



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05644/2014

THE IMMIGRATION ACTS

Heard at Field House
On 29 February 2016

Decision & Reasons Promulgated
On 18 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

TAN
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Loughran of Counsel

For the Respondent: Mr Jarvis a Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order preserving that already in force. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. I do so in order to preserve the anonymity of the Appellant who was found by the First-tier Tribunal to have been a child victim of trafficking and sexual exploitation, and who as will be seen I have found had been groomed, beaten, and repeatedly raped as a child by a man who was involved in an organised criminal gang, that there is a real risk that those involved will seek to recover their financial outlay from the Appellant should they have the opportunity, the Appellant lacks the maturity and the ability to stand up to Vietnamese people, he would have no family support in Vietnam, he would have no shelter or means of supporting himself should he internally relocate, and there is a real risk he will once again fall into the hands of traffickers.

Background

3. The Appellant is a citizen of Vietnam and was born on [] 1997. He is currently 18 years old. The Respondent refused the Appellant's application for asylum on 24 July 2014 when he was 16 years old but accepted he was the victim of trafficking. His appeal against the refusal of asylum was dismissed by First-tier Tribunal Judge Youngerwood ("the Judge") following a hearing on 10 September 2014. This is an appeal against that decision.

The hearing on 3 November 2015

4. It was conceded by the Respondent that the Judge had failed to give weight to the fact that at the time of the hearing the Appellant was 16 years old, and that, as he was also a victim of trafficking, there was a failure to engage with the required best interest assessment in the appropriate factual matrix. None of the subsequent findings regarding the Appellant's ability to safely reach his grandmother, avoid Tuan or those with whom he may be associated, or internally relocate with or without his grandmother, were sustainable and were accordingly fatally undermined. I was also satisfied that the "vulnerability" assessment conducted by the Judge did not adequately engage with the evidence of the specialist foster carer. This also amounted to a material error of law. I set aside the decision and determined to rehear the matter.

Issues Under Appeal and Proceedings

5. It is for the Appellant to show that there is a real risk he will be persecuted in Vietnam due to a ground that engages the 1951 Geneva Convention relating to the Status of Refugees ("the 1951 Convention"). He also claims protection under the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms ("the 1950 Convention"). I confirm I have borne in mind the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and in particular S8.
6. I was provided with bundles from the parties all of which I have read. I heard from the Appellant, [K], and Helen Fowler who were all cross-examined. I summarise here what I consider to be the most relevant parts of the evidence for the purpose of his appeal. The fact that I have not included every word stated or repeated does not mean that I have excluded it from my consideration.

The Appellant's evidence

7. In his pre-appointment questionnaire (23 August 2013) the Appellant (who was then 15) said that according to his grandmother, his mother was here. His family home is in Que Lam Town, Hai Phng City, in North Vietnam. There are paddy fields and a market. His main carer was his grandmother who was the only person he lived with. He does not know her phone number.
8. In his screening interview (23 August 2013) he added that he flew to Bangkok in Thailand and then came here hidden in the back of lorries with 6 (later clarified as 5) people to whom he was not related. Tuan arranged his trip. They met through mutual friends. He was told he was going on holiday to Thailand. He did not know he was coming here. He was told someone would get him a job here. He heard Vietnamese people say he had been trafficked here. If he returns, Tuan would demand money from him and try to traffic him out of the country again. Tuan travelled with him to Thailand and said just get into the vehicle and they will meet when the Appellant arrived. Tuan obtained the travel document to get the Appellant from Vietnam to Thailand.
9. In his statement (1 October 2013 when he was almost 16) he added that he went to school in Vietnam from the age of 6 to 13. His parents separated and left when he was very young. He lives with his maternal grandmother. He has not spoken to her since he left Vietnam. He met Tuan when he was 15. Tuan was 21 or 22. He was impressed by Tuan who treated him well. He went to Bangkok as he was excited to travel. He used a false passport and was given a phone on the plane. They were picked up in a car. Tuan was with him. He was driven to a car park and ordered to get into a lorry. He was told to ring Tuan when he reached his destination. He was in the lorry for a few weeks. He was arrested when he got out. He was put into foster care with 2 other children who were in the lorry. He agreed to go with them to their relatives. They were picked up by 2 men in a car and taken to a train station. After the others left he was approached by a Vietnamese man and woman who helped him. He showed them the address of his foster carer. The couple took him to their home and said they would return him to the foster carer which they did the next day. If Tuan knew he was here he may force him to grow cannabis or work for them. His grandmother is old and cannot protect him. The police will want money to protect him. His grandmother has no money. He will not be able to live away from his grandmother as she is his only relative. He would have to register with the authorities and give a reason why he has moved. Tuan could find him as he would be able to bribe the police. He thinks it was an organised group that brought him here.
10. In his substantive interview (3 October 2013 his 16th birthday) he added that he has not spoken to his grandmother since he left Vietnam. He does not know if he has relatives other than an older brother he has not seen since his parents divorced when he was little.

