Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10815/2019**

THE IMMIGRATION ACTS

Heard at	**Decision & Reasons Promulgated**
George House, Edinburgh	
On 24 November 2021	**On 02 December 2021**

Before

UT JUDGE MACLEMAN

Between

MARIA [O]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Olabamiji, of DMO Olabamiji, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Colombia. She sought asylum in the UK on 29 May 2019. In a decision dated 23 October 2019, the respondent found her claim not to be credible, and that it would fail in any event on grounds of availability of (i) state protection or (ii) internal relocation, or both.

2. FtT Judge Rea dismissed the appellant's appeal by a decision promulgated on 23 January 2020. He found the appellant credible. He held at [27] that she and her partner had been subject to threats and intimidation by an organised criminal gang; that she had a genuine fear of violence at the

hands of those making threats to her family, including the fear that her daughter will be kidnapped; and that such fear caused her to flee Colombia and seek refuge in the UK. Those findings are not disputed by the respondent. However, the Judge found at [31] that adequate state protection exists. He made no finding on internal relocation.

3. It was conceded in the FtT that the claim does not fall within the Refugee Convention. It is common ground that the only live issue now is humanitarian protection.

4. The FtT refused permission to appeal to the UT.

5. The appellant applied to the UT for permission. The relevant parts of the grounds are:

> …
>
> 2. The tribunal accepts that the appellant is credible, that she left Colombia after being threatened by a criminal gang and … has a genuine fear of violence and of kidnap of her daughter, [27].
>
> 3. The tribunal concludes at [31] that … state protection is available … the objective evidence before the tribunal does not support this conclusion for the following reasons:
>
> 4. The tribunal recognises that there is corruption in Colombia and states that steps have been taken to tackle this, at [31]. The tribunal makes no assessment of how far these steps have gone … or how they have enabled individuals to seek effective protection.
>
> 5. The tribunal states that there is effective protection because the … police have started an investigation into the threats made to the appellant … existence of an investigation does not mean that risk has been reduced. The tribunal places weight on lack of actual violence … but does not state why this entails that the appellant would not be at risk on return …
>
> 6. The test in *Horvath* cannot … be met merely by a recognition that some steps to tackle corruption are being taken … willingness to offer protection is not demonstrated unless the steps taken are … effective
>
> 7. Finally … the tribunal does not cite evidence to support its conclusion [of] effective protection beyond reference to the number of investigations … carried out. There is no evidence of what this entailed or … the outcomes … or … of reduced harm to individuals.

6. UT Judge Stephen Smith granted permission on 1 April 2020:

> "The judge accepted the key tenets of … violent threats by an organised crime group (OCG) … it is arguable that the judge erred when finding … sufficiency of protection … The judge referred only to relatively aged materials to give (only brief) reasons …. It is arguable that before ascribing determinative significance to the fact that the Colombian police have commenced some criminal investigations against OCGs in the past, the judge should have considered the effectiveness of those investigations and the likelihood that a *Horvath* level of protection would be available. OCG violence in Colombia is well documented, meaning that there was arguably a corresponding

> obligation on the judge to explain how, given the particular context … sufficiency of protection would nevertheless be available …
>
> Arguably, the absence of actual violence … is a neutral factor …"

7. In written submissions, filed in response to directions, the appellant argues under reference to authority and to background evidence that the tribunal failed "to carry out a proper assessment of sufficiency of protection".

8. In written submissions, dated 15 January 2021, the SSHD argues that the appellant identified no error by reference to the background evidence to which the tribunal had been directed and that the grounds, in essence, are no more than disagreement on the facts.

9. Mr Olabamiji adopted the grounds and written submissions. He referred to materials in the appellant's FtT bundles, and specified in the grounds and written submissions, and maintained that the FtT failed to deal adequately with them. He said the appellant was entitled to flee without waiting to come to harm, and that the Judge had not explained why absence of actual violence against her and her partner, and opening of an investigation, indicated protection from the state at the level required by law. He also said that the Judge, having acknowledged evidence of extortion and kidnapping by organised criminals, shed no light on why he found steps to deal with that to amount to an adequate level of protection. He sought a remit to another Judge in the FtT for a reasoned decision on state protection.

10. Mr Diwyncz had little to add to the SSHD's written submissions. He made no concession, pointing out that the FtT did refer to background materials and did state its reasons, but he did accept there might be a question mark over whether the FtT's explanation went far enough. If the UT considered that it had not, he agreed that the appropriate course would be for the case to go back to the FtT, but suggested that Judge Rea should be asked to complete the task.

11. In his reply, Mr Olabamiji said that although the positive findings by Judge Rea fell to be preserved, it would be appropriate for another Judge to resolve the issue on which Judge Rea had stated a conclusion, but for no good reasons.

12. I reserved my decision.

13. Having resolved credibility, the Judge at [29] directed himself correctly on the test in *Horvath.* At [30] he specified the main materials to which had been referred, and accepted the relevant operations of criminal gangs. The considerations stated at [31] are (i) steps taken to tackle corruption (ii) the making of a report to the police and the opening of an investigation and (iii) no actual attack or reprisals on the appellant and her partner. "The test … is that cogent evidence is required that the state which is able to offer protection is unwilling to do so … the evidence … falls far short of establishing this and I must therefore proceed on the basis that adequate state protection for the appellant exists …".

14. There is no country guidance on the general adequacy of state protection in Colombia from organised crime, so the matter is for decision case by case, based on both the individual facts and on the background evidence.

15. Reasons are not absent in the decision; and reasons may often be brief yet adequate. Nor is there any need to copy in lengthy passages of background evidence. However, bare reference to steps against corruption is not much of an explanation for finding that there is, in general, a legally adequate level of protection against organised crime.

16. It may have been open to the FtT to give some significance to the opening of an investigation and to absence of actual attacks on the appellant and her partner, but she was found to have fled promptly and in genuine fear.

17. Opening of an investigation and absence of attacks may tend towards adequacy of protection, but even if somewhere above neutral, they are not strong reasons for finding the appellant to have fallen short of showing an inadequate level of protection. That must depend, to a large extent, on the general context.

18. The issue required specific analysis by placing the facts as found in context of the background materials.

19. The appellant has shown error of law in that the outcome in terms of state protection is not adequately explained by the reasons given.

20. Although the matter has not been raised by either side, the FtT should not have ended its analysis where it did. It should also have decided the matter of internal relocation. That remains live, and should not be overlooked next time around.

21. The decision of the FtT is **set aside**, but on the understanding that as matters stand, there is no reason to revisit those findings which were favourable to the appellant.

22. Parties were agreed that the issue was apt for further decision in the FtT. As the original Judge has stated his conclusion on the first point at issue, the appellant may reasonably and in fairness expect the matter to be resolved by a differently constituted tribunal.

23. The case is remitted to the FtT for further hearing (likely to be by way of submissions only) and for a fresh decision to be reached. The member(s) of the FtT chosen to consider the case are not to include Judge Rea.

24. No anonymity direction has been requested or made.

25 November 2021

UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.