



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

Appeal Number: PA/04075/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2017**

**Decision & Reasons
Promulgated
On 31 January 2018**

Before

**THE HONOURABLE MR JUSTICE MORRIS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE RIMINGTON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**T A N
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondent: Miss R Kotak, Counsel instructed by Turpin & Miller
Solicitors
(Oxford)

DECISION AND REASONS

1. This is an appeal, brought with permission, by the Secretary of State for the Home Department (“the Secretary of State”) against a decision of First-tier Tribunal Judge Wyman promulgated on 11 July 2017 (“the FtT

decision”). By the FtT decision the judge allowed the appeal of TAN (to whom I refer as “the appellant”) against two decisions of the Secretary of State, first a deportation order dated 15 September 2016; and secondly, her decision dated 12 April 2017 refusing the appellant’s asylum and human rights claim. The FtT Judge allowed the appellant’s appeal, both in relation to the application for asylum and the deportation order. The Secretary of State now appeals to this Tribunal on the grounds that the FtT Judge erred in her assessment of the issues of sufficiency of protection. That assessment, it is submitted, was so inadequate as to constitute a material misdirection and thus an error of law.

2. The factual background is that the appellant is aged 25 and a national of Vietnam. He claims to have left Vietnam in 2005 with the aid of traffickers and travelled to Russia. He spent seven years working in Russia and then travelled to Germany and subsequently France. He entered the United Kingdom on 15 March 2016.
3. On 7 July 2016 he pleaded guilty to one offence of production of cannabis and was sentenced to four months’ imprisonment. We note in passing the observations made by the FtT Judge at paragraph 124 of the FtT decision setting out the sentencing judge’s comments in his sentencing remarks stating effectively that the offence was at the bottom scale of seriousness and also commenting that the appellant had been honest with the court from the start.
4. On 27 July 2016 the appellant was detained in immigration detention. As I have said, on 15 September 2016 the Secretary of State made the deportation order. On 20 October 2016 the appellant claimed asylum. That application was initially refused but was reconsidered following a finding by the Secretary of State dated 23 January 2017 that the appellant had indeed been the victim of trafficking. By the decision dated 12 April 2017 the Secretary of State refused the appellant’s claim for asylum, humanitarian protection and human rights in a detailed 13 page decision. The appellant appealed and that appeal was allowed by the FtT decision. The Secretary of State has now appealed to the Upper Tribunal and First-tier Tribunal Judge Hollingworth granted permission to appeal. The relevant provisions and legislation on this case are set out in detail in the FtT decision at paragraphs 9 to 16.

The FTT Judgment

5. In a detailed and well-written judgment running to some 131 paragraphs, the FtT Judge essentially concluded, at paragraph 118, that the appellant qualified as a refugee under the 1951 Convention because, first, there was not sufficiency of protection for the appellant in Vietnam; and secondly, there is no internal relocation alternative. As regards sufficiency of protection the judge considered the risk of the appellant being abused or re-trafficked upon return to Vietnam and directed herself by reference to the case of **Nguyen [2015] UKUT 170** where the factors to be taken into account included an outstanding debt due to the traffickers, the absence

of any supportive family willing to take the victim back into the family unit, no other support network, mental health conditions, financial deprivation or little education or vocational skills. I refer to paragraph 101 of the FtT decision.

