



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10137/2019

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On 12 April 2022

Decision & Reasons Promulgated
On the 16 May 2022

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HD
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Blackwood instructed by Qualified Legal Solicitors.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a male citizen of Vietnam born on the 19 August 1988. He claims to have entered the United Kingdom in a lorry on 12 September 2017, illegally.
2. On 12 October 2017 the appellant was arrested by South Yorkshire Police on suspicion of cultivating cannabis and served with a notice of the person liable to removal.
3. On 13 October 2017 the appellant claimed asylum.

4. On 22 November 2017, third country action was initiated against the appellant.
5. On 15 December 2017, the appellant claimed he was trafficked into the UK and on 21 December 2017 his trafficking claim was accepted although on the same day it was decided that no leave should be granted.
6. On 7 January 2018 a decision was made that the third country action was not to be pursued due to the deadline being exceeded.
7. On 30 January 2018, at Sheffield Crown Court, the appellant was convicted of production of a Class B controlled drug – Cannabis and on the same day sentenced to 9 months imprisonment, ordered to pay a victim surcharge, and an order made for the forfeiture of two mobile telephones and for the forfeiture/ destruction/ disposal of all drugs/plants and paraphernalia.
8. On 7 February 2018 the appellant was informed of the decision to make a deportation order.
9. On 7 October 2019 a decision was made to refuse the appellant’s asylum and human rights claims.
10. In his sentencing remarks HHJ Thomas stated:

So, HD can you stand up please? You’re said to be 29 years old. You’re a Vietnamese national and you last year came to the UK. You came here obviously illegally. You said that you came stowed away on a boat. When the police arrested you last October, you were to say that you’re only been here in the UK for about a week or so. That, in fact, seems incredible. To say that you arrived on a boat and then found your way within a week or so to Rotherham, where you speak of meeting a black man who put you into this house where all this cannabis was, just seems an impossible tale to actually believe.

Unhappily, the courts have got a lot of experience of people in your position, Vietnamese nationals being put to work in relation to these cannabis farms as gardeners. In any event, it doesn’t really matter that much as to when exactly you arrived in the UK and how exactly you came into this house in Rotherham. Certain it is that when you were at that house you were attending and playing a part in the production of this cannabis and there was a lot of it, over 800 plants that would have made somebody a great deal of money. Not you, you being very low down the chain of activity. Therefore, within the Sentencing Council Guideline you’re somebody whose role should be regarded as lesser, as opposed to significant or indeed, leading.

The amount of cannabis in this operation, with your lesser role, would suggest the starting point for sentence, so say the Sentencing Council, of a year’s worth imprisonment. You had pleaded guilty at an earlyish stage of the proceedings. Simplistically, I’ll discount that starting point by a quarter to represent your plea of guilty and a sentence of imprisonment that therefore is now passed upon you is a sentence of nine months imprisonment.

11. The appellants appeal against the refusal of his protection and human right claim came before First-tier Tribunal Judge Butler sitting in Nottingham on 10 February 2020, who in a decision promulgated on 12 March 2020 dismissed the appellants appeal on all grounds. The appellant sought permission to appeal to the Upper Tribunal which was granted on 11 September 2020.
12. At a remote hearing on 4 February 2021 Upper Tribunal Judge Norton-Taylor resided over the error of law hearing and noted in his decision that the Senior Home Office Presenting Officer before him accepted Judge Butler had materially erred in law for the reasons set out in the grounds of appeal, and consequently set that decision aside.

13. A number of findings by Judge Butler are not challenged. It was accepted at that stage that the appellant is a victim of trafficking following a positive conclusion to that effect by the Competent Authority. It was also accepted that there was no challenge to Judge Butler's finding that the appellant would face no risk on return to Vietnam due to his Catholic faith or that he would face no risk as a result of the claimed anti-government activities. At [10] of the error of law finding it is written:
10. The scope of the resumed hearing will be limited to the claimed risk from the original traffickers and/or from other trafficking networks operating in Vietnam. The assessment of these matters will be carried out in the context of the Appellant being an accepted victim of trafficking and the fact that he suffers from mental health conditions.

The evidence

14. The appellant has provided two witness statements one dated 18 November 2019 and a more recent statement limited to the trafficking claim.
15. In his more recent statement the appellant claims he has a fear of the man who trafficked him and took advantage of him who he states will find him again and force him into following the same life as before, alleging those involved have a network globally and that the person he dealt with in Vietnam, named Luyen, is their main point of contact. The appellant claims he was told by Luyen that he had no choice but to pay the debt for the cost of his journey to the UK which, as he was unable to afford it for himself, resulted in his being forced to work growing the cannabis. The appellant claims that threats had been made against him directly which he believes to be credible which could lead to his being killed.
16. The appellant claims that as a result of his experiences his mental health has suffered and that he has a permanent scar on his hand. The appellant claims to have contemplated suicide when he considered that to be the only option for him. The appellant claims there is no support in Vietnam for people who have been found to be victims of trafficking and claims he will have no support in Vietnam if he is returned there. The appellant claims, as a result, he will be left to the challenges of the very people who took advantage of him and that he would have to commit crime to succeed.
17. The appellant claims not to have a national ID card which he asserts will discriminate against his situation and place him in danger as a homeless person which could result in his becoming destitute, as without the necessary paperwork he will be forced to be exploited and will have to commit crime to survive.
18. In relation to his mental health needs; the appellant claims to have suicidal thoughts of wanting to hurt himself and states he has PTSD and suffers from nightmares and flashbacks due to his past experience. The appellant claims to have been prescribed medication to deal with his mental health and suicidal thoughts. The appellant claims that if returned to Vietnam he will not be able to access the support there due to lack of information and professional standards.
19. The appellant relies upon a country expert report prepared by Dr Tran who discusses various aspects of the appellant's case some of which are no longer relevant. In relation to the appellant's risk of being re-trafficked on return Dr Tran writes:

Part 11. HD's risk of being re-trafficked on return

11.1 In my research experience, human trafficking networks in Vietnam mostly target unaccompanied and vulnerable people with no network of support, females, children/young people, with no family, previous experience of trafficking, emotional and financial difficulties and unstable or deprived living conditions, who are easy targets due to their vulnerabilities. According to the Report "Challenging the way of return home to victims of human trafficking" dated 23 July 2018 on Bao Dan Sinh newspapers, only 20.4% of returned victims are settled and integrated well back to the society. If that figure is correct, nearly 80% returned female victims are at risk. This report did not mention male victims/male returnees however the support available for male trafficking victims/male returnees in Vietnam is even more limited and less effective than for female victims. In light of this, in my view, HD's circumstances fall into the category of an increased risk of being re-trafficked and subjected to further harm, abuse and victimisation.

11.2 In respect of Home Office's opinion on the risks on return of former victims of human trafficking (part sufficiency of protection) as the Home Office Country Policy and Information Note on victims of trafficking in Vietnam states:

"... as Vietnam is a large country with a population of some 90 million people and a number of large cities in it, a victim of trafficking would be able to return without being of adverse interest to the government, and the chance of the person coming across their traffickers is very slight".

11.3 In my view, the risks on return from former victims of human trafficking in Vietnam is not mainly from their former trafficker unless the victim signed/agreed the debt bondage with the trafficker, or the trafficker live at the same place with the victim. But the risks of being re-trafficked very likely come from the new traffickers. In my view, the risks of re-trafficking and/or exploitation of former victims of human trafficking and vulnerable returnees returned to Vietnam depend on the individual's circumstances and needs. If a victim/returnee has support and protection of their family, relatives and close friends they are less at risk. In the case of a person without family support and protection, victims who have relocated to a different area of Vietnam, persons in debt, or persons suffering from medical and mental health problems are at high risk of re-trafficking and further exploitation (though not necessarily from their former traffickers) if they live without (or don't have) the support and protection of family.

11.4 In relation to the risk of re-trafficking in Vietnam ECPAT UK states in their report from 2019 that:

The primary finding of this research is that significant gaps in the protection of Vietnamese victims of trafficking exist across Europe, as well as in Vietnam. The risk to victims returned to Vietnam must also be acknowledged. Assistance to returnees is extremely limited and there are risks of reprisals from traffickers and Vietnamese authorities. There is also a risk of re-trafficking or making further attempts at risky irregular migration in order to pay off the debt owed to traffickers'.

The report further states that: 'If a Vietnamese national leaves Vietnam via irregular means, is involved in criminal activity or has criticised the Vietnamese government, there is significant risk to their safety on return to Vietnam. If victims have spoken to the police and/or still owe a debt to their traffickers, of re-trafficking or reprisals from their traffickers and/or the Vietnamese authorities. There is limited support available in Vietnam for returned victims, leaving them at risk of re-trafficking or even becoming a trafficker themselves'.

