



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

Appeal Numbers: PA/09101/2019
PA/09269/2019
PA/09271/2019
PA/09274/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 26 November 2020 and 28
January 2021**

**Decision & Reasons Promulgated
On 11 August 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MILG
SJLG
ALG
MALG**

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondents: Ms L Mensah, Counsel instructed by Broudie Jackson
Canter Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondents, hereinafter “the

claimants”, or any of them. Breach of this order can be punished as a contempt of court. I make this order because the claimants are asylum seekers and so are entitled to privacy.

2. The claimants are siblings. They were born in 1986, 1988, 1992 and 2000 respectively. The first three claimants are sisters and the fourth claimant is their brother. These linked appeals, brought by the claimants against a decision of the Secretary of State on 6 September 2019 refusing them asylum, have previously been determined unsatisfactorily in the First-tier Tribunal. I set aside the decision of the First-tier Tribunal and directed that the case be heard again. My reasons for finding an error of law are appended to this Decision and Reasons. It will be noted from them that the First-tier Tribunal Judge believe much of claimants’ evidence and those findings were not criticised by the Secretary of State.
3. The judge’s decision to allow the appeal was wrong for two important reasons; it did not identify a Refugee Convention reason although it purported to allow the appeal on Refugee Convention grounds, and it did not show proper consideration and evaluation of an expert report or otherwise explain the conclusion that the claimants could not find a place of safety in El Salvador.
4. The hearing before me proceeded on submissions only. It had to be adjourned because Mr Melvin had not been able to consider the expert report. My decision to adjourn produced a rather sharp reaction from the claimants’ solicitors who insisted that the report had been sent. I make it plain that I never said to the contrary. Mr Melvin’s difficulty was that it had not come to his attention. The expert’s report was potentially very important and it was right that he had considered the report so that he could make such informed submissions as he wanted to do.
5. In very simple outline it is the claimants’ case that they each fear for their safety in the event of return to El Salvador because they had been threatened by one of the main criminal gangs that, according to the claimants, is influential throughout the country. It has been established that two of the claimants, I think the first and second, had been threatened directly by gang members and the other two claimants had been threatened indirectly with threats passed on through the first two.
6. I begin by looking carefully at the expert report. It is dated 2 December 2019 and is the work of Dr Andrew Redden who writes as a senior lecturer in Latin American History at the University of Liverpool. His relevant qualifications include a bachelor’s degree in Spanish which was awarded in the first class, a master’s degree in Latin American Studies which he passed with distinction and a Doctorate of Philosophy in Latin American History awarded in 2005. I also note that from 2017 he started to supervise a PhD being written concerning British aid to El Salvador. He is also particularly interested in a Salvadorian youth organisation known as “Music for Hope” and has been involved since 2016 in creating a documentary history of that organisation. He is now also a trustee of that charity and this research and associated work means that he typically visits El Salvador at least once a year and claims to be in close contact with co-project workers.

7. His report begins by explaining how disaffected Central and South Americans who had removed to the United States of America were dissatisfied with their lives there and tended to form gangs. There was mass deportation of non-citizens back to Central and South America introduced by immigration legislation in the USA in 1996 with the result that thousands of Salvadorians were deported back to El Salvador taking their gang culture with them. The difficulties were recognised by the governments but the solutions were ineffective.
8. He referred to a series of “iron fist” policies implemented by Central American governments intending to increase voter confidence in their ability to control crime but which actually caused the gangs to reorganise and become more effective as they developed their own internal security measures to counteract the state.
9. El Salvador particularly suffers from a very high homicide rate and a deeply entrenched gang culture.
10. In 2012 the Salvadorian government tried a different approach based on good treatment of gang prisoners in exchange for better gang behaviour. This saw some significant improvement particularly in the reduction in homicides in Salvador but the results did not last. Crudely the murder rate in El Salvador in 2018 was approximately 50 times higher than the murder rate in the United Kingdom.
11. There was a new government in June 2019 and a new “iron fist” policy involving the militarisation of the streets and poor districts and lockdown in the prisons. There was some apparent success including a reduction in the murder rate and on one happy day in July, for the first time on a long while, no homicides were recorded in the country.
12. However, by September 2019, the murder rate was rising again and Dr Redden anticipated that the relative peace would prove to be a welcome but short lived blip. He was aware the government claimed that its “plan for Territorial Control” was a new policy because it had a second phase involving social infrastructure investment. Dr Redden did not regard this as particularly new and did not see how the funding could be sustained.
13. He explained in some detail how gangs are highly organised and can communicate swiftly even within prisons and that their power is such that the two main gangs have each been used, unofficially, by political parties to propagate a message. He said that in Salvador there is no working class territory that is not “controlled” by one of the gangs and that it was impossible for ordinary citizens to avoid contact with gang members. Particularly he said (page 9 of the report):

