IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-000755
UI-2024-000756
First-tier Tribunal No:
PA/55179/2022
PA/55176/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 July 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

V R
S R
(ANONYMITY ORDER CONTINUED)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Selway, Counsel instructed on behalf of the appellants
For the Respondent : Mr Thompson, Senior Presenting Officer

Heard at (IAC) on 29 May 2024

DECISION AND REASONS

1. The appellants appeal, with permission, against the determination of the First-Tier Tribunal (Judge Fisher) promulgated on 20 December 2023 . By its decision, the Tribunal dismissed both appellants' appeals on all grounds against the Secretary of State's decision to refuse their protection and human rights claims.

2. The FtTJ did make anonymity orders and no grounds were submitted during the hearing for such orders to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the

public to identify the appellants. Failure to comply with this order could amount to a contempt of court.

The background:

4. The factual background can be briefly summarised as follows. The appellants are nationals of El Salvador, and they are brothers. They arrived in the United Kingdom on 21 May 2019 and claimed asylum. The first appellant said that he had been employed as a maintenance worker at the Soyapango town hall and that he was a member of the FMLN political party. His problems began in March 2015 when he was working in another area and was approached by 2 members of the MS-13 gang, who asked him to remove his clothing so they could check the tattoos which might identify him as a member of a rival gang. He was threatened and assaulted but managed to escape and returned to his workplace after which he went to hospital. He returned to work and was then transferred to a sports complex in the same neighbourhood, but VR had some problems with some of his colleagues who were members of the opposing political party and who he believed were associated with gangs. He said that he complained to the human rights procurement service.

5. The first appellant moved on again to refuse collection that involved travel through various neighbourhood, so he was transferred to work in a cemetery.

6. On 22 June 2018 whilst at work he was again approached by gang member, and he was asked to remove his shirt, but he managed to run away.

7. In February 2019 he resigned from his post at the town hall.

8. The 2nd appellant stated that he obtained work as a rubbish collector at the town hall. On an unspecified date in early 2016 he was working in an area where he was approached by gang members who questioned him as to why he was there. They left on arrival of the police patrol. He was not threatened. In the middle of 2016 he was approached by 2 males who checked him for gang tattoos, he was wearing his uniform and they told him to continue his work he was not threatened. At the end of 2016 or early 2017 he was working when some people came out of the house checked if he had tattoos and they found none, and he continued his work but was not threatened. In December 2017 he was returning home was confronted by gang members who told him not to work there. In the middle of 2018 he was approached by gang members who asked about tattoos and asked if he was informant, and he received a threat that he would be harmed if he was a gang or police informer.

9. In February 2019 it is said that both appellants attempted to leave but were returned from Colombia.

10. The incident that led to the appellants leaving El Salvador and travelling to United Kingdom was that on 15 April 2019 a number of police officers came to their house and searched the property. The second appellant was questioned and provided the officer with information about their neighbour ,a man called C who was arrested as a drug dealer, but 2 days (or 2 weeks) later was released. The appellant stated that they were harassed by members of Barrio-18 of which C was said to be the leader.

11. The respondent considered their respective claims in separate decision letters both dated 14 July 2022. Their claims for asylum were refused for the reasons set out in those letters which are a matter of record.

12. The appellants appealed those decisions, and their joint appeal came before FtTJ Fisher. In a determination promulgated on 20 December 2023, FtTJ Fisher dismissed each of their claims on all grounds. When assessing the credibility of the accounts given by each of the appellants, the FtTJ had regard to the background material relevant to El Salvador and that which considered gang activity, and that when assessing credibility he took into account in their favour the extent to which the respondent had accepted their evidence (see paragraph 9) and that it indicated a degree of consistency (see paragraph 12).

