



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13121/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 2 July 2018

Decision & Reasons Promulgated
On 9 August 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

PN
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Sachdev, Solicitor, Bury Law Centre
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant, a citizen of Vietnam, has appealed against a decision of the First-tier Tribunal ('FtT') dated 1 November 2017 in which it dismissed his appeal on all grounds.

Background

2. It is important to state right from the beginning that the FtT treated the appellant as a vulnerable adult. An anonymity direction was made and is maintained. The appellant has had a difficult and traumatic history. He left Vietnam in 2014 and arrived in the UK in 2015 when he was still a minor. He

was placed in the care of the local authority, where he remains with a foster parent.

3. It is no longer in dispute that the appellant was a victim of trafficking. He was trafficked to the UK for the purpose of forced labour and modern slavery. That has been accepted in formal decisions made by the respondent and endorsed by the FtT.

Procedural history

4. The respondent in a decision dated 11 November 2016 refused the appellant's asylum claim. In that decision the respondent expressly accepted that the appellant had been trafficked to the UK but considered that he would not be at risk upon return and that in any event he could internally relocate.
5. When the matter came before the FtT on 24 October 2017 the appellant gave evidence together with his former ESOL tutor, Mr Rudolpher-Arnold. The appellant gave detailed evidence as to his very difficult past in Vietnam. This included being abused by his aunt and being sold into human trafficking. He also described his fears if returned to Vietnam.
6. Mr Rudolpher-Arnold supported the appellant to the extent that he said that he had known him for about two years and he had spoken to him about what life would be like in Vietnam but that the appellant was petrified and in fear of his life and did not believe he could cope.
7. The FtT heard submissions from both representatives which are set out in its decision. Having referred to the fact that the appellant's trafficking claim was no longer in dispute, the FtT expressly accepted that there would be a risk for the appellant if he were to return to his home area to reside either with his aunt or on his own. The focus of the decision is therefore to be found in the findings as to internal relocation. As to those findings, the FtT took into account and made detailed references to the country expert report prepared by Dr Tran Thi Lan Anh. There was the original report dated 12 July 2017 and a supplementary or addendum report dated 10 October 2017. The FtT considered that parts of those reports were unhelpful or unreliable and contained mere speculation.
8. The FtT found that the appellant would not be at risk of re-trafficking or any other serious harm away from his home area and that it would be reasonable for him to internally relocate bearing in mind the size and population of Vietnam.
9. Solicitors representing the appellant appealed on his behalf in grounds of appeal, set out in eight paragraphs. Ms Sachdev, who represented the appellant before the FtT and before me, however, clarified that the grounds can be divided into two. First, failure to properly consider all the evidence and second, a failure to properly assess the country expert evidence.

10. In a decision dated 29 December 2017, Resident FtT Judge Appleyard granted permission to appeal, making the following observations:
 - “1. The appellant is a citizen of Vietnam who made application to the respondent for international protection. It was not disputed, and the judge found that the appellant had been a victim of trafficking to the United Kingdom for forced labour. Following a hearing, and in a decision promulgated on 1 November 2017, Judge of the First-tier Tribunal Pickup dismissed the appellant’s appeal. The grounds seeking permission to appeal are arguable in that they assert that the judge has materially erred by not differentiating between the respondent’s policy and background information, erred in his approach to the appellant’s personal circumstances, erred in relying on case authority which is not country guidance and in his assessment of the household registration system.
 2. All the appellant’s grounds are arguable.”

Hearing

11. I heard detailed submissions from Ms Sachdev, which relied on the eight paragraphs set out in the grounds of appeal. I deal with each of the grounds in turn below.
12. I also heard from Mr Bates, who represented the respondent. He invited me to find that when the decision is read as a whole, the FtT provided adequate reasons for approaching the country expert evidence in the manner that it did and was entitled to make the findings it did, given the evidence available to it.

Discussion

13. Given the broad manner in which the grounds have been drafted, it is important to provide an overview of the FtT’s decision.
14. In my judgment, when the decision is read as a whole it is very clear that the FtT had all the evidence in mind before making its key findings on internal relocation. The FtT was well aware of the detail of the appellant’s claim as summarised by the expert but was entitled to make the findings that it did from [41] onwards.
15. At [41] the FtT was not satisfied that the appellant as a mature adult would face any real risk of being re trafficked provided he did not return to his aunt. The FtT goes on to give reasons for that at [42]. The FtT pointed out that whilst the appellant left Vietnam when he was a child, he shall be returning as a healthy adult male. At [44] the FtT found that the appellant is not just a normal healthy young man but has also been able to:
 - “pursue education, is learning English and who is determined to carve out a career for himself as a barber. He is described as a popular person amongst his peers and has been able to form good friendships in the short time he has been in the UK. Clearly, he is resilient and the skills and experience he is acquiring in the UK will stand him in good stead on return to Vietnam.”

