted a skeleton argument in which he set out his written submissions on risk on return and the issues of sufficiency of protection and internal relocation.
11. There were no written submissions provided on behalf of the respondent.
12. Mr Diwnycz also relied upon the previous bundle which contained copies of their respective asylum interviews, witness statements, articles relating to gangs and information concerning El Salvador, and the decision letters.

13. I also heard oral submissions from the advocates, and I am grateful to Mr Katani and Mr Diwnycz for their clear oral and written submissions.

The factual basis of their claims:

14. The appellants are uncle and niece and are both citizens of El Salvador. Their claims that they are in fear of a gang, gangs or gang members operating in their country of nationality and in that respect both claimed to be members of a particular social group, namely those fearing gangs.
15. In respect of the first appellant, he had assisted passengers escaping from a bus which had been set alight by a gang named "Barrio 18" and this had taken place on the 20 June 2010. The first appellant stated that he had seen the gang kill the driver and then pour fuel into the bus. He had broken a window on the bus and helped three individuals to safety. It is said that the gang had observed the first appellant and two others who had assisted passengers. The first appellant said that he been shot at from a distance and fled. On reaching his home he packed clothes and left the area.
16. Four days after the incident and taken place, the first appellant stated that gang members had come to his home and had spoken to his wife. They informed her that he would be killed as a result of having helped people to survive the bus attack. Subsequently gang members came twice each week and death threats were repeated. After a period of time the visits became less frequent. The first appellant made reference having spoken out of the house window to gang members on one occasion when they threatened him directly that he would be killed. It was the appellant's case that he stayed out of the home; when he did visit he would arrive in the early morning and would leave early so that he would not be seen. Sometimes he would stay at home several weeks about leaving. The appellant was not able to work during that time and this behaviour continued for a period of eight years.
17. The first appellant stated that from June 2016 gang members demanded funds. The first appellant initially refused to pay and contacted police. They had returned and the first appellant's wife had paid them thousand dollars on one occasion. Thereafter the gang demanded \$5000 each month. On one occasion gang members entered the home and took money themselves. The first appellant complained to the authorities.
18. The first appellant stated that the harassment continued and that a threatening note was received in August 2018. The first appellant went into hiding. He stated that his daughters and niece were threatened and were followed in the streets. The first appellant was seen by gang members at his home during October 2018 and again was threatened with death. They tried but failed to enter the property.

19. The first appellant stated that he and his family were taken to the home of his mother-in-law in a part of xxx. the first appellant remained there for between 18 - 20 days until questions were asked by another gang called "xx" which had control in the locality. It was decided by the family to leave El Salvador.
20. The basis of the first appellant's claim is that he would be at risk of serious harm/persecution in El Salvador for assisting members of the public to escape the incident in 2010 and also for failing to pay extortion money as demanded by the gang.
21. The claim of the second appellant, who lived with the first appellant and his direct family members, referred to gang members extorting funds from the wife of the first appellant who did business selling food from the garage and the family home. The second appellant was unsure how many occasions, if more than once, money had been handed over. She stated that gang members came approximately six times to the property in 2016. She referred to the first appellant having reported matters twice in 2016 to the authorities, but no police action was taken.
22. Although the second appellant was not threatened personally between 2010 and 2017, the gang threatened the first appellant that they would take his daughters and that they and the second appellant would be forced into prostitution. On a Sunday during September 2018 the second appellant was with the eldest daughter of the first appellant. A group of men shouted at both of them in the street and referred to the threat that they would be forced to work as prostitutes. The second appellant believed that they were members of the same gang which attacked the first appellant. The second appellant did not report the matter to the police. She decided to leave her employment and gave notice to her work of termination in the middle of October.
23. The second appellant confirmed the family left the family home on 31 October 2018 and went to the home of the mother-in-law of the first appellant for between 18 - 20 days. The second appellant stated that her father and siblings had received threats from gang members searching for the first appellant. Those family members sought to leave El Salvador but were returned by Colombian immigration authorities.
24. The second appellant's claim that if returned El Salvador she will be further persecuted by the gang, believing that they would kill her or rape or force her into prostitution. Her fear stems from the assistance given by the first appellant in aiding members of public to escape for a bus attack by the gang in 2010 and his subsequent refusal to pay sums demanded by the gang by way of extortion.
25. The appellants left El Salvador on 28 November 2018 and took a flight to Spain with an onward flight to the United Kingdom.

