



IAC-BH-PMP-V2

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

**Appeal Number: PA/02664/2020**

**THE IMMIGRATION ACTS**

**Heard by a remote hearing  
On the 4 August 2021**

**Decision & Reasons Promulgated  
On the 08 September 2021**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**AND**

**H V N**

**(ANONYMITY DIRECTION MADE)**

**Respondent**

**Representation:**

For the Appellant: Ms N. Willocks-Briscoe, Senior Presenting Officer  
For the Respondent: Mr R. O’Ryan, Counsel instructed on behalf of HVN.

**DECISION AND REASONS**

**Introduction:**

1. On 17 October 2018 the respondent made an order that the appellant is to be deported from the United Kingdom (‘UK’), following his criminal convictions as it was considered that his presence in the UK was not conducive to the public good. The respondent refused the appellant’s protection and human rights claim in a decision letter dated 11 February 2020.

2. The appellant, a citizen of Vietnam, appealed this decision to the First-tier Tribunal (Judge Lodato) (hereinafter referred to as the "FtTJ"). In a decision sent on 8 February 2021, the FtTJ allowed his appeal on human rights grounds, and the Secretary of State has now appealed, with permission, to the Upper Tribunal.
3. Whilst this is the appeal brought on behalf of the Secretary of State, for sake of convenience I intend to refer to the parties as they were before the FtT.
4. The FtT did make an anonymity order and no grounds have been raised by the Secretary of State for the order to be discharged during these proceedings. I therefore continue the anonymity direction set out at the end of this decision.
5. The hearing took place on 4 August 2021, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing with the parties, and I was present at the Court building.
6. No technical problems encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means.
7. A previous hearing was adjourned in order for the appellant to be provided with the relevant documentation as he did not have the documents. I explained the proceedings to the appellant with the assistance of the court interpreter who I am satisfied was able to understand the proceedings. The appellant is now represented by Mr O'Ryan, of Counsel who had provided a skeleton argument for the hearing.
8. I am grateful to both advocates for their clear and helpful submissions during the hearing.

Background:

9. The appellant's immigration history and background is summarised in the decision of the FtTJ at paragraphs [23]-[25] and the decision letter of the 11 February 2020.
10. It is not known when the appellant entered the United Kingdom. However on 18 July 2007 he was served with removal paperwork as an illegal entrant in the UK.
11. On 15 May 2008 was arrested on suspicion of cultivating cannabis but no other information is known about the arrest.
12. On 9 June 2008 he claimed asylum but on 29 July 2008 it was concluded that he did not qualify for asylum or humanitarian protection but was granted discretionary leave to remain until 26 November 2013.

13. On 2 October 2008 he lodged an appeal and on 6 November 2008 the appeal was allowed on humanitarian protection /human rights grounds (see decision of Immigration Judge Caswell later summarised).
14. On 26 November 2008 was granted humanitarian protection leave to remain until 26 November 2013.
15. The appellant was convicted on 2 occasions for a total of 2 offences. He was first convicted on 8 December 2010 in the magistrates court for producing cannabis and was sentenced to a custodial sentence of 6 months imprisonment suspended for 2 years with an unpaid work requirement.
16. On 22 November 2013 he applied for indefinite leave to remain in the category settlement protection - ILR and included a dependent spouse application and a dependent child application. The applications were refused but they were both granted humanitarian protection leave until 29 April 2017.
17. On 26 May 2016 the appellant's spouse lodged an application for further leave and she was granted discretionary leave to remain until 24 March 2019.
18. On 28 April 2017 the appellant applied for indefinite leave to remain in the category settlement protection - ILR. He included a dependent child application for his child born in 2013. The application remains outstanding.
19. The appellant was convicted of a 2<sup>nd</sup> drugs offence in 2018 at the Sheriff Court on 17 May 2018. The offence of being concerned in the supply of controlled drugs, the appellant was sentenced to an immediate custodial sentence of 21 months.
20. In light of his conviction, a decision to deport him was issued on 17 October 2018. This was responded to by the appellant on 29 March 2019 where he made a protection claim and a human rights claim.
21. On 18 February 2019 the appellant's dependents were sent a notice of decision to deport.
22. On 25 July 2019 the notice of decision to deport his spouse was withdrawn and on 27 January 2020 the notice of decision to deport his child was also withdrawn.
23. A decision was made on 11 February 2020 to refuse a protection and human rights claim.

The decision of the Secretary of State dated 11 February 2020

24. The decision letter is a lengthy document extending to 16 pages.
25. Having set out the appellant's immigration history, the respondent set out a consideration of the appellant's protection claim at paragraph 9. The appellant's

position was that it remained as it has been in the past that he was trafficked in United Kingdom and that he remained afraid of the traffickers and in fear for his life and therefore should not be returned to Vietnam.

26. The appellant believe the same group of criminals were still operating and active in trafficking and to this date he had frequent stories from other Vietnamese nationals of them being trafficked in the same manner and through the same route via Russia, the Czech Republic, Germany and France and lorries.
27. It was said that his appeal was accepted by an immigration judge and humanitarian protection was further granted by the Home Office in 2014. As the Home Office continued to accept that he would face persecution for non-Convention reason he should not be returned to Vietnam and there were no reasons to consider that the circumstances had changed such that he would now be safe in Vietnam.
28. The respondent considered the protection claim at paragraphs 10-17 and in the light of the Country Policy and Information Note: Victims of trafficking, September 2018 confirming the victims of trafficking in Vietnam did not form a particular social group within the meaning of the Refugee Convention and that in absence of a link to 1 of the 5 Convention reasons, the question to be addressed in each case will be whether the particular person faces a real risk of serious harm sufficient to qualify for humanitarian protection.
29. Reference was made to the previous decision of Immigration Judge Caswell in November 2008, where the judge found that the appellant did not fall within a particular social group of "former victims of trafficking". The respondent therefore concluded that the appellant did not qualify for asylum.
30. At paragraphs 18 - 35 the decision letter recorded the reasons given by Judge Caswell on the 6 November 2008 for his decision allowing his appeal and which had led to the respondent granting him humanitarian protection on 26 November 2008.
31. The respondent noted that he had been granted humanitarian protection leave to remain on 26 November 2008 until 26 November 2013 and that on 29 April 2014 his leave was extended to 29 April 2017. On 28 April 2017 he applied for settlement protection -indefinite leave to remain, and it was this application which remained outstanding.
32. At paragraphs 37 - 43, the respondent set out the position that the situation in Vietnam had now changed by reference to the decision of Nguyen (Anti-Trafficking Convention; respondent's duties) [2015] UKUT 170. Under the heading "protection at paragraphs 44 - 50 the respondent set out the country information relating to the issue of sufficiency of protection and also the case of Nguyen. The respondent stated that in general, effective state protection would likely to be available, but decision-makers need to consider each case on its

facts. The onus is on the person to demonstrate why they are unable to seek and obtain effective state protection.