11. In his statement (undated but prior to 15 April 2014 as it is referred to by Christine Beddoe – see below [20]) he added that he finds it difficult to talk about what happened in Vietnam. He feels scared and ashamed. He was told by Tuan to use his brother's name. Initially he was well treated by Tuan but then Tuan became violent to him and allowed others to be violent as well. He was forced to have sex with Tuan on many occasions. He would then be nice to him. He could not tell the police or his grandmother due to the stigma and as the police would do nothing. This went on for about 7 months. Tuan would find him if he went home. He could not get protection from his grandmother or the police.
12. In his statement (10 September 2014 –when he was nearly 17) he said he does not know his grandmother's exact age.
13. In his statement (unsigned but dated 2 December 2015 when he was 18) he added that he attends college 3 days a week. His English has improved. He is studying Engineering. He continues to live with the foster carers. He does not feel ready to live with another boy and does not want to live alone. It would be very difficult to cook, clean, and organise himself. He has tried to stay safe. He would be in danger in Vietnam. He would not know how to get food or to live. He has had no contact with his grandmother since he left as Tuan knows where she lives. He will have to live on the streets with no qualifications. He would find himself in the same situation he was in before. He could be tracked down by Tuan when he registers.

[K]'s evidence

14. [K] stated (24 April 2014) that she is the Appellant's foster carer. She and her husband have fostered him since 26 June 2013. They are specialist foster parents for trafficked children from Barnardo's. They have been specifically trained and have looked after 5 trafficked children since 2010.
15. The Appellant is not allowed to use the internet to ensure the traffickers do not trace him. He was not allowed a mobile phone or money. This was done to keep him safe. He now has a restricted mobile phone and pocket money and can go out for short periods during which he must check in with them. He is very innocent and childlike and at risk of being manipulated. He trusts people very easily. He is smart in some areas but in other areas he is very vulnerable and needs careful handling. He attends school, is good at Maths, enjoys swimming, and has developed relationships with her family and friendships with other young people they have fostered. He is easily influenced and acts younger than his chronological age.
16. She added (7 December 2015) that the Appellant is still very trusting especially with Vietnamese people and thinks they can be believed. He will do whatever his Vietnamese friends want and is easily led. He becomes quiet and submissive. He resisted the influence of peers in respect of drugs. She has found him jobs. He does not understand the implications of her husband's serious

health problems and jokes about it. His organisation is not very good. He has never understood the seriousness of his trafficking, how he needs to keep himself safe, or how he deals with new friends. He is naïve. It is like teaching a small child.

17. In evidence she added that without the professional support the Appellant receives, he would struggle. He does not plan for the future. He would not cope in Vietnam. He does not go against Vietnamese adults and is very trusting of them. He now goes to college alone. So far as she is aware he has not been approached by traffickers here. It is still hard to get him to understand the trouble he can get himself into. It has not improved since he came here despite him getting older. He would rather Vietnamese people think bad of him than stand up to them.