“Individuals or families who escape from one region to another will soon be investigated by the controlling gang. If they had fled from MS-13 territory to Barrio-18 territory (or vice versa) then they will be suspected of spying and there is a very high chance that they will quickly be eliminated. Even if spying is known to be unlikely then they may be tortured and/or killed simply to ‘set an example’ and as a method of disseminating fear among residents of the community controlling by the opposing gang. If people flee to territory control by

the same gang, then the connections between cliques means that the reason for their flight will soon be discovered and their lives will once again be in danger.”

14. He also suggested that young adults are in particular danger because they had to carry an identity card that gives their place of origin and therefore their place of nominal gang loyalty.
15. Extortion is a major means of funding.
16. He then addressed his mind to the role of the National Civil Police (PNC) and lack of protection.
17. Dr Redden described the Home Office view that El Salvador has a police force that is capable and willing to offer protection as “a common misconception”. He said (page 11 of the report, page 38 of the bundle) that whatever the reasons for this misconception,

“for the entirety of the twentieth-century, right through to the present day, Salvadoran policing has been based on repression of those deemed threats to the state rather than the protection of ordinary citizens or its own officers who find themselves targeted.”
18. He then outlined how after the collapse of the truce in 2014 the government created a militarised rapid reaction special forces unit but that did not seem very different from a police commando force that had existed earlier. However, it had wider powers. Essentially it killed people and the response was that attacks on the police increased.
19. Certainly in raw figures the gangs suffered more because more gang members were killed but high numbers of police officers were still being assassinated and the gangs were not defeated.
20. He opined that experiences developed during the civil war had caused the gang members to develop increasingly sophisticated strategies and based themselves on organised guerrilla warfare. This included infiltration of legitimate state organisations.
21. Dr Redden was satisfied that there was a high level of corruption within the PNC and he described the government’s attempts at attacking it as “feeble”. Part of the problem is poor pay. He had no confidence whatsoever in the ability of the state to protect people such as the claimants. He gave examples of the assassination of a police sergeant and the intimidation of a judge which he indicated were examples of a general trend, not isolated incidents and suggested that if such people could not be protected there was neither the resources nor the ability to protect ordinary citizens.
22. He then considered the situation of returnees. He recognised there was no systematic study on the fate of failed asylum seekers who had been returned to El Salvador but found in 2014 84 people who had been removed from the United States and returned to Central America had been murdered. This he believed was a trend that echoed an Amnesty International Report of 2016.
23. He quoted an Amnesty International Report saying:

“In its research in all three countries [El Salvador, Guatemala and Honduras], Amnesty International found that states’ efforts to protect their returned citizens

appeared to end the moment they walked out of the doors of reception centres and that no effective protection mechanisms were in place.”

24. Lest this was not sufficiently clear under the heading “Insufficiency of State Protection” at page 18 of the report, page 45 of the bundle, he said:

“With respect to state protection, I can categorically state that, on the basis of the available evidence, there is no possibility that the state could or would be able to offer the protection to [the claimants]”.

