



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/09382/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 13 January 2016**

**Decision & Reasons Promulgated
On 28 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**TP
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. Azmi of Counsel, instructed by Coventry Law Centre

For the Respondent: Mr. D. Mills, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Cox promulgated on 18 February 2015 in which she dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. I have made an anonymity order, following that made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“At paragraph 22 of the determination the judge lists some of the abuse the appellant suffered, finding this did not amount to persecution but had he considered the age of the appellant and his working experiences in Vietnam when considering persecution, his finding might have been different. He seems to have given little weight to the appellant’s age when he worked on the construction site, (paragraph 24), although he notes that the minimum age for employment in Vietnam is 18. The judge appears to have made his decision based on the date of August 2016 instead of the date of the hearing.”

4. In respect of the second ground referred to above, that the judge made the decision based on the wrong date, Mr. Mills stated that he was not relying on paragraph 3 of the Rule 24 response. He conceded that there was an error of law in paragraph [30] of the decision where it was clear that the judge had not decided the potential for risk on return at the date of the hearing, but had considered the risk on return at the end of the period of discretionary leave.
5. Paragraph [30] states:

“The law in Vietnam sets the minimum age for employment at 18, and younger employees and vocational training is permitted, in order to comply with the law, special considerations and requirements are set out in the evidence in the Appellant’s objective bundle. The government in Vietnam is undertaking work to address the risks to children but there are, I find, nevertheless, continuing risks and the government has no yet been successful in comprehensively addressing risks to unaccompanied/orphaned children. This Appellant has however been granted discretionary leave to remain in the United Kingdom until the 4th of August 2016, at which stage he will be 17 and a half years of age. He will then be within months of obtaining his majority, having enjoyed more than 2 years education in the United Kingdom, although he will remain a minor. I not find he is at risk as a result of his membership of a particular social group.”
6. I find that it is clear from this that the judge has not considered the risk on return at the date of the hearing, but at the date of the expiry of the Appellant’s discretionary leave when he will be 17 and a half years old. I find that this is a material error of law.
7. However, there remains the other ground referred to in the grant of permission, which refers to the judge’s finding that the Appellant had not experienced persecution in Vietnam. This is relevant to any remaking of the decision regarding risk on return. I heard submissions on this point from both representatives, following which I reserved my decision.

Submissions

8. Mr. Azmi relied on paragraph 5 of the grounds of appeal, the skeleton argument before the First-tier Tribunal and the objective evidence

provided to the First-tier Tribunal, the relevant parts of which are set out in the "Key Passage Index" (pages 63 to 68). In relation to future risk, he submitted that paragraph [30] contained a finding that there were continuing risks for unaccompanied orphan children.

9. Mr. Mills submitted that adequate reasons had been given for finding that the Appellant had not experienced persecution in Vietnam, and submitted that these findings should be upheld (paragraphs [22] to [27]). He submitted that the decision should be remade on the basis of the Appellant's risk on return as at the date of the hearing as an individual who had not previously suffered persecution. In relation to future risk, he submitted that the background evidence was not clear cut enough to show that the Appellant would be at risk on return by virtue of being an unaccompanied minor. He submitted that the issue remained of whether the government did enough for an individual in the Appellant's circumstances. He provided no further evidence.

Error of law

10. I have found above that the decision contains an error of law in the consideration of the Appellant's risk on return, as the risk was considered at the wrong date. However, also relevant to any consideration of risk on return is the extent to which the Appellant has previously suffered persecution in Vietnam, paragraph 339K of the immigration rules.
11. The Respondent accepted the general credibility of the Appellant and at paragraph [17] the judge states that the Appellant's credibility was not at issue.
12. Paragraph [22] states:

"However, whilst I find that the Appellant has been shouted at by an employer and that he was provided with money only for clothing, sworn at on occasion and worked very long hours, I do not find that that treatment is capable of amounting to persecution."
13. I find that the judge has not factored into her consideration of the Appellant's treatment the fact that at the time he was only 12 years old, orphaned and homeless. I find that the judge has not considered the vulnerability of the Appellant at the time owing to his age. I find that the age of the Appellant is critical to a finding as to whether or not the treatment amounted to persecution.
14. In paragraph [24] the judge considered the Appellant's employment on a construction site. While acknowledging that the Appellant was "much younger" than the other construction workers, the judge does not find that this work and the nature of the employment amounted to persecution. However, although stating that the Appellant was much younger than the other workers, there is no consideration of the fact that the Appellant at the time was only 12 or 13 years old.

15. I find that the judge has failed to take into account all of the evidence when coming to her finding that the Appellant's experiences in Vietnam did not amount to persecution. I find that the failure of the judge to take into account the Appellant's age is a material error of law.

Remaking

16. The Appellant did not give evidence at the hearing in the First-tier Tribunal. As acknowledged in the reasons for refusal letter, the Appellant's credibility was not at issue. The Respondent considered that the Appellant's general credibility had been established [23]. The Respondent accepted that the Appellant's parents died in floods, that he has no family in Vietnam, and that his former employer would shout and swear at him [25]. When summarising what she accepts at paragraph [25], the Respondent does not set out all of his account, but this is summarised at paragraph [3] of the reasons for refusal letter. Given that the Respondent has accepted the Appellant's general credibility, and that she has not rejected any part of the Appellant's claim, I find that the Respondent has accepted the entirety of the Appellant's account and has accepted that the Appellant also worked on a construction site for a year in Vietnam.
17. Given that there are no credibility issues and that the Respondent has accepted the Appellant's account, the issue is whether the treatment that the Appellant received as described by him, and as accepted by the Respondent, was capable of amounting to persecution. The subsequent issue is whether or not the Appellant faces a risk on return to Vietnam either as an orphaned minor with no family in Vietnam who has previously suffered persecution, or simply by virtue of the fact that he would be returning to Vietnam as an orphaned minor with no family.