13. Against that background the FtTJ assessed credibility as a whole by considering the factual account given by each of the appellants. In relation to April 2019 and the problems of gang members and C, the FtTJ found that both appellants had given inconsistent evidence on this issue; the first appellant made no reference to being at risk on that basis in his SEF screening interview nor in his PIQ or in a detailed witness statement that had been provided on his behalf. The FtTJ rejected his explanation for that omission. The FtTJ took into account in relation to the second appellant the inconsistency in his evidence as to the discrepancy over the length of the detention of C and his explanation for that omission (see paragraphs 13 – 14). The FtTJ assessed the factual circumstances of the incident in the context of the background material, and found that the country material explained that witnessing a reporting of crime presented a risk and often led to death threats or even murder, and that despite the description of gang members and Barrio -18 as “trigger-happy” and “unpredictable”, the appellants claim that they were able to live next door to C in a Barrio-18 area until they left the country was inconsistent with that background evidence. Furthermore family members continued to live in the family home with whom they are in regular contact, and no issues have been reported and that was inconsistent with the country materials. Nor did the judge accept their claim that they were in hiding when they had described going out in public, using public transport and that also was not found to be credible that they could have lived next door to C without coming to any risk of harm.

14. Whilst the first appellant’s account had been that he would be at risk of harm from the gangs, the FtTJ assessed that risk in the light of the country materials and that travel was complicated by gang activity in their control of certain neighbourhoods which made it difficult for residents to travel work and attend school. However the first appellant was able to travel for 6 years to an MS 13 area to reach his place of work (see paragraph 17). When assessing risk of harm, the judge found that there was no ongoing threat to them as a result of that. Taking into account the past incidents he found that they had suffered sporadic harassment during their employment with the local authority, but it did not cross the threshold to amount to persecution nor did he find that the appellants would be at risk on that basis on return. The FtTJ found that the first appellant had failed to mention the main incident in April 2019 for reasons which is rejected and that the second appellant’s account of it was internally consistent and lacking in any credibility. The FtTJ reached the conclusion that they had fabricated and embellished their evidence by the addition of that incident. He also found that there was no sufficient evidence to show that the work incident described by the first appellant was gang related.

15. He further took into account that both appellants were above the age at which gangs ordinarily recruited and the fact that they were no longer employed in public service which is a target for the gangs and that aspects of the account which were accepted, did not amount to past persecution as opposed to harassment thus they could return to El Salvador and continue their lives without being at real risk of serious harm or persecution. He dismissed their appeals.

The appeal before the Upper Tribunal:

16. The appellant sought permission to appeal the decision. Permission to appeal was granted by FtTJ Chowdhury on 2024. Mr Selway appeared on behalf of the appellants and Mr Thompson appeared on behalf of the respondent. Mr Selway relied upon the written grounds and provided his oral submissions. Mr Thompson on behalf of the respondent relied upon the rule 24 response and also provided his oral submissions.

17. I have considered those submissions in the context of the evidence and the decision of the FtTJ. It is not necessary to set them out as I intend to refer to their respective submissions when considering each of the grounds of challenge.

Ground 1:

18. Dealing with ground 1, it is submitted that the FtTJ placed unfair reliance on an omission from the screening interview in relation to VR and gave inadequate reasons for relying upon the omission.

19. It is submitted by Mr Selway that the FtTJ dismissed the appellant's claim on account of VS's failure to mention the issue with the drug dealer/gang member known as C in his screening interview and PIQ. In the written grounds relied upon by Mr Selway it states that the 2 brothers were interviewed consecutively by the same person and that SR had already explained his issue with the drug dealer (C) in the interview before VR. SR had explained this as his primary reason for leaving El Salvador and that VR adds his own personal experiences predating the issues with C.

20. Having considered the grounds and the submissions made by the advocates, I am satisfied that there is no error of law in the decision of FtTJ Fisher on the basis of the matters submitted or set out in ground 1.

21. Mr Selway submits that the FtTJ materially erred in law by relying on the screening interview and in this respect relies upon the decision in YL (Rely on SEF) China [2004]UKIAT 00145 which set out the purpose of a screening interview at [19] as follows:

> " 19. When a person seeks asylum in the United Kingdom he is usually made the subject of a 'screening interview' (called, perhaps rather confusingly a "Statement of Evidence Form - SEF Screening-). The purpose of that is to establish the general nature of the claimant's case so that the Home Office official can decide how best to process it. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later.

> However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated. "

22. Both advocates are in agreement that at the first appellant's initial SEF interview he did not refer to any incident that occurred in April 2019 which was the reason the appellants left El Salvador. This was mentioned for the first time in his substantive interview. Mr Selway relies upon the grounds which argue that FtTJ Fisher failed to take the correct legal approach to inconsistencies between a SEF interview and a substantive asylum interview in accordance with YL (Rely on SEF) [2004] UKIAT 145.This states that when inconsistencies between a screening interview and the evidence provided subsequently are evaluated:

> " it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the [interviewer] to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered".