25. He rejected emphatically the Secretary of State’s contention that there was a functioning police force. He described it not as a functioning force but a force in which corruption is endemic, with insufficient accountability and which can and did commit abuses with virtual impunity. He gave by way of example that 559 members of the PNC had been arrested for crimes including membership in extermination groups and the disciplinary force sanctioned 753 officers, 136 of whom were dismissed. He pointed out that that means that 753 minus 136, that is 617, were sanctioned but not dismissed. Clearly this is raw data but he did not regard this as a reassuring figure. Dr Redden rejected the Secretary of State’s contention that the “iron fist” crackdowns were reasons to be confident of the system. He said there had been many “iron fist” crackdowns and they had all failed and he had no reason to think this one would do any better.

26. By way of further example he referred to key witnesses in court trials under the state witness protection scheme being “routinely murdered”.

27. He then addressed his mind to safe relocation. He regarded return to anywhere in El Salvador as highly dangerous. Most of the territory was controlled by either MS-13 or Barrio-18. In the event of their return they would be noticed and enquiries would be made. Return to the wrong area could easily attract death as a result of being seen as an enemy spy. The risks for the fourth, male, claimant would be particularly severe for this reason.

28. The Secretary of State had talked about relocating in identified places including Chalatenango and Santa Ana or La Paz. Dr Redden regarded this suggestion is based on out of date information. The murder rate in Chalatenango had worsened significantly worse and was no longer at the figure suggested by the Home Office but was actually higher than the place where the claimants had lived. Murder rates in the other two places were also very high.

29. It would be very difficult to gain employment even if they were safe in any of those places. Chalatenango particularly is one of the poorest and undeveloped regions in the country. They would have no income or means of obtaining income in these very poor areas and that would make them particularly vulnerable to control by the gangs.

30. I remind myself at the end of Dr Redden’s report where he said:

“It is also worth bearing in mind that someone who has to relocate due to the social conflict will be unemployed and have no income and will therefore have to relocate to the poorest areas which are the most dangerous and *always* controlled by one or other of the gangs. Unfortunately, there is no ‘safe’ part of El Salvador when someone has received a direct threat from a violent group, or when someone wishes or needs to escape extortion.”

31. Mr Melvin criticised this report and I consider that below but I outline now some of the other evidence in the claimants' bundle which tends to show that Dr Redden was not out on a limb in his conclusions. There is a reproduction of an article from the Washington Post dated 3 March 2019. It referred to officers "bankrolled" by the United States and trained by FBI agents to take down MS-13. At least nine officers were killed in the first month of 2019 and now a number were fleeing the gang that they were intended to eliminate. The US State Department had spent at least \$48,000,000 to train police in El Salvador, Guatemala and Honduras between 2014 and 2017 and the US government said that the Salvadorian government with its support had "made significant gains in the area of security, including reductions in homicides and every other category of island crime measured". The fact remained that killing a police officer was a way of gaining respect. He gave an example of a police officer seeking asylum in the US after the officer's child was threatened in school.
32. There is then an article from Doctors Without Borders dated 25 September 2019 under the title "El Salvador is not a safe country for refugees or asylum seekers". Substance is given to the headline and that the headline says it all.
33. The Human Rights Watch World Report 2019 on El Salvador is dated 17 January 2019. It refers to El Salvador having one of the world's highest homicide rates. It confirms that gang members are present in at least 247 of the country's 262 municipalities and says:

"they enforce their territories' borders and extort and gather intelligence on residents and those transiting these areas, particularly around public transport, schools, and markets."
34. Mr Melvin referred to the CPIN dated February 2020. It too referred to gangs and under "7.2 Territorial presence" it referred to gangs having great mobility as well as close territorial identity, said how they are present in "nearly all the country's municipalities but gravitate towards the urban areas". The extent of the gangs' presence has "no equal anywhere in the world" and they are particularly involved in homicide, extortion, forced recruitment and forced disappearances, drug trafficking, threats and carjacking. It said how demands were made to business operators with a pay or die policy and it echoed reports on the territorial nature of the gangs and how people from a different area would be noticed and investigated. People could not live in their areas without permission. All businesses pay extortion fees. Extortion is concentrated on businesses but individuals can be "taxed".
35. I find it apt to remind myself of the threat that has been issued in this case. The first claimant in her statement comments on the difficulties of living in El Salvador with its gang culture where lawlessness and extortion are part of ordinary life. Without in any way approving of such conduct her claim is starker than this suggests. She referred to a time on 22 March 2019 when she was returning from work and she was accosted as she came off a bus and was told to pay \$3,000 and "if I did not pay they would kill me".
36. This is developed in the subsequent paragraph to say that the threat included information about the knowledge the gang had of the claimant and her circumstances and includes the warning that if she did not give the money "we will kill you or a member of your family or my son".

