



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/04320/2014

Appeal Number:

AA/04323/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

Promulgated

On 1st June 2015

On 7th July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

TTN

MN

(Anonymity Direction Made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms M Knorr instructed by Southwark Law Centre.

For the Respondent: Ms Fujiwala, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The first appellant is a citizen of Vietnam born on 1st June 1995 and she appeals against a decision dated 16th June 2014 made by the

Secretary of State to remove her from the UK following a decision to refuse her international protection. She entered the United Kingdom in April 2009. The second appellant was the daughter born to the first appellant in the United Kingdom on 18th June 2013.

2. The respondent had accepted that the first appellant had been trafficked (for labour) but contended that she had not demonstrated that she would be at real risk of persecution from non-state actors on account of her membership of a particular social group if returned to Vietnam.
3. In a decision promulgated on 5th March 2015, Judge of the First-Tier Tribunal Young dismissed the appellants' appeals but an application for permission to appeal against that decision was granted by First-Tier Tribunal Judge Andrew on the basis that the Judge did not make findings as to whether the first appellant would be perceived as a prostitute on return to Vietnam. Nor was there any evidence that the Judge treated the appellant as a vulnerable witness and he should arguably have placed weight on her written evidence, as she was not called to give oral evidence. This may have affected the assessment of risk on return from the first appellant's step father and whether or not they would receive support from the family on return.
4. At the hearing before me, Ms Knorr expanded on her grounds of appeal which included the assessment by the judge of the appellant's written evidence, the failure to consider her as a vulnerable witness in his assessment of the evidence, the failure to consider the extant risk from the step father and take into account what the appellant had said about that risk and the overall risk on return to Vietnam. She submitted that the case had been put on the basis that the first appellant would be perceived as a victim of sexual trafficking and as a prostitute not merely as a single mother. She would thus be part of a Particular Social Group (PSG). There had been no indication by the Home office Presenting Officer at the First-Tier Tribunal hearing, in line with the Presidential Guidance, of a restriction on the questioning of the appellant and thus the appellant was not called. The judge had by implication criticised the lack of evidence from the appellant but had not placed weight on her written evidence. The judge had not assessed the overall risk.
5. Ms Fujiwala submitted that the judge had found that not all victims of trafficking would be perceived as victims of sexual trafficking or as a victim of prostitution. It was not clear why all victims of trafficking should be perceived as such. The point in **Hoxha [2005] UKHL 19** was that the appellant was a victim of rape and would be perceived, with the associated severe social stigma, as the victim of rape on return. The expert reports did not detail that what she would experience on return would amount to persecution. The point the judge was trying to make was that not all those trafficked would be engaged in prostitution. The judge took into account the appellant's vulnerabilities. With regard to the oral evidence it was not clear that

there was discussion regarding the oral evidence. The judge had not criticised the appellant on credibility but found at paragraph 119 that the real fear was not of re-trafficking but because the step-father would wish to prevent her from going to the police. He found the step father was not part of a gang and at paragraph 130 of the decision it could be seen that the judge did not accept that there was further risk from re-trafficking finding that the trafficking did not emanate from a gang from Vietnam and was opportunistic in China and in Russia. It was unclear how information would get back to the step-father as it was unknown whether the mother still lived with the step-father. The judge concluded that she would have treatment for her mental health condition until 2016.

6. In conclusion I set out the Qualification Regulations at 6(1)(d)

(d) a group shall be considered to form a particular social group where, *for example*:

(i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, *and*

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;"

7. There was much discussion within **SB (PSG - Protection Regulations – Reg 6) Moldova CG** [2008] UKAIT 00002 as to whether both d(i) and (ii) were required (as the Qualification Regulations departed from Article 10 of the Directive. In conclusion it was decided that whether a group is a social group for the purposes of the Geneva Convention must be decided in the context of the relevant society. The question is how the group would be perceived in the relevant society. It was also the case that Baroness Hale explained in Hoxha [2005] UKHL 19 that earlier persecution of one sort may lead to later persecution of a different sort. The point made here is how the appellant would be *perceived* in the society to which she would be returned. The judge needed to assess all the facts including the expert evidence, and weigh the cumulative evidence as to how the appellant would be perceived on return – thus addressing d(i) *and* d(ii). The judge appeared to find that because she had not been ‘trafficked for sexual exploitation’ and that she had only been ‘trafficked’ and would fear stigma on return, that she would not have a distinct identity and thus be within a PSG. The judge at [96] did not find that there was evidence that would suggest that a victim of trafficking (absent sexual exploitation) would have a distinct identity in being perceived to be different by surrounding society. At paragraph 101 the judge stated

‘it was not (my emphasis) suggested that the appellant belonged to a particular social group which could be described as ‘single mothers

returning from abroad' which would be intrinsically associated with prostitution. That seems a different situation from the particular social group which was identified for the appellant'.