11.5 There is close to no long-term support available for male human trafficking victims/male returnees at present in Vietnam as explained above at Part 9 above of this report. Human traffickers mostly target vulnerable and isolated people such as HD. If victims have a big

family who stay close around in the same village/city or if the victim can stay at the same house with their family, the risk of being trafficked or exploited is lower. Meanwhile if HD is returned to his place of origin, very likely he will face with the risks from his former trafficker as he has signed the debt bondage contract with them and ill-treatment from local authority but if he is relocated at different places, likely he will face with the risks of being re-trafficked due to the unaccompanied status.

- 11.6 Those relocated to a different area such as Ho Chi Minh City, Hanoi city or Hai Phong city as an unaccompanied person would be at additional risk. According to Vietnamese law, the police will not start a missing person investigation unless they receive an official request from the missing person's family. Secondly, even in cases where the police have received a request from a family member, it is difficult to find the perpetrators of trafficking, as the police forces in the countryside and remote areas are often ineffective, and they are unable to deal with complex crimes such as human trafficking. The police forces in larger cities such as Hanoi or Ho Chi Minh city are more effective in this regard but they are largely preoccupied dealing with matters other than investigating missing persons.
- 11.7 In respect of the risks of being abused or re-trafficked for former victims and vulnerable returnees such as HD in Vietnam, I would like to cite the relevant factors which Home Office referred to in the CPIN 2020 at para 2.4.8 as follows. In my view, most of those indicators applied to HD situation.

"2.4.8 factors that may increase the risk of being abused already trafficked include, but are not limited to:

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

- 11.8 In respect of the risks of being re-traffic for unaccompanied male victims/returnees such as HD I would also like to cite the relevant factors which the Home Office referred to in the CPIN April 2020 about the re-trafficking risks at Para. 8.1.1; 8.1.2; 8.1.4 as follows:

"8.1.1 The USSD TIP Report 2019 noted: 'Civil society reported Vietnamese victims who migrated via irregular means, were involved in criminal activity as a result of their trafficking [...] feared reprisals from Vietnamese government authorities, were less likely to seek support, and were vulnerable to re-trafficking. International observers government officials often blamed Vietnamese citizens for their exploitative conditions abroad or suggested victims inflate abuses to avoid immigration violations.

The 2019 Report 'Precarious Journeys' noted 'if victims have spoken to the police and/or still owe a debt to their traffickers, they are likely to be at risk of re-trafficking or reprisals from their traffickers and/or the Vietnamese authorities. There is limited support available in Vietnam for returned victims, leaving them at risk of being re-trafficked or even becoming a trafficker themselves.

8.1.4 Several sources referred to Mimi Vu, an antitrafficking advocate based in Vietnam, who has stated that outstanding debt and other factors which led to victims being trafficked initially still remain when victims are returned to Vietnam. As those factors still exist victims remain at risk of being re-trafficked"

20. The report also asserts the appellant will face significant challenges in reintegrating into society in Vietnam, claimed to be as a result of his religious and political involvement, but there are preserved findings applicable to such issues. The report refers however to the fact that when applying for a job in public services, state-owned enterprises, state-run organisations and for most of Vietnams private companies a profile/CV has to be approved by the local authority/local police and if something is written on the form by such organisations adverse to the individual a jobseeker may face significant difficulties. The report asserts the appellant would have to state his family religion, his arrest in Vietnam for attending the demonstration, and cannabis farming in the UK, which the country expert asserts will result in his facing significant challenges in obtaining “a decent job” as employers in Vietnam do not want to employ people with opposing political opinions and drug involvement.
21. In relation to the appellant’s medical condition, a number of documents have been provided such as letters from a GP and also a letter dated 4 June 2018 addressed to the appellant’s GP from the Talking Helps Newcastle, described as a psychological well-being service. The author of that letter writes:

HD reports symptoms of depression including poor motivation and a lack of interest. He further experienced frequent suicidal thoughts around hurting himself. This was further explored as much as was possible through the interpreter.

HD further reported symptoms suggestive of post-traumatic stress including flashbacks which are triggered by seeing a shadow which frightens him when he hears a strange noise whilst he is asleep and is suddenly awakened by this and ‘feels bad’. Furthermore, HD experiences nightmares on some nights offset by having a bad day in which she has felt uncomfortable and particularly triggered by seeing a stranger who may look aggressive.

HD finds his medication helpful with sleeping which is improving. However, he was not able to tell me what he was prescribed or taking currently. He reported some side effects, namely digestive complaints.

Current risk

HD reported spending about 40% of his time (daily) thinking about not wanting to be here and ‘wanting to kill himself’. He let the interpreter know that he has thoughts about many different ways of killing himself such as hanging himself, finding something sharp to cut himself and biting his tongue (which he currently does). However, he told the interpreter that he had no current intent or plans to act on these thoughts since he has been out of prison in Vietnam. He was able to keep himself safe as he cited several protective factors including, visiting the church to see the priest and in whom he confides and through this support knows he cannot hurt himself as life is a human gift; and also knows he can access and accept help on his behalf.

HD reported no risk to others. He reported that he has a mistrust of others and to some didn’t or couldn’t totally trust anybody.

HD feels uncertain about everything and where his life is going, that is, his future. To this end he is ‘begging to have a lawyer’ as he needs one at present. HD has been living in the UK since August 2017. He was accompanied by someone from Salvation Army called Sandra and HD gave consent to speak with her or a lady called Jeanette but couldn’t tell me who they were exactly. He stated he has no friends.

Past risk

HD reported that the last time he attempted to take his own life was when he was in prison in Vietnam but didn't elaborate on the means by which he considered this. Previous to this, he reported no past history of risk.

Planned treatment and recommendation

I asked HD what kind of help he was seeking from our service? He stated that he needed help to overcome his having a difficult time. Specifically, he said that he was afraid of being sent back to Vietnam by the Home Office. He informed me that he is a victim of human trafficking and is fearful of becoming a victim again if he goes back. He is also wanted by the Vietnamese police for protesting against the Government and was arrested and imprisoned where he endured physical and psychological injuries. HD reported that he fears that on his return to his country he will be forced to go back to prison or else 'do other bad things'. HD worked for an environmental company and became embroiled in the politics of the company.

HD was therefore requesting help with finding a lawyer to help him with his legal case to remain in this country. He alluded to when he arrived in the UK a group (of foreigners) unbeknown to him were involved in illegal drugs and he was targeted and given cannabis to grow. Thus, this had led to his mistrust and suspicious of people in general.

Although HD's primary reason for referral to THN was to seek a lawyer to help his case he was also requesting psychological support. He identified his goal to feel more motivated and to be less worried which is around two key threats, one being the fear of being sent back to Vietnam and secondly the fear of being captured by 'bad people'. He stated that he had to pay £40,000 otherwise he will be seriously hurt. In exploring this further, to a group who reside in Vietnam and therefore does not pose a real threat whilst he is in the UK.

Based on this assessment it would appear that we are unfortunately not able to help HD with his primary concern of his requiring a lawyer and I conversed with the interpreter to help him understand that this is not a remit of THN. In terms of his psychological difficulties, HD was willing and keen to engage with our service to support him with his psychological needs, namely depressive mood. I have around his legal status. Therefore placed on the waiting list to see a Primary Care Mental Health Worker (PCMHW) for help with depression and the management of his anxiety and uncertainty about his legal status...

Discussion

22. The core of the appellant's case is that he left school around 10 years of age, was introduced to the named trafficker by a friend, signed a lot of papers for the traffickers before leaving Vietnam, is not sure what he signed, arrived in the UK on or around 12 September 2017, was not aware that his traffickers considered he owed \$40,000 until he arrived in the UK, was forced to work in a cannabis farm to pay off the debt, and has been treated with violence if he did not continue to work in the UK before his escape. The appellant also argues that he has no family in Vietnam as his parents died when he was about 14 years of age and the aunt with whom he lived, his only known relative, died before he left Vietnam in 2017, and his wife and children have left him.
23. On behalf of the Secretary of State Mr Bates submitted that it was accepted the appellant is a victim of modern slavery and that on appellant's own evidence he had no collateral or anything to put forward for a loan and therefore claims that the debt will still be outstanding on return.

