



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/01539/2020 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons and regulated

On 21 June 2021

On 29 June 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

HCTD

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Ms C Johnrose, instructed by Broudie Jackson Canter Solicitors

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held

because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Vietnam with date of birth given as 20.2.92, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 20.10.20 (Judge Curtis), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 29.1.20, to refuse her claim for international protection made on 23.5.17.
2. Permission to appeal was refused by the First-tier Tribunal on 25.11.20. However, when the application was renewed to the Upper Tribunal, on 22.1.21 Upper Tribunal Judge Keith granted permission on grounds 1, 4 and 5 only, refusing permission on grounds 2 and 3.
3. In granting permission, Judge Keith considered as follows:
 - a) With reference to ground 1, "that the First-tier Tribunal imposed an impermissibly high test in relation to historic adverse interest, in particular noting assaults on the appellant's husband (twice) including with swords and attempts to drag the appellant into a car (paragraph 33) but concluding that neither suffered serious harm, which was a reliable indicator of future risk. This ground is arguable."
 - b) With regard to ground 4, "the (First-tier Tribunal) arguably erred in the conclusion at paragraph 51 of internal relocation would not be unduly harsh, in circumstances where at paragraph 30, the (First-tier Tribunal) had also found that the appellant's husband had internally relocated but his assailants had attacked him with a sword in the alternative location. This ground is arguable."
 - c) With regard to ground 5, "the (First-tier Tribunal) arguably erred at paragraph 34 in noting that evidence (a letter from the appellant's husband's father) which must have post-dated May 2019 but had been (before the) decision-maker on 29 January 2020, meant that less weight should be attached to it because it could have been produced to the decision maker. That arguably ignores the possibility that the evidence might have post-dated or might have been received after the refusal decision. This ground is arguable."
4. By letter dated 22.2.21, the appellant's representatives indicated that "the appellant intends to apply for a reconsideration of the decision to permit permission to appeal on limited grounds. The appellant does so in line with Tribunal Procedure (Upper Tribunal) Rules 2008 Section 22(4) (b) and (5)." As drafted, the letter was a notice of intention to apply, not the application itself and none such has been received, as Mrs Johnrose accepted before me. In any event,

such an application may only be made where the circumstances set out at paragraph 22(3) apply. A decision of the Upper Tribunal to grant permission on limited grounds is not within the specified circumstances under 22(3).

5. However, at the outset of the hearing, it transpired that whilst Mrs Johnrose did not rely on the 22.2.21 letter, she wished to make an entirely different application, entirely without any advance notice. She asserted that the decision of Upper Tribunal Judge Keith refusing permission on grounds 2 and 3 failed to comply with Rule 45 (4) & (5). These provide that the Upper Tribunal may give permission to appeal on limited grounds, “but must comply with paragraph (4) in relation to any grounds on which it has refused permission.” Paragraph 45(4) provides that:

“(4) If the Upper Tribunal refuses permission to appeal it must [provide]¹ with the record of its decision –

(a) a statement of its reasons for such refusal; and

(b) notification of the right to make an application to the relevant appellate court for permission to appeal and the time within which, and the method by which, such application must be made.”

6. Mrs Johnrose submitted, without adducing any evidence to justify her assertion, that the notice of decision of Judge Keith’s grant of permission on limited grounds did not include the statement outlining the right of appeal etc. against the refusal referred to in Rule 45. Her argument appeared to be that the grant of permission on limited grounds was defective and, as there had been no valid decision, the application for permission to appeal could be reargued in person. After hearing from Mrs Johnrose, I declined to reopen the application for permission to appeal to the Upper Tribunal. I am satisfied that the only way in which that decision could be challenged is by a Cart Judicial Review application, which, evidently, had not been made, within time, or at all. If the decision granting permission to appeal on limited grounds was defective, as claimed, one might have expected the appellant’s representatives to point that out immediately, which was not done.
7. It follows that the Upper Tribunal has no jurisdiction to entertain an application to reconsider the grant of permission on limited grounds and the only grounds which the Upper Tribunal can consider are those upon which permission has been granted, namely grounds 1, 4 and 5.
8. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds upon which the application for permission to appeal to the Upper Tribunal was granted.

