



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/10881/2017

Appeal Number

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 28th November 2018

Decision and Reasons Promulgated
On 06th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

L N
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms Patel (Counsel, instructed by GMIAU)
For the Respondent: Mr Tan (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's appeal against the Secretary of State's decision refusing his asylum claim was heard by Designated First-tier Tribunal Judge McClure at Manchester on the 24th of November 2017. The appeal was dismissed for the reasons given in the decision promulgated on the 12th of February 2018. The found that whilst at that time the Appellant was a minor he would be returned to Vietnam as an adult and that in the circumstances his removal would not place the UK in breach of its obligations.

2. The grounds argue that the Judge erred in his assessment of the circumstances that the Appellant would face on return to Vietnam and that his vulnerability had not been taken into account. The fact that the Appellant would face discrimination as a Catholic was also relevant in the balancing exercise. Permission was refused by the First-tier Tribunal but on renewal the Upper Tribunal granted permission with the Judge observing that it was arguable that the First-tier Tribunal Judge failed to assess the case at the date of the hearing and failed to consider section 55.
3. At the hearing it was argued that the Appellant was 17 at the date of the hearing and the grant of permission and that made the errors identified material, the Judge should not have been looking at the Appellant being returned as an adult. On the facts that had been accepted the Appellant would have succeeded and the error was looking at the position as an adult, this was intrinsically unjust to the Appellant.
4. The Home Office observed that the Appellant had been granted LTR under the policy that applied to minors and so that did not take the case further. The Judge had considered the Appellant's circumstances on return as an adult and removal would not take place before he turned 18. Reference was made to paragraphs 49, 31 and 53 and the Judge had concluded that the Appellant would not be at risk of re-trafficking. If an error was found and the decision was remade on the findings that stand the decision would be the same.
5. The fact is the Appellant is now an adult and any consideration of his case would have to be predicated on that basic fact. Although there were delays in the processing of the Appellant's claim the Appellant was granted LTR in line with the policies that apply to minors in his position as it was at the time. Given the grant of leave it was clear that the Appellant would not be removed before he had turned 18 and the Judge considered the Appellant's position in the real circumstances that would apply to him.
6. The facts on which the Judge made the decision have not changed except that now the Appellant will be returned as an adult. If the decision were to be remade then the findings on which the decision rested would be the starting point for the decision that had to be remade. In the circumstances I am not satisfied that the decision of Judge McClure does contain any error in approach or in the findings made and the conclusions drawn. In any event given that the Appellant is now an adult any error would not material, the remade decision would reach the same conclusion for the reasons already given.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:



Dated: 13th December 2018

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In dismissing this appeal I make no fee award.

Signed:

A handwritten signature in black ink, appearing to read 'M. Parkes'. The signature is written in a cursive style with a large, stylized initial 'M'.

Deputy Judge of the Upper Tribunal (IAC)

Dated: 13th December 2018