33. In the appellant's case the respondent considered that he was no longer at risk of traffickers as it had been 10 years since the judge decided he would be in the situation had changed. The respondent concluded there was no evidence to suggest that he had any outstanding debts to his traffickers meaning that he would be specifically targeted by them on his return. Even if it was accepted that he was at risk of his traffickers, which is not, it was considered that he would be able to relocate to another area Vietnam where there will be no risk. It was therefore concluded that having given consideration to his individual circumstances, it was accepted that there was no evidence that he had family members residing in Vietnam to support him on return, but it was considered that he was a fit and healthy young man who could find employment to support himself by utilising the employment skills he learned whilst residing in the UK as a self-employed nail technician. It was therefore decided that he no longer faced a real risk of suffering serious harm on his return to Vietnam and he no longer qualified for humanitarian protection.
34. At paragraphs 56 – 59 Articles 2 and 3 of the ECHR were considered but that there were no substantial grounds for believing that there was a real risk that he would face treatment contrary to articles 2 or 3.
35. At paragraphs 60 – 65 the respondent considered the appellant's exclusion from humanitarian protection on the basis that the appellant had committed a "serious crime" based on his conviction of being concerned in the supplying of a controlled drug. It was considered that he had been convicted of a serious offence and therefore fell within the exclusion criteria set out in rule 339D (iv).
36. The respondent therefore considered that not only did he not qualify for humanitarian protection but that also because of his criminality he was excluded from a grant of humanitarian protection under paragraph 339D of the immigration rules.
37. His protection claim was therefore refused, and it was also concluded that he had not shown there are substantial grounds for believing that he would face a real risk of suffering serious harm on return, and he did not qualify for humanitarian protection.
38. At paragraphs 67 – 105 the respondent considered the appellant's claim advanced on article 8 grounds including the family life with his child born in 2013 and his family life with his partner. When considering his family life it was accepted that the relevant child was under the age of 18 and that she was in the UK but that she was not a British citizen that was a citizen of Vietnam who was last granted leave to remain in the UK on 22 November 2013. She had not lived in the UK for at least 7 years and therefore could not satisfy the requirements of the exception to deportation set out at paragraph 399 (a) of the immigration

rules. Consideration was also given however as to whether it will be unduly harsh for the child to live in Vietnam will remain in the UK. It was not accepted that it would be unduly harsh for his child live in Vietnam and that she would have cultural ties in Vietnam as he was a Vietnamese national had spent the majority of his life in Vietnam and that she will be young enough to adapt to life in Vietnam with his support stop it was also not accepted that it will be unduly harsh for his child to remain in the UK without the appellant as she could reside with her mother should they regularise the residence rights in the UK.

39. As to family life with a partner, it was not accepted that she was a British citizen or settled in the UK and she was last granted leave to remain in the UK on 24 September 2016.
40. It is also not accepted that he had a genuine subsisting relationship with her, and it was noted that whilst she was granted discretionary leave to remain on 13 January 2014 and 26 May 2016 as it was accepted they were in a genuine subsisting relationship, on 6 January 2020 was confirmed in a letter to the Home Office that the relationship was no longer subsisting, and they no longer lived together. As regards her circumstances, it was not accepted it would be unduly harsh for her to live in Vietnam. It was noted that she claimed asylum in 2010 which is refused although she was granted discretionary leave to remain. She did not lodge an appeal against the decision it was also noted that she claimed to be a victim of trafficking in 2013 that the claim was refused in 2014 as it was decided that she was not trafficked. No legal challenge was lodged by her against that decision. Home Office records also state that she had confirmed an application for leave to remain lodged in March 2019 that she had returned Vietnam holidays in 2015, 2017 and 2018. But it was considered that it would not be unduly harsh for his former partner live in Vietnam she was a Vietnamese national was born and raised there. It was not accepted that would be unduly harsh for his former spouse remain in the UK she never been granted leave to remain in line with the appellant and their child as a family dependent. She has an outstanding discretionary leave to remain application which was lodged in March 2019 and therefore would be up to reside in the UK should she regularise her residence rights.
41. The respondent therefore concluded that it was not accepted that the appellant met the requirements of the exception to deportation on the basis of family life with a partner.
42. The appellant's private life was considered at paragraphs 100 - 105. The respondent also considered that as the exceptions to deportation did not apply to the appellant, consideration was given to whether there were very compelling circumstances such did not be deported but the significant public interest in his deportation outweighed any article 8 claim raised. Therefore it was not accepted that there were very compelling circumstances to outweigh the public interest in his deportation.

43. As to the outstanding application where he applied for settlement protection indefinite leave to remain and having named his child as a dependent on the application, it was refused under paragraph 322 (1C(ii)) because he had been convicted of an offence which had been sentenced to imprisonment for at least 12 months. There was no right of appeal against that decision.
44. In conclusion, the respondent considered that his deportation would not breach the UK's obligations under Article 8 of the ECHR and the public interest in deporting him outweighed his right to a private and family life.

The Decision of the First-tier Tribunal:

45. The appeal came before the FtTJ on 26 January 2021. The FtTJ heard oral evidence from the appellant. The FtTJ also had a bundle of documentation including written representations from his former representatives and grounds of appeal. On behalf of the respondent the documents included the decision letter and deportation decision, the PNC printout dated 13 June 2018, a criminal justice social work report prepared for the purposes of the appellant's sentencing hearing on 7 June 2018 and the decision of Judge Caswell dated 5 November 2008. The FtTJ was not provided with any country materials by the respondent, and this is supported by the record of proceedings and the judge's note of the submissions made by the presenting officer.
46. At paragraphs 26 – 36 the FtTJ set out the appellant's case and at paragraphs 37 – 43 set out the respondent's case. He noted at [20] it was conceded on the respondent's behalf that it would now be unduly harsh to expect the appellant's daughter to return to Vietnam with her father since she was now a qualifying child for the purposes of 2002 act having lived in the UK for over 7 years.
47. At paragraphs 24 – 25 the FtTJ summarised the previous decision of Judge Caswell in 2018. There does not seem to be any dispute that the summary given is not accurate. I therefore reproduce it as follows.

