



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

Appeal no: **PA/00573/2017**

**THE IMMIGRATION ACTS**

At **Field House**  
on **04.05.2017**

Decision signed: **04.05.2017**  
Sent out: on **10.05.2017**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**NGUYEN The Hiep**

appellant

and

**Secretary of State for the Home Department**

respondent

Representation:

For the appellant: *Soraya Pascoe* (counsel instructed by KM Solicitors Ltd, Manchester)

For the respondent: Mr P Nath

**DECISION AND REASONS**

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Ian Howard), sitting at Harmondsworth on 13 February, to dismiss an asylum and human rights appeal by a citizen of Vietnam, born in 1987. The appellant had given an account of being recruited by a trafficker in Vietnam to come here and work to pay off a debt owed by his parents. The appeal turns on the judge's way of deciding the credibility of that account.

**2.** The appellant said he had arrived in this country in June 2016, to find himself put to work in a cannabis 'farm', where his job was to water the

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.*

*(2) persons under 18 are referred to by initials, and must not be further identified.*

plants; but at one point he had also been involved in harvesting them. His description of his work is clearly set out by the judge at paragraph 19, to which I shall return: at paragraph 20 the judge noted that this was a commercial operation, involving forced labour by an illegally-trafficked worker; but at paragraph 21 he gave reasons, relying on his own knowledge of such operations, for concluding, again very clearly, at paragraphs 22 - 23 that the appellant had not been involved in anything of the sort.

- 3.** The grounds of appeal took various points on credibility, but not what may already be the obvious one: was the judge entitled in law to decide it on the basis of his own knowledge as he did? This point did not pass unnoticed by the judge who refused permission in the First-tier Tribunal, who alluded to it, on the basis that it was unclear where the information in paragraph 21 had come from. However, I considered it desirable that the point should be explicitly taken and dealt with, since it involves a not uncommon problem, on which neither the parties nor I were aware of any recent authority in this field. Miss Pascoe amended her grounds, and I granted permission accordingly.
- 4.** The appellant's account of events at the 'farm' had him hand-watering the plants, all kept in one room of the house in question: there was constant lighting, but no tent or heating. As for the harvesting, that had simply involved him in cutting the plants off as they stood, about half-way up the stem. The judge however noted that there were none of the features he considered typical of a commercial operation: no hydroponic system, heating, nor a tent to preserve heat or humidity. The lighting was neither intensified nor timed to produce maximum growth, and the harvesting was not of the flowering heads, the only part of commercial value; nor were they bagged or dried.
- 5.** The judge gave other reasons for his conclusions on credibility, but it is quite clear that those referred to were central to them. Again, other challenges were made to those conclusions; but, as Miss Pascoe realistically acknowledged, if the judge was entitled to reach the conclusions set out in paragraphs 21 - 23 on the basis he did, then the appeal could not succeed. Certainly it could not have done so on the grounds originally pleaded, not by Miss Pascoe.
- 6.** At Mr Nath's invitation, I looked at the judge's handwritten record of proceedings to see what had happened before him. As I made clear to the parties, the appellant had not been cross-examined about what the judge saw as the unusual nature of the cannabis operation in which he had been involved; nor had anything been said about that in the presenting officer's closing remarks. The judge himself does not seem to have raised the point at the hearing, so far as can be seen from his record of proceedings. It has to be assumed that it came from his own knowledge, and remained in his head till he wrote his decision.

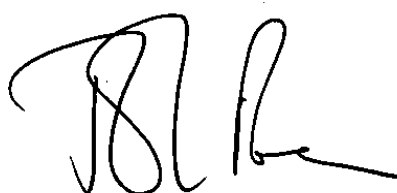
7. The general rules on this question are as follows: they are set out more fully in [AM \(fair hearing\) \[2015\] UKUT 656 \(IAC\)](#) (McCloskey P and UTJ Canavan) at paragraphs (i) and (ii) of the judicial head-note, dealing with a different situation; but the principles are the same.
- (a) where the judge's knowledge involves special expertise in some non-forensic area, it cannot be relied on without expert evidence to support it; on the other hand
  - (b) where it relates to something within the general knowledge of most reasonably well-informed people, then it will be enough to put it, in suitably neutral terms, to the party against whose interest it may go, or at least their advocate, so that they have an opportunity to deal with it at the hearing (needless to say, this is also necessary where expert evidence is relied on).
8. Returning to the particular facts of this case, Miss Pascoe again realistically accepted that the typical features of a cannabis 'farm' were as described by the judge at paragraph 21. Most reasonably well-informed people in this country are no doubt aware of this; and anyone involved, as judge or advocate, in criminal cases cannot fail to be. While not all of them may be present in any particular operation, that was not the basis of the judge's disbelief, as expressed at paragraph 22: his point was that this appellant had mentioned none of them.
9. However, the judge clearly needed to draw this point to the appellant's attention, preferably by asking him neutrally-phrased questions of his own, following cross-examination and any re-examination; or at least raising it with the appellant's representative in closing, so that he could apply to recall the appellant, if he wished. Given its importance to the judge's credibility findings, it was equally clearly wrong in law for him not to do either of these things.
10. The question then arises of what should be done about that. My jurisdiction comes from the Tribunals, Courts and Enforcement Act 2007:

## **12 Proceedings on appeal to Upper Tribunal**

- (1) Subsection (2) applies if the Upper Tribunal, in deciding an appeal under section 11, finds that the making of the decision concerned involved the making of an error on a point of law.
- (2) The Upper Tribunal-
  - (a) may (but need not) set aside the decision of the First-tier Tribunal, and
  - (b) if it does, must either-
    - (i) remit the case to the First-tier Tribunal with directions for its reconsideration, or
    - (ii) re-make the decision.

- 11.** The alternatives are clearly set out at s. 12 (2) (a). Miss Pascoe took her stand on the basis that something had clearly gone wrong at the first-tier hearing, which had directly affected the result. While that is certainly true, I had to ask her what difference it could make if I were either to remit the case, or re-make the decision? Both she, Mr Nath and I were agreed that the judge was right about the essential features of a cannabis ‘farm’; and the evidence which the appellant for his part had put forward as true had been clearly recorded by him. Miss Pascoe suggested that the appellant might not have had an opportunity to explain the ‘global operation’ of the ‘farm’; but it was on the points in which he claimed to have been involved himself that the judge had disbelieved him.
- 12.** I see no useful purpose in setting aside the judge’s decision, and decline to do so. This is not in any way to encourage him or other judges to decide cases before them without going through the procedure set out at **7** and **9**, which is designed, not only to reach a realistic result, but to do so in a way which is visibly fair to both sides.

**Appeal dismissed**

A handwritten signature in black ink, appearing to be 'JLR', written in a cursive style.

(a judge of the Upper  
Tribunal)