



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA089352015

THE IMMIGRATION ACTS

Heard at Bradford, Phoenix House
On 16 May 2016

Decision & Reasons Promulgated
On 23 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

[P K]

~~(NO ANONYMITY ORDER MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Pickering of Counsel

For the Respondent: Mr Diwyncz a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The respondent refused the appellant's application for asylum or ancillary protection on 2 June 2015. His appeal against that decision was dismissed by First-tier Tribunal Judge Simpson following a hearing on 19 October 2015. This is an appeal against that decision.

2. The appellant was born on [] 1998. He is Vietnamese. At the date of hearing he was 17 years and 9 months old. He claimed to have been brought up by his uncle when his mother abandoned him. He claimed that in September 2014 a gang attacked his home and threatened to kill them both unless money was paid. That night his uncle took him to Hanoi and obtained illegal documentation to bring him to the United Kingdom. He fears that on his return to Vietnam he would be killed by the gangsters as the money was not paid and he would be vulnerable to human trafficking as he has no family or social help.

The grant of permission

3. First-tier Tribunal Judge Astle granted permission to appeal (16 December 2015) on the grounds that;
 - (1) The Judge should have assessed the risk at the date of hearing,
 - (2) there is no bright line which says that when a person turns 18 he ceases to be at risk,
 - (3) the Judge failed to consider adequately the experts report, and
 - (4) the Judge failed to reconcile her finding that he would be homeless and yet it would not be unduly harsh for him to relocate.

Respondent's position

4. The respondent asserted in her reply (29 December 2015) in essence that the Judge directed herself appropriately, made findings open to her that there was no real risk of harm on return, and properly considered the experts report. It was submitted orally that children who are unaccompanied and would have no suitable reception arrangements are not removed.

The Judge's findings

5. The Judge found as follows;

[13] "The appellant fears loan sharks and gangsters in Vietnam, all of whom are non-state agents but none of whom are threatening him, if they are threatening him, because of a Convention reason. Consequently, he cannot succeed in asylum claim under the Refugee Convention."

[19] "... I bear in mind that the appellant would not return to Vietnam until after his 18th birthday and I take the view that as an adult, he would be less vulnerable... Moreover, while I accept that he has no family in Vietnam to turn to for support, there is no reason to believe that he would be particularly vulnerable to forced labour trafficking, whether outside the country or internally, given that he has received some basic education in United Kingdom

and thus will be better placed than many to obtain legitimate employment in Vietnam.”

[20] “Moreover, while there may be a short period of time in which he finds it difficult to obtain accommodation, particularly as Vietnam has no shelters or services specifically for assisting male or child victims and none devoted specifically to victims of labour trafficking, there is no reason to believe that he would have difficulty obtaining legitimate employment in one of the major cities e.g a Hanoi or Ho Chi Minh City and there is no reason why he cannot begin the process of re-registering his residence, if necessary, through the Vietnamese Embassy in London. They should certainly be able to advise him if his registration is still in place.”

[21] “The appellant has no known physical or mental health issues...”

Discussion

6. In relation to ground one, as at the date of the hearing the appellant was a child. He was not an adult. He had been granted leave to remain as an unaccompanied minor where there were inadequate reception arrangements in his own country. The chronology within the appellant’s bundle identifies his leave to remain was granted until 1 July 2015, namely until he was almost 17 ½. His leave would have expired if he had not submitted an appeal and further application for permission to appeal. There is no indication that the respondent had ever given an undertaking that the appellant would not be removed prior to his 18th birthday. In my judgement therefore he should have been assessed as being a child at the date of hearing who was liable to removal. There has been no assessment as to whether as a child he would be at real risk from loan sharks or traffickers. Background evidence had been produced and the experts report clearly identified that there was at least an issue to be addressed. Victims of trafficking can form part of a particular social group as the persecution is separate to the membership of the group. Whilst his claim was not one of a fear of the state itself but of non-state agents of persecution, there was no adequate assessment of the availability of state protection from those non-state agents of persecution. The peremptory dismissal of the asylum claim without consideration of these matters in my judgement was a material error of law.
7. In relation to ground 2, as identified in the application seeking permission to appeal, the Judge has not applied the principle identified in KA (Afghanistan) and others v SSHD [2012] EWCA 1014 regarding the lack of a bright line rule such that once he became 18 he would not necessarily be at risk due to his membership of that particular social group. That in my judgement is a further material error of law.
8. In relation to ground 3, while the Judge did consider the experts report, she did not do so in the context of an asylum claim from a child without any family

support who did not have access to shelters or services to help protect him and was based on an assumption that he was an adult which he was not. That in my judgement is a further material error of law.

9. In relation to ground 4, the Judge found that it would not be unduly harsh for him to return. She also found that he would have no family and no accommodation shelters or services available. As a child those findings are in my judgement irreconcilable. That in my judgement is a further material error of law.
10. I set the decision aside.
11. Both representatives agreed that in those circumstances I should remit the matter to the First-tier Tribunal for a *de novo* hearing.

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.

The matter shall be remitted to the First-tier Tribunal for a *de novo* hearing before a Judge other than Judge Simpson.

Signed:

Deputy Upper Tribunal Judge Saffer
17 May 2016