6. The FtT Judge held as follows: First, the respondent had no family support in Vietnam. He had previously lived with his grandmother. He had not had contact with either his mother or his father for many years before the death of his grandmother; applying the case of **Nguyen** she said “it is clear that the appellant does not have a supportive family willing to take him back into the family unit” (see paragraph 108). Secondly, at paragraph 109 the FtT Judge concluded that the appellant’s mental health was “one factor, but a limited factor that I take into account”. Thirdly, at paragraph 110, she found that the appellant had little education; he did have some vocational skills given that he had worked in a garment factory in Russia. Fourthly, at paragraph 111 she found that it was extremely significant in the case that not only had the appellant been a victim of traffickers from Vietnam to Russia, but “he has also been further trafficked from Russia to Germany and then it appears from Germany to France and then again from France to the United Kingdom. He clearly has a genuine fear that the traffickers could find him. It is not disputed that he has had some repeated experience of being trafficked into different exploitative situations, during some of which he feared for his life”.
7. The judge concluded at paragraph 112 that there would not be sufficiency of protection upon return to Vietnam, taking into account the following factors: first, the repeated history of being trafficked over a period of twelve years; secondly, a lack of family support; thirdly, mental health problems; fourthly, limited state support and involvement; fifthly, lack of education; and sixthly, the fact that he may have an outstanding debt to the traffickers.
8. Then, as regards internal relocation, the judge found at paragraphs 115 and 116 that because of the system of household registration in Vietnam and the computerised ID registration card system in Vietnam, his former traffickers might be able to find or track him, both when he returned to Vietnam and, if and when he relocated, when he relocated.
9. In relation to the decision to deport the FtT Judge held, at paragraphs 125 to 130, that exception 1 to Section 117C of the Nationality, Immigration and Asylum Act 2002 applied to the appellant’s case because, “there would be very significant obstacles to the appellant’s integration into Vietnam if he was to be deported”. In reaching that conclusion the FtT judge relied upon the same factors as she relied upon in relation to the asylum claim.

The Grounds of Appeal

10. The Secretary of State puts forward two essential grounds of appeal: first, that the FtT Judge materially misdirected herself in respect of all the bases

upon which the appeal had been held to succeed; and secondly, the FtT Judge did not explain the basis upon which she had accepted the credibility of the appellant's evidence in circumstances where he had a criminal conviction.

11. Dealing with the second ground first, we consider that this ground is not well-founded for two reasons: first, it is clear that the Secretary of State herself in the decision had made a positive finding as to the appellant's credibility, and thus the appellant's credibility was never in issue in the case. Secondly, insofar as the Secretary of State now seeks to rely on the fact that the appellant had a criminal conviction as grounds for impugning his credibility, we refer in particular to the sentencing comments of Judge Henderson which the FtT Judge herself recorded, that not only was the criminal conviction at the bottom of the end scale of seriousness, but that the judge had gone out of his way to comment upon the appellant's honesty with the court from the outset.
12. As regards the first ground, the Secretary of State seeks to impugn the findings of the FtT Judge on the following five elements or factors which she took into account. I will enumerate them first and then deal with them each in turn:-
 - (i) Relevance of onward trafficking within Europe.
 - (ii) Lack of family support.
 - (iii) Mental health problems.
 - (iv) Lack of education.
 - (v) Outstanding debt.
13. Turning to relevance of onward trafficking, the Secretary of State submits that there is no evidence that the persons who had trafficked the appellant within Europe had any connections with or presence in Vietnam. In response the appellant submits that throughout the case and the evidence placed before the First-tier Tribunal, there was never any suggestion other than that the appellant had been trafficked throughout by one and the same network of traffickers. In her argument Miss Kotak refers to particular paragraphs in the FtT decision which she says, and we accept, support the proposition that there was only ever one network of traffickers. In this regard we refer to paragraphs 21 and 22 of the FtT decision from which it is clear that there is reference to the traffickers, and in paragraph 22 that it was the same traffickers as before who had trafficked the appellant from Germany to France.
14. We also note in paragraph 111 that the FtT Judge again refers to the appellant having a genuine fear that the traffickers could find him, and similarly in paragraphs 115 and 116 it is also clear that what is being considered are one group of traffickers (I refer in particular to the last sentence of paragraph 116). In those circumstances we consider that the

FtT Judge was entirely entitled to take into account the fact (as being extremely significant) that the appellant had been a victim of trafficking, not only from out of Vietnam but also subsequently within Europe, and that that fact was highly material to his risk of re-trafficking on return.