16. At [45] the FtT expressly addressed the expert evidence to the effect that the background in Vietnam renders certain people as easy prey for traffickers. The FtT then said this in relation to the expert's assessment:

"She suggests that if returned to his aunt he would be at high risk of re-trafficking, though I fail to see on what basis this opinion is based since the appellant is no longer a vulnerable child he was when she used to mistreat him and forced him into hard labour. He is hardly likely to be now the obedient child he was then."

Whilst the FtT made it clear that the appellant would be at risk in his home area the FtT here was highlighting the likely stark differences in the position the appellant held when he left Vietnam and the position he is likely to hold when he returns to Vietnam.

17. The FtT then went on to discuss what became, it seems to me, a key issue in the appeal and that is the household registration system in Vietnam and the effect that would have upon the appellant's ability to internally relocate away from his home area. That is dealt with in detail at [46] to [54]. The FtT referred to Dr Tran's country expert's evidence in considerable detail before addressing it in this manner:

"51. All of the above tends to suggest that the difficulties the appellant may face on returning to Vietnam and living away from his home area have been rather exaggerated. I note in rereading Dr Tran's report that the employment she referred to as being restricted without the Ho Khau is public employment and she does not address employment in the vast private sector. Neither did Dr Tran make any mention of the temporary registration used by millions in Vietnam, which omission I consider to be a major oversight, undermining the reliability of the expert opinion.

52. In response to the evidence adduced by the Secretary of State on this issue, the appellant has obtained an addendum report from Dr Tran, which I have carefully considered. She claims that her report is grounded on personal experience. Whilst I have read her CV and background, I have not been directed to any part of her 'personal experience' as an expert that is relevant to the Ho Khau issue. Neither has she offered any explanation for omitting to mention the crucial information that temporary Ho Khau is available and used by millions of Vietnamese, who are able to work and access accommodation, etc., even though access to state-funded support mechanisms may be limited until the Ho Khau can become a permanent registration. I note from the World Bank report that many with temporary residency intend to obtain permanent residency and a period of two years is referred to.

53. In the addendum report, Dr Tran indicates that on return the appellant will be able to obtain a KT4 temporary registration, which he will hold for at least twelve months before moving to a longer term or permanent Ho Khau registration. She has listed some examples of restrictions he may face with the temporary registration, during that initial period, including, she claims, having to pay the full cost in advance of accommodation rental, rather than by instalments. She also discusses the asserted need for him in getting his personal profile approved, but this appears to relate primarily to public

employment. In any event, it is said that the CV has to be validated by the local authority in which he will be residing. However, I see no real difficulty for the appellant in doing this and no reason why, as suggested at 8.4.2, the local official would add negative comments about him. At 8.4.4 Dr Tran suggests that it is very unlikely that he would be able to get approval from local authority during his temporary registration, but I cannot see how that opinion is justified rather than merely stated.

54. Finally Dr Tran concedes, in contradiction to the omission in her main report, that the appellant will be able to relocate to another province without having to re-register in his home area. She says he will face significant difficulties and obstacles in getting his CV approval, and in obtaining state support during the twelve months of temporary residence. However, it is clear to me from the evidence that these are obstacles which can be overcome and which are not reasonably likely to make relocation unduly harsh or unreasonable. In a very different picture to that initially painted by Dr Tran, the appellant will be able to relocate and obtain temporary household registration without having to first re-register in his home area. Further, the period of temporary registration will be temporary and not indefinite. Whilst he may face some restrictions on government employment and state support, there is no reason why he would not be able to obtain employment and accommodation. If he relocates to one of the large cities, he will be in the same situation as many other Vietnamese with temporary registration, who are able to live and thrive in their own country. I find that the negative report initially presented by Dr Tran is not justified by the reality of the situation that she has now been forced to concede, and seriously undermines the credibility of her expertise."

18. The FtT then went on to consider internal relocation holistically at [55] and at [56] found that:

"Whilst there may be some challenges, it would not be unduly harsh to expect the appellant now to return to Vietnam and to relocate, if he chose, away from his former home area, in a huge country with a large population. There is no real risk of re-trafficking or being sought or harmed by those who were previously involved but there will be the prospect of protection of the authorities if such were to happen."

