



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07581/2017

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 26 July 2018

Decision & Reasons Promulgated  
On 22 August 2018

Before

**DEPUTY UPPER TRIBUNAL JUDGE DEANS**

Between

**MF**  
**(Anonymity direction made)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr N Robb, Gray & Co, Solicitors  
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This appeal is against a decision by Judge of the First-tier Tribunal Gillespie dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of El Salvador. He arrived in the UK on 15 February 2017 accompanied by his wife, EM, and their three sons. The appellant claims to have left EL Salvador because of threats from a gang who were attempting to extort money from the family's dairy business.

3. The Judge of the First-tier Tribunal heard oral evidence from the appellant and his wife and one of their sons. Because of inconsistencies in the son's testimony and apparent discrepancies in the appellant's evidence, the judge did not find the evidence of either of them to be credible. On the evidence of the appellant's wife the judge made no findings.
4. Permission to appeal was granted by the Upper Tribunal on several grounds. These included arguments about whether the Judge of the First-tier Tribunal had proper regard to that the country information in assessing the plausibility of the appellant's evidence and in finding there would be a sufficiency of protection for the appellant from the police in El Salvador. Among the other grounds on which permission to appeal was sought from the Upper Tribunal was that the judge failed to give adequate reasons for not accepting the evidence of the appellant and his wife.
5. Mr Govan contended that the evidence of the appellant's wife was not material and did not add to the evidence given by the appellant. He submitted that the judge had been entitled to take the view he did of the appellant's son's evidence. The judge had also been entitled to found upon discrepancies in the appellant's evidence and to draw a negative conclusion. The judge did not find the appellant's evidence credible and by extension did not find the evidence of his family credible.
6. I am not able to agree with Mr Govan's submission on this point. A reading of the witness statement for the appellant's wife shows that she claims to be the first person in the family to whom the gang members spoke when they first sought to extort money from the business. She claims also that it was to her telephone that threatening messages were sent after the family stopped paying the gang. It cannot be said that her evidence did not add to the appellant's evidence, or did not contribute anything distinctive or material to the outcome of the appeal. In my view the judge's omission in failing to make findings on the evidence of the appellant's wife and failing to give reasons for accepting or rejecting her evidence render his credibility findings unsound and his decision unsustainable. In making his decision without findings and reasons in respect of the appellant's wife's evidence the judge erred in law and his decision must be set aside.
7. I further consider that issues of credibility are so fundamental to the outcome of this appeal, and to the findings of fact which require to be made, that there is no alternative but to remit the appeal to the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statement. There was some discussion at the hearing as to whether the appeal should be remitted to the same Judge of the First-tier Tribunal to make the findings which were previously omitted. In view of the lapse of time since the previous hearing, which was in November 2017, it would not seem practical, or indeed fair, having regard to the findings purportedly made, to remit the appeal to the

same judge. Accordingly the further hearing must be before a differently constituted First-tier Tribunal with no findings preserved from the hearing in November 2017.

8. In view of my decision on the judge's credibility findings it is not necessary for me to address the other grounds of appeal to the Upper Tribunal. Issues such as sufficiency of protection or the proper assessment of the country information may be addressed before the First-tier Tribunal at the further hearing.

### **Conclusions**

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
10. The decision is set aside.
11. The appeal is remitted to the First-tier Tribunal for hearing before a differently constituted tribunal with no findings preserved.

### **Anonymity**

The Judge of the First-tier Tribunal did not make an anonymity direction. In order to preserve the position of the parties until the appeal is decided, I consider it is appropriate to make a direction in the following terms. Unless or until a court or tribunal directs otherwise no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and the respondent. Failure to comply with the direction may give rise to proceedings for contempt of court.

M E Deans  
Deputy Upper Tribunal Judge

13<sup>th</sup> August 2018