Helen Fowler's Evidence

18. She wrote (2 December 2015) that she is the Appellant's previous Social Worker and a Senior Practitioner in Child Care. She met him regularly and attended professional meetings. He is polite and pleasant with a good sense of humour. He is a very vulnerable young man. He is keen to engage with Vietnamese society and is frustrated at the checks that need to be undertaken to ensure he is safe. He did not understand he was being exploited by working for free in a nail bar in exchange for training as he was told that this was how it was done in Vietnam. The Child and Adolescent Mental Health Team (CAMHS) have identified that he is highly likely to be traumatised by the experiences in Vietnam and of being trafficked. In her opinion he has shown a level of immaturity in his emotional development which is due to his experiences. His emotional well being is very fragile. Due to his trusting nature, lack of self confidence, and lack of ability to enforce his basic rights, he is highly vulnerable to exploitation and further experiences of abuse. He has a low stress threshold due to his previous abusive experiences and any additional pressure on him causes him to regress and not meet his own basic needs.
19. In evidence she added that he would struggle with everyday tasks if he was removed and did not have the network of support.

Christine Beddoe's evidence

20. Christine Beddoe, former director of ECPAT UK End Child Prostitution, Child Pornography and Child Trafficking, detailed her expertise and filed a report (15 April 2014). Between 1999 and 2003 she spent time working in Vietnam advising government and non-government agencies on the protection of children and prevention of child exploitation. In 2011 as Director of EPCAT she visited Vietnam to discuss child trafficking with government and non-government agencies and consulted those agencies on the likely scenarios faced by children and young people who have been trafficked to the United Kingdom if they were to be returned to Vietnam.

21. It is noteworthy that adults of Vietnamese origin in the United Kingdom have sought to identify and control him [17 of her report]. In Vietnamese child trafficking cases there is no such thing as a benevolent stranger [20] who, without reason, collects a child at a station and takes them home. It is usual that these “accidental” meetings have been pre-arranged by a third party. It is after this point that the child ends up in some form of exploitation or debt bondage. This behaviour has been recently documented in Vietnam [36] by the International Organisation for Migration (IOM). It was reported by UNICEF and the Vietnamese government in 2011 that there are no specialised support services including shelters for boy victims [39]. In recent years there has been an increase in reports and anecdotal evidence showing that there is trafficking of males, especially boys trafficked internally and also abroad for sexual and labour exploitation [40]. Both UNICEF and IOM state that local responses to trafficking for sexual exploitation exclude boys [41]. The police arrest boys and girls if they are suspected to be involved in sex work [44]. Evidence suggests that discrimination and stigma exists against gay men [45]. The stigma of homosexuality and HIV Aids and the conceptualisation of prostitution being a “social evil” in official government policy creates a significant barrier for children to seek help from authorities for fear that their families will reject them and they will be arrested [48].
22. Human Rights Watch report that a considerable number of drug detention centres also double as detention centres for sex workers [52] and children who have used drugs [51]. The Law on Prevention, Suppression against Human Trafficking (LPSAHT) that took effect on 1 January 2012 is not sufficient to guarantee a continuation of support for all returning victims of trafficking because support is conditional and victims must first comply with government requirements to co-operate [54]. Accommodation support is only aspirational [56].
23. Victims face an uphill struggle that increases their vulnerability to re-trafficking. They cannot get identification cards to register for permanent residence. Their communities discriminate against them and consider them to be spoiled and unfit for marriage and as having a corrupting influence on other young people. Most returned victims suffered from economic difficulties, were homeless, landless, and jobless, and suffered from poverty and famine [71].
24. There are a number of policies to restrict migration into the major cities that are used to determine access to public services in that locality for formal sector jobs, education, health care, housing and registration for purchasing assets such as houses and vehicles [74]. The risk of exploitation and re-trafficking is extremely high if a young person has no attachment and is faced with no option but to move from place to place to secure work [75].
25. Vulnerable Vietnamese children are targeted by organised criminal networks in Vietnam. The short and long term safety and protection needs of these children

are very high due to the violent methods used by fragmented criminal networks to recoup financial outlay [81].