26. On 29 November 2018, the appellant's claimed asylum. They were interviewed by way of screening at the airport on the 29 November 2018 and preliminary information forms and witness statements were subsequently submitted by the appellant's representatives. Substantive asylum interviews were conducted with each appellants on 11 March 2019. With reference to the substantive asylum interview of the first appellant, amendments were submitted by the representatives dated 13 March 2019. Copies of articles of certain reports are also submitted as an aspect of the claims.

The decisions made by the respondent:

27. In a decision taken on 28 March 2019 the application by both appellants were refused on all grounds.
28. In considering the protection claim to the reference to the asylum grounds, the respondent accepted, in relation to both appellants, that they were members of a particular social group. With reference to the first appellant that was considered to be victims of gangs and with respect to the second appellant, a relative of a family member owning a small business in El Salvador. Additionally, the nationalities of both appellants were accepted by the respondent.
29. In respect of the first appellant's claim, the respondent accepted that there was evidence that the bus incident had taken place. However, there was no evidence that individuals had assisted people escaping from the bus or that shots had been fired additionally during the incident. Furthermore, the respondent did not accept that the first appellant could have avoided the threatened intentions of the gang over a period of some eight years. Returning the incident, the respondent took the view that it seemed unusual that those who attempted to shoot at the first appellant had been far away, whereas other gang members had been close to the bus had not done so. The first appellant had stated that they had put barbed wire around the family home, but it was not considered that a vicious gang will be prevented from gaining access to his home as a consequence of barbed wire.
30. With reference reports the first appellant had been targeted because he'd owned a water treatment plant, it appeared that the original incident whereby the first appellant claimed that he'd help people of the bus to which the gang are set alight, was then not mentioned with reference to the extortion threats. The first appellant also stated that he had refused police protection because he feared that the police had been infiltrated by gangs that the gang would in that way have more easily been able to kill him. However, the respondent referred to specific action taken against gang crime in El Salvador.
31. In respect of the second appellant's claim, the respondent did not accept that she had specifically been able to identify gang members would threaten the first appellant.

32. The respondent took into account his claim that he had been able to avoid the gang over a period of eight years because others, unlike himself, had not been prepared to run and hide. The respondent took the view that if they had wished to enact any threat, the gang would have been able to do so. It was also not accepted that the gang would not have been able to track the first appellant to other locations when he had stayed away from the family home.
33. The respondent accepted that the first appellant had been subject to extortion and there was evidence to confirm that. However, it was not accepted that the first appellant remained under threat as a consequence of having assisted individuals to escape from a gang having set light to a public bus in 2010.
34. The respondent considered the credibility of the account of the first appellant was damaged by the appellant's failure to claim asylum in Spain (Section 8 (4) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
35. The respondent considered the stated fear of the first appellant and it was not accepted that if genuinely so threatened by gangs since 2010 he would not have accepted help from the authorities. Thus, he had not established a failure of state protection in El Salvador and that protection was available. Additionally, the respondent considered that the first appellant could reasonably be expected to return to his home area, or he could move elsewhere in the country and gain employment (internal relocation).
36. The respondent therefore refused his protection claim.
37. In relation to the second appellant, it was noted that she was not referred to in any police reports and that there were internal inconsistencies in the account given by her as compared to that of uncle. It was stated that information provided by her was stated to have been "vague" and "implausible" and that based on the actions and circumstances claimed with respect the first appellant, the second appellant's fear of the stated gang was not accepted. It was considered the second appellant could return to her home area or to another town or city in El Salvador and that relocation was reasonable.

The submissions of the parties:

38. Mr Katani on behalf of both appellants relied upon his skeleton argument.
39. In his oral submissions, he submitted that the first appellant had a profile which arose as he had witnessed the bus attack and also as a victim of extortion from the gangs. The second appellant's claim is dependent upon his as it is formed from part of the same factual matrix.

