



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2024-004097  
First tier number: PA/59859/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 24<sup>th</sup> of December 2024**

**Before**

**UPPER TRIBUNAL JUDGE LODATO**  
**DEPUTY UPPER TRIBUNAL JUDGE PAUL LEWIS**

**Between**

**T A**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Dr Ibisi, Senior Home Office Presenting Officer

For the Respondent: Mr. Selway.

**HEARD AT MANCHESTER CIVIL JUSTICE CENTRE ON 3 DECEMBER 2024**

**DECISION AND REASONS**

**ANONYMITY**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, TA is granted anonymity.**

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

**Background**

1. The Appellant appeals with permission against the decision of the First-Tier Tribunal Judge Alis ('the Judge') promulgated on 21 June 2024 dismissing his appeal against the respondent's decision to refuse his asylum and humanitarian protection claims.
2. The appellant is a victim of gang violence in Honduras where he is a national. The appellant was attacked on two occasions in January 2022 by gang members.
3. The respondent refused the appellant's claims primarily because she considered his account was not credible. The respondent's position was further set out in their Refusal letter, Review and orally at the hearing as follows:
  - (a) *'Your claim to be a single male in fear of gangs does not fit a convention reason.'* Refusal letter [3].
  - (b) *'There would not be sufficient protection from persecution in Honduras and you could not relocate within your home country Honduras if the key material facts of your claim were accepted because you fear the criminal gangs whose power and influence is noted, meaning that neither option would be available to you. However, as I have rejected the key material facts of your claim, it is considered you are not at risk on return and do not need to seek protection or internally relocate.'* (Our emphasis). Refusal letter [17].
  - (c) *'The R. notes that the RFRL states that, if the core material facts of the claim were accepted then the A would not be sufficient protect from persecution and the A would not be able to internally relocate (RB/pg 8). However, as noted above, the R maintains that the A has not demonstrated that he is at risk from the gangs in Honduras. As such, the A is not in need of protection from the authorities and does not need to relocate to avoid persecution. Accordingly, the R. seeks to rely upon the RFRL and submits this issue remains live for an appeal hearing'.* Review, [22-25].
  - (d) At the outset of the hearing, the Judge recorded [32] that the respondent identified credibility as the "only live issue" to be determined in the appeal.
4. Having found the appellant's claim to be credible, Mr. Selway submits that the judge erred in law by disregarding the concession(s) made by the respondent that credibility was the only issue in the case. Alternatively, the late withdrawal of such concession was prejudicial to the appellant.

#### The concession

5. The starting point is to identify whether the respondent made a concession and if so, the precise nature of that concession.

6. Even if the respondent's correspondence was ambiguous, by the beginning of the hearing the respondent identified credibility as the only issue to be decided. The respondent's concession was clear.
7. Despite the concession, in closing submissions the respondent raised two additional matters: sufficiency of protection and internal relocation. Dr. Ibsi submits the respondent's position changed in response to the appellant's oral evidence. She further submits the respondent was entitled in these circumstances to alter her stance and the appellant was not prejudiced by that change.
8. *Lata (FtT: principal controversial issues)* 2023 UKUT 00163, obliges parties to identify and (if possible) narrow the principle controversial issues. Proceedings before the First-Tier Tribunal should not involve a rolling consideration by either party of its position. The task of the judge is to deal with the issues the parties have identified.
9. *AM (Iran) v Secretary of State for the Home Department* [2018] EWCA Civ.2076. Simon L.J. §40, establishes that where a concession has been made by the Secretary of State it may be withdrawn in the interests of justice [44-45]. Those who seek to withdraw a concession should explain both promptly and frankly why the concession was made, why it was mistaken and why it is now just and fair that they be allowed to withdraw it.
10. No such application was made by the respondent before the First-tier Tribunal. The respondent simply advanced different grounds to those identified at the start of the appeal. When the judge determined the case, he did so subject to an extant concession from the Respondent.

#### The precise nature of the respondent's concession

11. Mr. Selway submits that the respondent's concession was unambiguous and unconditional. He submits the appellant's appeal must succeed because the judge found his account credible. He submits that when the respondent wrote: '*There would not be sufficient protection from persecution*', the reference to '*persecution*' was intended as shorthand for a Convention reason. If that is not the correct analysis, the reference must be to the serious harm in the context of humanitarian protection
12. Mr. Selway's primary submissions relies on selecting discrete sections of the respondent's correspondence. Understanding the respondent's position requires their correspondence to be read together. It is clear to us that the respondent always maintained that the appellant's claim did not engage the Refugee Convention.
13. We further find the respondent's concession was contingent on the Judge's findings as to the '*key material facts*'. Mr. Selway submits that the key material facts in this appeal were whether the appellant was attacked and if so, whether the attack was by a gang or gangs. Had the judge limited his findings as Mr. Selway suggests, no finding was required as to

an issue in dispute: whether the appellant was at risk of persecution for a convention reason. We find that the *'key material facts'* were:

- (a) whether the appellant was attacked; and
- (b) by whom he was attacked; and
- (c) the reason for the attack on him; and
- (d) whether the appellant was at risk of persecution for a convention reason.