26. The Appellant is the victim of sexual abuse and exploitation by Tuan having been groomed [30] having been treated well and then plied with alcohol and drugs [33] and then ill-treated [34]. He is a vulnerable child requiring high levels of emotional and practical support which will not be met if he returns to Vietnam increasing the risk of re-trafficking either within Vietnam or cross-border [66]. He would suffer stigma and if he did not explain why he had been outside Vietnam he would be marginalised further [67]. He would not be eligible for children specific support and there is no appropriate support for young male victims of human trafficking [69]. For the Appellant there are no services or intensive protection measures, and a withdrawal of the level of support he has had would undoubtedly contribute to a sustained period of extreme anxiety and increase his risk of re-trafficking. His ability to access legal advice or support as a victim of trafficking in Vietnam would be almost nil [73]. His age and lack of experience and family network means he would have to travel to find work [75]. He could have been removed from the registration scheme having been absent for more than 6 months [76] and would find it difficult to navigate the level of bureaucracy necessary to regain it without trusted support which would leave him open to deception, corruption, and exploitation [78].
27. He is at high risk of being re-trafficked should he be returned to Vietnam. The single most important risk factor is that he has already been trafficked and sexually exploited and multiple vulnerabilities flow from that point. There are no specific shelters in Vietnam for boys who have been sexually exploited and trafficked and there are no therapeutic support programmes or safeguards in Vietnam for young people in his situation. He would almost certainly be forced to work with corrupt officials and others who would expect to be bribed for keeping quiet about his history of abuse. The stigma of men having sex with men would make it untenable to discuss his past history with officials of any kind, or seek help in the community [86].

Christoph Bluth's evidence

28. Christoph Bluth is the Professor on International Relations and Security at the University of Bradford. He is a specialist in the geopolitics of Asia, has studied and taught about Vietnam for over 20 years, and recently supervised a Vietnamese Doctoral candidate who engaged in primary research on his country.
29. Loan sharks often act as migration brokers and are closely connected to trafficking and debt bondage [5.2.6]. Children are trafficked for labour exploitation often in cannabis farms [5.2.9].
30. It is reported that upon return, their community does not sympathise with their experiences but rather discriminates against them and treats them as criminals.

Local authorities have not yet paid attention to them and have not yet provided support and assistance for their reintegration. This makes the victims more vulnerable and increases their risk of being re-trafficked. Victims are generally denied household registration. It is suggested that they are perceived as different in society and they therefore constitute a particular social group who share a common characteristic [5.2.11]. (I note here that I have been provided with the 2012 study entitled Repatriation and Reintegration of Trafficked Victims: the Case of Vietnam by Le Thi Hoa – see below [46]). They are likely to be re-trafficked as they are usually poor, lacking in education, and lack awareness of trafficking. He has heard that police hand returnees to the trafficker and it is likely he would be returned to his grandmother who may be forced to have him re-trafficked to pay the perceived debt [5.2.12].

31. The Appellant would be thrust into a hostile environment without the necessary experience to cope with the enormous challenges and dangers he would have to confront. He would compete for work against peers with established family and social networks, local experience, and the ability to distinguish criminal elements from bona fide employers [5.2.15]. Criminals trafficking in “slave labour” particularly focus on the countryside to find new victims. Relocation would not eliminate the risk to the Appellant [5.2.17]. Law enforcement to deal with trafficking is uneven and the law enacted in 2012 has not had the implementation edicts issued and lacks enforcement penalties [5.3.1]. Trafficking related corruption at the local level remains widespread [5.3.2]. Shelters for trafficking victims are rudimentary, underfunded, and do not have appropriately trained staff. The process for applying for a new household registration is no easy task and involves several phases and is time consuming [5.3.6/5.3.8]. Having one is necessary to exercise basic rights. Not having one would expose him to multiple institutionalised vulnerabilities and risks [5.3.7] where he would be unable to access basic government services, and access to health care and education [5.3.10].
32. It is practically inevitable that if returned he will come into contact with loan sharks and there is a risk he could be re-trafficked. There is a high risk he will be the target of trafficking gangs, aided and possibly abetted by corrupt police, and there will not be sufficient support to protect him [6.2].

