



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

Appeal Number: IA/22381/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Decision & Reasons Promulgated  
Centre**

**On 12<sup>th</sup> April 2017**

**On 5<sup>th</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**TUAN HUU PHAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Barnfield (Counsel)

For the Respondent: Ms H Aboni (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Phull, promulgated on 1st June 2016, following a hearing at Birmingham, Sheldon Court on 17<sup>th</sup> May 2016. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent subsequently

applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Vietnam, who was born on 15<sup>th</sup> November 1994. He appealed against the refusal of asylum and humanitarian protection under paragraph 336 of HC 395 (as amended) in a decision dated 9<sup>th</sup> June 2015 by the Respondent. The relevant facts and documentary material are set out in the determination of IJ Phull under appeal as is the legal framework that is applicable here. In essence, the Appellant's claim is that he was an orphaned child on arrival in the UK in 2011 and he had no contact with any individuals or family members in Vietnam. This is accepted in the refusal letter of 4<sup>th</sup> May 2012. The Respondent also accepts that there is a considerable problem in Vietnam of trafficking and that the system of protection is very limited and therefore effective protection does not exist in Vietnam (see paragraph 30 of the determination). The Appellant's claim before the Tribunal was that the Appellant should qualify for asylum as a member of a particular social group because of his particular personal characteristic, a vulnerable childlike character, which would put the Appellant at risk of trafficking. He also qualified for humanitarian protection (see paragraph 31).
3. The judge observed that the Respondent had accepted in the 2012 refusal letter that there was a considerable problem in Vietnam from trafficking and in particular trafficking for labour. The Respondent had also accepted the availability of the system of protection was very limited and therefore effective protection did not exist in Vietnam (see paragraph 41). The appeal was allowed.
4. The Grounds of Appeal state that the judge had incorrectly recorded the Respondent as conceding that there was a lack of sufficient protection for victims of trafficking in Vietnam. What was said by the judge at paragraphs 30 and 41 of the decision was not quite the position of the Respondent Secretary of State. Given this mistake, this coloured the view of the background country information which the judge apprised herself of and did not support her findings eventually made.
5. On 19<sup>th</sup> September 2016, permission to appeal was granted on this basis. Permission was not granted on the basis that what was said by Mr Howard Christopher, the Appellant's foster parent, was unsupported by any evidence from professionals who were involved in the case.

### **The Hearing**

6. At the hearing before me on 12<sup>th</sup> April 2017, Ms Aboni, the Senior Presenting Officer, on behalf of the Respondent relied upon the Grounds of Appeal. First, that the judge erred in stating that there was no sufficiency of protection available to the Appellant in Vietnam (see paragraph 47) and this was the accepted position of the Respondent. What the refusal letter

of 8<sup>th</sup> May 2012 had stated was that sufficiency of protection existed to the level referred to in **Horvath** in Vietnam and as such protection would extend to the Appellant to mitigate any future risk of becoming a victim of human trafficking. Second, the judge failed to give adequate reasons to depart from the wealth of background information relied upon by the Respondent to demonstrate a sufficiency of protection in Vietnam which existed (see paragraphs 26 to 39 of the refusal letter). Third, the judge failed to give adequate reasons, because the judge held that the Appellant was vulnerable, and although this was the view of the Appellant's foster carer, it was unsupported by any evidence from the medical professionals, Social Services, or Route 21 who were involved in this case for the care of the Appellant (see paragraph 20 of the Appellant's bundle).

7. For his part, Mr Barnfield submitted that this was nothing more than a disagreement with the decision of the judge. He relied on the following reasons. First, the Secretary of State had actually accepted in the refusal letter of 4<sup>th</sup> May 2012 that there was a considerable problem in Vietnam from trafficking (see paragraphs 28 to 32) and the Appellant would not be eligible for state support on return. He would be without resources. He did even know the whole village that he came from. In fact, at paragraph 33 of the refusal letter acknowledged that young people in rural areas are most likely to be targeted for human trafficking. Secondly, at paragraph 38 of the refusal letter admitted that the availability of the system of protection is very limited, and therefore effective protection did not exist. The willingness on the part of the state authorities to provide protection was not the same as an ability to do so, and this was well-established as the principle of protection in the case law.
8. In reply, Ms Aboni submitted that the background evidence was extremely clear that there were "a number of state shortcomings in seeking to tackle the problem of trafficking" (see paragraph 36). However, whilst these shortcomings were acknowledged, it was also made clear (see paragraph 38) that, "with regard to the current situation in Vietnam, it is evident from the objective information above, that the Vietnamese state is certainly willing to afford protection to its citizens." The Appellant was not a person who had previously been trafficked. Moreover, he was now being returned as an adult. In these circumstances, the refusal letter was clear that "a sufficient level of state protection to the standard referred to in **Horvath** exists in Vietnam and as such protection would extend to you to mitigate any future risk of becoming a victim of trafficking" (paragraph 39). In any event, the option of relocation was open to the Appellant.

### **No Error of Law**

9. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
10. First, the judge expressly took into account the 2012 refusal letter, and noted that it was acknowledged that there was a considerable problem in

Vietnam from trafficking, and in particular trafficking for labour, such that the Respondent accepted that the availability of the system of protection was very limited (see paragraph 41). The judge came to this conclusion on the basis of the Respondent's own reference to the United Nations Inter-Agency Project on Human Trafficking (see paragraph 30 of the refusal letter). The judge actually quoted from this report that, "human trafficking affects women, men and children in Vietnam ..." (see paragraph 42). If one then has regard to what is said at paragraph 28 of the refusal letter, it is quite clear that it is recognised in that paragraph that, "there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year". Not only, therefore, did the judge have regard to what was stated in the refusal letter, but the judge reached a decision on this matter which cannot be deemed to be unreasonable on the evidence before the judge.

11. Second, the judge had regard to the "Vietnam Human Rights Network (Annual Report 2011)" which recognises the efforts being made by the authorities in Vietnam but concludes that, "nonetheless, the human trafficking problem in Vietnam kept becoming increasingly serious, instead of being ameliorated" (see paragraph 29 of the refusal letter).

12. The judge was not oblivious to the fact that significant efforts were being made to tackle the problem (see particularly paragraph 43 of the decision), but concluded that,

"Having considered this evidence, I find the Appellant is a vulnerable young man. He has no family to whom he can return to in Vietnam or support. Although he speaks the national language the evidence is that he does not know which village or town he originates from. I accept he has no contact with his father." (paragraph 44).

13. Finally, the judge considered the Appellant's vulnerability, the fact that he has trust issues, and could be very easily exploited in Vietnam, "where trafficking and labour exploitation is a problem" and he has "no-one to support him" (paragraph 45). In these circumstances, the decision reached by the judge with respect to this Appellant was one that was open to her.

14. There is no error of law.

### **Notice of Decision**

15. There is no material error of law in the original judge's decision. The determination shall stand.

16. No anonymity order is made.

17. The appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

3<sup>rd</sup> May 2017