



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

Appeal Number: AA/04122/2015

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**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated  
On 18 January 2018**

**On 15 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**HTV  
JT  
(ANONYMITY ORDER MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: M K Reid, Counsel, instructed by Wick & Co Solicitors

For the Respondent: Mr E Tufen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants, a mother and minor son of Vietnamese nationality, appeal the decision of judge of the First-tier Tribunal Nicholls (FtJ), promulgated on 7 September 2017, dismissing their appeals against

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the respondent's decision, dated 25 February 2015, to issue directions for their removal having refused their protection and human rights claims.

## Background

2. The 1<sup>st</sup> appellant was born in Vietnam on [ ] 1995. The 2<sup>nd</sup> appellant was born in the UK on [ ] 2014. The 1<sup>st</sup> appellant entered the UK illegally and claimed asylum on 23 March 2012. At that time she was 16 years old. The following is a summary of the protection claim. In her 1<sup>st</sup> statement, dated 4 May 2012, the 1<sup>st</sup> appellant described how her father, her only parent, would often gamble and come home drunk. He would sometimes get angry and violent. She had to carry out the household chores. In 2011 people would begin to come to the house because her father owed them money. The people would shout threats about payment of debt. On one occasion she was grabbed by two men on her way back from school who tied her hands and put her in a vehicle with her eyes covered. She was allowed to speak to her father by phone. When later released she saw that her father's legs were bleeding and he had scratches. She stopped going to school and they left Vietnam 2 months later. They went by plane to what she believed was China where they stayed for around 3 weeks. They then flew to a western country where they stayed in a big building for around a month. They were then taken in a minivan to Germany. After journeying to another country where they remained for a short time she was placed in a lorry, without her father, that eventually brought her to the UK. She was afraid to return to Vietnam because of the people who were looking for her father. She had nowhere to stay, no qualifications or experience. She feared she would become destitute or would be compelled to work in the sex industry.
3. In a 2<sup>nd</sup> witness statement dated 24 July 2015, written when the 1<sup>st</sup> appellant was 19 years old, she confirmed her previous statement. She said that she and her father travelled from Vietnam to China and then to Germany, although at the First-tier Tribunal hearing she indicated that this was a mistake and that she went by air from China to the Czech Republic and then to Germany before going in a minivan to France from where she was placed in a lorry to the UK. She believed that the people who kidnapped her were connected with a criminal gang who trafficked people out of Vietnam. This was because shortly after her release a man came to their house with passports, money and documents. She believed she was trafficked out of Vietnam order to pay off her father's debts. She feared the criminal gangs who operated in all parts of Vietnam. As a single woman with a small baby she would be particularly vulnerable.
4. In a 3<sup>rd</sup> witness statement, dated 22 March 2017, the 1<sup>st</sup> appellant's account changed significantly. It was only as a result of counselling and medication that she felt able to give a full description of what

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happened. Her father had left Vietnam through arrangements made with people to whom he owed money. After leaving China they were taken to the Czech Republic where she was forced to make clothes. They were never paid any money for the work.

5. She and many others were guarded closely and required to sew clothes. If mistakes were made they were beaten and not given any food. On one occasion she was knocked unconscious and raped. She remained in this place for several months before being placed with other girls in a van. Their mouths were covered with duct tape and they were ordered to lie on the floor, and when it became light they were blindfolded. When they arrived at their destination she saw her father was there as well, also with duct tape across his mouth and his hands tied. He was taken to another place. She was forced to sew items and was beaten if she was slow or made a mistake. Several weeks later she and several others were blindfolded, their mouths covered with duct tape and placed in a van. They were driven to France and found themselves in a place that had tents and gardens. They were told that they would be sent back to Vietnam if found by the authorities. Her father was brought to the same place about a week later although he stayed in a different section. One night her father placed her in a lorry but went himself in a different lorry. This is the last occasion she saw him. There were many people in her lorry and she did not know whether any of them were guards. When she was eventually taken out of the lorry it was daytime and she was told to wait. The 1<sup>st</sup> appellant was on the floor crying when she was approached by a woman who gave her a coat and some biscuits and took her to a building where she left with some other people. These people called the police and, via a Vietnamese interpreter, she became aware that she was in the UK. She claimed she was not able to disclose the bad things that happened to her. She was placed in the care of social services and eventually went for counselling where she was told that she had to talk about all the bad things for her own mental health. It was the combination of the council and the medication that made her able to disclose what happened to her.