37. For completeness she reported the matter to the police in May 2019 (I think she might mean March) and after living very discreetly left on 27 May 2019 having obtained tickets to the United Kingdom because “we found that flights to the UK were the cheapest”.
38. The second claimant’s statement has to be read with her interview. Having said that she knew that her sister had been threatened she said that she was “attacked” on 14 May 2019. She said that, untypically, she walked home that day and she was accosted by people who threatened her with a gun and indicated that they had asked her sister for money and if they did not pay then “we know where you live, you live with your sisters and brothers and a little boy, my sister’s little boy” (question 45).
39. The third claimant makes clear that she was not threatened directly but believes she was at risk because of what was said to her two sisters.
40. The fourth claimant makes a similar point stating expressly at paragraph 3 of his statement:

“Yes, my life is at risk as well because the MS-13 gang threatened all of us in the house through my sisters MI and SJ.”
41. Clearly a great deal will depend on my evaluation of the expert report. I remind myself that I regarded as of sufficient importance to grant an adjournment so that Mr Melvin would be in a position to make considered response. Mr Melvin prepared a written challenge to the expert report and set it out in a “Respondent’s Addendum Written Submissions” dated 27 November 2020 which I now consider.
42. The Addendum Written Submissions summarise the report and the challenge starts at paragraph 38.
43. Comment is made that the writer was not able to find any judicial analysis of Dr Redden’s opinions. That may be right but no doubt reflects the fact that cases involving citizens of El Salvador are, I find, rare in the United Kingdom. It is not a good reason to discredit or even doubt Dr Redden’s views whose academic qualifications are of a high order.
44. The Secretary of State then contended that the report was “overly pessimistic” in its analysis of the likely consequence of the government’s latest efforts to crack down on gangs. I see no reason to regard it as “overly pessimistic” other than the fact that it suits the Secretary of State’s case to categorise it so. Dr Redden has explained that there is a history of failed attempts and explained why in his judgment the latest efforts are unlikely to succeed. I find his arguments at least persuasive.
45. The Secretary of State does not accept there is “near absolute territorial control” by the gangs. There have been “thousands of arrests and convictions of gang members”. That is clearly right but the fact remains that gangs continue to exist and perhaps have become even more entrenched in society. The evidence points not to these gangs being some sort of quirky social club but to an evil throughout society which asserts its presence by marking borders in the streets and embarking upon widespread, far- reaching criminal acts typically protection rackets. Dr Redden’s contention that a person returning would be “entering into the theatre” is said to be illustrated by saying that the

claimants would be forced to the poorest areas where the gangs operate. I do not understand that criticism at all. All Dr Redden is saying is that the claimants, like most other people, would have to earn a living. It is hard to see how they could expect to return anywhere where there would be jobs available. The fact is that El Salvador is a poor country.