19. In my judgment, the FtT has provided adequate reasons for finding the expert evidence to be speculative and in some respects unreliable. I invited Ms Sachdev to clarify in what specific respect the findings on internal relocation contain an error of law. Ms Sachdev, however, sought to re-argue the case by taking me to certain references within the evidence without specifying what was erroneous in law in the FtT's findings. She was therefore unable to make good the grounds of appeal.
20. Turning to the first specific point relied upon, Ms Sachdev claimed that the FtT preferred the respondent's guidance on the country background evidence over and above the more up-to-date background evidence provided on the appellant's behalf and as contained in the country expert evidence. I invited Ms Sachdev to take me to specific areas of the evidence in which the FtT preferred one set of evidence over the other and in what way that made a material impact

upon the issue that was in dispute, i.e. internal relocation, but she was unable to do so.

21. Ms Sachdev asked me to find that the FtT failed to acknowledge that there were formidable barriers in moving from temporary to permanent registration in Vietnam and that there were difficulties in reintegrating generally because of the registration system. However, the FtT considered the evidence relevant to the registration system in detail and was entitled to make the findings it did.
22. I turn to the second and third points raised in ground 1, which can be taken together. Ms Sachdev submitted that the FtT failed to take into account that the appellant is vulnerable by reason of being in care until the age of 21 and also failed to take into account the supportive evidence provided by the ESOL tutor that the appellant would have difficulties in Vietnam. Both of these points, in my judgment, are not well-founded. Whilst in the UK there is statutory recognition that those who have been in care whilst a minor continue to require continuing care to assist with the transition into adulthood. However, the FtT was entitled to consider this particular appellant's likely position upon return to Vietnam. The FtT found him to be a resilient, healthy young man who would be able to cope, notwithstanding his age and traumatic past experiences.
23. As to the tutor's expression of the indication from the appellant that he feared being returned, that is a matter that the FtT was well aware of - see the careful recitation of the evidence provided by Mr Rudolpher-Arnold at [23] to [25] of the decision.
24. I turn now to the fourth point made in ground one. That submits that the FtT failed to properly take into account the expert's opinion that as someone without permanent registration, the appellant's request for protection will be ignored. However, as I have already indicated, the FtT was entitled to approach the expert's evidence in the manner that it did and has given adequate reasoning for taking a different approach to that adopted by the expert.
25. At point five of the first ground, it is submitted that the FtT wrongly treated the decision in Nguyen [2015] UKUT 170 (IAC) as country guidance when it was not country guidance and could be distinguished on its facts. The FtT referred to Nguyen at [43] mainly to reiterate that Vietnam is a large country both in population terms and geographically, and to underline the point that the appellant would be able to relocate a long distance away from his home area. I can see no indication, when the decision is read as a whole, that the FtT treated Nguyen as country guidance.
26. The final point made in ground one is that the FtT wrongly considered the household registration system and failed to take into account all the evidence. Ms Sachdev made it clear that that included the evidence that there would be particular difficulties in transferring from a temporary residence system into a more permanent one. The FtT has, however, dealt with the household

registration system, as I have already indicated, in detail at [46] to [54] and that ground amounts to no more than a disagreement with those findings.

27. I now turn to the second ground, in which it is submitted that there was a failure to properly assess the country expert evidence. I have already dealt with this ground above. Ms Sachdev confirmed that the only additional point relied upon is the FtT's failure to provide the country expert with an opportunity to explain herself and that this caused unfairness. Reliance is placed upon the decision in Y (Sri Lanka) v SSHD [2009] EWCA Civ 362. I invited Ms Sachdev to take me to a passage in Y (Sri Lanka) to support the proposition that was being advanced in the grounds of appeal but she was entirely unable to do so.
28. This is a case in which the appellant provided a country expert report after the decision refusing asylum. The respondent put in further evidence and the appellant was given an opportunity by means of an adjournment to provide an addendum report from the country expert. Both parties to the appeal took different approaches to the issue of internal relocation. The FtT took into account the detailed submissions made by the parties and the competing evidence. The FtT preferred the evidence that supported the submission that the appellant could internally relocate and has given adequate reasons for that conclusion.
29. I can discern no unfairness in the approach that the FtT took to the expert evidence. Indeed, the expert herself acknowledged in the addendum report that her evidence had changed and the FtT was entitled to draw adverse inferences from that. In my judgment, there was no unfairness and ground two is not made out.

Decision

The FtT decision does not contain an error of law and I do not set it aside.

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

Upper Tribunal Judge Plimmer

11 July 2018