40. He submitted that the appellant would not be able to return to his home area given that his presence will be such that the gang would reasonably retaliate in the light of the bus incident as well as having failed to pay the "taxes" by way of extortion.
41. Mr Katani made reference to the skeleton argument and the expert report which made reference to the "long term memory" of the gangs and that there is no defined time period as to when a risk would end or that gang members would give up after a particular extended period of time (see paragraph 45 and paragraph 63).
42. As to protection in his home area, he pointed to the country materials both in the respondent's CPIN and in the appellant's bundle which he submitted demonstrated that in El Salvador whilst there was a functioning police service, it was an ineffective system which was unable to protect its citizens from reprisals and gang members. He further submitted that even if the police were able to protect the appellants, the background material suggested it could only be for a short period of time. The gangs are sophisticated and have intelligence (see CPIN 12.12.1) and that the witness protection schemes would not provide the protection necessary. He highlighted the reasons given by the appellant as to why he would not enter witness programs or seek further police protection which is through the fear of reprisals and because of the position of the police themselves many of who were members of gangs themselves (this is reflected in the country materials (in the Refugee Board of Canada report at para 5.3 )and also the expert report). Thus, having made a complaint against gang members would also pose an additional risk factor for the appellants. The same applies the judiciary and the background evidence shows widespread corruption in the judiciary and low conviction rates of prosecuting gang members (see Refugee Board of Canada para 5.2 para; page 81.
43. As to the question of internal relocation, he relied upon the skeleton argument. He submitted that this was a case where the appellants have been able to avoid gang members for a significant period of time. However, he submitted it is important to remember the circumstances and the type of behaviour adopted to avoid gang members. The appellants were aided by friends and family, they change their patterns of behaviour and life seeing family and friends irregularly stop thus living in such circumstances would be unduly harsh even if the appellants were able to relocate to another area of El Salvador. As the expert stated this was not sustainable long-term.
44. In any event, the country materials when taken together demonstrate that as the gangs operate throughout the country, and that moving from one area to another would raise suspicions and would thus lead to checks being made, it was reasonably likely that their presence would be ascertained by the gangs. Any new person to the area would likely to be treated with suspicion and give rise to a risk. Thus, he



submitted the appellants would not be able to internally relocate and that was also noted by the respondent in the CPIN at paragraph 7.3.1.

45. Mr Katani therefore invited me to allow the appeals. As set out in the decision letter, there was no dispute that their risk of persecution or serious harm would be as a result of a Convention reason namely as members of a "Particular Social Group" (see paragraphs 28 - 33 of the decision letter and is reflected at paragraph 19 in the FtTJ's decision).
46. In his oral submissions, Mr Diwnycz made reference to the expert report in relation to sufficiency of protection and made reference to objective material in the CPIN February 2020 which he fairly stated did give support for the expert report at section 2.5.13. and the submissions made on behalf of the appellants. He also made reference to a recent reported decision of the Tribunal reported on Bailii (although not on the Tribunal website) which, although not dealing with entirely the same factual matrix, did make reference to the latest CPIN and the issue of gangs in El Salvador. He did not seek to address any of the other issues raised.
47. At the conclusion of the submissions I reserved my decision which I now give.

The decision re-made:

48. I begin with the factual findings made by the judge which are set out at paragraphs [125] - [128] and which were preserved findings.
49. The appellants advanced two aspects of their claim to be at risk of harm on return to El Salvador. The first related to a risk arising from the incident relating to the bus in 2010 and the second relating to the risk of extortion.
50. The FtTJ set out his general assessment at [125] where he stated "in general terms the country without doubt suffers from gang activity, most particularly from members and supporters of the two largest gangs in the country, known as MS 13 and Barrio 18. Indeed, the government of El Salvador considers both gangs as terrorist organisations. In varying degree, it appears that all parts of El Salvador are affected by the activity of criminal gangs and leaders and members may exhibit considerable influence, pressure, and criminal extortion against those whom the gang's target. The statistics in relation to unlawful killings at the hands of gang members places El Salvador in the unfortunate position of heading the statistics of victims of gang murders in Central America. It is clear that, perhaps to a varying degree, the activity of gang members is able to create a general climate of fear across particular areas or in specific localities."
51. At paragraphs [127]-[128] the FtTJ set out his factual findings in relation to the incident which occurred in 2010.