Other Evidence

33. Gwen Wilkinson is the manager at the KRAN Riverside Project. They provide non-statutory English and Lifeskills for unaccompanied asylum seekers and refugees between the ages of 16 and 19 under the care of social services. She wrote (4 December 2015) that the Appellant was referred to them in July 2014 and enjoyed the summer programme. He came again in the summer of 2015. It was noticeable how little progress he had made in his confidence and ability to interact with peers and his failure to realise his own vulnerabilities when engaging with visiting adults. He was submissive in his interaction with Vietnamese and mixed ethnicity students. His ability to fend for himself is of a

much younger person. His unfailing trust in others could lead to him being exploited and re-trafficked.

34. Romana Ghorbani is an English Teacher at the Royal Harbour Academy. She wrote (5 December 2015) that she taught the Appellant until June 2015. He made very good academic progress. He is very immature for his age and needed lots of guidance, almost at a primary school level, to help him acquire some basis skills necessary for going through his school life successfully. Progress in organisational social and communication skills would not have been possible without very close home-school liaison links. He often misunderstood what was expected of him, found it difficult to meet deadlines, and had difficulties with planning ahead. He was also very impressionable and had a very naïve outlook on life. He was still a vulnerable young man not ready for the challenges of life at a college and of living independently without appropriate support mechanisms being in place without which he would be susceptible to exploitation.
35. Patrick Cavanagh is a Family Therapist with Kent CAMHS. He wrote (30 September 2014) that the Appellant appears as a traumatised, courageous young person. The best therapy for him is to have a safe, secure, nurturing environment where he can begin to feel safe and secure within himself.
36. Elizabeth Jackson is the Progression Mentor and Designated Member of Staff for Computing and Engineering at East Kent College. She identified (2 December 2015) the Engineering course the Appellant was enrolled on. She noted his ability in Maths and his exemplary attendance, effort, and attainment. She added (8 December 2015) that the Appellant has a tendency to “go along” with things which could leave him in a vulnerable position. He mentioned cannabis a lot when discussing going back to Vietnam and she is concerned he could potentially start smoking it. He is easily influenced by peers. He would have very little opportunity to reach his potential in Vietnam.
37. Gunes Kalkan, Assistant Director of Policy and Research at Barnardo’s, noted (9 December 2015) from his own observations the close relationship the Appellant had with [K] and the very negative impact their separation would have on him.

The US Department of State, Trafficking in Persons Report 2015 on Vietnam (27 July 2015)

38. Vietnam is a source country for men, women, and children subjected to sex trafficking and forced labor within the country and abroad. Debt bondage, passport confiscation, and threats of deportation are tactics commonly used to compel Vietnamese victims into servitude. Victims are often recruited by relatives or acquaintances, often with the knowledge, consent, or urging of close family members. Vietnamese organized crime networks recruit and transport Vietnamese nationals, especially children, to Europe – particularly the United Kingdom and Ireland – and subject them to forced labor on cannabis farms; they are lured with promises of lucrative jobs and compelled into servitude

through debt bondage. Vietnam's labor export companies – many affiliated with state-owned enterprises – sometimes charge fees in excess of the law for work abroad, leaving workers with exorbitant debts and vulnerable to forced labor and debt bondage. Upon arrival in destination countries, some workers find themselves compelled to work in substandard conditions for little or no pay, with large debts and no credible avenues of legal recourse.