46. I attach no weight to the submissions tending to undermine the integrity of the findings. The Secretary of State chose to settle the grounds and chose not to challenge credibility. If she had wished to challenge credibility it was open for her to do so. It is not attractive to do it now and I do not permit it.
47. The criticisms of Dr Redden's report recognise that information in the latest CPIN "paints a difficult picture for those facing gang violence". Every case has to be considered on its own merits which as far as I can is precisely what Dr Redden has done.
48. I remind myself that although the burden is on the claimants the standard of proof is low. I have to decide if there is a "real risk" to their safety having considered the evidence as a whole. I find Dr Redden's report informed, objective and persuasive. Having read that report and the other background material before me I find that there is no effective protection for people in the claimants' circumstances. The police are reluctant to act partly perhaps because of corruption and partly because there is little if anything they can do. There are many cases where they cannot act to protect people who are in direct need of their protection such as witnesses. The idea they can do anything useful to protect the claimants is, I find, optimistic to the point of being fanciful. The claimants have made a report to the police and there has been no useful response. I find that is the sort of thing that tends to happen. It is not a question of the government of El Salvador not caring. The fact is they cannot do anything that is useful. The gangs are large and well-structured and deeply entrenched in society.
49. I then have to consider what would happen if the claimants returned. I accept the evidence in Dr Redden's report. I also find it chimes very tunefully with the passages in internal relocation on the 2020 CPIN. At paragraph 2.6.2 it states:

"El Salvador is a relatively small country (about the same size as Wales) with a population of 6,000,000, many communities are close-knit. Gangs control territory across the country and able exert influence over the whole country, with some gangs reportedly able to track a person throughout the country. Gangs monitor movement into areas they control and are reported to check people moving from one gang-controlled area to another, generally not allowing this. LGBTI persons and women and girls, without support networks, may be particularly vulnerable to abuse and may find it difficult to support themselves in areas of relocation. Conversely, single men who have experienced limited difficulties, are educated with independent financial means may be more able to relocate safely (see Gangs' size and reach, Women and girls, Displacement and Freedom of movement)."
50. The section "Gangs' size and reach" is under number 7. Local gangs can have a membership ranging from a handful to 100 or more. I note particularly the UN Special Rapporteur who at 7.1.6 reported being told that "anyone living in gang territory has little choice but to co-operate with them". The point is that some people may be rich enough to live in protected areas. I have no reason

to think these claimants are such people or that if that were a viable option it is not what they would have done.

51. I do not accept effective protection is available.
52. I consider now the separate but related idea of avoiding trouble by internal relocation. As I have indicated above there may be internal relocation for people with the means to live in gated communities but I have no basis for concluding these claimants are such people. Rather, they are people who would have to establish themselves somewhere and I am satisfied from the evidence that it is at least reasonably likely that they would very quickly come to the attention of the controlling gang. If it was the gang that had threatened them then the threats would be repeated and carried out if there was not compliance. If it was merely controlled by the other gangs then there is at least a reasonable chance they would be seen as spies and at very grave risk indeed for that reason. I emphasise that in reaching these conclusions two of these people have already been threatened directly and threatened so convincingly that, having tried to live very discreetly in their country of national, they pooled their resources and escaped to the United Kingdom.
53. There is a slightly untypical feature of this case. Extortion rackets tend to work by people being required to pay affordable amounts, possibly even token amounts initially. This case is untypical but by no means unprecedented. A significant premium was demanded. I do not know why that should be. The claim has been believed and I have no reason to go behind it. In the event of return they would be identified as people who had been expected to pay a large amount. Their difficulties would be very real.
54. I accept the evidence that the gangs have far-reaching influence and contacts. I accept that the claimants' return would be noted and I reject the contention that there is safe internal relocation for them in El Salvador.
55. It follows that I find they are at risk.
56. I must now decide if they are entitled to refugee protection. Having satisfied myself that the claimants do face a real risk of serious ill-treatment in the event of their return I must now rhetorically ask why. Realistically if they are to come within the scope of the protection offered by the Refugee Convention they must show that they are a member of a particular social group. That is a, no doubt deliberately, elastic concept plainly intended to provide assistance to those who face persecution but who do not fall within the four main protected reasons. However, as I indicated when I found an error of law, it is not sufficient simply to show a person runs a risk of serious ill-treatment. To be a refugee the serious ill-treatment has to be for a recognised reason and membership of a particular social group is a phrase that has been subject to case law which I must endeavour to apply.
57. Ms Mensah argued that the claimants are at risk because they are a member of a particular family. Mr Melvin argued against that and I find Mr Melvin was roughly right. The claimants are not in trouble because they are member of a family. Several members of the family continue to live in El Salvador without complaint and I see nothing in the evidence that would support a finding that the risk they run is because of their family connections. It contains a core of

truth in the sense that the third and fourth claimants are at risk because of their link to the first and second but that is not the point. Families are social groups but the claimants are not at risk on that account. I must look for another reason and there may not be one.