52. The FtTJ observed that in relation to that incident there had been evidence from the public domain which demonstrated that the event had in fact occurred. The first appellant had claimed that he was one of the few rescuers who had come forward to help victims inside the bus. Whilst the judge recorded that the respondent made the point that there was no reference in the press or other media which had named the appellant, the judge stated that he accepted the evidence on behalf of the appellant that where circumstances arose from a gang attack, the press would not name individuals or victims in order to preserve anonymity. At [128] the FtTJ found that the appellant did come forward as a volunteer to help those who face being burned alive in the wreck of the ignited bus and that this was a “very brave act and enormously to his credit”. The FtTJ also accepted that members of the gang who were present at the side of the bus and were on the other side of the vehicle did not have the opportunity to fire at the appellant. He also accepted the gang members who are at a greater distance attempted to do so but did not hit the appellant and to then run away from the scene.
53. Part of the appellant’s factual claim is recorded in his oral evidence before the FtT was that 19 passengers had been killed, and 21 had suffered severe burns. The appellant was asked why the gang had targeted the bus and the appellant stated at [70] that the day before the incident a member of Barrio 18 had been killed by people in locality and that the incident with the bus was their revenge.
54. It is also the factual position that following the incident, gang members came to the house and informed family members that he would be killed as a result of his actions. They also demanded money and in June 2016 the wife of the first appellant gave them \$1000 thereafter they demanded monthly payments. The second appellant lived with the first appellant and his family. Her evidence confirmed that of the first appellant that he had helped rescue people from the bus. She also confirmed that her aunt had owned a business from the house garage selling food from 2016 and that she had been the victim of extortion. In her case, gang members had threatened to remove her and her cousins and to put them into prostitution. The threats were so bad that the second appellant gave up her employment.
55. The appellant’s account is that for the period before he left El Salvador (a period of approximately eight years) that he had not lived at the family home as a result of interest in him from gang members and that throughout that period he had gone home for a few days and left again and it stayed at a house of a friend for a month and are then transferred to another address. It also considered his daughter’s house but would return to his own home to make visits. He would check with friends to see that the situation was clear but would not go outside the family home in daytime (at [58]).

56. As to the second limb which related to being a victim of extortion, the FtTJ set out at [128] that “extortion in El Salvador is a familiar practice, particularly against those who are obviously in trade or business.” That is supported by the expert report at paragraphs 35 onwards where it is recorded that one of the primary ways that the gangs exercise their power is through extortion or the levying of “taxes” or “rents” against residents and businesses locating or operating within their territory. These rents are one mechanism through which the gangs exercise their control and governance over populations. At [36] the expert makes reference to extended period of time a pass when an individual family received no threats/demands or series of threats/demands, only to find that later on they re-emerge. At [37] it is recorded that gang demands for rent and taxes affect all corners of El Salvador. Small businesses, including shopkeepers and family businesses are the most common targets of extortion in local neighbourhoods and towns. This country evidence is consistent with the factual claim made on behalf of both of the appellants.
57. As to the second head of claim which related to extortion, the FtTJ recorded at [128] that extortion in El Salvador was a familiar practice particularly against those who are obviously in trade or business.
58. There is evidence in the expert report that related directly to this issue at paragraphs 35 - 39. The appellant’s account was that he had been the target of extortion. Thus, the appellants account that he had been subjected to threats of extortion is consistent with the background evidence as to how gangs operate in El Salvador.
59. Against that background I am required to address the issue of risk of harm to the appellants and do so by considering the factual claim in the light of the country materials and the country expert report.
60. The appellant relies upon an expert report. It has not been suggested on behalf of the respondent that the author of the report is not qualified or lacks the expertise in his chosen area. Having had the opportunity to consider the report, I am satisfied that he does have relevant experience. At paragraph 13 the expert sets out the basis of his expertise setting out his knowledge gained from having undertaken field research based on interviews with migrants from El Salvador, with government officials and members of NGO’s and his participation observation over the course of many years alongside his assessment of written documentary evidence.
61. Furthermore, when considering the weight to be attached to the report, I observe that the factual information contained in the report is consistent with the other objective and country materials both in the appellants’ bundle and the respondent’s CPIN.
62. The expert considered the evidence given by the appellants was “consistent” with his assessment of the objective material and the background evidence that related to El Salvador.