23. The FtTJ addressed the issue of the material discrepancy in the evidence and his factual assessment at paragraph 13 of his decision. He referred to the screening interview undertaken on 21 May 2019 and that at Q4.1 when asked to briefly explain **all** (his emphasis) reasons why he could not return to his country, the first appellant (VR) made references to incidents in 2015 and 2016 but not the incident which led him and his brother to leave El Salvador in April 2019.

24. As set out there is no dispute that the FtTJ was factually correct about that omission in the screening interview. However the FtTJ did not seek to rely on the omission from the screening interview alone but also that the first appellant had been sent a Preliminary Information Question form which was to be returned by 31 January 2020 which was completed with the help of his legal representatives. Along with the PIQ, the appellant provided a detailed witness statement signed on 29 January 2020. The FtTJ described the witness statement as one providing “17 paragraphs running over 4 pages”. The FtTJ stated, “it is notable that no reference is made therein to the alleged problems with C” (that is the drug dealer) in April 2019. The FtTJ set out that the problems had not been raised until the substantive interview conducted over one year later in September 2021.

25. Contrary to the submissions made by Mr Selway, the FtTJ considered and properly explained why he found the failure to include this evidence in both his screening and the PIQ to undermine his factual claim. The FtTJ stated:

> “although I appreciate that applicants are advised to be brief in the screening interview, they are still expected to mention **all** (my emphasis) of the reasons why

> they cannot return. Moreover, I see no reason why the threat from C and his associates should not have been mentioned in the witness statement. The first appellant sought to explain this omission on the basis that he had been advised by his legal representative that both cases would be "linked". I asked him when this advice had been received, and he replied that it was after the 1st (screening) interview at the airport. The obvious point to make is that you could not possibly have known, in the screening interview, that his case and that of his brother would be linked. There was no evidence from the representatives concerning this. I discount that is an explanation for failing to mention the last incident and the one which primarily caused the appellants to leave El Salvador. Furthermore, if the first appellant had been so advised, that does not explain why the April 2019 incident is not mentioned in the witness statement accompanying his PIQ form."

26. The reasoning set out in that paragraph is consistent with the decision of YL(China) at paragraph 19 and that whilst an appellant is only asked to give brief details it identifies that it is for the FtTJ to evaluate the circumstances. Here the FtTJ did carry out that evaluation. He took into account the form and that appellants are asked to give brief details. It was open to the FtTJ to find that the form still expected an applicant to mention all of the reasons why they cannot return, even if in brief terms. Furthermore and central to the grounds, the FtTJ properly reached the finding that there was no reason why that incident had not been set out in the detailed witness statement that accompanied the PIQ. This was completed by the appellant with the assistance from his legal representatives.

27. The FtTJ continued his evaluation of the inconsistencies as set out in YL(China) where it had been stated by the first appellant that he had been advised by his legal representatives that his and his brothers cases would be "linked". The judge records that when asked about when that advice had been received, the appellant replied that it was after the 1st screening interview. The FtTJ gave his reasons for rejecting that explanation within paragraph 13,

> "The obvious point to make is that he could not possibly have known, in the screening interview, that his case and that of his brother would be linked. There was no evidence from the representatives concerning this. I discount that is an explanation for failing to mention the last incident and the one which primarily because the appellants to leave El Salvador. Furthermore, if the 1st appellant had been so advised, that does not explain why the April 2009 incident is not mentioned in the witness statement accompanying his PIQ form."