58. Having reminded myself of the leading authorities and particularly **R v Immigration Appeal Tribunal ex parte Shah and Islam [1999] 2 AC 629**, I take as my working definition of particular social group, “a person who is a member of a group with immutable characteristics that they cannot be or should not be expected to hide and which they do not share with society at large”.
59. In the hypothetical event of the claimants being returned to an area controlled by the major gang that has not, so far, persecuted them I find they would be at risk because they would be seen as spies. Being perceived as a spy is a particular social group to which on the background evidence they would undoubtedly belong. In the event of their being returned to the area where the persecuting agents are the dominant gang they would be identified quickly as people who had defied the gang and would, I find, be at enhanced risk because of that. Being a “person who defied a gang”, I find, satisfies the definition of particular social group. They would be at risk just for being there and the gangs cannot allow people who defy them to triumph as their authority would be undermined. Both of these definitions are, in my experience, unusual but I cannot see how they fail to comply with the requirements. They are not being defined by the fact of persecution but by the characteristic which makes them vulnerable.
60. If I am wrong about this then they are entitled to humanitarian protection under Article 15(b) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and associated Immigration Rules. They face degrading treatment, quite possibly even death but there is no need to go that far to come within the protection of the Convention.
61. In reaching this conclusion I have reminded myself that I have decided there is no safe place for them in El Salvador. This is not, as I was concerned it might be when I found an error of law, a case of people who could return safely to a very difficult part of the country which might not be so difficult as to be contrary to their Article 3 rights. I am satisfied that there is no safe place for them. That is what the expert says and that is the evidence I prefer.
62. If I am wrong about all of this then it should be allowed with reference to Article 3.
63. I have reflected on this case particularly because it is, in my experience, rather unusual. It may be that the arguments have been tested in other jurisdictions possibly nearer to the claimant’s home but the claimants here had the advantage of claiming asylum on arrival and offering at least a plausible explanation for coming to the United Kingdom, namely that was there their funds would take them when the time came for them to leave.
64. Putting everything together I have decided that the appeals should be allowed and I allow the appeals of the claimants in each case.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 6 August 2021



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

Appeal Numbers: PA/09101/2019
PA/09269/2019
PA/09271/2019
PA/09274/2019

THE IMMIGRATION ACTS

**Determined at Field House Without a Decision & Reasons
Hearing Promulgated
On 24 September 2020**

.....

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

**M I L G
S J L G
A L G
M A L G**

(ANONYMITY DIRECTION MADE)

Respondents

REASONS FOR FINDING ERROR OF LAW

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Respondents (also “the Claimants”). Breach of this order can be punished as a contempt of court. I make this order because the Claimants seek international protection and are entitled to privacy. The First-tier Tribunal did not make an anonymity direction but an anonymity order should almost always be made in asylum claims.
2. These appeals are brought by the Secretary of State against the decision of the First-tier Tribunal to allow the appeal of the Respondents, hereinafter the “the

Claimants”, against the decision of the Secretary of State refusing them international protection. The First-tier Tribunal refused permission to appeal but permission was granted by Upper Tribunal Judge Kamara on 5 May 2020. Subsequently Upper Tribunal Judge McWilliam issued directions in what might now be thought a standard form because she had reached the provisional view that the appeal could be determined at least to the extent of deciding if there were an error of law and if the decision should be set aside without the need for an oral hearing.