The decision of Judge Caswell in 2008:

*The factual account:*

48. The appellant said he was born in x village in the x province of central Vietnam. His was a poor family, and his father died about 10 years ago, when the appellant was very young. The appellant was the only surviving son, that he had an older sister who was 22 years old and had a child. He lived with them and with his mother. From the age of 12 he had to work to help support the family.
49. The appellant left Vietnam just before his 14<sup>th</sup> birthday. His family arranged for him to go to work in Europe, said that he could send money home support them. The appellant travelled with a series of agents in the company of many other young Vietnamese girls and boys. He flew to the Czech Republic from

Hanoi and was kept locked up in hut in the forest for months, while attempts are made to get him and others into Germany.

50. Eventually they were told it was not safe to try and work in Germany anymore, and they were going to travel to the UK. They travel by lorry to France, in a place called Len, the appellant met a Vietnamese man called X. Apart from the agents in Vietnam itself, this is the 1<sup>st</sup> Vietnamese “organiser” the appellant has been put with since he started travelling.
51. X said he would get the appellant working a nail bar in the UK, and he would be able to send back good money from his family. He accompanied the appellant the UK by lorry and then they went to (place) to a house there. He told the appellant that the job a nail bar would be arranged but in the meantime should stay in the house in (place) and look after the plants there. These were cannabis plants.
52. The appellant spent 2 months living there. For the 1<sup>st</sup> 6 weeks he was with X. After that he was left on his own look after the plants and threatened with sticks by four men who visited him, when he said he did not want to stay in the house. They threatened his family would be harmed as well. On 14 May 2008 the appellant was rescued when the police raided the house and found him. Although he was prosecuted and convicted of being involved in the cultivation of cannabis, as part of a big police operation, the conviction was later quashed on the grounds that he was a trafficked child.
53. The appellant has not been able to contact his family since he left home. His mother had said they might move to x/x to look for work there. If he were returned to Vietnam he feared death or serious ill treatment than the agents. Because he would expose the fact that they had lied about how it would be abroad and expose their trafficking of children. He also feared for his family. The agents, whom he believed are highly organised and connected to the Mafia, would think he’d reported them to the authorities, or would do so, it was not in their interests to leave him alive.
54. The FtTJ noted that the appellant’s claim for asylum was dismissed on the basis that there was no convention reason underpinning the risk he faced on return, and it was found that there was insufficient evidence to support the conclusion that victims of trafficking were particular social group (paragraph 14).
55. However the conclusion was reached by Judge Caswell at paragraph 17 that the appellant was a real risk from those who trafficked him of suffering treatment contrary to article 3 of the ECHR if he was returned to his home area. He could not hope to receive sufficient protection (paragraph 22) and internal relocation within Vietnam would not be reasonable given his age, background, lack of familial contacts and vulnerability (paragraph 24).
56. At paragraph 27 Judge Caswell said:



“I found therefore that the appellant, while not refugee, had shown substantial grounds for believing that he would face a real risk of suffering serious harm on return and that he was unable to avail himself of the protection of his country. He had also shown that return would expose him to the real risk of inhuman or degrading treatment, torture or death at the hands of the traffickers, from retaliation for his assumed part exposing their crimes, wish to silence him to protect themselves and/or being re-trafficked.”

57. The FtTJ findings of fact and analysis of the issues are set out at paragraphs [44]-[57]. The FtTJ found:

- (1) The appellant was a foreign criminal having been sentenced to a period of imprisonment of at least 12 months and was not a British citizen (at [44]).
- (2) The appellant had been convicted of being concerned in the supply of controlled drugs which was a particularly serious crime and constituted a danger to the community in the UK. The appellant cannot benefit from protection under the Refugee Convention and the asylum ground of appeal must be dismissed (at [45]).
- (3) The judge took as his starting point the findings of fact reached by judge Caswell applying the principles in Devaseelan. In those proceedings it was concluded that the appellant was a real risk of suffering article 3 ill-treatment from the criminal gang which forced him into servitude (at [46]).
- (4) The judge considered the submission made by the respondent that the country conditions in Vietnam and the specific risk to the appellant had materially changed since the 2008 decision taking into account the passage of time and the decision of Nguyen. The judge cited paragraphs 39-51 of the decision letter by reference to that decision.
- (5) The FtTJ found that the respondent had misquoted the decision in Nguyen and that the decision actually included the following at paragraph 51:” the respondent has made the point that Vietnam is a large country of some 90 million people with a number of large cities in it. If the appellant were able to return, a matter to which we will have to return, she would not be a person of any adverse interest of the government, and the chance of coming across the traffickers is very slight.”
- (6) The FtTJ found that there was a “distortion in the decision letter” in that it converted a statement about the particular circumstances of the appellant in those proceedings to a general statement of principle about the risk faced by those who have been formally trafficked. The judge stated “it is noteworthy that while the decision was reported, it was not reported as a country guidance about Vietnam. The point of principle decided in that case was the responsibility of the UK in its treatment of a victim of trafficking had been trafficked before their arrival in the UK. At paragraph 52 of the determination, the personal circumstances of that particular applicant

considered as a single mother with 3 small children before going on to conclude that she would not be at risk and those who originally trafficked her or from the malign interests of fresh traffickers. It was further stated that there was evidential support for the proposition that sufficiency protection exists Vietnam, but this falls a long way short of bearing the weight placed upon it by the respondent that the male appellant in this case would benefit from sufficient protection on return”.

- (7) The judge referred to paragraph 41 of the decision letter where it was acknowledged that return victims of trafficking may be at risk of reprisals from their original traffickers or being re-trafficked and that the factors were identified which might have a bearing on that risk as follows:

factors that may make the person face an increased risk of being abused or re-trafficked include, but are not limited to:

- the person having outstanding debt to the traffickers
- the absence of supportive family willing to take the victim back into the family unit
- the person having no other support network to a system: no or little educational vocational skills, mental health conditions, which may well have been caused by experiences of abuse were really trafficked: material and financial deprivation such as to me that they will be living in poverty or in conditions of destitution.

- (8) The judge found that there was no evidence of an outstanding debt owed to the appellant’s original traffickers (at [52]).
- (9) The judge found that the respondent did not challenge the proposition that the appellant would return to Vietnam without any family support having lost contact with his immediate family when he left the country as a child (at [52]).
- (10) The judge found that the respondent’s suggestion that the appellant could utilise his skills as a nail technician to re-establish and support himself once back in Vietnam to be an “unrealistic submission” and that “such a basic skill set hardly seems sufficient to counter the risk factor”.
- (11) The judge stated that “save for the mere passage of time, they would seem to be little justification to depart from the finding reach by Judge Caswell that this appellant was at a real risk of suffering conditions contrary to article 3. This is consistent with the decision of the respondent to grant the appellant a period of leave to remain on humanitarian protection grounds until as recently as 2017. All that has changed since then is the further, moderate passage of time and the conviction in 2018. The criminal offending

is, of course, reprehensible but does not touch upon the article 3 risk he would face on return.” (at [52]).