9. It is important to note that at the First-tier Tribunal appeal hearing, Mrs Johnrose conceded that the appeal did not engage the Refugee Convention. The claim was framed entirely in terms of humanitarian protection, in which the burden was on the appellant to demonstrate to the lower standard of proof that there were substantial grounds for believing that if returned to Vietnam she would face a real risk of suffering serious harm and is unable or, owing to the risk, unwilling to avail herself of the protection of that country, as acknowledged by the judge at [4] and again at [28] of the decision. In that regard, the judge recorded at [28] the appellant's claim that the Vietnamese authorities do not offer sufficient protection from such a risk and that if she relocated, she would be found by the moneylenders. However, at [39] and [49] the judge concluded from the objective evidence that the Vietnamese authorities are able and willing to provide effective protection from the risk that the appellant claimed to fear, and noted at [50] that she had never sought such protection and was unwilling to do so because of her subjective perception that the police would not investigate matters on her behalf. The judge went on to find at [51] that she could reasonably be expected to relocate and at [47] that it would be unlikely that she would encounter her traffickers in Vietnam and at [48] that there was no real risk that she would be re-trafficked. At [53] the judge noted that Mrs Johnrose did not ask the judge to consider the respondent's discretionary policy for victims of modern slavery.
10. I must point out that Judge Keith specifically refused permission on the two grounds challenging the judge's conclusion that there was a sufficiency of protection for the appellant on return to Vietnam against the risks she claimed to fear. As Mr Tan pointed out, given that finding, the materiality of any error of law in respect of other parts of the decision on the remaining grounds in respect of which permission was granted is doubtful.
11. I am concerned that much of the substance of the grounds in respect of which permission has been granted, and Mrs Johnrose's submissions, is little more than a disagreement with the weight given to the evidence by the First-tier Tribunal Judge and the conclusions reached. I must bear in mind that the higher courts have repeatedly cautioned against appellate courts interfering with the reasoned decisions of first instance judges, see Lewison LJ in *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5 at [114]. Further, in MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC) the Upper Tribunal held that, "A judge considering an application for permission to appeal to the Upper Tribunal must avoid granting permission on what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal judge's assessment of the evidence." Similarly, in Herrera v SSHD [2018] EWCA Civ 412, the Court of Appeal said that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the

advantage of hearing oral evidence. Whilst Mrs Johnrose submitted that the judge failed to give adequate weight to various elements of the evidence, it is well-established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law, see Green (Article 8 -new rules) [2013] UKUT 254.

12. In relation to the first ground, I am not satisfied that the First-tier Tribunal Judge imposed “an impermissibly high test” in relation to historic adverse interest and future risk of serious harm. At [29] the judge set out the definition of serious harm, as to which definition there has been no challenge. In assessing the future risk of serious harm, the judge took careful note of the past incidents of assault and kidnapping, accepted by the respondent so that the essential facts were not in dispute, but was entitled to conclude and take into account in the assessment that no serious harm occurred as a result of any of these previous incidents. As the judge stated at [30] of the decision, the extent of any past harm was “one indicator” of future risk. It is clear from the decision that the judge also considered as relevant to the alleged risk the extent of protection afforded by the Vietnamese authorities, a finding which cannot now be challenged. I reject Mrs Johnrose’s interpretation that the judge was imposing a requirement of past serious harm. Considering the decision as a whole, I am satisfied that the judge made a careful and reasoned assessment of the risk of serious harm and that no error of law has been demonstrated.
13. In relation to the fourth ground and the Judge’s assessment that internal relocation would not be unduly harsh, Mrs Johnrose argued that what appears at [51] of the decision is inadequately reasoned and that the judge failed to engage with the facts that internal relocation had been attempted but the appellant and her partner had been found by the moneylenders, and that money is still owed which the appellant’s husband remains unable to pay, by which reasoning there remains real risk of serious harm.
14. It is clear that at [30] of the decision the judge took account of the claim that the husband had attempted to flee yet had been discovered by the moneylenders and attacked by a group of 8-10 men with swords, but had managed to evade them. The judge also took account at [43] that both the appellant and her husband were independently victims of trafficking but made the distinction that this trafficking did not relate to the non-repayment of the loan. After considering the evidence, including the objective country evidence, at [47] the judge concluded that the appellant would be unlikely to come across her traffickers on return to Vietnam, relying on the CPIN evidence that it was unlikely that a person would be re-trafficked once returned to Vietnam.
15. In any event, as stated above, the judge concluded for the reasons carefully set out in the decision that there would be a sufficiency of protection against both