28. In YL, the IAT contrasted the screening interview with the SEF, Self-Completion Form, which, at the time, an asylum seeker subsequently returned, which the IAT recognised was an individual's opportunity to set out in fuller form his or her claim (see [10]-[13]). That form, in all material respects, may now be equated with the PIQ. At [20], the IAT said this about that form:

> " 20. The Statement of Evidence Form -SEF Self Completion form- (that is the "SEF" that the adjudicator considered) is an entirely different document. As has been explained above, it is the appellant's opportunity to set out his case. The asylum seeker has to return the form by a specified date, usually about a fortnight after the form is given to him. However the asylum seeker is allowed to choose his own interpreter and obtain all the assistance he wants in order to complete the form. He is in control of how the form is answered. It is hard to imagine a fairer way to enable the claimant to set out

> his case. That being so, the Secretary of State, and if it comes before him, an Adjudicator, is entitled to assume that it is right. "

29. The IAT added at [22]:

> " 22. We recognise, of course, that sometimes mistakes will be made and sometimes, for whatever reason, claimants will withhold information until a later stage or will answer questions inaccurately or downright untruthfully. However, the starting point must be that the form SEF is a complete and accurate statement of a case. If it is not, and the asylum seeker has been advised properly, he will say so at the first possible opportunity so that complaints can be investigated and put right. If an error has been made by solicitors then the Secretary of State, or the Adjudicator, can expect to see evidence from the solicitor concerned explaining how the mistake came to be made and exhibiting any notes or instructions in support. It is hard to see why a claimant who had been let down in this way would not waive any privilege that prevented proper instructions being disclosed. Solicitors who carelessly set out a claimant's case can be expected to be reported to their professional body. "

30. Mr Thomson submitted that the appellant's complaint was that the judge had given too much weight to the appellant's failure to mention earlier aspects of his claim but that that could only establish an error of law if it was Wednesbury unreasonable or irrational. Weight was essentially a matter for the judge and should not be characterised as an error of law otherwise. That submission is consistent with the Court of Appeal's decision in Herrera v SSHD [2018] EWCA Civ 412 at [18] and Durueke (PTA: AZ applied, proper approach)[2019] UKUT 197(IAC) at para [ii].

31. In conclusion, it was reasonably open to the FtTJ to reject the explanation given by the appellant for his failure to mention that central incident in his SEF form. The FtTJ went on to find that in any event it did not explain why the April 2009 incident was not mentioned in the detailed witness statement that accompanied the PIQ form. In this context Mr Selway's oral submissions concerning the problems with screening interviews such as being completed after a long journey do not undermine that factual finding and fail to address that there had been no reference to it in his detailed witness statement filed a year before his interview. There is no error of law based on ground 1.

32. Although not expressly referred to in ground 1, Mr Selway challenged the finding made at paragraph 14 based on the submission that he had made as set out in ground 1, namely the unfairness of the judge by relying on the screening interview.

33. At paragraph 14 the FtTJ addressed the inconsistencies in the second appellant's evidence relating to the events in April 2019. The second appellant had raised in his screening interview about his claimed cooperation with the authorities over C (the drug dealer) and his activities. He said C had been released after 2 days which was different from his subsequent evidence where he said he had been released after 2 weeks. The FtTJ also identified the inconsistencies were put to the second appellant in his substantive interview about the length of C's detention. This is recorded in the interview between questions 223-226. The inconsistency was put to him by the interviewer and the first reply or explanation

given was “maybe it is a system mistake”(Q223). When this was followed up by the interviewer the appellant then stated, “the truth is I did not remember exactly” (Q224). He was asked why he had said to different things during the screening interview and the substantive interview? The appellant replied, “I forgot” (Q225). It was then put to him by the interviewer that the appellant had answered “I do not know to multiple questions” and so the interviewer did not understand why he would simply say that he did not know rather than state that it was 2 weeks? The reply recorded is “I do not know. The truth is I forgot” (see Q226). It was then suggested to him, if that was the case why make something up rather than simply say that you had forgotten? The appellant stated, “the truth is I did not remember, and I forgot.”

34. The FtTJ summarises those answers and that the appellant is recorded as saying that he had forgotten. However in the witness statement in response to the refusal letter the appellant claimed to have been tired in his interview.

35. Mr Selway has made reference to YL(China) and the general circumstances in which SEF screening interviews are undertaken, for example when they take place on the day of arrival or where the person required an interpreter and applied to this case the appellants had travelled on an 11 hour flight and a telephone interpreter had been used. However as set out in the preceding paragraphs YL(China) also sets out that the FtTJ should evaluate the circumstances. The FtTJ did so by considering the explanation given for the inconsistency in what was a core factual part of the claim which was also inconsistent, and which did not rely on the SEF interview. The FtTJ was also entitled to take into account that when asked at the start of the interview whether he was well and ready to be interviewed, the second appellant confirmed that he was.