63. At paragraphs 14 - 19 of his report, the expert summarises the position of gangs in El Salvador. He identified the two largest gangs as “MS 13” and “Barrio 18” and that according to police records, estimates of the total membership of the gangs exceeds 60,000 in a country with the total population of 6.4 million. Each gang has local branches that operate with the permission of the head gang leaders and that El Salvador has the highest concentration of gang members per capita in central America. The gangs have continued to grow membership and proliferate throughout the northern Triangle and into Mexico since the 1990s, when gang members began to be deported in larger numbers initially from Los Angeles where the gangs were born. Over the last decade, these gangs have evolved into large-scale criminal organisations who are “highly organised and internationally networked, remarkably prosperous and resource by stockpiles of firearms, including high-calibre weapons used in war”. In 2015 they extorted an estimated \$650 million from residents in the northern Triangle. The US Department of Treasury classified MS - 13 as a transnational criminal organisation and the El Salvadoran government classifies both MS - 13 and Barrio 18 as terrorists. It is also recorded at paragraph 16 that largely as a product of the wide proliferation of gang-related violence, El Salvador’s homicide rate is among the highest of any country in the world. Gang related homicides, and the climate of fear and terror that accompany them, affect Salvadorans throughout the entire country in both urban and rural areas.
64. At paragraph 19, the expert refers to the government legislation and law enforcement having been “almost entirely ineffective in reducing the spread of gang activity, membership and related violence in El Salvador”. Prisons have become overcrowded and have become sites where gang members continue to recruit new members, organise themselves and unite. From within prisons, gang leaders are able to continue their criminal activities and target their opponents. To date, responses to gang-related violence have been ineffective.
65. The material set out in the respondent’s CPIN version 1.0 dated February 2020 entitled El Salvador: gangs, is consistent with the contents of the expert report. At 7.16 it is reported that up to 500,000 people are affiliated with gangs in El Salvador and that “anyone living in gang territory has a choice but to cooperate with them” (at 7.1.6). In terms of active gang members, it is estimated that there are 60,000 gang members in El Salvador compared to just 52,000 police and military (7.3.1). The section at 5 of the CPIN provides further details.
66. The material in the Immigration and Refugee Board of Canada report make reference to the gangs being able to “exert their influence all over the country. Authorities have lost control over territory gangs, as the latter decide who enters and who leaves from neighbourhoods. Gangs are very vigilant in controlling their territories and they question whoever enters those territories.”

67. The CPIN also provides that those who refused to join a gang or refuse to comply with the gangs demands are vulnerable to violent reprisals (2.4.6) and that those who are at risk from gang violence are those who have collaborated with security forces or are perceived to have collaborated with them such as informants or witnesses (see 2.4.10). The CPIN makes it plain that whether a person is at risk from a gang will depend on his profile and actions, the area the person resided in, the reasons for the gang's interests and size reach and capability of the gang involved (see 2.4.9).
68. The expert set out at paragraphs 54 - 61 of his report a number of factors which he considered place the appellants at risk of harm on return. Firstly, he was the witness to a gang perpetrated crime and witnesses to gang perpetrated crimes are a group in society that are particularly likely to be marked by gangs as targets for torture and murder in El Salvador. Secondly, he rescued victims of crime and reported the gang who threatened him for doing so. The act of rescuing the victims would be generally understood to be an active opposition against Barrio 18 and those who take actions are oppositional to a gang or otherwise challenge gangs with an authority generally become the targets of retaliation by the gang. The appellant's family members have been threatened and that is common. Families are at the core of the central American lives and this is tactic is used to effectively terrorise and control not only those being direct friend, but to maintain power control and authority over society as a whole by perpetuating a general state of fear.
69. In relation to the threats made against the appellant's daughter and the second appellant, the expert at [58] considered that that was characteristic of gang threats against women and girls. Gangs are known threatened to take the daughter of a family member of a target individual as a "gang girlfriend" (into a full sexual relationship). Girls and young women to be forced into prostitution and forced sexual relationship gang members. Gender-based violence against women occurs.
70. As to the reports made by the first appellant to the police, having reported threats against him and his family to the authorities, the decision to report such threats would put him and his family members in danger. Corrupt law enforcement officers and share information with gangs and Barrio 18 could learn of his report to the authorities.
71. In reaching my assessment, the question is whether the appellants are at risk of serious harm due to what occurred in El Salvador based on the factual findings made by the FtTJ. The FtTJ accepted the factual account that the first appellant had come forward and rescued those in the burning bus. The appellant's account which was accepted by the FtTJ was that the gang members were aware of his actions and had attempted to shoot him at the time of the incident. Thereafter there followed threats against him. Both he and the second appellant

have been the subject of extortion and threats by gang members of the type that is consistent with the country materials, both in the type of threats to made in the context in which the extortion takes place.