14. This is the approach the Judge took. He found:

- (a) The appellant was attacked on two occasions in January 2022 [47].
- (b) The attacks were by gang members.
- (c) The attacks on the appellant were not connected to each other or an earlier incident in 2020 [49].
- (d) The Judge found that the appellant was not at risk of persecution for a convention reason [57]. In describing the attacks on the appellant as *'muggings'* the Judge found that the motivation for the attacks on the appellant was immediate financial gain.

15. It is necessary at this stage to segue to a further ground of appeal. Mr. Selway submits the Judge misdirected himself [50] as to whether the appellant engaged the refugee convention by suggesting that the test to be applied was:

*'the appellant must demonstrate he was targeted for taking a stand against the gang such as reporting them to the police and that the gang believed that he held a thought, belief or opinion about their policies and methods'*.

16. Mr. Selway submits that and that the Judge misapplied the test in *EMAP (Gang violence - Convention Reason) El Salvador CG v. Secretary of State for the Home Department* [2022] UKUT 00335 (IAC) because:

- (a) The evidence before the judge was of two gang attacks on the appellant in such short compass that they may be considered habitual.
- (b) The Judge failed to give proper regard to the objective evidence regarding the scope of gang influence in Honduras, in particular, that *'enmity'* [Skeleton Argument §33], to gangs in Honduras would engage the Refugee Convention.
- (c) There is no need to demonstrate that one has *taken a stand* against a gang.

17. Although the Judge could have been more precise in setting out the test, he considered whether the motive for the attacks on the appellant might be connected to an actual or imputed political opinion held by the appellant or for any other reason to place him within the refugee convention but found the motivation for the attacks was financial gain.
18. The evidence before the Judge was not of 'enmity' from the appellant in the form of tangible objection to the gangs. The judge found no nexus between the attacks on the appellant and a convention reason nor did he find that there was a risk of persecution in the future for such a reason.
19. The Judge's findings of fact to his point do not bind the respondent to a concession that the appellant was a refugee. This was never the ambit of the respondent's concession.

#### Humanitarian protection and procedural irregularity

20. At the outset of the hearing, the principal controversial issues had crystallised and narrowed to the extent that the judge recorded that the "only live issue" to be resolved was whether the appellant was credible. This can only be understood as recognition that the protection appeal would succeed if the appellant was believed about the sequence of events he described before he left Honduras. For the reasons explained above, we are not satisfied that this swept aside the principled objections the respondent had always relied upon in relation to the existence of a convention reason. The only sensible interpretation of credibility amounting to the "only live issue" is that the appeal fell to be allowed on humanitarian protection principles if the appellant was found to be credible. This is the only way in which sense can be made of the articulation and agreement of the principal controversial issues identified at the beginning of the hearing. The appellant was entitled to conclude from this important exchange between the representatives and the judge that his protection claim would succeed if his narrative evidence was found to be credible. It struck us manifestly and procedurally unfair for the respondent to introduce new issues in closing submissions and for the protection appeal to be dismissed in circumstances where the appellant had the legitimate expectation that his protection appeal would succeed if his evidence was believed. This was a paradigm example of the issues in the appeal shifting and changing during the hearing in a way which is impossible to reconcile with recent authoritative guidance that the tribunal should no longer tolerate a 'rolling consideration' of issues.
21. Having had the key material facts determined in this favour the appellant was entitled to rely on the concession made by the respondent in so far as it placed him at risk of serious harm for a non-convention reason.
22. The Judge's decision [59] that the appellant was not at risk of serious harm for a non-Convention reason on return was not a finding of 'fact' but a forward-looking assessment of risk.
23. It follows that the Judge made errors of law by:

- (a) Determining issues beyond that which it was necessary for him to do. In doing so he went behind a concession made by the respondent.
- (b) Failing to determine whether the respondent was formally seeking to withdrawing her concession or the merits of such application.
- (c) Dismissing the appellant's humanitarian protection claim without providing the appellant sufficient opportunity to meet the respondent's changed case.

### Remedy

24. Both parties agreed that if we allowed the appeal we should remake the decision rather than remit the matter to the First-Tier Tribunal. We agree.

### **Notice of Decision**

1. The making of the decision of the First-Tier Tribunal involved a material error on a point of law. The appellant's appeal is allowed and the decision of First Tier Judge Alis dated 21<sup>st</sup> June 2024 is set aside.
2. We remake the decision. We maintain the decision to dismiss the appeal on asylum grounds and allow the appellant's appeal on humanitarian protection grounds.

Paul Lewis

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
5 December 2024