24. The Home Office CIPU relating to the issue of trafficking in Vietnam, discusses the issue of risk of re-trafficking in Section 8 where it is written:
8. Risk of re-trafficking
- 8.1.1 The USSD TiP Report 2019 noted:
- ‘Civil society reported Vietnamese victims who migrated via irregular means, were involved in criminal activity as a result of their trafficking [...] feared reprisals from Vietnamese government authorities, were less likely to seek support, and were vulnerable to re-trafficking. International observers reported government officials often blamed Vietnamese citizens for their exploitative conditions abroad or suggested victims inflate abuses to avoid immigration violations’.
- 8.1.2 The 2019 report ‘Precarious Journeys’ noted ‘If victims have spoken to the police and/or still owe a debt to their traffickers, they are likely to be at risk of re-trafficking or reprisals from their traffickers and/or the Vietnamese authorities. There is limited support available in Vietnam for returned victims, leaving them at risk of being re-trafficked or even becoming a trafficker themselves.’
- 8.1.3 When asked about the risk of re-trafficking Hagar told the UK Home Office FFT in February 2019 that they had not seen any cases where victims have been re-trafficked and the IOM stated that ‘in the case of Vietnamese males travelling to the UK, we are not aware of cases of people being re-trafficked’.
- 8.1.4 Several sources refer to Mimi Vu, an anti-trafficking advocate based in Vietnam, who has stated that outstanding debt and other factors which led to victims being trafficked initially still remain when victims are returned to Vietnam. As those factors still exist victims remain at risk of being re-trafficked.
25. It is not clear from the expert report whether the appellant was trafficked to the UK, or he was in the UK when trafficked. I have not seen a copy of the Competent Authorities letter and the reasons why it was accepted the appellant has been a victim of trafficking, but the appellants claim is that he was trafficked to the United Kingdom from Vietnam for the purposes of exploitation through work, as a means of repaying the debt for the cost of his journey rather than incurring the debt as a form of a commercial agreement to enable him to be brought to the UK, where he had the freedom to decide where to work rather than being effectively imprisoned by those he refers to in a cannabis farm, from whom he later escaped.
26. The first question to be considered is whether the traffickers were so connected that this will create a real risk for the appellant on return to all of Vietnam.
27. The appellant’s evidence regarding how and where his contact with the named individual who arranged for his travel to the United Kingdom occurred is that it was within his home area of Nghệ An, a province in the North Central Coast region of Vietnam. It is Vietnam's largest province by area, which he confirmed in his asylum interview was the location of his last address in Vietnam. The appellant was a fisherman and this is a coastal province indicating that he would have lived within a coastal community. It is plausible that if returned to this area it is reasonably likely he will come into contact with his friend who arranged for him meet Luyen to whom either the appellant owes the outstanding debt or is a person connected with those who provided the finance.

28. If the appellant comes into contact with those to whom he owes the debt which he cannot pay there is a real risk, according to the evidence, of the appellant suffering harm or being re-trafficked to try and secure payment from him. It is accepted before me that the appellant may face a real risk in his home area if he is identified. In relation to debt bondage/illegal money lending, the CIPU at 5.4.1 is referred to in the appellant's own experts report, in which it is written:

5.4.1 The 2019 report 'Precarious Journeys' noted:

'The system of debt bondage is prevalent amongst Vietnamese victims of trafficking in Europe. The cost of travelling to Europe typically ranges between \$10,000 USD and \$40,000 USD. Funds for travel are commonly borrowed, or family property is given as collateral. Smugglers demand interest on borrowed money, and the amounts owed can rise quickly. If debt lies with the remaining family in Vietnam, this can be used as a way to pressure and control the victim. The risk of economic exploitation through debt owed to the smuggler is significant because victims and potential victims do not wish their family to lose their home or be in danger. Migrants commonly acquire informal work throughout their journey to pay off such debt and enable them to continue moving. 'If victims have spoken to the police and/or still owe a debt to their traffickers, they are likely to be at risk of re-trafficking or reprisals from their traffickers and/or the Vietnamese authorities.'

5.4.2 The 2019 DFAT report noted that 'Returnees, including [...] trafficking victims, typically face a range of difficulties upon return [...] Many returnees have high levels of debt from funding their travel out of Vietnam. Sources in Vietnam have reported cases of moneylenders taking borrowers' houses or land as repayment, or borrowers having to flee loan sharks when they are unable to repay their loans'.

29. It is not made out in this case that the appellant provided any collateral for the loan.
30. The question therefore arises whether there is another part of Vietnam to which the appellant can reasonably relocate away from his home area.
31. The ability to relocate is important as it is not made out on the evidence that Luyen is personally connected through all of Vietnam or has contacts or influence with groups throughout the country or internationally that will create a real risk for the appellant outside his home area. The appellant's claim that this is the case is not made out on the evidence, even to the lower standard applicable in an appeal of this nature.
32. A lot was said in the appeal about the registration system which is specifically commented upon by the appellant's country expert whilst discussing the need for an ID card in Vietnam. At paragraphs 7.8 – 7.15 of the report it is written:

7.8 The ID card needs to be carried at all times when the citizen travels. If a citizen is stopped by the police and does not have the ID card to present to the police, this citizen would face a fine from VND 100,000 to VND 200,000 (equivalent from £3.50 to £7.00).

7.9 In some situations, a citizen who is not carrying his/her ID card with them might be temporarily arrested and detained at a police station. On 5 September 2019, in Ho Chi Minh City, Mr Nguyen Huu Quyen and Mr Dang Quang Vinh were arrested and detained for 20 hours at the police station because they did not have their ID cards. Mr Quyen and Mr Vinh had lost their ID cards and have not yet obtained new ones. They had reported the loss to the police and had their lost

ID card report. They also had their driving licences that the police did not accept the driving licence as proof of ID.

7.10 If HD is returned to his place of origin to apply for the new Vietnamese identification card, very likely, he will be at risk of bad treatment such as being summoned to the police station.

7.11 "Ho Khau" is Vietnam's policy of residential registration in which a person is registered in the area in which he or she was born. A household registration record officially identifies a person as a resident of an area and includes identifying information such as name, parents, spouse, children, address and date of birth. This registration system entitles citizens to receive social services such as healthcare and public education in their specific registered area. The "Ho Khau" registration for children is done by the parents just after the baby is born. This procedure has to be done just after the birth registration procedure.

7.12 This registration is made under the form of a small notebook, similar to a passport, named "So Ho Khau"-Registration Booklet". Citizens need to present their Registration Booklet in many of their daily activities. There are around 20 official procedures in Vietnam which require the Ho Khau registration, these include: Renting/buying a house; Buying a vehicle; School enrolment application; healthcare insurance registration; Opening a bank account, job application, National ID card application; National Insurance application; Birth registration/death registration; Marriage registration; Marriage Status certificate; CV form and personal profile approval from local authority; Child adoption application; Mortgage contract; Money borrowing contract; application for state benefits; Phone/fax contract; Business Registration; Electric/Gas/Water contracts with suppliers; Driving licence application; scholarship applications and many other daily activities.

7.13 If a citizen does not have a permanent registration it would be very difficult for them to acquire and access many of their principal and basic rights and facilities. They would be considered as a 'second class citizen' in Vietnam.

7.14 So, for reasons mentioned above with regard to the Ho Khau registration system and identification card, in my professional view, HD is at risk of being traced, placed under surveillance and arrested by the local police authority if he is returned to Vietnam.

7.15 However, if he is returned to Vietnam and relocated immediately to a new place, and likely he will be able to have his ID card. The lack of Vietnamese ID documents together with HD's personal circumstances are highly likely to increase his vulnerability in becoming a risk of re-trafficking and further harm on return.

33. Mr Bates submitted a concern in relation to the weight that can be placed upon the expert report as a result of the failure of the expert to make any reference to the evidence contained in the CIPU relating to the Ho Khau registration document, at section 11, where it is written:

11.2.1 On 25 January 2018 the Vietnam Law and Legal Reform Magazine reported that the Ho Khau is set to be scrapped in 2020 and 'Vietnamese citizens will be managed solely through their identification numbers on a new online national database'. The report went on to note that:

'Under Government Resolution No. 112/NQ-CP issued on October 30 [2017], Vietnamese citizens will be managed solely through their identification numbers on a new online national database. Personal transactions will be performed only through the national identification (NI) number and all changes of personal information will be updated on the national database and recorded in each person's NI number.

‘With the abolishment of the household registration book, many time consuming administrative procedures will be scrapped, including formalities to change persons named in the book, obtain a new book when moving houses, deregister permanent residence or extend temporary residence. The procedures to declare temporary residence to the commune-level police will also be abolished. Papers proving family relationship or birth certificates to register permanent residence for children will not be needed either.’

‘To prepare for this, the Ministry of Public Security is striving to complete gathering personal information of all citizens by early 2019, and by 2020, every citizen is expected to have a new ID card with NI number.’

11.2.2 Hagar and an academic source told the UK Home Office FFT that ho khau registration is not a barrier to moving around the country and does not prevent free movement.