moneylenders and those to whom she may still owe a debt for her trafficking to the UK. It cannot be said that the findings and conclusions therefrom were irrational or perverse. As suggested above, this ground is little more than a disagreement with the decision and an attempt to reargue the appeal. In any event, given the finding of sufficiency of protection, any failure to specifically address elements of the evidence relied on by Mrs Johnrose in her submissions is not material.

16. In relation to the fifth ground and the judge's observations about the undated letter at [34] and [35] of the decision, for the reasons set out below, I am again not satisfied that there is any material error of law.
17. The undated letter in question refers to a number of alleged incidents, the last of which is dated in May 2019 when loan sharks are said to have attended at the appellant's partner's father's home. In evidence, the partner suggested that this letter was received in 2020. The judge noted that this letter did not appear to have been before the respondent at the time the refusal decision was made, as it was not mentioned. The judge considered that as the asylum claim was made in May 2017 and the refusal decision is dated 29.1.20, there was "sufficient time for such a letter to have been provided prior to the decision."
18. At [58] of the refusal decision the respondent noted that although the appellant stated in interview in 2017 that she had spoken with her family in Vietnam once or twice a year since leaving, they had not advised her of any problems with gang members since she left. At [35] the judge noted that the appellant's witness statement in rebuttal of paragraph [58] of the refusal decision states that she was never asked in interview whether her family had received threats from these individuals but referenced her legal representative's interview amendment letter of 4.8.17, which asserted that family members from both sides had been found and targeted by the loan sharks.
19. As I now understand it in the light of Mrs Johnrose's submissions, the complaint made is that the judge treated the undated letter with circumspection, the grounds stating, "It is illogical for the IJ to expect the appellant's representatives to refer to paragraph 58 of the refusal letter in their letter dated 04.08.2017 when the decision post-dates the (representatives') letter by over 2 years." It is further submitted that there is no evidence that the undated letter was received before the refusal decision was made on 29.1.20 so that it could have been provided. However, as Mr Tan pointed out, the judge was not suggesting that this letter could have been provided, but that such "such a letter" could have been provided. In other words, that there was time for information about the alleged May 2019 incident to have been provided to the respondent.

20. Whilst I agree that the interview amendment letter 4.8.17 could not have referred to paragraph [58] of a refusal decision made over two years later, and, therefore, I accept the judge made a factual error at [35] of the decision, the essential point being made by the judge at [34] was that there was ample time after events said to have taken place in May 2019 for that important information to have been provided to the respondent prior to the making of the decision on 29.1.20, particularly when the appellant stated that she was in contact with her family once or twice a year. It must reasonably follow that whenever the undated letter was received, she and her partner would have spoken with their respective families after the alleged May 2019 incident and before the refusal decision was made. In the circumstances, it would be astonishing if she had not been made aware of the alleged incident in May 2019 at a stage prior to the issue of the refusal decision. That the interview amendment letter of 4.8.17 referred both families having been found and targeted by loan sharks is beside the point being made by the judge. In summary, I am satisfied that the complaint whilst factually accurate is of marginal significance in the overall assessment of a real risk of serious harm, as at [35] the judge noted the claim that loan sharks had found the appellant's husband's family. The letter adds little if anything to the claim.
21. Even if this fifth ground does amounts to an error of law, I am satisfied that, in light of the findings that there is a sufficiency of protection and that internal relocation within Vietnam is open to the appellant and her family, it is not material.
22. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 21 June 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

“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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 21 June 2021