36. In any event the FtTJ’s reasoning at paragraph 14 cannot be considered in isolation. To do so would be to engage in “island hopping” in the “ sea of evidence “which is disapproved (see Dingemans LJ in Terghazi v SSHD [2019] EWCA Civ 2017 at [45]).

37. The FtTJ considered both appellants’ factual claim in relation to C by reference to the country objective materials which was cited at both paragraphs 15 and 17. The CPIN he referred to explained that witnessing and reporting of crime presented a risk and often led to death threats or even murder. The FtTJ considered that the material also demonstrated that “Barrio 18 is trigger-happy and unpredictable”. In this context he considered the evidence that both appellants were able to live next door to C (the drug dealer/gang member) in a Barrio 18 area until they left the country without any interest being shown in them or any harm caused to them. The FtTJ took into account the explanation given by the first appellant in his evidence for the lack of interest and that it was a case that the gang members were waiting until the appellants felt comfortable before exerting their revenge. The FtTJ rejected that explanation as being inconsistent with the country materials but also that this was inconsistent with th ganga member inaction when they could have killed the appellants at any time.

38. The FtTJ also considered the first appellant’s evidence that on 16 May when going to report the incident to the Archbishop, the gang members must have seen them and started shooting as a warning. The FtTJ found the fact that this

evidence “made no real sense that they were not shot at that time” given the risk to them.

39. Lastly the FtTJ considered the family circumstances and that the appellant’s parents and brother remained in the family home and that the appellant had stated in evidence that they were in regular contact with them but “no issues have been reported save one occasion when they were in the UK a male had asked about them”. The FtTJ did not consider that point upon the evidence in isolation but by considering it in the context of the country objective materials which he found demonstrated that there was a risk of retribution to extended family members of those who are the targets of the gang and therefore the evidence given as to the lack of interest by the gang members was not consistent with the background evidence.

40. The conclusions the FtTJ reached at paragraph 16 were that the FtTJ did not find credible the evidence that the appellants would have been able to remain safely living next door to C for one month in a Barrio 18 controlled area, when they had gone out in public, had use public transport to the human rights commission and seen the Archbishop and for the second appellant to go out and obtain a passport. The FtTJ found that evidence to be inconsistent with their factual claim of being a target of the gangs but also based on the objective country materials .

41. At paragraph 17 the FtTJ again returned to the objective evidence and in particular 15.1.3 of the CPIN which cited the Freedom House report which stated that travel within El Salvador is complicated by gang activity in their control of certain neighbourhoods which makes it difficult for residents to travel, work and attend school. The presenting officer had invited the judge to contrast that with the evidence of the first appellant who had said that he was able to travel for 6 years to an MS-13 area to reach his place of work. The FtTJ recorded the submission made to that point as follows “Ms Cleghorn somewhat novel response to that was the gangs would do not want rubbish to pile upon the streets in their areas of the capital.” It is implicit from that reference that the FtTJ did not find that to be a sufficient answer to the inconsistency as drawn by the country materials.

42. In his oral submissions Mr Selway sought to raise grounds which were not advanced in the written grounds and upon which permission had not been sought or granted. One of the matters raised was that the FtTJ did not take into account the circumstances of the family members and that their brother was granted asylum in October 2022 and that the Home Office would have been aware of this.

43. However it has not been demonstrated that that was ever raised as an issue in the proceedings nor that it played any part in the appellants’ case as it was advanced before the FtT. As Mr Thompson submitted the issue was not raised in the grounds of appeal, there was no evidence before the FtT that the presence of their brother bore any relevance to their particular claim and that if that material had any bearing on the matter it could have been presented as part of the appellants case, but it was not. It is not a legal error not to consider matters that were not put to the Judge. For those reasons, the submission made that the judge failed to consider other family members is not a submission that can succeed, even if it had formed part of the grounds of challenge.

44. A further additional ground Mr Selway sought to raise which again was not in the written grounds was based on the submission that at paragraphs 9 – 11, where the judge referred to the consistency of the appellant's evidence, he submitted that the FtTJ erred materially in law by failing to say what parts of the evidence he did not accept and that the use of the phrase "consistent with" was a material error of law.