15. The second ground, lack of family support: the Secretary of State submits that the finding of lack of family support was not made out on the evidence. She refers in particular to paragraph 45 of the FtT decision where it is recorded that in cross-examination at the hearing before the First-tier Tribunal it was put to the appellant that initially he had stated that he had lived with his mother and not with his grandmother. The answer that the appellant gave to that was that he had always said that he had lived with his grandmother and that the statement in his initial statement that he had lived with his mother may have been an error of the interpreter. Miss Kotak submits, and we accept, that with the exception of that first initial statement which was no more than one page long, his evidence throughout had been that he had been living with his grandmother and the first time that that was questioned was in cross-examination before the FtT Judge. In our judgment, given that credibility was not apparently in issue, the First-tier Tribunal Judge was entitled to accept the appellant's evidence in this regard based on his credibility and that his answer given in paragraph 45 was one that he was entitled to accept and that he was consistent with all the other evidence that the appellant had given throughout other than in that first statement. In our judgment, in this regard, there was no material misdirection amounting to an error of law on the part of the FtT Judge.
16. As regards the third factor, mental health problems, the Secretary of State submits that there is a conflict between paragraph 109 of the FtT decision where the judge concluded that the appellant's post-traumatic stress disorder and depression was only a limited factor to be taken into account, and paragraph 112 of the decision where the judge took account as one of his factors "his mental health problems". The Secretary of State submits that the judge should not have given weight to those mental health problems in paragraph 112 in the light of his previous finding in paragraph 109. In our judgment there is no substance to this ground of appeal. Paragraph 112 merely states that the judge has taken into account the appellant's mental health problems and is identified as only one of the factors he took into account. That finding is not inconsistent with a finding that those problems might be a relatively limited factor. In our judgement there is no inconsistency between paragraph 109 and paragraph 112.
17. Fourthly, the Secretary of State submits that the judge was wrong to take into account lack of education as a factor likely to increase the risk of re-trafficking. First, the judge recognised (so the Secretary of State submits) that the appellant has significant experience of working in a textiles factory (see paragraphs 20 and 110 of the decision). The judge failed to take that into account and also failed to take into account that it is well-known that the textile industry in Vietnam is one of the single, biggest employers. Secondly, the judge failed to explain why lack of

education would prevent the appellant from accessing a livelihood in Vietnam. In our judgment it is plain that at paragraph 110 of the decision the FtT Judge did take account of the fact that the appellant had some vocational skills. Vocational skills and education are two distinct factors. We do not accept that it necessarily follows that having worked for seven years in Russia in the conditions which were described by Miss Kotak as conditions of slavery would necessarily give him sufficient or relevant experience to obtain employment in Vietnam in the textile industry, as to which there is no evidence before the Tribunal; and secondly, in our judgment, the FtT Judge was entirely entitled to take into account distinctly his lack of education, not least taking account of the fact that he had left Vietnam when he was 13.

18. Finally, the Secretary of State refers to the finding in relation to an outstanding debt. At paragraph 112 the FtT Judge relied upon the possibility of an outstanding debt to the traffickers. The Secretary of State submits that it was not clear in the decision how the judge could conclude that such a debt remained outstanding given the evidence of the appellant recorded at paragraph 50 of the decision that the appellant had never known his level of debt. In respect of this ground we do not consider that the precise amount of the debt is relevant. More importantly, in the decision at paragraph 112 the FtT Judge accepted that the appellant “may” have an outstanding debt to the traffickers and that was one of the factors that was taken into account. He was prepared to accept the evidence of the appellant given at the appeal hearing on that matter. In our judgment the FtT Judge was entitled to take that into account as one of the factors and he neither misdirected himself nor was there any error of law in relation to that finding. The only point we would add in parenthesis is that in paragraph 112 there is a reference to the judge dealing with the debt further on in the judgment and it appears that in fact there was no further consideration after 112 of the debt issue.
19. Accordingly, we conclude that there was no material misdirection by the FtT Judge in relation to any of these matters. The FtT Judge carefully considered the evidence and made findings of fact based on the evidence before her and findings which were available to her, and for those reasons we would dismiss this appeal. We would in any event have found that if there was indeed one single error or two single errors they would not have been material errors given the overall conclusions and the comprehensive manner in which the appeal was dealt with. For those reasons the appeal is dismissed and the decision of the First-tier Tribunal Judge will stand.

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. The decision is anonymised owing to the sensitive nature of the appeal.

Signed



Mr Justice Morris

Dated

30 January 2018