39. The Government of Vietnam does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Vietnamese authorities continued to prosecute and convict internal and transnational sex traffickers, but did not pursue criminal prosecutions for labor traffickers exploiting victims transnationally or within Vietnam. The government reported an increased number of officials received anti-trafficking training; however, many officials were unable to identify and investigate labor trafficking cases, resulting in a failure to identify victims and to pursue criminal investigations in 2014. Often, government responses to overseas workers facing debt bondage or forced labor situations were inconsistent and inadequate. However, government officials abroad assisted with the return of trafficking victims in 2014 and worked with NGOs to help repatriate victims from China and Malaysia. NGOs report border officials in high-risk trafficking areas increased their engagement to investigate trafficking cases, but official complicity remained an impediment to anti-trafficking efforts in Vietnam.
40. In 2014, the government arrested 685 suspected traffickers, of which it prosecuted 472 (346 under Article 119 and 126 under Article 120 of LPSAHT – see above [22]) and convicted 413, with sentences ranging mostly from 3 to 15 years' imprisonment, a slight decrease from the 420 offenders convicted in 2013. Authorities did not report how many cases involved sex or labor trafficking or how many were for internal or transnational trafficking. Although LPSAHT amendments provide a criminal law basis to prosecute these crimes, officials primarily pursued labor trafficking cases as administrative violations under the country's labor laws, which do not provide criminal penalties. Officials continued to participate in joint investigations and rescue operations in China, Cambodia, and Laos. A lack of coordination across provincial agencies impeded overall law enforcement progress in Vietnam, and officials sometimes did not pursue trafficking investigations due to provincial budgetary constraints.
41. The government demonstrated modest efforts to protect victims. In 2014, authorities identified 1,031 potential trafficking victims but did not report how many were exploited in sex or labor trafficking, how many were adults or children, or how many were exploited in Vietnam or abroad. In comparison, authorities certified 982 trafficking victims in 2013. Victim identification and referral mechanisms remained weak throughout the country. The government had a formal procedure for victim identification, but it did not proactively employ it to identify victims among vulnerable groups, such as women arrested for prostitution, migrant workers returning from abroad, and child laborers. It

also did not systematically refer victims to protective services due to inadequacies that persisted in its formal referral process. Officials continued to conflate trafficking with smuggling, which precluded the identification of victims who voluntarily migrated abroad.

42. In 2014, the Ministry of Labor, Invalids, and Social Affairs (MOLISA) provided protection and reintegration support to 668 trafficking victims, of which the government repatriated over half. Protection services varied by location but generally included legal aid, counseling, shelter, vocational training, healthcare, and financial allowances. Authorities did not report the number of victims who used the one-time government cash subsidy – up to one million dong (\$50). MOLISA's social protection centers, which provided services to a wide range of vulnerable groups, sometimes housed trafficking victims; these centers are often underfunded and lack appropriately trained personnel to assist victims. The Vietnam Women's Union, in partnership with NGOs and with foreign donor funding, continued to operate three shelters in urban areas, one of which was trafficking-specific. Vietnam had no shelters or services specifically for assisting male or child victims and none devoted specifically to victims of labor trafficking. Vietnam maintained labor attachés at their embassies in nine countries receiving large numbers of documented Vietnamese migrant workers; however, reports allege some Vietnamese diplomatic personnel lacked sufficient training to adequately assist victims. Vietnam lacked diplomatic representation or bilateral agreements with some countries where Vietnamese citizens were subjected to trafficking, inhibiting victims' access to government assistance and impeding the government's protection efforts. In some repatriation cases, Vietnamese diplomatic missions provided basic provisions, transportation, and healthcare to Vietnamese victims subjected to trafficking abroad. The government reportedly encouraged trafficking victims to assist in judicial proceedings against traffickers and offered some protection and compensation to victims, yet victims expressed trepidation to use them given the endemic social stigma attached to being a victim, fear of retribution in their local communities, and fear of punishment for illegal acts committed in the course of being subjected to trafficking. Vietnamese law protects victims from being prosecuted for actions taken as a consequence of being subjected to trafficking; however, officials are not properly trained in identification of trafficking victims, which may have led to the treatment of some victims as criminals. The government did not offer foreign victims legal alternatives to their removal to countries where they faced retribution or hardship.
43. The government maintained efforts to prevent trafficking. During the latter part of 2014 and early 2015, the government commenced initial planning of a new four-year (2016-2020) national anti-trafficking action plan by developing future anti-trafficking priorities, though it did not include a specific budgetary allotment for its implementation. The government shared limited information on trafficking statistics and anti-trafficking operations with the international community, but the lack of accurate reporting on labor trafficking stymied anti-trafficking progress in the country.