- (12) The judge concluded that there was no basis for going behind the assessment of judge Caswell in concluding that the appellant was at risk of encountering article 3 treatment on return to Vietnam and that “without more, it is insufficient to simply rely upon the passage of time to argue that the threat has dissipated” (at [53]).
- (13) At [54] the judge stated that he had carefully consider the arguments advanced on behalf the respondent that sufficiency protection now exists in Vietnam but that he did not regard it to amount to the “kind of cogent foundation to displace the findings reach by judge Caswell that the authorities were riven with corruption and unlikely to offer any semblance of protection to this appellant.”
- (14) He concluded at [55], “I am not persuaded that the appellant could internally relocate in Vietnam to guard against the risks of reprisals or of being re-trafficked. He would return as a former victim of trafficking without any family or social network to assist him in re-establishing himself. This together with his very limited skill set would render him vulnerable to the malign interests of traffickers. I do not regard this as a reasonable option to counter the risky faces on return.
- (15) The judge therefore allowed the appeal and article 3 grounds.
- (16) At paragraph [56]’s the judge did not consider article 8 but had he done so, he stated there was no credible basis on which to conclude that any of the exceptions found in S117C of the Act were satisfied.
- (17) The judge concluded at [57] “I have considered the matter in the round and find that there is no justification to depart from the findings reach by Judge Caswell that there is a real risk that the appellant would encounter conditions contrary to article 3 of the ECHR. Neither sufficiency protection or internal flight operate to counteract the danger the appellant would face.

58. The FtTJ therefore allowed the appeal.

#### The Appeal before the Upper Tribunal:

59. The Secretary of State sought permission to appeal that decision and permission was refused by FtTJ Nightingale on 25 February 2021 but on reconsideration permission was granted by UTJ Hanson on 25 March 2021.
60. The Secretary of State was represented by Ms Willocks-Briscoe, Senior Presenting Officer. The appellant was represented by Mr O’Ryan of Counsel. I am grateful to both advocates for their clear and helpful submissions.

The submissions:

61. Ms Willocks-Briscoe relied upon the written grounds. No further written submissions had been filed on behalf of the respondent.
62. An application was made in an email sent to the Tribunal on the 3 August 2021 to submit further evidence under Rule 15 (2A) namely the report of a Home Office fact-finding mission to Vietnam published 9 September 2019 and the CPIN Vietnam: victims of trafficking dated April 2020. It was not stated how the material was relevant to the proceedings.
63. The application was opposed by Mr O’Ryan on behalf of the appellant in his skeleton argument where he submitted that the documents now relied upon were in existence at the time of the hearing before the FtTJ, and the Secretary of State had advanced no reason why they could not have been placed for the Judge, if they could have had some bearing on the outcome of the appeal, at that time.
64. At the hearing, Ms Willocks-Briscoe confirmed that the documents were not filed for the error of law hearing but that in the event of an error of law being found this would be material which would be relevant to any re-making of the appeal.
65. Mr O’Ryan made reference to the remaking of the appeal and that if the tribunal found that there was a material error of law in the decision of the FtTJ that the respondents CPIN dated April 2020 differed from the earlier CPIN relating to whether victims of trafficking formed a “PSG”, and that this would be an issue which he would wish to refer to at any later hearing and also the issue of exclusion from protection.
66. I therefore heard from the advocates concerning the grounds of challenge relating to the issue of error of law.
67. The written grounds of appeal submit the following:
  - (1) It is submitted that the respondent’s evidence and the decision in Nguyen (Anti-trafficking Convention; Respondent’s duties) [2015] UKUT 170 shows that effective protection is available to the appellant to the Horvath [2000] UKHL 3700 standard is held by Lord Hope, “the standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals.”
  - (2) It is submitted that the onus is on the appellant to demonstrate why he is unable to seek and obtain effective state protection and the decision of the FtTJ contains no reason to believe that the appellant as a healthy adult is unable to do so.

- (3) Reliance is placed on the reported case of Nguyen that there is in general, sufficiency of protection provided by the authorities in Vietnam (paragraph 52). The evidence for these findings is largely based on the US State Department trafficking in Persons report on Vietnam of 2010 which stated that the Vietnamese government sustained “efforts to protect victims of transnational sex trafficking” though it “did not make sufficient efforts during the year to protect or identify victims.” Current evidence shows that whilst efforts to protect victims has decreased from the previous year [2016], the government of Vietnam has demonstrated increasing efforts to meet the minimum standards for the elimination of trafficking.
  - (4) It is submitted that there is inadequate consideration of the passage of time since the 2008 determination. At [52] the FtTJ describes this as a “moderate passage of time”. It is submitted that in 2008 the appellant was a child and the respondent accepted relocation was therefore unreasonable. The appellant is now in a very different position as a healthy adult with work experience.
  - (5) Given the absence of debt and the passage of time it is submitted that the FtTJ has provided inadequate reasons why the appellant is at risk of being trafficked at paragraph [55].
68. Ms Willocks-Briscoe also made oral submissions to which I have given careful consideration.
  69. In her oral submissions Ms Willocks- Briscoe expanded on the grounds and made the following submissions which I shall summarise.
  70. She submitted that the grounds identified a period in excess of 10 years since the decision of Judge Caswell in 2008 and that the decision letter based the situation compared to 2008 to the present and that there had been a significant change in circumstances. In this regard the judge had failed to properly consider the change in position. The appellant was no longer a child, and this was important because in 2008 he had been manipulated by his family and he now had skills he had obtained in the UK. She submitted that the judge did not address the period of time and that there was speculation as to any ongoing risk. The background evidence quoted that many people have been trafficked for labour exploitation that the judge did not address that issue or give adequate findings for the respondent to understand why the position in 2008 should be maintained.
  71. Ms Willocks-Briscoe submitted that she accepted Nguyen was not a country guidance case but there was reference which indicated that there was sufficiency of protection for former victims of trafficking as set out in the USSD report 2010 and cited in that decision.
  72. When the tribunal stated that it did not appear that the CPIN was before the judge, she submitted that the judge did not engage with the decision letter

which should have been addressed. By reference to the decision letter, she submitted that extracts of the decision letter were taken from the CPIN victims of trafficking version 3.0 dated September 2008.