Past persecution

18. I find that the Appellant worked in a restaurant for seven to eight months, for between 13 and 15 hours a day, seven days a week. I find that he was 12 years old at the time. I find that he was given enough money only to buy clothes. I find that he received verbal abuse from his employer and was made to do unreasonable things by him.
19. Given that the Appellant had been orphaned, that he was homeless, and that he had no family in Vietnam to whom he could turn, I find that he was extremely vulnerable when he took the employment at the restaurant. I find that he was exploited by his employer. I find that he was only paid a very small amount, and that he was not able to leave the restaurant premises on his own. Equally as significant as the fact that the Appellant was sworn at by his employer is the fact that as a 12-year-old boy with no family in Vietnam, he was put to work by his employer for up to 15 hours a day, seven days a week, for very little pay, and was not able to leave the premises on his own. I find that this is treatment capable of amounting to

persecution given the very young age of the Appellant, and his extreme vulnerability.

20. I find that the Appellant then worked on a construction site for a year where he did jobs such as carrying stones. I find that he was a minor at the time aged 12 or 13. He worked seven days a week from around 7am to around 6pm. He was only allowed a day off when he was sick. The Appellant said in his witness statement that he got very tired doing the job and he was scared of being yelled at. He said that he was desperate to leave [paragraph 20]. I find that although he was paid better for doing this job than he had been paid at the restaurant, he was still a minor who should have not been working on a construction site given that the minimum age from employment was 18. He worked seven days a week and was only allowed time off when he was sick. I find that given his age, and given the nature of the work and the hours of work, that this is treatment capable of amounting to persecution.

Risk on return

21. I find that the Appellant would be returning to Vietnam as a minor orphan, with no family support, having previously suffered persecution. In considering the risk on return, I have carefully considered the evidence provided by the Appellant's representative, in particular that in the Key Passage Index.
22. Paragraph 4.2 of the Respondent's Operational Guidance Note: Vietnam, June 2013 states:

"At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Vietnam. Those who cannot be returned should be considered for leave as Unaccompanied Asylum Seeking Children".
23. The Respondent accepts that the Appellant is a minor. She accepts that his parents were killed in floods when he was about 12 years old. She accepts that he does not have any family in Vietnam. Therefore the Respondent's own Operational Guidance Note indicates that, given his circumstances, the Appellant cannot be returned.
24. I have also considered the evidence from the US Department of State, Trafficking in Persons Report 2014: Vietnam, which states:

"Children are subjected to forced street hawking, forced begging, or forced labor in restaurants in major urban centers of Vietnam. NGOs report that the approximately 22,000 street children in Vietnam, as well as children with disabilities, are at an increased risk of trafficking" (page 45).
25. The US Department of State, 2013 Country Reports on Human Rights Practices: Vietnam states:

“Independent NGOs estimated that 23,000- 25,000 children lived on the streets and were sometimes abused or harassed by police” (page 47).

Later the same report states:

“MOLISA is responsible for enforcing child labor laws and policies. Government officials may fine and, in cases of criminal violations, prosecute employers who violate child labor laws. Generally, the government committed insufficient resources to enforce effectively laws that provide for children’s safety, especially for children working in mines and as domestic servants. MOLISA maintained that more than 25,000 children worked in hazardous conditions countrywide; international observers believed the actual figure was higher.”

26. The Country of Origin Information Report, Vietnam, August 2013 quoted from the UN Committee on the Rights of the Child, Sixtieth session, where it was noted:

“The Committee is concerned about the lack of reliable information on children deprived of their family environment, whether they are in street situations, orphans, abandoned children or displaced children, including information on the identification of children in such situations, on preventative measures to limit the number of these children, and on efforts to improve their situation and reintegrate the children with their families” (paragraph 23.16).

27. I find the Appellant has suffered persecution in the past when at 12 years old he was forced to work in a restaurant for little pay, for long hours, and without being able to leave the premises alone. I find he then worked on a construction site when he was 12 and 13 years old. I find that it is reasonably likely, given the evidence as quoted above, that the Appellant would suffer persecution of this kind again on return to Vietnam, taking into account the evidence above, including the Respondent’s own Operational Guidance Note which states that there is insufficient information to be satisfied that there are alternative support and care arrangements for minors with no family in Vietnam.
28. I find that the Appellant has demonstrated that there is a real risk that he will suffer persecution on return to Vietnam, and so his claim succeeds on asylum grounds. As I have allowed his claim on asylum grounds, I do not need to consider his claim to humanitarian protection.

Notice of decision

The decision involves the making of an error on a point of law and I set it aside.

I remake the decision allowing the Appellant’s appeal on asylum grounds.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 27 January 2016

Deputy Upper Tribunal Judge Chamberlain