11.2.3 The 2019 DFAT Report stated that: ‘The Law on Residence (2006) establishes the system and policies for household registration (ho khau) and is administered by the Police. Under the law, there are two categories of registration (reduced from four under the previous law): temporary and permanent. Household registration requires citizens to register their permanent residence in only one district in Vietnam. To gain permanent residence status in a new district, citizens must either marry into a family already holding permanent residence, purchase land, or live in rental housing with an official lease and a minimum amount of liveable space.

‘Household registration is initially obtained through the registration of a person’s birth with the village or provincial administrators. Officials use the registration system to determine the levels of services provided to villages and provinces, linking a person’s right to access government health care, education and other services to their place of residence. Household registration is also essential for obtaining employment with the government or in state-owned enterprises. Furthermore, household registration provides benefits for low-income families, including reduced electricity rates.

‘Although health care facilities can be accessed anywhere in Vietnam in emergency cases, there have been reports of public facilities turning away non-life-threatening cases where the person is not properly registered. Access to schools is determined by household registration and administration fees may apply to children not registered in an area zoned for a particular school. For members of minority groups, household registration is essential to access development-related entitlements in rural and regional centres. This may include additional language training or employment related training. Citizens can request the issuance or reissuance of a household registration book, a certificate of temporary residence or other residential papers from local authorities.

‘As noted above, under government resolution 112/NQ-CP issued 31 October 2017, the household registration book will be abolished in 2020 and replaced with a new online database, removing some previously timeconsuming administrative procedures. Personal administrative procedures going forward will be linked to an individual’s 12-digit personal identification number, and updated on the national database.’

34. I find it is not made out the appellant will need to return to his home area to apply for replacement documentation especially as he no doubt had the required ID document in the past and must therefore exist in terms of the national database which is a fundamental and basic requirement of an online system of the type referred to in the country report.
35. The appellant claims that he is at risk from the authorities on return as a result of past experiences and detention in prison. The appellant claimed he attended a

demonstration against the Formosa company which discharged pollutants into the sea therefore damaging the environment. It is accepted the company exist and there was a demonstration against it in Vietnam. The appellant claims that whilst participating in demonstrations he was beaten by the police after being arrested as a result of which he suffered an injury to his eye.

36. The findings of First-tier Tribunal Judge Butler in relation to this aspect of the appellant's claim are preserved finding in which the Judge found:
22. If I have understood the Appellants account properly, he was involved in two protests or demonstrations which brought him to the attention of the authorities. By way of evidence he has produced photographs of one of them and says an individual show marching and wearing a baseball cap is him. Following Tanveer Ahmed, it is for the Appellant to establish the authenticity of any documents. It is simply not possible to identify the Appellant in these photographs even with the benefit of seeing him in the appeal hearing and being able to compare him to the images in his bundle. I further note that, whilst I am not an expert in such matters, the banner bearing the Pope's image in the photographs appears to have no visible means of support. The Appellant states that the photographs were obtained from the Internet by a friend and posted to him but there is no evidence of either.
 23. The Appellant also produced an email from Father Nguyen Dinh Thuc dated 5 March 2019. This is not signed and there is no screenshot of the actual email received. Further, there is no evidence to show this document was sent the Appellant. I do not find it to be a credible document.
 24. There is evidence in the form of a letter from the hospital that the Appellant suffered an injury to his eye but it was clearly not possible to state the source of that injury. It has not required significant medication.
 25. There are also inconsistencies between Father Thuc's account and the Appellants regarding the date of one of the demonstrations with one saying it was on 2 February 2017 and the other 14 February. The Appellant does not explain how he was apprehended at his Aunt's house, particularly how the authorities knew he was living there.
 26. Having considered all the circumstances in the round, the Appellant has not satisfied the burden of proof to the lower standard that he participated in any demonstrations or came to the attention of the authorities as a result.
37. The appellant's subjective fear of further ill-treatment by the police if he came to their attention in Vietnam is not objectively made out as the basis on which he makes such a claim has been found to be a lie and not credible. The adverse finding also casts doubt upon the alleged causation of some of his mental health issues which he refers to as being connected with his experiences following his arrest in Vietnam for attending the demonstration.
38. What is accepted is that the appellant has evidence of an injury and evidence of depression and anxiety, but I find the causation of the same has not been shown to relate to any alleged detention or ill-treatment following his attendance at the Formosa demonstration as he claimed.
39. The lack of credibility is also relevant to the weight that can be given to the appellants claim that Luyen is connected to an international network. The only source of evidence relating to this is from the appellant himself. It is not clear how he believes the extent of this individual's connections is such as to create a real

- risk in all of Vietnam. I find the assertion to this effect is no more than that, a mere assertion by the appellant, and not an issue supported by sufficient evidence.
40. In summary at this stage of the decision, I accept the appellant cannot return to his home area as result of the risk of coming into contact with Luyen again, bearing in mind the finding of the Competent Authority that the appellant is a victim of trafficking, but it has not been established that Luyen has influence throughout all of Vietnam, and that consideration has to be given to the reasonableness of the appellant internally relocating away from his home area.
41. The appellant is a physically fit and healthy male although has mental health issues as recorded in the evidence. I find it has not been made out that those mental health issues, however caused, are sufficient to enable him to succeed pursuant to article 3 in light of AM (Zimbabwe) or article 8 ECHR for the reasons discussed in further detail below.
42. There is no credible evidence that the appellant experienced any difficulties in Vietnam whilst he was there, with the exception of his reference to his fishing boat being rammed and sunk by a Chinese vessel, which created any personal risk to himself until he left. There is merit in Mr Bates's submission that the appellant when he decided to leave Vietnam was no more than an economic migrant who, unfortunately, fell into a situation of exploitation.
43. If returned the appellant will not be as vulnerable as he may have been in the past as he is clearly aware if approached by unknown individuals offering him the opportunity to travel to the UK by way of provision of a loan agreement, that this may result in his falling into the type of situation he has experienced in the past.
44. In relation to the availability of shelters in Vietnam it is accepted in the CIPU at 7.1.1 by reference to the USSD TiP Report 2019, that there were no government shelters designed exclusively for male or child victims. It is important however to read this provision as a whole as it records that the existing shelters assist all victims, male and female, as needed. There is reference to a number of shelters being available, some run by the Vietnamese government and some by NGOs.
45. The shelters run by the Vietnamese government for vulnerable people, which whilst not specifically for victims of trafficking as such are included within this definition. It is stated that 7.1.3 of the CIPU that there are 400 government run shelters which were not separate shelters for men women or children where victims are allowed to stay for a maximum of 60 days and where they receive health support, including mental health support, legal support, accommodation and food together with help in finding employment.
46. It is also recorded at 7.1.6 of the CIPU that when victims leave the shelters they are provided with help in studying, jobs, and advice on financial borrowing should they wish to set up their own business.
47. In relation to NGO support and services, it is written:
- 7.2.1 NGOs met during the UK Home Office FFM (Fact Finding Mission) in February 2019 stated that they operated shelters for victims of trafficking. One NGOs stated that they have 3 shelters for victims of trafficking, all of which are in Hanoi. They also confirmed that whilst they do have a shelter for boys this is mainly for Street children. Every month they rescue 4-20 girls and can provide support in a short-term shelter where they have 3 rooms and a long-term shelter where normally not more than 10 girls are in one shelter. Hager

confirmed that, in Hanoi, they refer victims to a shelter run by one of their partners. In the north they can refer victims to Compassion House run by MOLISA. Information provided by Hagar after the meeting confirmed that there is also a shelter in Yen Bai province which Hagar set up along with the Women's Union. Hagar are also able to identify safer common options for victims by referring victims to government-run shelters or boarding schools. There are also able to rent houses in communities to provide semi-independent accommodation for victims.

