



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02998/2017

THE IMMIGRATION ACTS

Heard at Field House
On 11th April 2018

Decision & Reasons Promulgated
On 16th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

G H L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Meredith (Counsel)

For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge C A S O'Garro promulgated on 16th November 2017, following a hearing at Hatton Cross on 30th October 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Vietnam, who was born on [] 1997. He appealed against a decision of the Respondent dated 10th March 2017 refusing his claim for asylum and humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he has been the victim of human trafficking. He left Vietnam in December 2011, travelled to Russia, where he remained for five months, and from Moscow he claimed to have travelled to Belarus, where he remained for two weeks, and then travelled through Poland and Germany, and then through France, before reaching the United Kingdom in July 2012. Importantly, the National Referral Mechanism (NRM) had on 5th May 2016 determined in a decision that the Appellant was a victim of modern slavery. On 30th July 2014 the Appellant claimed asylum.

The Judge's Findings

4. The judge at the outset noted that the Appellant's claim for asylum was that he was a victim of trafficking and that if he returns to Vietnam he will be harmed by his traffickers. He also additionally claimed that he was of the Catholic faith and that if he returns to Vietnam he will be persecuted by the authorities as such.
5. The judge referred to the case of **SB (PSG - Protection Regulations - Reg 6) Moldova [2008]** where the Tribunal had emphasised that "former victims of trafficking" are members of a particular social group, and that the group in question must have a distinct identity in society in order to take the claim any further (paragraph 29).
6. The judge then went on to consider the fact that the Appellant was of the Catholic faith and that he had mentioned an incident which he said occurred on 30th April 2010 when he was given a banner to hold by the Catholic priest when he attended a church and then the authorities had arrested him because of this. There was a priest's letter in support of the Appellant that the judge referred to (paragraph 34). Importantly, the judge also stated that, "I noted the Appellant was able to give full details of his involvement with the traffickers ..." (paragraph 34). He went on to consider the trafficking aspect of the claim. In so doing, the judge observed that the Appellant's Counsel had argued that there was a debt bond owed to the traffickers and because the Appellant had said that the gang member he dealt with in the United Kingdom told the Appellant that he has to work for him to repay the money owed, he would be at risk. He observed that, "it is clear from the objective evidence and the Appellant's expert's report that traffickers are unscrupulous people" (paragraph 38). However, the judge then found that no debt bond was owed to the traffickers (at paragraph 38). He went on to consider that refuges were available as confirmed by the country guidance of Vietnam (see paragraph 39 of the determination), and that there were nine such shelters which catered for trafficked women, and consideration was given by the judge to this (at paragraph 39).

7. The judge's eventual finding was that the Appellant would be returning to Vietnam "not owing money to the traffickers and so there is no debt bondage" and therefore what this meant was that "the Appellant who is now an adult can safely return to Vietnam". The judge also observed that although "there are no shelters designated exclusively for male victims, I note the evidence states that existing shelters provided assistance to all victims as needed" (paragraph 40).
8. The judge also dismissed the appeal on Article 8 grounds on the basis that the Appellant did not succeed under paragraph 276ADE and that he did not speak English and his private life had been established at a time when his immigration status was precarious "and for that reason I put little weight on it" (paragraph 47).
9. The appeal was dismissed.

The Grounds of Application

10. The grounds of application state that the judge erred in law by failing to deal with a number of material matters and dismissed the appeal for reasons that were given by the Respondent herself. It was also stated that the judge misdirected herself in law on the Refugee Convention reasons, namely on the Appellant being a member of a particular social group. Moreover, it was stated that the judge failed to determine material submissions and evidence and failed to give legally sustainable reasons for rejecting the "harm" from the traffickers.
11. On 21st December 2017 permission to appeal was granted by the Tribunal. It was stated that the judge "did not give anxious scrutiny to all the evidence and submissions that were made to her". It was additionally stated that the judge granting permission had "not been able to consider the judge's Record of Proceedings as the judge's writing is illegible" (paragraph 2).