45. That was not a matter raised in the grounds nor upon which permission was sought. There was no application to amend the grounds at any time either before the hearing or at the hearing but in any event the submission is not made out. A FtTJ is entitled to consider the evidence and to assess what is and what is not consistent in the sense of being internally consistent or being consistent with background evidence. However a judge is entitled to consider the evidence of the factual claim as a whole and by reaching his overall conclusions on the facts and whether there is any risk which may arise from that factual analysis. On any fair reading of the decision and when it is read in its entirety, that is the task that the FtTJ undertook and was accompanied by his reasoning and analysis.

46. Against that background I turn to ground 2.

Ground 2:

47. It is submitted that VR's experiences with gang members up to 2018 and had led him resigning from his employment had been accepted by the respondent. It is therefore unclear why VR failed in his claim regardless of the adverse factual findings made in relation to the April 2019 incident that involved the drug dealer C. It is submitted that the FtTJ's assessment was that as both appellants left their jobs in the public sector some time ago they would not be an ongoing threat as a result of that and the experiences they have had did not cross the threshold into persecution.

48. The grounds submit that that conclusion was inconsistent with the background evidence included within the bundle which was set out at paragraph 14 as follows;

> "the absence of a state response and the individualised nature of a safe place mean that people fleeing criminal violence have few safe or sustainable options inside the country. Internal displacement is often ineffective and precarious, which leads to repeated transitory movements, severe restrictions on freedom of movement such as the phenomenon of "self-containment" and significant cross-border flight.
>
> .....
>
> The security forces themselves have also provoked the displacement of young people from gang affected areas who flee arbitrary harassment and violence. This suggests an emerging state rolling displacement, one of commission as well as omission..
>
> Displacement has significant socio-economic and psychosocial impacts, which get worse if people are unable to find security and stability. These impacts also perpetuate and aggravate some of the underlying causes and drivers of criminal

violence and displacement at the individual, community and national level.... Instead a protection void is left in which further human rights violations take place and the precarious nature of internal displacement leads to transitory movements, self-containment, and cross-border flight abroad.

49. Mr Selway could not identify the material cited at paragraph 14 of the grounds from the material in the bundle. It is in general terms and the grounds fail to demonstrate how that material undermines the factual findings made by the FtTJ.

50. At its highest it has been submitted that even if the events with the drug dealers did not occur then VR would still be at risk and that he cannot even move beyond Barrio-18 controlled areas. That submission however fails to consider the factual circumstances of VR's case and the finding of fact at paragraph 17.

51. There is no error of law identified on the basis set out in ground 2. The FtTJ in his reasoning set out why he rejected the appellant's claim of an ongoing risk in El Salvador. Whilst the grounds appear to identify only VR being at risk, the FtTJ assessed the nature of any future threat or risk of harm based on the past incidents in respect of both appellants (see paragraph 18). In relation to the second appellant there had been 5 instances when approached but his account was that he had been threatened on only one occasion. As regards VR whilst it was accepted that there had been an incident that took place in 2015 where he had been approached by gang members and attacked following that incident he was threatened on the way to the cemetery and in June 2018 was threatened by an unknown individual. At work and the position with his colleagues was that he was threatened as they were members of the opposing political party. In light of the nature of the incidents that were relied upon the FtTJ's finding that they had both suffered sporadic harassment during their employment with the local authority was consistent and the threats which were made were insufficient to cross the threshold to persecution. Whether the ill treatment in a particular case amounts to persecution is a mixed question of fact and law and is a fact sensitive enquiry. The FtTJ was entitled to consider the incidents and whether there was a serious possibility or reasonable likelihood of persecution or serious harm in the future. The conclusion as to whether the conduct amounts to persecution or not, is ultimately one of fact. The FtTJ was entitled to find that both of the appellant had left their employment in the public sector some time ago and that they would not be "any ongoing threat to them". That was also demonstrated by them living in their home area openly, as the FtTJ had found, without any interest being shown in them by C or any of his associates or any other gang members.