Other Background Evidence

44. The MDGIF Report (January 2012) reported that when boys are trafficked they bear less discrimination from the community than trafficked girls because trafficking is still widely perceived as for sexual exploitation only, and boys are perceived as not being vulnerable to this type of exploitation.
45. The Borgen Project Blog (24 July 2015) notes that Vietnam has been praised for its efforts to crack down on child trafficking internationally but its control of internal trafficking needs to increase.
46. The Le Thi Hoa report notes (in addition to that which is referred to above [30] and in which he is described as a legal expert at the Ministry of Justice in Vietnam) the state support with repatriation, and support for essential needs and travelling expenses, medical support, psychological support, legal aid, educational training, vocational training, and loans or short term allowances for overcoming difficulty. Publicly run social welfare institutions shall support victims by providing shelter and subject to resources education and information. The support measures have not fully materialized, there are limited job or income generating opportunities, and there are not enough shelters.

The Respondent's case

47. It is accepted he has been trafficked by deception for the purpose of sexual exploitation.
48. It is not accepted that Vietnamese victims of trafficking constitute a particular social group as there is no evidence that this group is set apart or recognised as a distinct group by society in Vietnam. He would not give evidence against the traffickers in Vietnam, and the authorities provide sufficient protection and prosecute traffickers. His fear is from non state agents of persecution, not the state.
49. Vietnam is on the Tier 2 Watch list which means it does not fully comply with minimum standards to protect victims of trafficking but is making significant efforts to do so. The situation has improved significantly as detailed in The US Department of State, Trafficking in Persons Report 2015 on Vietnam a copy of which I was provided with and which was detailed in Mr Jarvis's skeleton argument. In particular adult males are not excluded from potential assistance including in mixed shelters, and suspected traffickers have been prosecuted and convicted.
50. Little weight is placed on Ms Beddoe's view on the risk on return as there is no reference to her expertise in assessing that risk in Vietnam, and as the Appellant is not homosexual.

51. He can internally relocate given the size and population of Vietnam, as there are 2 cities with populations in excess of 2,500,000, as he speaks the language and lived the majority of his life there, and as there is no evidence Tuan or his claimed associates are linked to the government. He has improved in terms of his behaviour and social interaction and as he resisted the influence of peers in respect of drugs. He would not be compelled to disclose the sexual abuse to Vietnamese officials and would engage in getting the relevant documents from here. Local corruption does not extend to diplomatic and immigration officials.
52. There is freedom of movement. Children who do not have a household registration document are more likely to be arrested or harassed by the police and may not be eligible to receive basic social services.
53. His Article 3 claim was dismissed for the same reason.
54. His Article 8 claim was dismissed as he has not lived here for 7 years, has ties to Vietnam, and does not have any health condition that meets the relevant thresholds. He can obtain assistance in tracing his grandmother.

Findings of Fact

55. It is accepted that the Appellant was trafficked here when he was 15 for the purpose of sexual exploitation and that deception was practised in doing so. That is a preserved finding from the First-tier Tribunal.
56. I am satisfied it is reasonably likely Tuan, who was then 21/22 and is now 24/25, groomed, beat, and repeatedly raped the Appellant while he was a child. I accept that it is reasonably likely Tuan was involved in an organised criminal gang given the fact the Appellant came with others clandestinely in a lorry and was given a mobile phone, and as arrangements were made for the group to be met here. The background evidence of the financial servitude that flowed from such an arrangement satisfies me that there is a real risk that those involved will seek to recover their financial outlay from the Appellant should they have the opportunity.
57. I had the benefit of hearing from [K] and Helen Fowler. They were cross examined. Their evidence was consistent across the various forms it was given, within itself, and with the written statements from Gwen Wilkinson, Romana Ghorbani, Patrick Cavanagh, Elizabeth Jackson, and Gunes Kalkan all of whom have spent time with the Appellant and are professionals in one capacity or another. Whilst I place less weight on the evidence of those who did not give evidence than those who did as they did not make themselves available to have their views tested, I do not exclude it. I accept they have all told the truth as they see it as I see no reason why any of them would lie and I see no evidence of collusion.
58. Taken together, from the evidence I have seen and heard, I accept it is reasonably likely the Appellant lacks maturity and the ability to stand up to