### **Decision of the First-tier Judge**

6. The appellants relied on 2 bundles of documents. The first bundle contained the 1<sup>st</sup> appellant's 2<sup>nd</sup> statement and an expert country report from Dr Tran Thi Lan Anh, in addition to a number of background reports including the US State Department report on trafficking relating to Vietnam, a Human Rights Watch World report, and a number of articles relating to trafficking. The appellants' additional bundle contained the 1<sup>st</sup> appellant's most recent statement, an additional skeleton argument and a 38-page psychological report prepared by Dr Roman Halari.
7. The judge indicated that the 1<sup>st</sup> appellant should be regarded as a vulnerable witness and treated accordingly. The judge heard oral

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evidence from the 1<sup>st</sup> appellant. The judge recorded the oral evidence, which included the 1<sup>st</sup> appellant's explanation for not previously disclosing what happened to her during her journey to the UK, the circumstances in which she travelled in the lorry to the UK, and the circumstances in which she was taken out of the lorry in the UK. The judge summarised the content of Dr Tran's report, which dealt principally with the position of victims of trafficking in Vietnam and the social stigma that would be faced by an unmarried single mother. At [8(t)] the judge summarised Dr Halari's psychological report. The judge noted the doctor's opinion that the 1<sup>st</sup> appellant had experienced significant trauma based on her account, and that she had been diagnosed with PTSD with a depressive disorder in the moderate-to-severe range. In Dr Halari's view the 1<sup>st</sup> appellant's clinical presentation was consistent with the accounts she had given and with circumstances of other victims of abuse and trafficking. The medical expert did not consider that the symptoms were invented and the 1<sup>st</sup> appellant's account was said to be credible. It is pertinent to note that in the judge's consideration of Dr Halari's report he did not specifically engage with the expert's evidence relating to the late disclosure.

8. In his findings and conclusions the judge accepted the diagnosis of PTSD and depression but found that a largely overland journey from Vietnam to the UK would contain within it circumstances of individual trauma [15]. The judge found that if the 1<sup>st</sup> appellant was under the control of people traffickers to the extent that she claimed it was not implausible that there could have been sexual violence on occasions [*supra*]. The judge placed significant reliance on two elements of the 1<sup>st</sup> appellant's account in finding it incredible. At [16] the judge noted a discrepancy in the 1<sup>st</sup> appellant's oral evidence in comparison with her 3<sup>rd</sup> statement as to whether she was gagged and tied when being transported from France to the UK. In the same paragraph, the judge found it implausible that the 1<sup>st</sup> appellant would be left at a roadside without any form of restraint and alone given the significant restraints that had previously been imposed on her when being transported. Then at [17] the judge considered the late disclosure of the events that allegedly occurred from the time she left Vietnam until her arrival in the UK. The judge noted that there was no report from a therapist or counsellor to support her explanation. The judge then stated,

If the Appellant is right about the circumstances of her journey to the UK, having come in contact with the UK authorities, she would have been keen to show all of the reasons why she should be allowed to stay in the UK. It seems that she was placed in foster care, an arrangement the Appellant said she found very safe and supportive. She did not, however, tell the foster carers of these aspects of her history, she says because she felt unable to talk about them. I cannot accept that. The only reason the Appellant was in the UK was because of the action of people traffickers who, she says, had forced her to work for no wages, for very long hours and in very poor working conditions. While she may have had psychological problems revealing all of the circumstances, it is much

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more likely, in my judgement, that she would have been keen to make those closest to her aware of the problems and why she was so particularly afraid to return to Vietnam.

9. The judge, at [18], found that the lack of credibility relating to the 1<sup>st</sup> appellant's account of her journey from Vietnam to the UK infected her central claim, including her account of events in Vietnam. Whilst noting that debt bondage in Vietnam leading to trafficking or forced labour or prostitution was by no means improbable, the judge found that the general lack of credibility meant that those factors did not carry great weight in the appeal. The judge briefly considered article 8 but noted that neither appellant was entitled to stay in the UK and that both the Vietnamese nationals. The removal of the appellants would not breach article 8. The appeals were dismissed.