3. Those Directions were sent to the parties by their representatives by email on 10 July 2020. The Secretary of State made “Response Submissions” by a Presenting Officer, Mr Stefan Kotas, dated 17 July 2020, and then “Reply Submissions” also by Mr Kotas dated 31 July 2020. These were drawn in reply to written submissions from the appellant’s representatives dated 30 July 2020.
4. The Secretary of State makes plain that she is content for the issues identified by Judge McWilliam to be decided without a hearing. Paragraph 2 of the “Response and Submissions” is unequivocal. The claimants’ representatives do not seem to have expressed a view.
5. Although it has been a long-established custom in the Tribunal to determine error of law issues at an oral hearing there is no requirement in the law to provide a hearing. However, I am obliged by Rule 34(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to “have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter”. The claimants had not expressed a view and the Secretary of State approves. That is not the end of the matter. The decision is for the Tribunal but I agree with the Secretary of State that the issues raised are clear and an oral hearing is not necessary. This Tribunal is pressed to find space because of the constraints imposed in the wake of the national lockdown. Determining appeals without a hearing significantly reduces the pressure on that space and therefore encourages more expeditious disposal of the Tribunal’s business. I am satisfied that in a case such as this, which does not seem complex, the balance of justice favours a decision on the papers. It will be decided sooner and dispensing with a hearing will provide hearing room space for other cases that really cannot be decided in this way. I am therefore content to determine the issue of whether there is an error of law without a hearing. I will, of course, have regard to the submissions that are made.
6. I begin by looking at the Decision and Reasons. This shows that the Claimants are citizens of El Salvador and are siblings. On 6 September 2019 they were refused asylum and humanitarian protection and they appealed that decision to the First-tier Tribunal.
7. The First-tier Tribunal Judge noted the immigration histories were not in dispute. She said:

“They arrived in the United Kingdom by aeroplane and claimed asylum on the same day, that is 28 May 2019. The judge summarised their case as being a fear of persecution in El Salvador (for a non-Convention reason) namely that they have suffered issues with criminal gangs there and fear return on this basis.”
8. The judge went on to explain that the claim for humanitarian protection is based on how they would expect to be treated in the event of their return to El

Salvador. They claimed that the treatment they risked contravened Article 3 and indeed Article 2 of the European Convention on Human Rights and this would constitute a breach of Article 15(c) of the Qualification Directive.

9. The Judge noted the Claimant's oral evidence and the judge found that evidence credible. The Judge assessed their evidence particularly against the background material and said unequivocally at paragraph 20:

"I state now at this early stage in my findings that I find the [Claimants'] claim to fear that if returned to El Salvador they would face mistreatment, to be credible."

10. The Judge was satisfied that the two eldest Claimants were directly threatened by a criminal gang that controls the area where they lived and the gangsters made the eldest Claimant aware that they knew about her family. The Judge was satisfied that the evidence that protection money in the sum of \$3,000 was demanded was also credible even though this was not typical of extortion rackets which tended to involve, at least initially, smaller sums. The Judge found that the Claimants had taken steps to live safely in their home area but could not. The Judge acknowledged there was some supporting evidence in the form of a police report which showed a genuine attempt to get assistance. At paragraph 31 the Judge considered if there was in fact a Convention reason. The Judge also accepted evidence that internal relocation was not possible. The Judge said at paragraph 36:

"I am satisfied that even were they to relocate, to areas suggested by the Home Office to be possibilities, such as Chalatenango, they are likely to be unemployed and have no income, it is stated as one of the poorest and undeveloped regions, meaning they would be even more susceptible to the mercy of gangs and their threats. It is stated in the objective expert evidence that once a direct threat is received, or there needs to be an escape from extortion, there is no safe part of the country. I am satisfied on this basis that relocation is not an option at least at present and to return the [claimant] to El Salvador given the circumstances would put them in danger of their lives."

11. The judge then reached conclusions at paragraph 39 which states:

"For the reasons which I have given, I am satisfied to the low standard of proof that the [Claimant] has an objectively well-founded fear of persecution in El Salvador. I do consider that the risk on return engages the Refugee Convention and the ECHR in these circumstances. I find they have demonstrated that there is a real risk that would suffer serious harm if they were to be returned which would justify a grant of humanitarian protection under the Immigration Rules."