73. Ms Willocks-Briscoe submitted that the decision letter made reference to the shelters available and would cover male victims although not exclusively and that the case of Nguyen did deal with general evidence that there would be a level of protection which was not considered by the judge.
74. She further submitted that the judge was an error when referring to “mere passage of time” which undermined the decision on internal relocation. Looking at the decision of Kamara, and whether there were very significant obstacles to reintegration there should be a “broad evaluative assessment”. The judge failed to take into account all the relevant factors that he would receive support from shelters who assist trafficking victims.
75. The judge failed to take into account that in 2008 the appellant was a child whereas now he did not require reception facilities and therefore the judge failed to identify risk based on his circumstances. Given the large number of trafficking victims it had not been demonstrated that he would be at risk of re-trafficking and the evidence was lacking.
76. She therefore invited the tribunal to set aside the decision.
77. Mr O’Ryan on behalf of the appellant relied upon his skeleton argument which had been served on the morning of the hearing. He submitted that the respondent’s grounds of appeal to the Upper Tribunal are nothing more than a disagreement with the outcome of the appeal.
78. The written submissions rely upon the following points:
79. The Judge identified that Nguyen was not, in fact a Country Guidance case; it was reported for reasons relating to the correct procedure to be taken by the Secretary of State as competent authority when considering trafficking claims. The body of the decision in Nguyen principally concerns itself with that issue.
80. He submitted that little country information is actually set out in the Tribunal decision in Nguyen; such evidence as is referred to dates from 2010 and 2011; ie well before the Secretary of State decided to grant the present Respondent further leave to remain from April 2014 to April 2017. Further, the evidence referred to within Nguyen as to the availability of trafficking shelters and the provision of counselling and vocational training for were for female sex trafficking victims; neither of which applies to the present Respondent. The evidence before the Upper Tribunal in Nguyen did not speak directly to the issue of the risk to a male trafficking victim.
81. Mr O’Ryan submitted that the Upper Tribunal’s reference to the chance of the appellant in Nguyen coming across her traffickers being very slight should be

read alongside the Upper Tribunals observation at paragraph 2 of its decision that appellant had moved from her home area to work in Hanoi and was trafficked from there. The present Respondent was trafficked from his home area, and the question under Immigration Rule 399O(i)(b) arose, ie when considering a grant of humanitarian protection, whether there was a part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country. In finding at para 55 that the Judge did not regard internal relocation is a reasonable option, the judge correctly directed himself in law.

82. Further, and significantly, the Upper Tribunal appear to have proceeded in Nguyen to assess that appellant's risk of being re-trafficked on the basis that it had not been suggested that she would be unable to make contact again with her two brothers and her sister (para 52). The appellant in Nguyen was therefore treated as having a family network of support available to her; a materially different scenario than the scenario faced by the present Respondent.
83. Further, the suggestion that paragraph 41 of the decision letter in the present appeal, that there are a number of factors which might make a person face an increased risk of being abused re-trafficked, comes not from the case of Nguyen, but is a conclusion Secretary of State has arrived it for itself, as contained within its own Country Policy and Information Note, Vietnam, Victims of Trafficking, September 2018, which is quoted with the refusal letter. For the present Judge to have taken into account such considerations, including, specifically, the agreed consideration that the present Respondent has no network of support in Vietnam, cannot be said to amount to a material error of law.
84. Further, within the Secretary of State's own grounds of appeal dated 11.2.21, it is acknowledged that 'current evidence' (without stating what that source of evidence was) actually showed that efforts to protect victims had decreased from the previous year [2016]. It is unclear how such assertion establishes a material error of law and the judge's approach.
85. It is submitted that the Secretary of State's assertion that the appellant would have the necessary skills to find work is a mere disagreement with the Judge's finding that that would not be the case; the Secretary of State would need to establish that such finding was perverse in order to establish a material error of law; the Appellant's grounds do not come near establishing that point.
86. Further, the suggestion in the grounds of appeal that the Judge erred in his approach regarding the 'passage of time' since the determination in 2008 is misconceived. Judge Lodato did not treat the passage of time since Judge Caswell's decision in 2008, and his own consideration of the appellant's circumstances, in 2021, as being a 'moderate passage of time'. A proper reading of paragraph 52 of the Judge's decision clearly establishes that the 'moderate passage of time' the Judge was there referring to was from 2017 to 2021. The

Secretary of State had in April 2014 continued to acknowledge a real risk of serious harm to the appellant by granting him a further four year period of humanitarian protection until April 2017. It is in *that* context, wherein the Secretary of State had continued to recognise a real risk of serious harm to the appellant up until April 2017, (when the appellant was nearly 25) that the Judge was entitled to observe that the passage of time from 2017 to 2021 would not make any material difference to the risk of harm that the appellant will face upon return to Vietnam.

87. Further and in any event, the original Judge in 2008 did not find the appellant's case made out merely on the basis that he was then 16 years old; it is clear from her paragraph 26 that she would still have allowed the appeal even if the Secretary of State had been right (which they were not) to argue that the risk to the appellant should be assessed at the earliest potential point of return, when the appellant would have been 17 ½. Judge Caswell therefore found the appellant's case made out, even if he had been six months off being an adult. That approach also undermines the Secretary of State's challenge to the FtTJ's decision.
88. He also made the following oral submissions. He submitted that the judge directed his attention to the case of Nguyen in his assessment of the issue of risk and the grounds seek to elevate the content of that case to something that it was not. He made the point that the decision was a reported decision on the protection of trafficking victims and was not a country guidance decision. He relied upon his skeleton argument which set out identifiable differences between the appellant's in their respective cases.
89. Mr O'Ryan submitted that the decision had little relevance to the task that the judge was required to determine and that the decision in Nguyen had little by way of content relating to country material relating to trafficking victims and in particular male victims and that it was only between paragraphs 49 - 52 that it turned its attention to the country conditions. The evidence referred to was in 2010 and 2011 and the reasoning as to risk of harm was "thin".
90. As regards risk of harm, the FtTJ referred to guidance in the CPIN at paragraph 51 which reflected or accepted that some individuals would be at risk of harm and risk of re-trafficking and set out the factors. Thus it was accepted that they would not be effective sufficiency of protection from serious harm for some individuals and those considerations were set out in the bullet points recited by the judge at paragraph 51. He submitted that the judge directed himself to those factors which are relevant to issues of protection.
91. He submitted that there had been a challenge in relation to one finding made in that assessment and that the appellant could find work but that this submission was simply making an assertion and it was not clear what the nature of the challenge was whether it was based on a perversity challenge. The judge had regard to the age of the appellant, his circumstances and his experience in



working as a nail technician and he was entitled to reach the conclusion that he did, and it could not be established that it was a perverse finding.