72. The expert evidence at [61] sets out his assessment of the objective evidence. In that paragraph the expert expressly addressed the factual account given by the appellant and his claim that he had been in hiding to avoid further harm. In particular the expert noted his claim that he had given up his routine activities to attempt to temporarily avoid harm whilst he remained in hiding for several years. At paragraph [61] the expert identified from the material that the appellant's account of giving up his daily routine to avoid harm was plausible as "gangs are best able to target individuals and their families by identifying their routine activities, such as when they leave their home, take the bus, pick up the children from school, go to work and so forth, when they are vulnerable to threats and assaults. If extremely careful by remaining indoors for extended periods limit home only the advice of trusted others who remain on the lookout for gang members to make sure he would not be seen, and by periodically changing location, (the appellant) may have been able to temporarily (even if over several years) keep in view from gang members." The expert went on to state that it was not viable in the long term.
73. Therefore, the expert provided an explanation as to why he was able to avoid the gangs over the period of time that he asserted. Whilst that is a lengthy period of time, I do not consider that it is implausible when seen in the context of the objective material.
74. Having considered the account of both appellants (principally the first appellant) and in the context of the country materials relied upon by both parties which are consistent in my judgement, that material is supportive of the appellant's account to be at risk of harm upon return to El Salvador. As set out earlier, the CPIN at 2.4.9 and 2.4.10 makes reference to those who would be at risk of harm and identifies those who have a profile as a result of any actions which could be viewed or perceived of having acted against the gang or as an informant or witness. In the factual account of the appellant, the incident with the bus falls into both categories; he was involved in an act which could have been viewed as acting against the gangs by rescuing people from the burning bus and also from having made a complaint to the police. In respect of the extortion, having refused to continue to pay sums of money, that would also fall within the risk category. The gang who were identified are one of the two largest gangs who dominate El Salvador. The position of the second appellant is dependent upon the first appellant as set out in the earlier decision of the FtTJ (at paragraph 6).
75. The respondent in the decision letter had submitted that the length of time that had elapsed since the incident in 2010 and the later

incidents in 2016 in 2018 would mean that the appellants would not be at risk of harm on return now. I have considered that in the light of the evidence and in the light of the country materials and based on how gangs operate in El Salvador. At paragraph 45 of the expert report, it is recorded that gangs “maintain a long-term memory about those whom they have threatened in the past, and they regularly follow through on these threats against those who have defied, or are suspected of having defied, the authority of the gang, even when years have passed since the victim’s perceived defiance.” Furthermore, at paragraph 36 it is recorded that “extended period of time a pass when an individual family received no threats/demand or series of threats/demands, only to find that later on they re-emerge.”

76. It is therefore argued on behalf of the appellant that the material demonstrates that there is no defined time period of when the risk ends, or that gang or gang members simply give up after an extended period of time.
77. In my view, whilst there has been a significant period of time which has elapsed, the material before the Tribunal demonstrates that there is no period of time when a risk can effectively end. What I consider to be more relevant is the country materials set out in both the CPIN and the appellants material which demonstrates the way in which gangs control territory across the country and that the nature of the community in El Salvador is very close knit. Given that gangs monitor movement in the areas they control and they check those moving from one gang controlled area to another, if the appellants were to return to their home area their re-emergence and presence would become known to the gangs which was reasonably likely to give rise to interest again in them.
78. I am therefore satisfied that the appellants have demonstrated to the lower standard that they would be at risk of serious harm from gang members if they were to return to their home area.
79. As to the assessment of sufficiency of protection, Mr Diwnycz on behalf of the respondent does not seek to argue that there is sufficiency of protection for the appellants on return. The material in the CPIN is consistent with that in the expert report. At page 68 of the appellant’s bundle, there is a copy of the Immigration and Refugee Board of Canada, El Salvador: Information gathering mission report-part one: gangs in El Salvador and the situation of witnesses of crime and corruption dated 1/9/2016. At page 79 the position of the police was summarised as was the justice system at page 80. There was evidence given that sources that indicated the justice system was inefficient, with high levels of impunity (page 81) and that sources indicated that people prefer not to file complaints with authorities due to the either fear of reprisals or retaliation or due to the lack of confidence in public institutions receiving complaints. It also recorded that “the IGSP indicated that they have been isolated cases of