- 7.2.2 Hagar informed the UK Home Office FFT that they are able to provide vocational training and provide victims with small loans to start-up businesses and at any one time are able to support around 60 people, but this also includes victims of domestic violence and sexual abuse in addition to victims of trafficking and their dependents. Hagar also noted that whilst they have not dealt with many victims returned from the UK, they would be able to provide reintegration and support to those returned.
- 7.2.3 IOM in Vietnam told the UK Home Office FFT that they are also able to provide financial support to returnees which is based on the returnees providing a plan detailing how they will use alone for their reintegration. Support provided by IOM can also include access to physical and mental health support.
- 7.2.4 AAT told the UK Home Office FFT that they have developed a programme of community rehabilitation with a mobile team as they stated that 99.9% of victims do not want to go to shelters. AAT also told the FFT that the British Embassy gives them a list of those being returned, who are normally sheltered in UK Salvation Army centres prior to their return. The AAT have a moral contract with National Crime Agency (NCA) and the British Embassy which makes them responsible if victims suffer negative pressure from the authorities in Vietnam as the authorities are not given the returnee's details because of European laws, which restrict the dissemination of information. AAT are able to organise training courses for those who have returned to support their reintegration and go back to check on the current situation of a number of victims who were returned from the UK.
- 7.2.5 NGOs Hagar and AAT told the UK Home Office FFM that where the Vietnamese authorities are involved in supporting victims of trafficking, they are unable to get involved in their cases
- 7.2.6 The 2019 UK Annual Report on Modern Slavery published in October 2019 noted that the UK have allocated £2.2 million to Vietnam between 2017-2019 to support seven projects protecting vulnerable children at risk of trafficking.
- 7.2.7 Further information on the NGO support and services available to victims of trafficking can be found at the following:
- Peace House http://www.cwd.vn/en/index.php?option=com_content&view=article&id=113&Itemid=208. In Hanoi and is managed by the Centre for Women and Development. They mainly help children and women who are affected by domestic violence or are victims of people trafficking. They can provide shelter.
 - Pacific Links Foundation <http://www.pacificlinks.org/> is an international NGO who 'leads counter-trafficking efforts at the frontiers of Vietnam by increasing access to education, providing shelter and reintegration services, and enabling economic opportunities.'
 - Hagar Vietnam <https://www.hagarinternational.org/international/ourwork/where-we-work/vietnam/> is an international NGO in Vietnam which aims to support women and children affected by trauma particularly from domestic violence and trafficking.
 - Alliance Anti-Traffic, <https://allianceantitrafic.org/> is a non-profit, nonpartisan and non-religious organization that aims to protect women and children in Southeast Asia from sexual exploitation and trafficking.

- Blue Dragon <https://www.bluedragon.org/> helps children in crisis throughout Vietnam, including those who have been the victims of trafficking.

48. In relation to this issue the appellant's country expert, he writes in Part 9 of the report:

- 9.1 Support for trafficking victims in particular, and vulnerable people in general, is a new service in Vietnam. Whilst international organisations, charity organisations, NGOs and the Vietnamese government are working together to provide support, it is still very limited. There is only one centre for victims of human trafficking which is provided by the Government with funding from the state budget. There are some other centres which are provided by NGOs but the operation of those centres depends on the availability of funding and human resources from those NGOs. Furthermore, due to the limitations of funding, most centres/services which do exist provide advice only. They do not provide other essential support such as accommodation, healthcare, financial support or assistance finding jobs.
- 9.2 The 2021 USSD Trafficking report maintained her previous assessment that there are no shelters in Vietnam designated exclusively for male child victims and further notes are systemic problems in getting victims referred into the government system for protective services: *"the government maintained a formal nationwide victim referral process; however, it did not systematically refer victims to protective services due to inadequacies in the referral process, including some local officials unfamiliarity with antitrafficking protocol and policies, insufficient inter-jurisdictional cooperation, and limited social work capacity."*
- 9.3 In addition, in terms of financial support for trafficking victims until 1 January 2020, according to the TiP Report 2016, there was only one lump sum payment of up to 1.5 million available Vietnamese Dong (VND) from the local authority (equivalent to £45 at the time of 26 January 2022). This allowance was only enough for one months food (home-cooked) for one person, and would not be sufficient to pay for adequate accommodation/shelter which would be a significant additional cost. In the year 2015, only 668 victims received the support including the lump sum payment, however, in the period of five years from 2012 to beginning of 2018, there were around 7500 victims that have been rescued and recognised.

Recently, from 1 January 2020, according to the TiP Report 2021, *"victims were allowed to stay at support facilities for up to 3 months with a meal stipend and medical assistance"*.

- 9.4 The procedure for obtaining state financial support is outlined in the FFM report at page 77:

"When a victim is identified they are issued with a 'Victim of Trafficking' certificate

'Not all. By law they will get a certificate which certifies they are a victim of trafficking. It can be granted by border officials or the migration office. It only happens when the person is handed over at the border legally. Eighty percent of victims recuse themselves and cross the border illegally and do not want to make any statement and don't want to go.' The certificate allows them to receive a support package with 50 USD, that they cannot get this instantly due to procedures in processing. It takes time and they have to give confidential information, they have to wait and give confidential information and then everyone knows".

- 9.5 The Trafficking in Persons Report of the United States of America released in July 2021 address the availability of support for victims of human trafficking in Vietnam as follows:

"The government maintained overall efforts to protect victims, but it identified and provided services to fewer of them... Per a circular that went into effect in January 2020, victims were allowed to stay

at support facilities for up to 3 months with a meal stipend and medical assistance. By law, foreign trafficking victims were entitled to four support services: essential needs and travel expenses, medical support, psychological support, and legal aid. However, NGOs reported the government did not have adequately trained or experienced social workers to provide appropriate support to trafficking victims.

- 9.6 400 social protection centres (Trung tam bao tro xa hoi) were mentioned in the Home Office country guidance information dated April 2020, and the FFM September 2019. These social protection centres (Trung tam bao tro xa hoi) provide shelter, care and support in the long term for people with serious mental health illnesses (who cannot live independently, need full-time care), abandoned newborn children and the abandoned elderly (with or without children). The operation of the social protection centres is regulated by the Decree number 103/2017/ND – CP, issued by the Government on 12 September 2017.

The social protection centres in Hanoi city, for example, provide long-term support for abandoned (or without family) elderly people, abandoned children, disabled children, and people with serious mental health illness who need full-time care. As HD is able to live independently at present, he would not fall under the category of “serious mental health problems” and therefore would not meet the criteria for long-term support. Only those who cannot look after themselves in daily activities such as cooking and washing or toileting fulfil this category. As a result, in my view, it is unlikely that HD will be able to access this long-term support in Vietnam. In any event the centres have very poor conditions in both material terms and staffing.

- 9.7 At present, there is not any long-term support for adults without serious mental health illness available from the social protection centre in Vietnam.
- 9.8 Regarding the availability of facilities which specifically support victims of human trafficking in Vietnam, the FFM at para.5.8.1 states:

“Representatives from MOLISA informed the FFT that there are no government run shelters specifically for victims of trafficking; or vulnerable people staying one shelter. They told the FFT that there were 400 government run shelters for vulnerable people and do not separate shelters for men, women or children.

According to MOLISA, the law states that victims are allowed to stay in the shelter for a maximum of 60 days (expert note: from 1 January 2020, victim can stay at the supporting shelter up to 3 months). Whilst there, they can receive health support, (including mental health support), legal support, accommodation and food. They can also get support to find jobs. All these services are free”

- 9.9 According to the latest regulation on supporting for victim of human trafficking in Vietnam, the Circular number 84/2019/TT – BTC that victims of human trafficking are entitled to stay in the shelter for a maximum of three months with food and stipend. It also provides that whilst there, they can receive health support, (including mental health support), legal support, accommodation, food and get support to find jobs. All these services are free. However, due to the staff and budgeting shortages, in practice, conditions in those centres are very poor. Other support centres listed above, in theory, are available but in practice the support is very limited.
- 9.10 A summary of the Reviewing Session of the National Assembly of Vietnam on the Implementation of the Law in Combat the human trafficking in Vietnam dated 22 August 2018 is instructive. Mrs Le Thi Nga, Chairwoman of the Justice Committee of the National Assembly noted that “the resources” (referring to human resources and funding) for preventing and combating the human trafficking in Vietnam is considered a “big issue/problem”. The Report of the Justice Committee of the National Assembly stated that the food allowance for victim of human trafficking at the government run shelters – Trung

tam Bao tro xa hol - is only VND 30,000- (equivalent to less than £1.00) a day. To place this in context, this allowance is less than the food allowance for prisoners in Vietnam.

Medical care support for returned victim is VND 50,000 (equivalent to £1.70) which is also a one time lump sum.

Mrs Mai Thi Phuong Hoa is standing member of the Justice Committee of the National Assembly and conducted a field trip in which she surveyed returned victim is staying at the government run shelters (Trung tam Bao tro xa hol) in different provinces. This concluded that the medical care support allowance (£1.75) is only enough to buy some very simple first-aid bands, or simple cold and flu tablets (such as paracetamol). It is not enough for a single appointment with the doctor or medical professional staff (the healthcare system in Vietnam is a paid service).

Mrs Hoa's field trip results, in many government shelters (Trung tam Bao tro xa hol) returned victims were only allowed to stay for one to 2 days. The victims were then immediately return to their family or local authority, without access to support/facilities. When the victims were returned back to their place of origin, the government run shelters also did not have any further updated/reports about the returned victims relating to whether they were able to integrate into to the society; or whether they were re-trafficked or not.