12. The judge then went on to allow the appeals on asylum grounds and on "humanitarian protection grounds under the Immigration Rules" and decided there was "no valid appeal before me in respect of human rights".

13. I have considered this but it cannot be right. It is fundamental to principles of asylum law that a person is not protected by the Refugee Convention unless that person risk persecution for a Convention reason. The judge did not identify a Convention reason and no such reason is obvious. In the absence of a Convention Reason there cannot be a lawful finding that the Claimants are refugees.

14. The decision to allow the appeal on humanitarian protection grounds under the Immigration Rules is more puzzling. The essence of humanitarian protection is

there is a general risk and the case here seems to be that there is a specific risk. It is entirely possible as a matter of law that a person cannot be safe anywhere in his or her country of nationality but if that is what the judge has concluded it is a conclusion that is not explained. A vague reference to risks identified in the background material is not sufficient.

15. I see no point in going through the grounds in detail. I do note that the grounds expressly criticise the judge's finding that there is no place of safety in El Salvador. I also agree that the conclusion that there can be no relocation there because they are likely to be unemployed and have no income is not enough to justify an Article 3 finding. This is not a question of internal relocation being reasonable in Refugee Convention terms (unless they are in fact refugees) and the Article 3 threshold otherwise is very high and is not shown to be established in the reasons given by the judge.
16. Mr Kotas' response is appropriately short and he is undeniably right when he says that the First-tier Tribunal Judge does not identify a particular social group or any other Convention reason but I have indicated above that I accept that criticism.
17. The written submissions from the claimants' representative, Mr George Madubuike, a solicitor with the claimants' representatives, speculates what the judge might have meant but I cannot accede to his submission that a particular social group was established even though not expressly stated or even identified. It is probably right that the phrase "particular social group" is construed broadly rather than restrictively but it does have to be construed. It is not just a catch-all to describe everybody who might be in some sort of trouble in their country of nationality.
18. For the avoidance of doubt, I make clear that I am not saying that there is no Convention reason for the alleged risk. The decision has not been explained. It is open to the Claimants to reargue the point.
19. I take Mr Madubuike's point that I was not at the hearing and if I had been I might have been impressed by the evidence and would have understood, but that will not do. The determination has to be a self-standing document and this Decision and Reasons just does not explain how the claimants qualify for protection as refugees under the Convention. As Mr Kotas points out in his reply to submissions, it is just wrong to say there was no challenge to the findings on humanitarian protection. Paragraphs 7, 8 and 9 of the grounds of appeal could, with respect, be drafted more precisely but, cumulatively, I understand them to be a clear criticism of the finding that there would be an "Article 3 risk" throughout El Salvador because such a conclusion is not explained adequately. The difficulty with this submission, from the Claimants' point of view, is the high threshold that has to be crossed to establish an Article 3 risk that does not exist for a Convention reason.
20. It follows that I am satisfied the First-tier Tribunal erred in law and I set aside its decision. I do not set aside the decision that the claimants were credible. Their credibility was not challenged and the findings are explained. I do set aside the finding of the Tribunal that an Article 3 risk is prevailing throughout El Salvador because that is not explained adequately.

21. This appeal will be heard again and I have decided it will be heard again in the Upper Tribunal. There has been no application to adduce further evidence (that is unsurprising at this stage) but I remind the parties that if they wish to rely on further evidence a properly reasoned application under Rule 15(2A) of the Procedure Rules is required. At present it seems to me there is no need for further evidence. It is likely that oral submissions would be helpful and this appeal seems to me eminently suitable for a remote hearing. It is likely to be listed for remote hearing and either party objecting to that must make its objections known forthwith and they will be considered.
22. Notice of Decision
23. The appeal is allowed. The First-tier Tribunal erred in law. I set aside its decision and I direct that the appeal be redetermined in the Upper Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 8 October 2020