collusion between members of the PNC with gangs. Other sources stated that if someone files a complaint against a gang member, the person will likely face reprisals as gangs of infiltrated many state institutions, including the PNC. At p82 there was a section at 5.3 dealing with the witness protection programme which was said to not guarantee the lives of witnesses. The expert report set out relevant issues at paragraphs 15, 19,21 and 22.

80. The CPIN also makes reference to the lack of effectiveness of the witness protection schemes and at 2.5.9 record that the PNC lacks resources, officers are poorly paid, there is collusion with gangs and impunity. At 2.5.10 whilst there is a function judiciary it is not effective and is undermined by inefficiency and corruption. Finally, at 2.5.13, the CPIN and makes reference it is unlikely that there would be effective protection.
81. In his evidence the appellant had given an explanation as to why he did not seek state protection (beyond making a complaint) because of the issue of infiltration of the gang members in the state apparatus and that he would not be safe. In the light of the country materials both that relied upon by the appellant and by the respondent, that explanation is entirely plausible and has weight.
82. I therefore conclude that in light of the country materials when set against the appellant's account, there would not be sufficiency of protection for either appellant.
83. I now turn to the issue of internal relocation. The respondent in the decision letter stated that relocation in El Salvador is deemed reasonable as its citizens have freedom of movement throughout the country (at [81-82]). However, the material cited later at [82] states that the government respected those rights of movement "although in many areas the government could not provide freedom of movement due to the strength of gang activity." The argument advanced on behalf the appellants is that gang culture meant that anyone moving home would attract the attention of the prevalent gang in the new area of residence.
84. The appellant's argument has been supported by reference to the objective country materials and the expert report. The FtTJ had accepted that gangs operated throughout El Salvador in his assessment at paragraph [125] and this is supported in the material. The objective evidence on this issue is set out in the Refugee Board of Canada report (page 73) and also at section 4.1.1. The expert report also addressed this issue at paragraphs 51 - 53.
85. The respondent's CPIN at 13.2 makes reference to internal relocation being difficult due to the close-knit nature of its communities. El Salvador is a relatively small country (approximately the same size as Wales) with a population of 6 million and that the communities are very close knit. Gangs control territory across the country and are



able to exert influence over the whole country with some groups reportedly able to track a person throughout the country. The gangs are recorded to monitor movements in areas they control and are able to check people moving from one gang -controlled area to another (see CPIN at 2.6.2). At 2.6.3 the CPIN records that “in general internal relocation is unlikely to be reasonable”, however each case must be considered on its own facts.

86. Having considered the country materials as set out above, the reports are consistent with each other as to the ability of the gangs to control their territory and for the other gang to monitor movements in areas that they control. As Mr Katani submits, it is reflective of the territorial control that gang members have in El Salvador. Given that checks are undertaken against those who move from one gang controlled area to another, there is a reasonable likelihood that this would occur in the case of both appellants and thus internal relocation would not be a safe alternative for them and that they would be at risk of harm for which there is no sufficiency of protection as outlined in the earlier assessment.
87. At paragraphs 28 - 33 of the decision letter and as reflected at paragraph 19 of the FtTJ’s decision, the respondent accepted that if their factual account was accepted, that their claim fell within a Convention reason namely victims of gangs which form a “Particular Social Group”.
88. Drawing together those matters, I am satisfied that the appellants have demonstrated to the lower standard that there is a reasonable likelihood that upon return to El Salvador that they will be at risk of persecution or serious harm for which there is no sufficient protection and that internal relocation is unsafe, and unreasonable and thus is unduly harsh.
89. I therefore allow their appeals under the Refugee Convention and on human rights grounds (Articles 2 and 3).

### **Notice of Decision**

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision was set aside and remade as follows: the appeals are allowed.

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

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. 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 Upper Tribunal Judge Reeds

Dated 19 November 2020