### **The grounds of appeal, the grant of appeal and the Upper Tribunal hearing**

10. The grounds contend that the judge misapplied the correct burden and standard of proof and failed to apply the liberal application of the benefit of doubt principle in light of the 1<sup>st</sup> appellant's vulnerability and her age when the events were said to have happened to her. It is submitted that the judge failed to properly assess the 2<sup>nd</sup> appellant's claim given the evidence that he would face difficulties accessing the benefits of nationality as a foreign born child, with reference to the respondent's own guidance and Dr Tran's report. The 3<sup>rd</sup> ground challenges the judge's approach to the delayed disclosure. It is argued that the judge failed to give effect to the respondent's guidance "*victims of modern slavery - Competent Authority guidance*", and failed to consider Dr Halari's assessment of the late disclosure and the guidance identified in case law contained in the skeleton argument, specifically *SF, R (on the application of) v The Secretary of State for the Home Department* [2015] EWHC 2705 (Admin). The grounds complained that the judge failed to explain why a person who had been through the experiences recounted by the 1<sup>st</sup> appellant would necessarily trust her foster carer and other professionals in the UK such that she could overcome her trauma and disclose all her experiences without psychological support. The grounds additionally contend that the judge failed to adequately consider the medical report when assessing the 1<sup>st</sup> appellant's credibility. While the judge was not bound to accept the content of the report, he was required to consider it and, in rejecting it, provide adequate reasons. The grounds finally take issue with the judge's adverse inference drawn on the basis that it was implausible that the 1<sup>st</sup> appellant would be left unattended at a roadside. The judge, it is said, impermissibly considered the issue of plausibility from the perspective of a western person, and failed to consider credibility more holistically.
11. Although permission was granted in respect of all the grounds, particular emphasis was placed on the contention that the judge failed

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to sufficiently engage with the medicolegal report, and in respect of his adverse credibility finding.

12. Ms Reid, who was the representative before the First-tier Tribunal and who drafted the grounds, adopted and expanded her grounds. She drew my attention to the medicolegal report, noting Dr Halari's assessment of the late disclosure at paragraphs 113 and 131. Although there was no document from the 1<sup>st</sup> appellant's counsellor before the judge, it was apparent that the expert did have letters issued by the counsellor. My attention was also drawn to the most recent statement, at paragraphs 25 and 26, where the 1<sup>st</sup> appellant provided her explanation for her late disclosure. This, it was submitted, had not been considered by the judge. Mr Reid drew my attention to her skeleton argument and the reference to *SF*. There had been no consideration of the difficulties the 1<sup>st</sup> and 2<sup>nd</sup> appellants would face as a single mother and her child. Mr Tufan submitted that the significant change in the 1<sup>st</sup> appellant's account entitled the judge to hold this against her. Dr Halari had only considered the issue of late disclosure in two short paragraphs. M Tufan submitted that the judge was entitled to her conclusions for the reasons given.

## Discussion

13. having holistic regard to the judge's decision I am satisfied that he properly directed himself in respect of the lower standard and burden of proof. This is readily apparent from [6]. There is nothing in the section of the decision containing the judge's findings and conclusions to indicate that he applied anything other than the lower standard of proof.
14. Nor am I satisfied that the judge impermissibly drew an adverse inference from the description given by the 1<sup>st</sup> appellant of the circumstances in which she travelled from France to the UK and in which she came to leave the lorry. The grounds failed to refer to the inconsistent evidence relating to whether the 1<sup>st</sup> appellant was restrained when in the lorry making its way to the UK. The judge was mindful of the Joint Presidential Guidance Note when considering the 1<sup>st</sup> appellant's oral evidence and was rationally entitled to hold the discrepant evidence against her. The judge was also rationally entitled to find implausible the element of freedom bestowed on the 1<sup>st</sup> appellant when she left the lorry. This was inconsistent with all the other trafficking journeys described by the 1<sup>st</sup> appellant in her 3<sup>rd</sup> statement. If the 1<sup>st</sup> appellant was trafficked into the UK for the purposes of exploitation one may legitimately wonder why she was left alone in circumstances where she could conceivably have run away, even if instructed to remain. This aspect of the judge's assessment did not fall foul of the principled approach to issues of plausibility as considered in *MM (DRC - plausibility) Democratic Republic of Congo* [2005] UKIAT 00019, *HK v Secretary of State for the Home Department*

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[2006] EWCA Civ 1037 and *Ali v Secretary of State for the Home Department* [2002] UKIAT 07001.