Mr Dao Ngoc Dung, Minister Labour Social Affairs of Vietnam (MOLISA) confirmed in this review session is that with the food allowance of VND 30,000 (£1.00) a day, the victims "cannot survive" (khong song duoc).

- 9.11 In terms of the availability of mental health care support in the centres, the FFM para 5.8.3 sites:

"Hagar noted that the law allows victims the right to safe accommodation and psychological support but there are not many shelters and there are not enough qualified counsellors. They went on to say that whilst victims are eligible for support, in reality they do not receive much. He victim certificate allows the victims of trafficking to receive the sort port package of 50 US Dollars, but they cannot access is instantly due to delays in processing. It also requires victims to give confidential information which many are reluctant to do"

- 9.12 In light of the country information in relation to the availability of support for vulnerable male and human trafficking victims as described above, in the best case scenario i.e. assuming if HD were accepted as a victim of human trafficking in Vietnam, having overcome the bureaucratic hurdle and costly relating to consulate documents and para-8.9 above), he would only receive state support of maximum three months accommodation support with meal and stipend. After this three month period, it is likely that he would face further challenges including the absence of accommodation and finding himself at risk of re-trafficking. The regulation on state support for former victims of human trafficking is applied nationwide. So, wherever HD was relocated in Vietnam, you would receive the same amount three months of shelter with food and stipend only.

49. The reference to the TiP Report is to the US Trafficking in Persons Report which is described as the United States Government's principal diplomatic tool to engage foreign governments on human trafficking. The 2021 report makes reference to the global situation impacted by the COVID-19 pandemic in addition to other issues.

50. Whilst there are a number of similarities between the country evidence relied upon by the parties, the appellant's expert making reference to the CPIN in addition to other sources, there are differences between them.
51. Whilst it is accepted that there are limitations to the provision of suitable services, by way of shelters and assistance in Vietnam, it is not made out a shelter would not be accessible to the appellant on return. The appellant will be returning from the UK, will cross the border lawfully, and be handed to immigration officials, and I find it is not made out he will not be entitled to or not receive a Victim Trafficking Certificate.
52. There is a positive finding from the Competent Authorities that the appellant is a victim of trafficking and there is insufficient evidence of administrative burdens that will prevent his being recognised as the same in Vietnam or, consequently, that he will not be entitled to access one of the shelter facilities, provided by the government or an NGO with whom the UK government have an established working relationship. It was not made out the immigration authorities in the UK will be unable to communicate the appellant's circumstances to their opposite numbers in Vietnam to enable arrangements to be made to admit him to one of the facilities.
53. While some may not be single sex facilities i.e. male only, it is not made out this would make it unreasonable for the appellant to access the same as this is the standard practice in Vietnam experienced by victims. It was not made out that within such facility will be a breach the appellant's protected rights. In the UK some hospitals have mixed wards with both male and female patients but with an individual's dignity being preserved by the internal arrangements and administration. It was not made out in same will not be available to the appellant within one of the shelters in Vietnam.
54. It was not shown even if conditions in shelters are described as "poor" there will be a breach of the threshold of article 3 or is such as to make internal relocation into them on a temporary basis unreasonable or unlawful.
55. The appellant has not made out he cannot be accommodated in a shelter for the required period to enable him to obtain his ID documents and complete the online registration process. No credible evidence has been provided that if he does so it will create a real risk from the authorities for the reasons he claims.
56. The appellant states he has worked both as a fisherman and within an environmental organisation within Vietnam and it is not established he will not possess the necessary skills and/or experience required to enable him to obtain employment. There is specific reference in the country material to support being given from those within the shelters to enable individuals to obtain work. In relation to the appellant's claims that the content of his CV may place him at a disadvantage, his claim to have undertaken political activity in Vietnam was found to lack credibility and nor has the appellant established it will be necessary to disclose a UK conviction when, arguably, there is no evidence that the fact of the same will be known to the authorities in Vietnam or to any prospective employee.
57. In relation to the appellant's mental health issues, whilst the country material refers to the hesitancy by those suffering mental health problems to seek help as

a result of stigma or societal issues, there is clear evidence that the appellant has been willing to seek help from appropriate services in the United Kingdom and it was not made out that he would not be willing to continue to take any medication that it was deemed necessary for him to have in Vietnam.

58. The appellant will already have evidence he can furnish to those in the shelter who can arrange medical assistance based upon the diagnosis made by medical professionals in the UK; meaning he will not be in the same position as a person claiming to have mental health issues requiring an initial diagnosis. It was not made out that the necessary medication is not available or accessible in Vietnam.
59. The country material speaks of the facilities in Vietnam and provided through the shelters not being able to assist an individual with serious mental health issues. In a country guidance case of DH (PSG – mental health) [2020] UKUT 223 the definition of serious mental health was considered and defined on the basis of there being a wide range of mental health issues. There is insufficient evidence to warrant a finding that the appellant’s underlying mental health condition satisfies the definition of a serious mental illness. The appellant has provided insufficient evidence to show that the services he needs and can access will not be sufficient to meet his mental health needs.
60. The appellant expresses the fear of being re-trafficked and that is understandable giving rise to subjective fear and consequential stress related issues. The profile of an individual who is traffic from Vietnam is set out in the country information above and does not include persons such as the appellant. There is also reference to statistical evidence showing the lack of evidence of a person with the appellant’s profile being re-trafficked. Whilst the appellant claims not to have any family support in Vietnam his claim in other respects has been found to lack credibility but, even if accepting he has no family, it is not made out the appellant will be completely abandoned in light of his ability to seek the assistance of government or NGO shelters who have considerable experience of ensuring those who seek their services are able to live reasonable lives thereafter by way of employment etc as noted in the country material.
61. The appellant refers to a feeling of helplessness and wishing to end his life based on fear of being returned to Vietnam but a lot of the reasons why he claims such fear arises have been shown to lack credibility. Guidance in assessing whether a person is entitled to a grant of international protection pursuant to article 3 was set out by the Court of Appeal in *J v Secretary of State for the Home Department* [2005] EWCA Civ 629 which set out the applicable test in the following terms:
26. First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see *Ullah* paras [38-39].
27. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in *Soering* at para [91], the court said:

"In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which *has as a direct consequence the exposure of an individual to proscribed ill-treatment.*" (emphasis added).

See also para [108] of *Vilvarajah* where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka..."

28. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of *D* and para [40] of *Bensaid*.
 29. Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] 's of *Bensaid*).
 30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.
 31. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights.
62. That test was further modified by the Court of Appeal in *Y (Sri Lanka) and another v Secretary of State for the Home Department* [2009] EWCA Civ 362, a case involving an applicant from Sri Lanka who feared arrest and ill-treatment on return and whose claim to have already been tortured and raped whilst in official custody before fleeing Sri Lanka had been accepted as being credible. The Court of Appeal found it would infringe the applicant's human rights to order his return under such circumstances as there was a real risk of suicide as to obtain treatment he would have to liaise with those same authorities who had subjected him to ill-treatment in the past. The sixth of the J tests was modified to include this additional element.
63. The Upper Tribunal considered this issue in [AXB \(Art 3 health: obligations: suicide\) Jamaica \[2019\] UKUT 397 \(IAC\) \(15 November 2019\)](#) the headnote of which reads:
1. *In a case where an individual asserts that his removal from the Returning State would violate his Article 3 ECHR rights because of the consequences to his health, the obligation on the authorities of a Returning State dealing with a health case is primarily one of examining the fears of an applicant as to what will occur following return and assessing the evidence. In order to fulfil its obligations, a Returning State must provide "appropriate procedures" to allow that examination and assessment to be carried out. In the UK, that is met in the first place by an examination of the case by the Secretary of State and then by an examination on appeal by the Tribunal and an assessment of the evidence before it.*
 2. *There is no free-standing procedural obligation on a Returning State to make enquiries of the Receiving State concerning treatment in that State or obtain assurances in that regard. Properly*

understood, what is referred to at [185] to [187] of the Grand Chamber's judgment in Paposhwili concerns the discharge of respective burdens of proof.