Submissions

12. At the hearing before me on 11th April 2018, Mr Bramble, appearing as Senior Home Office Presenting Officer, stated that, although this was an appeal by the Appellant himself, he would have to say that the judge had materially erred, given the skeleton argument that was before the judge, and which had not been in any way addressed by the judge. Mr Bramble submitted that the judge had simply failed to grapple with the issues that had been laid before her. Mr Bramble further stated that it did appear that the judge had simply followed the conclusions reached in the refusal letter, which had been a fundamental aspect of the complaint made before the Upper Tribunal. Indeed, the expert had today attended the Upper Tribunal to confirmed that the evidence given by the expert had been entirely overlooked with no reference made to it, and that the judge had simply followed the conclusions reached in the refusal letter. Moreover, submitted Mr Bramble, the issue of human trafficking in Vietnam is a problem and the judge had not fully considered the guidance in relation to this.
13. For her part, Ms Meredith welcomed the concession made by Mr Bramble, and she submitted that the expert report had been completely ignored and today present at the

hearing also was Miss Tara Topcagarden from the Refugee Council, who, if required to give evidence, would also confirm that the judge had simply followed what was said in the refusal letter, paying scant regard to the evidence and the submissions before the judge.

Error of Law

14. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
15. First, it was accepted that the Appellant had been trafficked. There an NRM decision to this effect, made on 5th May 2016. That being so, the first and initial starting point before the judge was the submission that the Appellant, if returned now to Vietnam, feared persecution by being subjected to a general risk of re-trafficking and exploitation, based on the fact that he had been trafficked as a minor, and therefore remained vulnerable to re-trafficking and exploitation on his individual facts. This aspect has simply not been given the consideration that was due to it. Indeed, it has simply been overlooked that the reason why traffickers do target people who have already been previously trafficked is because they are that much more valuable and amenable to being picked up for trafficking again. This has simply not been taken on board. If it had been considered, it was then open for the judge to consider the risk of re-trafficking or exploitation as pointing the way to asylum and/or humanitarian protection, or to Article 2, 3, or 4 ECHR violations.
16. Second, the judge failed to note that the Appellant may come into contact with his traffickers by being sought out or recruited in his home area. Traffickers may seek to find the Appellant through acquaintances or in the family context. The fact of being trafficked would be known in the wider population. It is significant moreover that the future risk of re-trafficking was accepted in the NRM decision but this is not considered in the refusal letter. It was incumbent on the judge to take it into account.
17. Third, the test in the Qualification Directive, which appears in Regulation 6(1)(d)(ii), is not cumulative, but operates as an alternative. The judge did not apply the correct test in this way in assessing whether the Appellant had met the criterion set out there.
18. Finally, there appears to have been a misunderstanding of whether the Appellant owed debt money. The judge's findings in this respect are confused. The judge accepted that the traffickers may have told the Appellant that he owed them money but then goes on to say that he did not in fact owe them money because he himself did not say that he owed money to loan sharks. This does not follow at all. The existence of debt bondage was in any event not determinative in itself of future harm that would fall upon the Appellant.
19. In short, there appears to be substance in the complaint that the judge found there to be sufficiency of protection on the basis of the Respondent's refusal letter and on a generalised basis without considering whether the Appellant's individual features meant that he would be able to access support and protection in Vietnam. The judge

failed to take into account the expert evidence, which was to be effect that protection would not be available to the Appellant on the facts. The fact that so much store is laid on the fact that the Appellant is a practising Catholic in Vietnam and has no political profile and therefore is not at risk shows the reliance that was placed upon the refusal letter in the judge coming to the decision that she did. The fact remained the parties were already agreed on this matter and it in no way impacted upon the essential basis of the claim for refugee, asylum and humanitarian status that was being made by the Appellant.

Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge C A S O'Garro at Hatton Cross. There are to be two witnesses and the matter is to be listed at the first available opportunity. This appeal is allowed to that extent.

An anonymity order is made.

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

Deputy Upper Tribunal Judge Juss

14th May 2018