52. By reference to the FtTJ's decision, he gave adequate and sustainable reasons as to why he rejected the claims of both appellants of an ongoing risk in El Salvador despite the generalised country materials which referred to risks from gangs that operate in El Salvador . It was open to the judge to depart from the objective country materials as he did between paragraphs 15 to 18 by assessing the factual account given in the light of that and taking into account the fact that the appellants continue to live next door to C (the drug dealer associated with the gangs) for a significant period despite being in fear and a gang that was not known for its moderation and who were plainly aware of their residence but took no action against either them or their family members .

53. Consequently there is no error of law on the basis of ground 2 and the findings that were made were consistent with the factual account and the lack of problems thereafter

Ground 3:

54. Dealing with ground 3, it is submitted that the FtTJ went behind a concession at paragraph 18 where the FtTJ found that there was "no sufficient evidence to show that the work incident described by the first appellant was gang related". The grounds cite the decision letter as follows:

> 34 "you have experienced gang activity whilst working in your previous employment for Soyapanga town hall-accepted".

55. The difficulty with that ground and the submissions made is that they do not go beyond noting the heading set out at the start of paragraph 34 and the ensuing assessment. If the refusal letter is read after the heading it makes it clear what was accepted and in what context. In relation to VR it was accepted that he worked at the town hall from 2016 – 2019 and was accepted that he had experienced gang threats and violence by being attacked in March 2015 (paragraph 35) but that in relation to 2018 the threat was from unknown individuals and whom the appellant did not know if they belonged to a gang. The refusal letter then went on to state, "they were isolated incidents, and you were not particularly targeted because of your profile in the community."

56. Further along in the letter the respondent dealt with the threat that occurred with his work colleagues. It was accepted that he had experienced threats from them, but they were political disagreements with his colleagues and that it was speculative that his colleagues were related to gang members (see paragraph 41).

57. When the FtTJ set out at paragraph 18 that there was no sufficient evidence to show that the work incident described by the 1st appellant was gang related, the FtTJ was referring to the incident with his colleagues. That interpretation is supported by the FtTJ's acceptance of the earlier relevant incident in June 2018 which he records the respondent accepted (as set out at paragraph 12) and also the general acceptance at paragraph 9. Consequently it has not been demonstrated that the FtTJ went behind any concession and the reasoning given for the overall conclusions should be read together. The FtTJ properly assessed the incidents relied upon, and he correctly balanced the acceptance of what had occurred in the light of the overall credibility of the appellants but also in the context of risk.

58. It is by now well-established that appropriate restraint should be exercised before interfering with a decision of the tribunal below, which will have read and heard the evidence as a whole and which had the primary task of reaching findings of fact and attributing appropriate weight to relevant considerations: see, for example, UT (Sri Lanka) [2019] EWCA Civ 1095, at [19]-[20] - observations subsequently endorsed in a number of other judgments of the Court of Appeal.

59. In conclusion and when properly analysed, the grounds of challenge amount to no more than a disagreement with the decision. There was no procedural unfairness on the part of the FtTJ on the basis that he went behind a concession in the decision letter for the reasons set out above. Consequently it has not been

demonstrated that such a procedural error has vitiated his overall adverse conclusions on the credibility of their accounts and the issue of risk on return as the grounds assert.

60. When addressing the adequacy of the analysis undertaken, and when addressing the issue of adequacy of reason in MD (Turkey) v SSHD [2017] EWCA Civ 1958 the Court of Appeal confirmed that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why he or she has lost, and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.

61. Having considered the decision reached, the FtTJ was required to consider the evidence that was before the First-tier Tribunal as a whole, and he plainly did so, giving adequate reasons for his decision on the material evidence available. The FtTJ plainly had regard to the background material and there is no requirement to set out each and every reference in his factual assessment.

62. The constraints to which appellate tribunals and courts are subject in relation to appeals against findings of fact were recently (re)summarised by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 in these terms, per Lewison LJ:

> "2. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
>
> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

63. With those propositions in mind, the decision reached by the FtTJ was one that was reasonably open to him on the evidence before him and he gave adequate and sustainable evidence-based reasons for his decision. Consequently the appellants have not established that the FtTJ's decision involved the making of an error on a point of law, therefore the decision of the FtTJ shall stand.

Notice of Decision:

64. The decision of the First-tier Tribunal did not involve the making of an error on a point of law; the decision shall stand.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

26 July 2024