



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

Case No: UI-2023-000198

First-tier Tribunal No: PA/52177/2022  
IA/05758/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 12 February 2025**

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD  
DEPUTY UPPER TRIBUNAL JUDGE COLE**

**Between**

**AH  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In Person

For the Respondent: Ms C Newton, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 14 January 2025

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant and her partner are 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 or her partner. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

## Background

1. The Appellant and her partner are nationals of El Salvador.
2. They arrived in the UK in March 2020 and they both claimed asylum based on a fear of gang violence in El Salvador.
3. The Appellant and her partner's asylum claims were refused by the Respondent by decisions dated 20 May 2022. They appealed to the First-tier Tribunal. Their cases were linked and were heard by Judge Davies on 14 December 2022.
4. By decision dated 30 December 2022 Judge Davies allowed the Appellant's partner's appeal on asylum grounds. However, he dismissed the Appellant's asylum appeal but allowed her appeal on human rights grounds under Article 8 of the ECHR.
5. The Appellant challenged the decision of Judge Davies and permission to appeal was granted by First-tier Tribunal Judge Hatton.
6. By decision dated 2 April 2024 Upper Tribunal Judge Keith set aside the decision of Judge Davies. It had been agreed by the Respondent in her Rule 24 notice dated 15 February 2023 that Judge Davies had erred in law and that the decision must be set aside and remade. It was agreed that various findings of fact were to be preserved.
7. Thus, the Appellant's protection appeal came before us for remaking. Judge Davies' decision on the Appellant's Article 8 human rights claim is unaffected.

## Preserved Findings

8. Judge Keith confirmed that the parties had agreed that many of Judge Davies' findings could be preserved. These are as follows:

*"Consideration and Findings: First Appellant [the Appellant's partner]*

*39. The [partner] was born and lived in Comasagua, La Libertad, in El Salvador. This area was controlled by the Barrio-18 gang. The [partner] described his local area as being far away from any major city. During his oral evidence he indicated that it was around an hour away from the capital, San Salvador.*

*40. The [partner] had no difficulties with Barrio-18.*

*41. The [partner] worked for a company in San Salvador.*

*42. The [partner] was and is in a relationship with the [Appellant] who lived with her family in San Marcos. He visited her in San Marcos.*

*43. The [partner] has been consistent from the initial interview and preliminary information questionnaire that he was threatened by the MS-13 gang on 11th and 18th January 2020 and further on 31st January when they came to his workplace, approached him outside as he left and threatened him. Clarification was provided about the workplace visit. On 11th January he was questioned and robbed of some possessions. On the second occasion he was physically manhandled ("grabbed") and told that they did not want to see him in San Marcos again. The partner has given an internally consistent account which is externally consistent with the country objective evidence and the country guidance which confirm the extraordinary degree of social control exercised by the gangs.*

44. On the [partner's] account, he was threatened on the third occasion (outside his workplace) and was told by the gang that they did not wish to see him in San Marcos or in any other place. They referred to his cousin who had faced similar threats and had then disappeared and not been found. The [partner] did not report the threat to the police. He decided to quit his job and leave the country as soon as possible (AIR 88).

45. The [partner] was asked at the interview to explain how the gang found out where he worked. He responded that he did not really know but commented that they always found out where people lived or worked through a network of people. The background country material deals with this issue and I accept that it shows that the gangs have extensive links throughout the country. The [partner] had been questioned when he encountered gang members on the first occasion. At paragraph 115 of EMAP, the Upper Tribunal found that the gangs were political actors and had control or a significant degree of control across "vast" areas of the country where they subject residents to "an extraordinary level of social control." Their criminal and political activities overlap.

46. The [partner] was asked at interview if it was common for gang members to approach people from other areas (AIR 126). He responded that if it was an area they controlled, they would not hesitate to approach and intimidate. This is consistent with the country evidence. He explained that the gang would know that he was not from their area through his identity card and, also, they approached him because he was not someone they saw frequently in the area. Asked why (before the first incident) he had not been approached on an earlier visit to his girlfriend, he stated that it might be a matter of luck. I accept that although the gangs have a high degree of social control, they might not be able to encounter every single visitor to their area of control on every single occasion. The country evidence indicates a real risk that strangers in an area would be approached by gang members.

47. The Respondent referred to the inability of both Appellants to identify the gang members through appearance or dress. I have considered the country evidence. A section of the Home Office CPIN of 2021 deals with the matter of appearance. It referred to the UNHCR guidelines (8.4.1) which indicated that members traditionally identified themselves through gang-related tattoos and style of dress and appearance. However, it was indicated that there was an apparent move towards discouraging those visible practices as they also helped to identify gang members to the security forces. The use of tattoos was decreasing. The evidence suggested that gang members were becoming increasingly discreet. One source cited suggested that there is a new generation of gang members that dressed normally and represented the figure of the honest and correct citizen. For those reasons, I place no significance on the inability of either Appellant to identify gang members.