3. *The burden is on the individual appellant to establish that, if he is removed, there is a real risk of a breach of Article 3 ECHR to the standard and threshold which apply. If the appellant provides evidence which is capable of proving his case to the standard which applies, the Secretary of State will be precluded from removing the appellant unless she is able to provide evidence countering the appellant's evidence or dispelling doubts arising from that evidence. Depending on the particular circumstances of the case, such evidence might include general evidence, specific evidence from the Receiving State following enquiries made or assurances from the Receiving State concerning the treatment of the appellant following return.*

4. *Where an individual asserts that he would be at real risk of committing suicide, following return to the Receiving State, the threshold for establishing Article 3 harm is the high threshold described in N v United Kingdom [2008] ECHR 453, unless the risk involves hostile actions of the Receiving State towards the individual: RA (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 1210; Y and Z v Secretary of State for the Home Department [2009] EWCA Civ 362.*

64. Following the Supreme Court handing down its judgement in AM (Zimbabwe) v. Secretary of State for the Home Department [2020] UKSC 17 the Upper Tribunal reviewed the case law and recently found that the test in J as modified was still applicable.
65. In dealing with the six question I find as follows:
66. Question one, severity of treatment the appellant would suffer if removed; the appellant has failed to establish that he would suffer the claimed degree of ill-treatment at the hands of the authorities in Vietnam if he were removed as the basis of his claim to face a real risk of such treatment, i.e. his political activities, has been shown to lack credibility. It is not shown the appellant will be ill-treated by the authorities for any credible reason and nor is it shown that those he fears as a result of any outstanding debt or his activities in the United Kingdom have sufficient reach to be aware of his return outside his home area. I therefore find the appellant has not established that on return to Vietnam there is a real risk that he will suffer ill-treatment that comes anywhere near meeting the minimum level of severity sufficient to be 'serious' such that it is an affront to fundamental humanitarian principles. I find the appellant therefore cannot satisfy the first aspect of the J test.
67. In relation to the second aspect, as the appellant has failed to establish any credible claim to face a real risk of inhumane treatment relied upon as violating his article 3 rights the appellant cannot establish any causal link between his active removal and such treatment. I find the appellant cannot satisfy the second aspect of the J test. The appellant fails to make out on the evidence that his removal from the United Kingdom to Vietnam will, on the facts, expose him to treatment sufficient to breach the article 3 threshold as a direct consequence of being exposed to the alleged ill-treatment.
68. In relation to the third of the J aspects, it is noted the threshold is high in relation to an article 3 case such as this, which is a foreign case, and in which there is no credible evidence the appellant will face a real risk of inhumane treatment sufficient to cross the article 3 threshold by the public authorities in the receiving State. Whilst it may be difficult for the appellant and whilst the standard of

facilities may be not the same as the appellant might enjoy in similar facilities in the UK that is not the required test.

69. In relation to the fourth element of the J test, it is accepted that an article 3 claim can in principle succeed in a suicide case. That was not disputed before this tribunal.
70. In relation to the fifth element of the J test, the appellant's objective fear of ill-treatment in Vietnam is not objectively well-founded as the base of his claim relating to an adverse political opinion has been found to lack credibility and to be a lie. The appellant's claim to face a real risk based upon his religion as a catholic was found to lack credibility and his claim not to be entitled or eligible to receive any support on return is not supported by the country material. The appellant is unable to satisfy the fifth element of the test as he has not established that his claim is objectively well-founded or that he has a subjective fear sufficient to warrant a finding in his favour.
71. In relation to the sixth question, it is not disputed before me that there are adequate facilities within the UK to deal with mental health needs, including risk of suicide, in the UK and in transit. Within Vietnam it is not made out that no treatment is available. The CIPU Vietnam: mental health care version 1.0, May 2021, has been considered along with all the information provided by the appellant.
72. In relation to the provision of mental health services in Vietnam it is written in the CIPU:

2.2 Provision of mental healthcare

- 2.2.1 The 2017 WHO Mental Health Atlas for Vietnam provided a useful overview table on 'mental health system governance', 'resources for mental health' and 'mental health service availability and uptake'
- 2.2.2 The mental health system is divided into four levels including central, provincial, district, and commune levels.
- 2.2.3 According to a 2018 article on 'Mental health literacy: knowledge of depression among undergraduate students in Hanoi, Vietnam' published in the International Journal of Mental Health Systems: 'More mental health services are provided in hospitals than in community, but follow-up usually occurs at community general practice.'
- 2.2.4 The same article also stated that: 'Shortage of resources, lack of psychiatric services, social stigma, and lack of mental health literacy (MHL) constitute major barriers in accessing treatment for mental disorders in general and for depression in particular.'
- 2.2.5 The 2018 joint UNICEF, MOLISA and ODI report, regarding children and young people, stated: '...the commune is the lowest level through which health services are provided. In addition to having commune health centres, remote areas also have hamlet health workers. These centres and individuals are the first port of call for people living in rural areas when mental health related challenges arise. In addition, in some areas a community mental health programme was in operation.'
- 2.2.6 The 2018 Vietnam Briefing article stated:

'The mental healthcare industry in Vietnam is still developing. The government has established the National Mental Health Programme (NMHP); however, industry observers have noted that the NMHP only covers approximately 30 percent of the country and uses a very narrow list of mental illness.

'While the government estimates that approximately 15 percent of the population requires mental health care services, independent research suggests that the figure is closer to 20 to 30 percent of the population. This is a major service gap for NGOs [Non-Governmental Organisations] and foreign businesses.

'...The mental health network facilitates outpatient treatment and inpatient programs for psychiatric care. The psychiatric hospital system in Vietnam has 36 hospitals established across the country. Hospitalization for clients in severe conditions are given the care in these inpatient hospitals – currently, there are 6,000 beds.

'The system delivers services through a network of state-owned hospitals; there are two National Psychiatric Hospitals: one located in the north in Hanoi, and the other in Bien Hoa city, located in the south. The remaining 34 provincial psychiatric hospitals are disseminated across the country.

'Currently, Vietnam has 600 outpatient mental healthcare facilities available for locals who are looking for short-term care. Outpatient treatment offers psychosocial services for those in need, without being admitted into the hospital.

'Further, while service is available through state-owned facilities, the consensus among international research is that there are no targeted facilities for children and adolescents – demographics that research suggests are highly vulnerable.'

- 2.2.7 The 2019 DFAT report stated: 'Currently, mental health and psychosocial services are provided through social welfare and social protection centres, mental health hospitals and psychosocial units in schools. The Ministry of Health is responsible for health centre and hospital services to diagnose and provide treatment for serious and persistent mental illness stemming from neurological conditions and developmental disabilities. MOLISA [The Ministry of Labour, Invalids and Social Affairs] provides social support policies for social protection beneficiaries and services for serious cases. The Ministry of Education and Training provides psychosocial counselling units in schools and life-skills training.'
- 2.2.8 The DFAT report further added: 'NGOs are increasingly providing mental health and psychosocial related services, and familial and community-based support is also common. In 2011, the government introduced a program for social support and community-based rehabilitation for people with mental illness for the period 2011 to 2020 (known as Decision 1215). This program focuses on the family and community provision of spiritual and material support, and rehabilitation.'
- 2.2.9 An article published in 2019 in the journal *Innovations in Global Mental Health*, titled 'Challenges in Integrating Mental Health into Primary Care in Vietnam' stated that: 'Vietnam has a weak mental health system governance with no mental health policy and legislation and an ineffective action plan. Like other developing countries, Vietnam is having institutional approach in providing formal mental health services such as psychiatric hospitals and social protection centers. Informal community care providers which care for most of people with mental disorders were ignored by the government. In addition, mental health human resource is facing shortage in terms of quantity and limited quality.'

73. In relation to individual centres within Vietnam concerning the availability of medical facilities and pharmaceutical services, it is written:

3. Regional mental healthcare services
- 3.1 Mental healthcare services in Hanoi

3.1.1 The joint 2018 joint UNICEF, MOLISA and ODI report stated: 'In Hanoi, mental health services are provided through a number of hospitals, including the National Institute of Mental Health, the National Psychiatric Hospital No. 1, Hanoi Psychiatric Hospital and the Mai Huong Daytime Psychiatric Hospital.'

3.2 Mental healthcare services in Dien Bien

3.2.1 The joint 2018 joint UNICEF, MOLISA and ODI report stated:

'In Dien Bien Province mental health services are essentially provided through the government and through two hospitals in Dien Bien Phu city: the provincial (general hospital), which has a mental ward and the Psychiatric Hospital, which was established in June 2012. While there are a large number of private clinics and health care providers in Dien Bien Phu city, according to study respondents, none provide mental health services.

'The Psychiatric Hospital is housed, and has been since it opened, in the TB hospital. Currently there are two floors and about 20 offices and treatment rooms. There are a total of 30 staff, up from an initial 17; out of these staff, there are five doctors and seven nurses, but currently no counsellors or psychologists. All the medical staff have received some form of mental health training – for nurses it is three months, for physicians and doctors it is six-seven months continuously at the National Mental Hospital; they also get refresher training every three-four years. Currently, there are 20 beds, up from four when it opened, and they are in the process of trying to "borrow" more rooms from the TB hospital to be able to increase their beds to 50 though they still face challenges in infrastructure, equipment and human resources.