92. He submitted that contrary to the submissions made on behalf of the respondent and having drawn attention to paragraphs 39-51 of the decision letter, the judge did take into account the sections of the decision letter (see [48]). He submitted it was clear that the judge had regard to that section of the decision letter. In any event he submitted that the references in the decision letter to the country material presented a "mixed bag" and even if the judge had in the body of decision made direct reference to it, it was not clear that it would have demonstrated this appellant had effective protection. Whilst there was legal redress available, the decision letter made reference to the lack of coordination and uneven enforcement of the law. As the availability of shelters, that was also referred to at paragraph 48 in the decision letter on the basis of the lack of availability and resources and also there were no shelters for male or child victims. When considering the background of the appellant, he has no family or support, and the section does not say that male victims will be given accommodation.
93. As to the grounds on which it was asserted that the judge failed to have regard to the passage of time since he was 1<sup>st</sup> recognised to be at risk in 2008, Mr O'Ryan relied upon his skeleton argument at paragraphs 30 - 31 and replicated above. He submitted that they had been 2 periods of humanitarian protection leave with the final period being 2014 - 2017. In 2014 he was 21 years of age and the respondent acknowledged even after his offending when he was an adult that he still required protection and was then granted a further 3 years humanitarian protection until 2017. Thus the respondent should be taken to have granted humanitarian protection leave in full knowledge of the country conditions and that the decision of Nguyen did not alter that landscape. He submitted that the judge was entitled to observe the moderate passage of time from 2017 - 2021 and that the appellant made an adult and thus the judge was not failing to have regard to the difference to the position from when he was 1<sup>st</sup> recognised to the present day.
94. Mr O'Ryan level submitted that the grounds were not made out and the appeal should be dismissed.
95. By way of reply Ms Willocks-Briscoe submitted that whilst the appellant would be returning without family, the submission made was that shelters were available to the appellant on return, and nothing was suggested to indicate that as a former victim of trafficking he would be excluded. Even if the evidence was insufficient for males, the judge had to give a reason.
96. She further submitted that the later grants of humanitarian protection did not mean that the Secretary of State could not change her position and the background evidence was in the decision letter and the judge did not give adequate reasons. The judge should have considered the case of Nguyen at

paragraph 52 in tandem with the 2018 background evidence in the decision letter to show that there was an adequate level of sufficiency of protection.

97. At the conclusion of the hearing I reserved my decision which I now give.

Discussion:

98. I have given careful consideration to the submissions of the advocates and have done so in the light of the decision of the FtTJ and the material that was before the tribunal.
99. The respondent's case advanced in the written grounds submit that the respondent's evidence and the decision in Nguyen (Anti-Trafficking Convention: respondent's duties) [2015] UKUT 170 (hereinafter referred to as "Nguyen") shows that there is effective protection available to the appellant. A further reference is made to that case and that "reliance is placed on the reported case of Nguyen as support for the respondent's case that there is sufficiency of protection provided by the authorities at paragraph 52 of the decision as supported by the evidence in the USSD TiP 2010 report."
100. Those written grounds do not particularise what error of law the FtTJ made in his decision. Ms Willocks-Briscoe on behalf the respondent expanded on the ground submitting that the judge was in error by not addressing Nguyen and the background evidence in the decision letter. Whilst accepting that Nguyen was not a country guidance decision, she submitted that the decision did refer to country material that there was sufficiency of protection for victims of trafficking returning to Vietnam and that the FtTJ did not properly engage with the material or the CPIN.
101. I am satisfied that there is no merit in the submission made on behalf of the respondent that the FtTJ failed to properly direct himself to the decision of Nguyen or that he failed to follow this decision which supported the position that there was effective protection available in Vietnam.
102. The FtTJ began his consideration, correctly in my view, by taking the starting point as his assessment as the previous decision of FtTJ Caswell in 2008 on the same issues. In those earlier proceedings and by reference to the factual findings made by Judge Caswell, the appellant was found to be at a real risk of suffering treatment contrary to Article 3 of the ECHR.
103. In his decision the FtTJ expressly addressed the respondent's argument that the country conditions in Vietnam had materially changed since 2008 and the specific risk to the appellant and did so by expressly by referring to the decision in Nguyen and the material referred to in the decision letter.
104. In my judgement there is no error in the FtTJ's assessment of the decision in Nguyen and its status as evidential support for the claim made in the decision letter and subsequently in the written grounds.

105. At paragraphs [48] – [50] the FtTJ gave entirely sustainable reasons for reaching the conclusion that the decision letter had misquoted the decision of Nguyen. At [49] the judge identified that the extracts copied into the decision letter in fact misquoted Nguyen and set out what the decision had in fact included. At [50] the judge stated, “the distortion and the reasons for refusal letter converts a statement about the particular circumstances of the appellant in those proceedings to a general statement of principle about the risk faced by those who had been formally trafficked.” He went on to give further reasons as to why the citation in the decision letter of that decision “fell a long way short of bearing the weight placed upon it by the respondent that the male appellant in this case would benefit from sufficient protection on return.”
106. The decision in Nguyen is a reported decision of the tribunal but as both advocates accept it is not a country guidance decision. As to the status of reported cases such a reported case does not have the same status as a country guidance decision and where summaries of the evidence in such cases can be relied on, the assessment of the evidence is not binding unless it accords with any pre-existing country guidance ( see SI (reported cases as evidence) Ethiopia [2007] UKIAT 00012).
107. The decision does not deal with the background evidence or country material in the way that a country guidance decision would normally do. Contrary to the emphasis placed on the decision in the grounds and the respondent’s submission, the decision is not reported for what it says about country conditions or sufficiency of protection in Vietnam but what it states about the public law duties of the Secretary of State towards victims of trafficking. Judge Lodato properly identified that at paragraph [51] of his decision. As identified by Mr O’Ryan the only paragraphs that deal with risk on return are those at paragraphs 49 – 52 and the decision cites limited evidence. The main source appears to be the USSD TiP 2010. This cannot be viewed as up-to-date source documentation for the present appeal given its age and that the CPIN 2018 which in fact reproduces its reliance on the decision in Nguyen refers to more recent reports from the same source.
108. The FtTJ properly identified in my view that the decision was based on the particular circumstances of that appellant. There were identifiable differences in the circumstances of this appellant and that of the appellant in the decision and notably their gender. The appellant in Nguyen was a female who moved from her home area to work in Hanoi and had been trafficked from there. The conclusion reached by the UT which referred to the chances of the appellant coming across the traffickers as “slight” had to be considered in the light of that appellant’s particular factual circumstances. In the present appeal it had been found by the earlier judge that the appellant had been trafficked from his home area with the complicity of his family. A further difference identified from the facts is that the material in the decision referred the availability of shelters for female sex trafficking victims which again does not apply to this particular

appellant. As Mr O’Ryan submitted the evidence before the Upper Tribunal did not speak directly to the issues relevant to male trafficking victims.