Vietnamese people, and that whilst being now an adult, he acts as someone much younger and should be considered to be a vulnerable young person. Whilst he was able to resist the drug offer here, that is just one example of limited self assertion amongst many that were given of subservience even whilst he has a supportive professional network with a consistent message. Once that support mechanism is removed, it is my judgement that it is the subservient attitude that will prevail. His vulnerability is exacerbated by the lack of family support he would have in Vietnam as he should not be expected to return to his grandmother's home. That is because he would be at a real risk of being re-trafficked by Tuan.

59. I accept that Christine Beddoe and Professor Bluth are experts on the situation for victims of trafficking in Vietnam given the length of their involvement in their specialist fields. Ms Beddoe's expertise is set out at [20] above and Professor Bluth's at [28] above. I accept that they have both considered the relevant evidence and used their own personal knowledge appropriately to reach their views. Their views accord with each other and the background evidence. I agree that those males who are the victims of trafficking from Vietnam form part of a particular social group as (c.f. SB (PSG - Protection Regulations - Reg 6) Moldova CG [2008] UKAIT 00002) they share a common background which is an immutable characteristic they cannot change which defines the group by giving it a distinct identity in the society in question and has nothing to do with the actions of the future persecutors. "Former victims of trafficking" and "former victims of trafficking for sexual exploitation" are capable of being members of a particular social group because of their shared common background or past experience of having been trafficked.
60. Whilst I accept that the Vietnamese authorities will assist with repatriation, and the background evidence indicates a willingness by them to assist with reintegration, given the Appellant's particular vulnerability, I am not satisfied that the embryonic support on the ground will enable him to be provided with shelter or a means of supporting himself should he internally relocate. By far the most persuasive background report given its recent publication, independent source, and breadth, is the US Department of State Trafficking in Persons Report 2015 which was relied on heavily by the Respondent before me. The most worrying feature arising from this report is that despite the international spotlight and legislation, Vietnam remains a source country for men subjected to sex trafficking. Debt bondage and passport confiscation remain. Organised criminal gangs are still involved. The forced labour and exorbitant debt regime continues. Training of government official and agency co-operation remained problematic. Protection services varied by location. Shelters are often underfunded and lack appropriately trained personnel. The one time cash government subsidy of \$50 is plainly of little use. This report does not establish that there is sufficiency of protection from the state against non state agents of persecution or the viability of internal relocation to avoid a similar fate. The Appellant has never worked in Vietnam. He has no support mechanism. He would have no local contacts or family to assist him. He would

be vulnerable to exploitation once again. There is a real risk he will once again fall into the hands of traffickers.

61. The submission that the Appellant is not a homosexual and therefore would not have that "stigma" is not the issue. The issue is how he would be perceived by others. He should not have to explain he was raped as a child by a man. Nor should he have to disclose what his sexuality is to obtain support from the community or professionals.
62. The Appellant should not be expected to lie about his reasons for having left Vietnam. He behaves in a deferential manner. He lacks the skills to change that and to avoid social stigma, official corruption, or local loan sharks and traffickers even if he could, which I am satisfied he would not be able to given the evidence of [K] which I accept (c.f. HJ (Iran) v SSHD; HT (Cameroon) v SSHD [2010] UKSC 31).
63. Given the findings I have made, I accept he is entitled to international protection and to be recognised as a refugee.

Human Rights

64. Given the findings I have made it is clear that I accept it is reasonably likely his Article 3 rights will be breached if returned to Vietnam.

NOTICE OF DECISION

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I allow the appeal on asylum grounds.

I allow the appeal on human rights grounds.

I make an anonymity direction.

Deputy Upper Tribunal Judge Saffer
8 March 2016