8. That was, however, a key element of Ms Knorr's case. The judge refers to the evidence of Ms Beddoe at [102] and [103] regarding stigma but does not address, in this context, the issue of the suspicion of sexual exploitation, which Ms Beddoe and Mr Sidel (Paragraph 73) alluded to, and thus in turn perception by society. Ms Beddoe thought the appellant was at high risk because of her presenting features of being re-trafficked. The appellant had been accepted by the respondent as a victim of trafficking and Ms Knorr submitted she would also be perceived as a victim of prostitution (sexual exploitation), on the basis of the expert evidence, because of her return as a lone single mother. Ms Knorr argued that her sexual abuse in the UK was said to be a consequence of her experience of being trafficked. The judge made no finding as to whether the appellant would be perceived as a victim of trafficking for sexual exploitation.
9. The judge at [120] also dismissed the evidence of the experts that the appellant may be re-trafficked merely because the appellant did not articulate this herself and this and in this assessment the judge made no reference to the vulnerability of the witness but noted that
'as indicated no evidence was led from the appellant which articulated that particular fear'.
10. There was, however, no reference to the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. The guidance confirms that
'The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for the judge to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole'.
11. The judge placed minimal emphasis on the appellant's written evidence and rather throughout the decision referred to the lack of oral evidence or explanation from the appellant. The guidelines indicate that areas of cross examination can be restricted but as Ms Knorr indicated there was no record within the decision that this was the reason given as to why the appellant was not called.
12. Even in the event that the appellant was not part of a PSG it was argued that humanitarian protection should be considered. In this regard the evidence in relation to the step-father was important as the appellant had escaped from the traffickers who which she had been sold by the step-father albeit the judge had stated there was no

evidence that she had been targeted by a gang. It was the stepfather nonetheless who had sold her and the expert evidence suggested that there was risk from the step-father.

13. As part of the judge's assessment of risk on return the judge considered whether the appellant would be able to access assistance from her family and found that she could. However the judge detailed that the appellant gave no evidence on the point regarding access to her family but this was not correct. The appellant's witness statement (29.1.2015) indicated that she did not have friends (indeed she had left Vietnam at the age of 13 years) or family she could turn to. Her contact with her mother had ceased. She feared returning to an aunt who lived two hours away lest her stepfather relocate her. Dr Majid's report identified that the appellant was adamant that she could not return to her family for support because of her step-father's violence (Respondent's Bundle D5). There was no basis for the assertion by the judge that the mother may have left the step-father [38].
14. I was presented by Ms Fujiwala with **Nguyen (Anti -Trafficking Convention: respondent's duties)** [2015] UKUT 170 (IAC) but this was a reported decision on the duties of a signatory to the Council of Europe Convention on Action against trafficking into the country from which they later travel (untrafficked) to the signatory state. In this case the respondent confirmed that if the appellant was at risk of re-trafficking she could succeed which underlines the importance of accurately assessing risk on return. The legal authorities also confirm the importance of assessing the individual circumstances of the appellant and those of the appellant in this judgment differed from those of this appellant. There was no indication that the expert reports were the same.
15. I find thus that the judge failed to take proper account of the written evidence of the appellant, which would have had a material effect on the outcome.
16. Finally the judge appeared to assess [133] the circumstances of the appellant particularly with regard her mental health at a later date at the hearing and as at the end of her discretionary leave in 2016.
17. I took account of the submissions of Ms Fujiwala but for the reasons identified above I find that the judge erred in law and in a way which may have a material effect on the outcome.
18. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007).. Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (ii) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Direction: All further evidence should be served on the Tribunal and the opposing party not later than 14 days prior to any substantive hearing.

Signed

Date 3rd July 2015

Deputy Upper Tribunal Judge Rimington