'...The community mental health programme appears to have been running for around ten years in Dien Bien province, whereby the psychiatric hospital distributed medicines to the districts and the responsible officers (generally the head or deputy head of the health centre) at district level, who then distributed them to patients in their coverage areas. Thus, through this decentralised programme, health workers based in the community treat and follow mental health patients, also providing them with appropriate medications. According to a Keo Lom commune health worker, the service has expanded over time...

'As part of this community mental health programme, there is also a system at commune level whereby people with disabilities are identified by the commune officers in terms of their eligibility for an allowance through DOLISA. Since mental illness is also considered a disability, DOLISA can also identify people with mental health issues. However, according to study respondents, identifying people with mental health problems is more difficult...

'According to study respondents, only "serious" and "very serious cases" are eligible to receive an allowance, of which there are several levels. "The standard level is 180,000 dong. For the poor, it is 270,000 dong. In the future, the level of support will be the same for everyone at 270,000 dong. Those with mental health problems receive support worth about 540,000 dong. The rate for elderly and children is higher. Amongst people with disabilities, there are rates for the serious disability and less serious disability; the poor and non-poor. The mental patients are the people with disabilities" (Key Informant Interviews, DOLISA, Dien Bien Phu city).'

3.3 Mental healthcare services and available pharmaceutical drugs in Ho Chi Min City (HCMC)

3.3.1 The 2018 joint UNICEF, MOLISA and ODI report stated:

'In HCMC, mental health services are provided primarily through a number of hospitals including the Paediatrics Hospital No 1 and the Psychiatric Hospital.

'...The Psychiatric Hospital of HCMC is the leading hospital specialized in mental health in the south of Viet Nam, providing services to both adults and children. There are nearly 400 employees to undertake the prevention, detection, and treatment of all mental disorders and mental illnesses. The hospital has three agencies. The main agency, with 100 beds for acute patients, is located in Cho Quan, and the second agency, with 250 beds for subacute, chronic and rehabilitation patients, is in Le Minh Xuan. The last one, specialized in children, is located in Phan Dang Luu...

'...Additionally, HCMC has a network of district psychiatric clinics in all 24 districts (usually located in the medical centre of the district), which are responsible for the treatment and case management of outpatient psychiatric patients and coordinating activities of the network of health stations at ward level. Currently, HCMC has implemented the national program on mental health care and protection for community and children in 49 wards/communes.'

3.3.2 MedCOI noted in responses, dated April 2020 and October 2020, that the following treatment for mental health conditions were available at various facilities located in Ho Chi Minh city:

- Inpatient treatment by a psychiatrist
- Inpatient treatment by a psychologist
- Outpatient treatment and follow up by psychiatrist
- Outpatient treatment and follow up by psychologist
- Psychiatric forced admittance in case necessary
- Laboratory research of liver function (PT, albumin, bilirubin, transaminases: ASAT(=SGOT), ALAT(=SGPT) etc.);
- Laboratory research / monitoring of full blood count; e.g. Hb, WBC & platelets;
- Outpatient treatment and follow up by an occupational therapist.

3.3.3 MedCOI noted in a response, dated April 2020, that the following pharmaceutical drugs were available in facilities in Ho Chi Minh city, to treat mental healthcare conditions;

- Duloxetine (Medication group: Psychiatry: anti-depressants)
- Mirtazapine (Medication Group: Psychiatry: anti-depressants)
- Amitriptyline (Medication group: Psychiatry: anti-depressants)
- Citalopram (Medication group: Psychiatry: anti-depressants)
- Venlafaxine (Medication group: Psychiatry: anti-depressants)

3.4 Mental healthcare service in An Giang

3.4.1 The 2018 joint UNICEF, MOLISA and ODI report stated:

'Although there is no psychiatric hospital in An Giang, according to key informants, the DOLISA staff support the hospital wards and health centres by providing them with financial support to accept referrals of serious mental health patients; they also have formed a social work centre...

'An Giang also has been implementing the national programme on mental health care for community and children within the whole province. While the DOH has been in charge of medicine distribution for mental patients with schizophrenia, epilepsy and depression, DOLISA has been responsible for providing support in the form of cash to beneficiaries from the national program of mental health care, and supporting health centres for mental health care. There is also a Women's Union that provides support to those with mental health needs. For instance, the Women's Union facilitates the process of getting admitted

into a hospital, though it seems that this only takes place for someone who is severely mentally ill...'

- 3.5 Mental healthcare services and available pharmaceutical drugs in Đồng Nai
- 3.5.1 MedCOI noted in a response, dated October 2020, that the following treatment for mental health conditions were available in the public facility National Mental Hospital 2:
- Inpatient treatment by a psychiatrist
 - Psychiatric long-term outpatient treatment by a psychiatrist
 - Psychiatric long-term clinical treatment (e.g. for chronic psychotic patients) by a psychiatrist
 - Psychiatric clinical treatment in a closed ward/setting (not necessarily forced admittance).
- 3.5.2 MedCOI noted in a response, dated October 2020, that the following pharmaceutical drugs were available in facilities in Đồng Nai, to treat mental healthcare conditions;
- Flupentixol decanoate depot injection (Medication Group Psychiatry: antipsychotics classic; depot injections)
 - Fluphenazine decanoate depot injection (Medication Group Psychiatry: antipsychotics classic; depot injections)
 - Zuclopenthixol decanoate depot injection (Medication Group Psychiatry: antipsychotics classic; depot injections)
 - Haloperidol (Medication Group: Psychiatry: antipsychotics; classic)
 - Fluphenazine (Medication Group Psychiatry: antipsychotics; classic)
 - Olanzapine (Medication Group Psychiatry: antipsychotics; modern atypical)
 - Quetiapine (Medication Group Psychiatry: antipsychotics; modern atypical)
 - Risperidone (Medication Group Psychiatry: antipsychotics; modern atypical)
 - Clonazepam (Medication Group Psychiatry: anxiolytics)
 - Bromazepam (Medication Group Psychiatry: anxiolytics)
 - Diazepam (Medication Group Psychiatry: anxiolytics)
 - Lorazepam (Medication Group Psychiatry: anxiolytics)
 - Trihexyphenidyl (Medication Group Psychiatry: for side effects of antipsychotics/ anti-Parkinsonism)
- 3.6 Available pharmaceutical drugs in Đà Nẵng
- 3.6.1 MedCOI noted in a response, dated October 2020, that the following pharmaceutical drug was available in the Da Nang Mental Hospital in Đà Nẵng- to treat mental healthcare conditions;
- Clozapine (Medication Group Psychiatry: antipsychotics; modern atypical).

74. The appellant describes in his witness statement the darkest time in his life being when he was imprisoned in Vietnam but the reason he claims he was imprisoned, namely the attendance at demonstrations, is not true. This cast doubt upon his claim of the consequences of such actions.
75. The appellant's own country expert acknowledges that an individual in a shelter can receive health support, including mental health support, which is in addition to support provided in the hospitals referred to above.
76. It is accepted the services available in Vietnam are not the same as those in the UK but that is not the appropriate test. There is clearly psychiatric professional care within a proper setting available within Vietnam in relation to which the

appellant has not established he will not be able to gain access to or benefit from. There is clearly an availability of prescription medication sufficient to deal with the appellant’s depression and care both within an institutionalised and a community environment.

- 77. There is insufficient evidence to establish a credible objective barrier to the appellant accessing such services.
- 78. I was not referred to any country guidance case or authority emanating from the Court of Appeal or Supreme Court to show that an individual with the profile of the appellant could not be returned to Vietnam.
- 79. I accept the appellant does not wish to return and I accept that country material highlights difficulties he may face but it is not made out that the appellant will face any insurmountable obstacles to reintegration sufficient to warrant a grant of leave to remain in the United Kingdom on any basis.
- 80. I do not find the appellant has established he can satisfy the definition of a member of a particular social group (PSG) or any basis for entitling him to a grant of asylum or international protection. I do not find that the appellant has established it is unreasonable in all the circumstances for him to relocate to another part of Vietnam away from his home area.
- 81. I do not find the appellant has made out that is entitled to a grant of leave to remain in the United Kingdom either on the basis of his medical condition, his claim to face ill-treatment sufficient to engage the article 3 ECHR threshold, or on the basis of his private life formed in the United Kingdom. The Secretary of State has established that any interference with any right protected by article 8 ECHR is proportionate to the legitimate aim relied upon by the Secretary of State.
- 82. The answer to the question posed by Mr Blackwood as to whether the appellant had established any basis on which he was entitled to a grant of leave to remain in the United Kingdom is “no”. Accordingly I dismiss the appeal.

Decision

83. I dismiss the appeal.

Anonymity.

84. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 4 May 2022