



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

Appeal Number: PA 513282021
UI-2022-000261; IA/03251/2021

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 July 2022**

**Decision & Reasons Promulgated
On 13 September 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**DG
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown

For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a male citizen of El Salvador who was born in 1993. He appealed to the First-tier Tribunal against a decision of the respondent dated 5 February 2021 refusing his claim for international protection. The First-tier Tribunal, in a decision dated 4 September 2021, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the initial hearing at Bradford on 29 July 2022, Mr Diwnycz, who appeared for the Secretary of State, told me that the respondent agrees that the First-tier Tribunal had erred in law such that its decision fell to be

set aside. In the light of his findings of fact (which neither party disputes), the judge should properly have concluded that the appellant would be at real risk of Article 3 ECHR ill treatment on return from gangs in El Salvador. In the circumstances, I set aside the decision and remake the decision allowing the decision on Article 3 ECHR and humanitarian protection grounds.

3. I am not satisfied that the judge has erred in his determination of the appeal on asylum grounds. He has addressed this aspect of the appeal at [27-33]:

31. It was said in Gomez that it is difficult to see how a political opinion can be imputed by a non-state actor who is not itself a political entity. "Evidence of imputed political opinion cannot consist solely of the general political purposes of the persecutor" 7 Appeal reference: PA/51328/2021 While MS13 may be seen as having some social ideological background, Gang 18 is more easily categorized as a criminal organization. In the present case, the Appellant's encounters with Gang 18 and MS13 were not, in my view, motivated by ideology but rather by criminal intent.

32. I need to consider the gangs' perception of the Appellant's political opinion. The evidence does not suggest anything more than the Appellant being in the wrong place at the wrong time. On his own account, he kept a low profile, and did nothing to bring himself to the attention of the gangs. I do not believe that the gangs saw the Appellant as anything more than a potential victim. Even where the gangs may have political views about those who they target, it may not be political views which motivate their actions. I find that in the Appellant's case, the gangs were motivated by criminal intent.

33. I find that the Appellant has not established a Convention ground for his claim and therefore that he is not a refugee. I come to the same conclusion based on my findings of fact, in respect of the Appellant's position under Articles 2 and 3 ECHR

4. On the particular facts, those were findings available to the judge and I do not propose to interfere with them.

Notice of Decision

The decision of the First-tier Tribunal is set aside. I have remade the decision. The appeal is allowed on Article 3 ECHR and humanitarian protection grounds. It is dismissed on asylum grounds.

Signed

Date 29 July 2022

Upper Tribunal Judge Lane

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008,

the appellant is granted anonymity.

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