



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

PA/05279/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
On 28 February 2019**

**Decision & Reasons Promulgated
On 06 March 2019**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

B P

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms J Todd, of Latta & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of El Salvador, who arrived in the UK with his wife and two sons. On 9 October 2017, he sought asylum. He claimed to have been persecuted by and to be at risk from the MS 13 gang, who saw him, due to his place of origin, as a member of their main rivals, the B 18 gang.
2. The respondent refused the claim by letter dated 5 April 2018:- [20-22], no Refugee Convention category; [23-25], nationality accepted; [26-44], material facts and future risk not accepted; [45-55], sufficiency of state protection; [56-64], internal relocation available.

3. FtT Judge Hands dismissed the appellant's appeal by a decision promulgated on 25 July 2018. She did not accept his claims about events which provoked his departure from El Salvador, other than one incident of mugging, and found that he had not established that he was a specific target of gang violence, [14-21]; no Refugee Convention category, [22-23]; expert report based on truth of appellant's account, and did not support risk on return, inability to relocate, or imputation of political opinion, [24-27]; relocation available, [28-30]; claim fabricated, [30].
4. Although permission was granted by the UT, Ms Todd confirmed that the grounds are as stated in the application made on 7 August 2018 to the FtT, headed as:-
 - (1) failure to have due regard to the opinion of an expert;
 - (2) failure to engage with the appellant's evidence; and
 - (3) error in applying the Refugee Convention.
5. Ms Todd submitted firstly on ground (3). She argued that the judge misunderstood the UNHCR guidelines and the submissions on the appeal potentially falling within the Refugee Convention. Resisting a gang's authority, even by as simple an act as initially refusing to hand over a wallet, might be enough for an inference of imputed political opinion. As the judge accepted that incident at [21], she should have found that risk was established in terms of the UNHCR guidelines.
6. Turning to ground (1), Ms Todd said that at [26] the judge misapplied the expert report. Even if there had been a slight decline, the murder rate remained the highest in the world, and rather than taking effective control, the evidence was that the police colluded in gang activities. The finding of sufficiency of protection was unsustainable.
7. On ground (2), Ms Todd contended that the judge misunderstood the evidence in several respects, all of which contributed to the adverse credibility finding. She accepted that these might separately be minor but said that cumulatively they were material, by analogy with *SB (Sri Lanka)* [2019] EWCA Civ 160.
8. Finally, Ms Todd sought a remit to the FtT.
9. Having heard the submissions also for the respondent, I reserved my decision.
10. On ground (2), [8-13], the fact that the appellant was not asked if he checked with the police is neither here nor there. His evidence was that he heard no more about his complaint, and he did not suggest he had followed up the matter. The ground is insistence, re-argument and selective disagreement on minor points, rather than a challenge to the reasoning in the decision as a whole.

11. There being no error in the FtT's findings on the facts, grounds (1) and (3) could not result in setting aside.
12. There is an overlapping point from ground (1) and (2). A gang related claim from El Salvador might fall into a Refugee Convention category, but not on the findings here. Initial reluctance to hand over a wallet is not an adequate basis on which to find either a theoretical category or an actual risk.
13. The expert report is thoroughly considered in the decision. The only specific criticism of the FtT's handling of it went to [26] on the decline in the murder rate. It remained horrifyingly high. The judge may have not had the strongest of reasons for finding protection to be adequate. However, that was not an issue on which the case turned.
14. The general background of gang violence may have been part, even a large part, of the appellant's motive for seeking to move with his family to a country offering better prospects. However, he failed to establish contentions which would qualify him for international protection and the FtT's crucial conclusions, at [20-21 & 30], withstand all the challenges made.
15. The grounds do not show that the making of the decision of the FtT involved the making of any error on a point of law, such that it ought to be set aside.
16. The decision of the First-tier Tribunal shall stand.
17. The FtT made an anonymity direction. It is not clear why the principle of open justice should be departed from in this case, but as the matter was not addressed in the UT, anonymity has been preserved herein.



4 March 2019
UT Judge Macleman