109. Furthermore the Upper Tribunal in Nguyen assessed the risks of re-trafficking on the basis that it had been suggested that she would be able to make contact with her 2 brothers and her sister (paragraph 52). The appellant in that case was therefore treated as having a family and support which was not the position for this appellant where it was accepted by the respondent that he would have no such family or social support network.
110. The FtTJ therefore correctly identified at paragraph 50 of his decision that paragraph 52 of Nguyen should be set against and considered in the light of particular characteristics of the appellant in that appeal. In my judgement, the fact that the Tribunal decided on the evidence before it that the appellant in that case could obtain effective protection is not determinative.
111. Consequently the FtTJ correctly identified the lack of evidential weight which could be attributed to the case as support for the claim that sufficiency of protection existed in Vietnam. His conclusion that it fell a “long way short of bearing the weight placed upon it by the respondent that the male appellant in this case would benefit from sufficient protection on return” was one that was rationally open to him to make.
112. Therefore for those reasons I am satisfied that the judge did not fall into error by his analysis of the decision in Nguyen and that he was entitled to place little weight on that decision in so far as they applied to the circumstances of this particular appellant.
113. Insofar as it is argued now that the judge failed to consider the CPIN, that was not particularised in the written grounds where it was argued on the basis of the judge failing to place reliance on the decision in Nguyen.
114. The respondent did not provide any country materials to the FtTJ. I have a copy of the record of proceedings and there is no reference in the judge’s note or his decision that the respondent put before him a copy of the CPIN 2018 which is briefly referred to in the decision letter nor has it been demonstrated that there were any submissions made by reference to that CPIN in the proceedings before the FtTJ beyond the generalised paragraphs in the decision letter.
115. The proceedings before the FtTJ are adversarial proceedings and the judge reaches his decision based on the material that is presented to the court and in the light of the submissions made about that evidence. The respondent is duty-bound not only to provide the country material relied upon to the tribunal but also to make it clear to the tribunal during submissions as to how that material is relevant to the particular circumstances of the appellant within those proceedings. The reference to the CPIN 2018 in the decision letter was also not the current CPIN as a more up-to-date document had been published in April

2020. I can see no reference to that document having been referred to during the proceedings.

116. I therefore do not consider that the judge was in error by failing to make specific reference to the paragraphs in the CPIN. In any event the FtTJ did make express reference to paragraphs 41 and 42 of the decision letter which is replicated at paragraph 2.4.5 of the 2018 CPIN which set out factors which were identified as those which might have a bearing on the risk of harm or re-trafficking. The judge set out at paragraph [51] the factors which may make the person face an increased risk of being abused or re-trafficked which include, but are not limited to:

- the person having outstanding debt to the traffickers
- in the absence of a supportive family willing to take the victim back into the family unit
- the person having no support network to assist them; no or little educational vocational skills; mental health conditions, which may well have been caused by experiences of abuse when originally trafficked: material and financial deprivation such as to mean that they will be living in poverty or in conditions of destitution.

117. Thereafter the FtTJ at paragraphs [52]-[55] undertook his analysis of risk by reference to those factors but also by reference to the sufficiency of protection (at [54]).

118. The grounds advanced on behalf of the respondent also assert that the FtTJ fell into error in his assessment of risk by failing to take into account the passage of time since the 2008 decision. Ms Willocks-Briscoe submits that the description of there being a “moderate passage of time” was not an accurate reflection of the factual circumstances of the appellant and that this inaccuracy undermined his assessment of risk and also internal relocation. She submits that in 2008 the appellant was a child, and it was against that background that relocation was therefore considered unreasonable. Thus it was submitted on behalf the respondent that the appellant was in a different position as a healthy adult with work experience. In her submissions Ms Willocks-Briscoe expanded on this by submitting that the judge had not taken into account the length of time since the last decision and that he could support himself having owned a nail bar in the UK. She submitted that he would also have the advantage of shelters provided by the government and that the circumstances were different from 2008.

119. I have carefully considered the decision of the FtTJ and his assessment of risk. At [54] the judge reached the conclusion from the evidence that having considered what had been advanced before him, little had changed since the earlier decision of Judge Caswell who reached the decision that there was a real risk of suffering conditions contrary to article 3. The judge was plainly aware that the appellant was no longer a minor as he had been in 2008 ( the age of 17

½) and where he referred to the “mere passage of time” or a “moderate passage of time” he was not referring to the length of time between 2008 and the date of the current appeal but was in fact referring to the position between 2017 – 2021.

120. I agree with the submission made by Mr O’Ryan that when the judge considered the issue of risk he was entitled to rely upon the later grant of humanitarian protection status which had been provided by the respondent until April 2017 where the respondent continued to acknowledge that the appellant was a real risk of serious harm. It was therefore open to the judge to find that the respondent by granting further periods of humanitarian protection up until 2017 when the appellant was the 21 that the judge was referring to that passage of time and that the passage of time without more made no material difference to the risk of harm he would face on return. As Mr O’Ryan pointed out, the grant of humanitarian protection had been provided for long after the case of Nguyen and thus the respondent could be taken to have granted leave in the full knowledge of that decision and the risk of harm to the appellant.
121. I therefore conclude that the judge was plainly aware of the length of time since the decision but was entitled to consider the time since the last grant of leave based on the same risk of harm. I am also satisfied that the FtIJ gave adequate reasons for reaching the view that the respondent had not provided cogent evidence to displace the findings reached by Judge Caswell in any event.
122. The FtIJ stated that he had “carefully considered the arguments advanced on behalf the respondent that sufficiency of protection” now existed in Vietnam but that he did not regard it to “amount to the kind of cogent foundation to displace the findings reached by Judge Caswell that the authorities were riven with corruption and unlikely to offer any semblance of protection to this appellant” (at [54]).
123. Judge Caswell had found that the appellant would be at risk of reprisals in his home area from the traffickers (at[17])) and that in respect of issues of protection at paragraph 19 the judge set out the respondent’s argument that there was sufficient protection as the appellant would be able to go to the police. Reference is made to the USSD report that the government were increasing their efforts to prosecute traffickers, but it was noted that the government did not fully comply with the minimum standards for the elimination of trafficking that it was making significant efforts to do so. It was also stated by the respondent that the government also demonstrated progress in improving victim protection and assistance. At paragraph 20 Judge Caswell set out the appellant’s argument that the efforts of the government, while encouraging, had been focused on developing national laws, law enforcement and awareness raising campaigns as opposed to making resources available for victim support and protection. Such resources were in any event concentrated towards the south of the country or along the border provinces and were for the return of adult victims of sex trafficking. There were no known support services for young male victims of trafficking. The judge concluded at [21] that “all the