48. The Respondent has put in issue the factual basis of the claim of the two Appellants. I am satisfied that the [partner] has given an internally consistent account of his experiences with the gang. It is consistent with the country evidence and guidance. It was unchallenged at the hearing. There is no reason to reject the account though I must, particularly in the light of the country guidance, consider the implications of that finding. Aside from the lack of a challenge, I agree with Mr Holmes' submission that there is nothing inherently surprising in the factual narrative presented by both Appellants. Much of the country is under gang control. Sometimes crossing the street from one gang's territory to another is enough.

49. *There is no significance in the fact that the [partner] was unharmed between his final encounter with gang members outside his place of work and leaving the country. He gave up his employment. He remained at home in what was a Barrio-18 area and self-evidently would not encounter MS-13 there.*

50. *I am satisfied that the [partner] has not been subjected to past serious harm. He was robbed and threatened. On his unchallenged evidence, he was approached by MS-13 outside his place of work and threatened with death. He was not to be seen in any area of El Salvador. He was threatened with the same fate as his cousin who had disappeared after visiting his father in another area. That is a threat motivated by social control rather than a demand for money or rent. On his account which has been unchallenged he would face a real risk on return because there is a real risk that his actions would be treated by MS-13 as a challenge to their social control. While his home area is controlled by Barrio-18, the Appellant would be likely to need to move into other areas in order to work.*

51. *The Upper Tribunal in EMAP at paragraphs 120, 121 and 122 considered the different aspects of motivation for the actions of the gangs, namely, political (which includes their social control), financial and areas of overlap where the political and criminal motivation was harder to separate. The less immediately the financial in nature interest of the gangs, the more likely would the interest be to fall into the political end of the spectrum.*

52. *This [partner] has not explicitly resisted the gang by, for example, reporting matters to the police. On the facts, any challenge to the 'authority' of the gang arises from his crossing of boundaries and therefore a perceived challenge to the gang in control in the area. I am satisfied that such a perceived challenge falls within the Refugee Convention grounds of political or (more aptly) perceived political opinion.*

53. *The [partner] has not been subject to serious harm in the past. He has been threatened with serious harm or worse in the event that he is encountered again by the MS-13 gang. I am satisfied that he is at real risk of persecution on return to El Salvador for a Convention reason and accordingly allow his appeal on asylum grounds....*

73. *The Appellants have now lived together in a relationship akin to marriage since their arrival in the UK in March 2020. Neither are British or have leave. Their relationship developed over several years in El Salvador. Their relationship is well-settled.*

74. *The [partner] lived in an area dominated by Barrio-18. The Appellant lived in an MS-13 area. They wished to visit each other regularly. The objective evidence deals with the difficulties presented in such circumstances. I accept that such a normal and commonplace activity of life is significantly compromised by the grip which the main gangs have in their respective areas.*

75. *In view of the threats to the [partner], I accept that it would be impossible for them to resume their family life in El Salvador. I have accepted that the [partner] is a refugee because of the serious threats made to him. He cannot return in the foreseeable future. If he did, he would be at real risk. In reality, the removal of the Appellant would sever the family life enjoyed by the Appellants.*

76. *The ability to conduct a normal life, including visits to one another, can only be carried out at significant risk to one or the other or both. The alternative, for fear of harm, is to remain out of sight and/or to cease visiting one another. Neither is an acceptable state of affairs. It is*

*regrettable that international protection may be required in such circumstances. However, the system of law and order has broken down. The Respondent accepts that neither state protection nor internal relocation is open to the Appellants. The state of El Salvador is unable to police the country and ensure the safety of its citizens and the freedom of its citizens to freely move from place to place in safety.*

*77. Article 8 rights are qualified. There is no right to choose the country of residence. I must consider whether removal of the Appellant would be proportionate in relation to the public interest in immigration control that I must have at the forefront of my consideration.*

*78. In considering the Article 8 balance sheet, a heavy weight needs to be attached to the public interest as against the wishes of the Appellants to remain together in the UK. The Appellants are both asylum seekers, do not work (because they are not allowed to), do not speak English and are not self-sufficient.*

*79. I do consider however that there are very exceptional circumstances at large. The situation in El Salvador as confirmed in the country guidance is really quite unique where criminal gangs have become so embedded in the apparatus of the state that it is accepted that they are beyond democratic control and immune to the forces of law and order. These circumstances create a situation where it is quite impossible for this couple to maintain their relationship in El Salvador without very serious risks to the [partner] in particular. I note that the Respondent does not address this in any meaningful way at paragraphs 63 and 64 of the refusal. Nor has she attended to make any oral submissions.*

