



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

**Appeal Numbers:
UI-2021-000195 (PA/04076/2020)
UI-2021-000196 (PA/04077/2020)**

THE IMMIGRATION ACTS

**Heard At Manchester Civil Justice
Centre
On the 02 September 2022**

**Decision & Reasons Promulgated
On the 12 September 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**DMLH
LYLH
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Holmes Counsel instructed by Greater
Manchester Immigration Aid Unit**

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are respectively an aunt born in 1959 and her niece born in 1990. They are both nationals of Honduras. They appeal with permission against the decision of the First-tier Tribunal (Judge Bannerman) to dismiss their linked protection appeals.

Background

2. The Appellants arrived in the UK by air on the 24th August 2019 and claimed asylum at port.

3. They claimed to be at risk of serious harm in Honduras at the hands of the gang known as the 'Maras'. The first Appellant avers that she inherited a family property which she and her niece were planning to renovate after it had fallen into disrepair. On the 27th July 2019 the two women were on the site when they were approached by two men whom they believe to be gang members. These men asked if the property was for sale; when the women said no the men in effect told them that they had to transfer the property to them or they would be killed. Approximately two weeks later the first Appellant was in a supermarket when she was intercepted by armed gang members who violently threatened her: they told her that time was running out and that if she did not transfer the property into their name they would rape and dismember her niece. The first Appellant was shaken and did not return to her home. She went to stay with friends who persuaded her to go to the police. The Maras subsequently found out that she had gone to the police and have threatened to kill her via messages on Whatsapp.
4. The Respondent refused these claims by way of letters dated the 17th July 2020. Three matters arise from that decision. First, the Respondent does not accept that this is a claim which engages the Refugee Convention: if the Appellants are afraid, it is a fear of crime not persecution. Second, for a number of reasons set out in the letter, the Respondent did not believe the account was true. Third, even if the women are afraid of gang members in their locality, it is open to them to relocate within Honduras to a place of safety away from these men.
5. When the appeal came before the First-tier Tribunal the Respondent's reasoning was upheld and the appeal dismissed.

Error of Law: Discussion and Findings

6. Mr Holmes' central submission is that the Tribunal simply accepted assertions made by the Respondent about country conditions and practices without giving any substantive consideration to the Appellants' evidence on these matters. For instance, the core of the claim is rejected because the Appellants' claim that the first Appellant inherited a property is found to be inconsistent with a single reference in the refusal letter to a "legal tradition" followed by "Latin American society" that all legitimate children inherit property equally on the death of their parents. It was on the basis of this single citation that the Tribunal rejects the evidence that something different happened in this family. Mr Holmes submits that to have been an impermissible and irrational approach and Mr Tan agrees.
7. Mr Holmes also argues that the Tribunal makes a mistake of fact as to whether a property stands on the plot claimed, having

misunderstood the reasoning in the refusal letter. Mr Tan also accepts this ground is made out.

8. Finally the parties agree that the First-tier Tribunal has erred in failing to give reasons for its decision: the evidence of both witnesses is dismissed as “incredible” without any explanation why.
9. I am invited by the Secretary of State to set the decision of the First-tier Tribunal aside and I do so.
10. Mr Holmes did suggest that I retain the matter in the Upper Tribunal for remaking, particularly given the outstanding legal issue of whether this is a claim capable of engaging the Refugee Convention. Having had regard to the nature and extent of the fact finding required, and to the lengthy wait that the Appellants will have if this matter is to come back before me, I have decided that it would be better in the interests of justice if the matter was remitted to the First-tier Tribunal to be remade *de novo* by a Judge other than Judge Bannerman. No findings are preserved.

Anonymity

11. I have had regard to the Presidential Guidance Note 2022 No 2: *Anonymity Orders and Hearings in Private*. In light of the guidance at paragraph 28¹ thereof, I make an order for anonymity in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them, any of their witnesses nor any member of their family. This direction applies to, amongst others, both the Appellants and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”
12. The decision of the First-tier Tribunal is flawed for error of law and it is set aside.
13. The decision in the appeal is to be re-made in the First-tier Tribunal by a judge other than Judge Bannerman.

¹ Paragraph 28 of the Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private reads: In deciding whether to make an anonymity order where there has been an asylum claim, a judge should bear in mind that the information and documents in such a claim were supplied to the Home Office on a confidential basis. Whether or not information should be disclosed, requires a balancing exercise in which the confidential nature of the material submitted in support of an asylum claim, and the public interest in maintaining public confidence in the asylum system by ensuring vulnerable people are willing to provide candid and complete information in support of their applications, will attract significant weight. Feared harm to an applicant or third parties and “harm to the public interest in the operational integrity of the asylum system more widely as the result of the disclosure of material that is confidential to that system, such confidentiality being the very foundation of the system's efficacy” are factors which militate against disclosure. See R v G [2019] EWHC Fam 3147 as approved by the Court of Appeal in SSHD & G v R & Anor [2020] EWCA Civ 1001

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Upper Tribunal Judge Bruce
2nd September 2022