objective evidence show that corruption was a significant and widespread problem the police force". The judge also quoted the USSD Tip 2008 which confirmed the retaliation of agents, and some government officials was a problem for returning victims of labour trafficking. The judge concluded at [22] that from her consideration of the objective evidence, that the appellant had shown that there would not be sufficient protection for him in his home area and that although she accepted that the government was trying to deal with the problem of trafficking, even the minimum accepted international standards were not yet being met. The judge also found that the appellant would not have the benefit of any sort of support services on return and that the police service was rife with corruption so that he would not have a sufficiency of protection from the traffickers, who would be concerned to silence him.

124. In my judgement the FtTJ's assessment that the evidence relied upon by the respondent did not displace that earlier assessment of sufficiency of protection was open to him. The judge had provided sustainable reasons as to why the decision in Nguyen did not provide a proper evidential basis for concluding that there was sufficiency of protection for victims of trafficking on return to Vietnam. He had not been referred to the full information in the CPIN but had applied the risk factors set out in the decision letter (which had been taken from the CPIN at paragraph 2.4.5) and had undertaken his assessment of those factors at [52]-[55]. The paragraphs in the decision letter are in my judgement generalised statements which did not refer to other specific relevant parts of the CPIN. By way of example reference is made in the decision letter to the anti-trafficking legislation at paragraph 45, no specific reference is made to the law set out in Articles 150- 151 of the penal code and that the definition of trafficking in Vietnam under the legislation did not fully comply with the international obligations set out at 3.13 and that it was inconsistent with international law as set out at paragraph 3.2.3 by reference to the US SD 2018 report. The government does not systematically refer victims to services as the government's definition of trafficking does not fully correspond with the internationally accepted definition. That is what Judge Caswell found in 2008.
125. The fact that the authorities prosecute some traffickers does not mean they generally accord meaningful protection and assistance to former victims of trafficking. Many victims of trafficking are not recognised as such under the Vietnamese law.
126. As Mr O'Ryan submits, what was cited in the decision letter itself did not support sufficiency of protection for former victims of trafficking or for this appellant. Whilst paragraphs 44 - 46 makes reference to the law in Vietnam and that there was comprehensive anti-trafficking legislation, the decision letter also refers to the lack of coordination across provincial agencies and poor understanding of the relevant legislation which had resulted in uneven enforcement of the law.

127. Paragraph 45 and 46 refers to the prosecutions that occur but fail to set out that at 6.4.3 of the same CPIN and citing the USSD Tip 2018 that for the last 6 consecutive years the government had not prosecuted any suspected traffickers under the 2012 anti-trafficking law. Paragraph 6.5.1 refers the difficulties to enforce the law due to the complicity of the officers. That material was consistent with the same evidence before Judge Caswell which the present judge found had not altered in the intervening period.
128. At paragraph 48 of the decision letter referring to “protection”. It states that there are 400 social protection centres to local authorities which provide services to wide range of vulnerable groups including trafficking victims. However it goes on to state the centres are reported to be unevenly staffed and resourced and lack appropriately trained personnel to assess victims. There are no shelters designated exclusively for male or child victims, although existing shelters provide assistance to all victims as needed. The relevant paragraphs that deal with protection and support are set out at paragraph 6.3 where it is stated that the government did not systematically refer victims to protective services due to inadequacies in its formal referral process. At 8.1.3 the CPIN referred to the lack of resources as to long term support services for male victims of trafficking returning to Vietnam. Again this echoed the earlier findings of Judge Caswell, and upon which Judge Lodato concluded the evidence of sufficiency of protection or effective support had not changed in any material regard.
129. Whilst the judge did not expressly refer to the shelters available given the assessment at paragraph 48 of the decision letter which referred to the lack of staffing and resources and personnel to assist victims, and that it is stated that there are no shelters designated exclusively for male or child victims, the lack of reference to this does not undermine his overall assessment.
130. In the light of that material it was open to the FtTJ to reach the conclusion that the evidence did not displace the earlier findings that the authorities were riven with corruption and unlikely to offer any semblance of protection to the appellant.
131. Insofar as the grounds seek to argue that the FtTJ’s description of the appellant of having limited skills or a “basic skill set” was wrong, in my judgement that was merely a disagreement with the judge’s assessment and does not demonstrate that the finding was either irrational or one not open to him.
132. At [55] the judge concluded “I am not persuaded that the appellant could internally relocate in Vietnam to guard against the risk of reprisals or of being re-trafficked. He would return as a former victim of trafficking without any family or social network to assist in re-establishing himself. This together with his very limited skill set would render him vulnerable to the malign interests of traffickers. I do not regard this as a reasonable option to counter the risk he faces on return.”



133. Furthermore the judge not only consider the lack of skills and his lack of education (having left Vietnam as a child and having been exploited in the UK by his traffickers) but also considered the lack of support that the appellant would have in Vietnam without any form of family available to provide that social support to re-establish himself and that it was also this which gave rise to the real risk of re-trafficking. It was open to the judge to find that internal relocation would not change the economic/social vulnerabilities including lack of support, employment and having been a former child victim of trafficking that would expose such a former victim to an elevated risk of re-trafficking.
134. Whilst the judge did not expressly refer to the shelters available given the assessment at paragraph 48 of the decision letter which referred to the lack of staffing and resources and personnel to assist victims, and that it is stated that there are no shelters designated exclusively for male or child victims, the lack of reference to this does not undermine his overall assessment.
135. For those reasons, it has not been demonstrated that the decision of the FtTJ involved the making of an error on a point of law and I therefore dismiss the appeal. The decision of the FtTJ shall stand.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtTJ shall stand.

Signed

Dated 5 August 2021

*Upper Tribunal Judge Reeds*

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

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### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as

follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.