*80. I accept that on the particular facts of the case that there are exceptional circumstances which outweigh the public interest in immigration control. I conclude that the removal of the Appellant would put the UK in breach of Article 8 of the ECHR and section 6 Human Rights Act 1998."*

## **The Hearing**

9. The Appellant attended the hearing in person. She was not called to give any further evidence although there was a court interpreter present to explain the proceedings to her. The Appellant confirmed that she understood the interpreter who was speaking Spanish. Both parties made submissions

## **Submissions**

10. Ms Newton highlighted that there was only a narrow issue to resolve in this appeal. The issue is whether the Appellant has demonstrated that she is at real risk if she returns currently.
11. She submitted that the Respondent's position is that the risk to the Appellant on return to El Salvador is predicated on her association with her partner and that, as he is not returning to El Salvador due to him being granted refugee status in the UK, there is no ongoing risk to the Appellant.
12. Ms Newton confirmed that she was relying on the Rule 24 notice. This highlighted Judge Davies' finding at paragraph 60 of his decision: *"there is a risk that she is associated by the gangs with the first Appellant who is from a different area."*

13. The Rule 24 notice also detailed the Respondent's **Country Policy and Information Notice El Salvador: Gangs Version 4.0, December 2022** which states:

*2.4.2 However, a person who is able show they are one or more of the following is likely to face treatment by its nature and/or repetition that amounts to persecution or serious harm in their home area:*

- considered to be a threat to a gang*
- associated with someone who is considered to be a threat*
- has not complied with a gang's rules or demands*
- belong to a particularly vulnerable group, such as being female or a LGBTI person*

14. Ms Newton was asked if it were correctly understood that the Respondent's position as set out by her is that the Appellant's appeal should have succeeded on protection grounds when it was linked with her partner's appeal before Judge Davies. Ms Newton agreed with this summary of the case, stated that she saw the strength in the Appellant's case, and stated that she had nothing further to add.

15. The Appellant made generic submissions regarding the risk from MS-13 and the danger to her in El Salvador.

### **Analysis & Remaking**

16. In remaking the protection decision, the burden of proof is on the Appellant. It is for her to establish that returning her to El Salvador would expose her to a real risk of persecution. The standard of proof is real risk or reasonable likelihood and is often referred to as the lower standard.
17. There is no challenge to the credibility of the Appellant's account and the factual findings made by Judge Davies have been preserved. The issue is whether the Appellant has shown that she would be at real risk of persecution on return to El Salvador due to her association with her partner.
18. The Appellant's partner received threats from MS-13, the gang in control of the Appellant's home area. He was threatened on three occasions by MS-13. Judge Davies found that the Appellant's partner *"would face a real risk on return because there is a real risk that his actions would be treated by MS-13 as a challenge to their social control."* His appeal was allowed by Judge Davies on asylum grounds.
19. The Appellant was with her partner when they were first threatened by MS-13 in her home area. Judge Davies accepted that the Appellant had a further encounter with MS-13 which did not escalate. Judge Davies accepted that the Appellant stayed at home and was unable to live a normal life for fear of the gang.
20. The Appellant is associated with her partner by the MS-13 gang who control her home area. As detailed previously, Judge Davies' found at paragraph 60 of his decision that *"there is a risk that she is associated by the gangs with the [partner] who is from a different area."*
21. Further, in paragraph 65 of his decision Judge Davies found that *"The [partner] has demonstrated that he is of adverse interest to the MS-13 gang. The [Appellant] is associated with him."*

22. Considering the factual findings in this case and the country information detailed in the Respondent's **Country Policy and Information Notice El Salvador: Gangs Version 4.0, December 2022**, the Appellant has clearly proven that she would be at real risk of serious harm from the MS-13 gang on return to her home area in El Salvador.
23. The Appellant has already come to the attention of MS-13 in her home area due to her association with her partner. The Appellant's partner is of adverse interest to MS-13 as his actions would be treated by MS-13 as a challenge to their social control.
24. Therefore, we find that the Appellant has demonstrated that she would face a real risk of serious harm from MS-13 in her home area due to her known association with her partner. There is no suggestion that the Appellant could obtain effective protection from the authorities on El Salvador or that internal relocation would be safe or reasonable.
25. For these reasons we conclude that the Appellant has a well-founded fear of persecution in El Salvador for one or more of the reasons outlined in the Refugee Convention.

### **Notice of Decision**

There was an error of law in the decision of the First-tier Tribunal and the decision was set aside. We remake the decision and allow the appeal based on refugee grounds.

**C R Cole**  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

12 February 2025