15. I am however satisfied that the judge failed to consider or engage with relevant evidence relating to the late disclosure issue, and factors relevant to a full and proper assessment of late disclosure. While the judge summarised the medicolegal report, at no stage of his decision has he engaged with Dr Halari's assessment of the 1<sup>st</sup> appellant's late disclosure. At paragraph 130 the doctor indicated that the 1<sup>st</sup> appellant found it difficult to trust people on her arrival in the UK, and in particular men. At paragraph 131 Dr Halari stated,

She was able to open up in her counselling sessions because she was able to develop a trusting therapeutic relationship with her therapist and she started to feel safe and contained before disclosing her past trauma this would be a typical presentation of someone who has been traumatised.

16. This assessment reflected paragraph 113 of the same medicolegal report where the doctor explained that late disclosure of trafficking trauma is consistent with the 1<sup>st</sup> appellant being scared, anxious and traumatised. And at paragraph 114 the doctor stated that, in her clinical opinion, the late disclosure of trafficking trauma would be in keeping with being a victim of trafficking. Nor did the judge consider or engage with the Secretary of State's guidance for assessment of delayed disclosure, set out in *SF* at 22(d), "*A key symptom of post-traumatic stress is avoidance of trauma triggers, or those that cause frightening memories, flashbacks or other unpleasant physical and psychological experiences. Because of these symptoms a person may be unable to fully explain their experience until they have achieved a minimum level of psychological stability. You must not view a delay in disclosing of facts as necessarily manipulative or untrue. In any cases it is the result of an effective recovery period and the establishment of trust with the person they disclose the information to.*"

17. I do not accept Ms Reid's submission that the judge entirely failed to consider paragraphs 25 and 26 of the 3<sup>rd</sup> witness statement. It is readily apparent from [8(m)] that the judge had read those aspects of the statement, and in particular the 1<sup>st</sup> appellant's claim that she was unable to talk about the "bad things" that had happened to her and that she needed to talk about all the bad things for her own mental health and that is the combination of the counsellor and medication that enabled her to do so. What the judge has not however engaged with is the further explanation given by the 1<sup>st</sup> appellant at paragraph 25 of her 3<sup>rd</sup> statement. There the 1<sup>st</sup> appellant stated that she felt guilty and bad and wanted to forget about the events. She explained that when things like this happened girls would be considered spoilt or bad and people would not want to have anything to do with them. She explained that she did not want this to happen to her and felt that she had to pretend that nothing had happened because she did not want to be branded as 'spoilt goods'. This was a much more in-depth

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explanation provided by the 1<sup>st</sup> appellant for her late disclosure. Moreover, in her oral evidence, recorded at [8(o)], the 1<sup>st</sup> appellant explained that she had not volunteered the information that she had been forced to work because she did not know who to trust. Nor had anyone asked her what happened during her journey.

18. The judge rejected the 1<sup>st</sup> appellant's credibility because, on his view, she would have been keen to show all the reasons why she should be allowed to stay in the UK and would have been keen to make those closest to her aware of her problems, particularly as she found her care arrangements safe and supportive. While the judge was undoubtedly entitled to take account of these factors as tending to undermine the 1<sup>st</sup> appellant's credibility, he failed to engage with the evidence and the relevant guidance, given judicial approval, as described in paragraphs 15, 16 and 17 above. While the judge would not be obliged to accept the 1<sup>st</sup> appellant's explanation or the medical opinion relating to late disclosure, he had to at least engage with that evidence in the context of the relevant guidance issued by the Secretary of State, and to offer comprehensible reasons for rejecting those explanations. I am satisfied that the failure of the judge to do so constitutes a material error of law rendering the decision unsafe.
19. Given that the identified error of law relates to a core credibility finding, and in light of the representations made by the parties at the hearing, I consider it appropriate to remit this matter back to the First-tier Tribunal for a fresh hearing before a judge other than judge of the First-tier Tribunal Nicholls.

### **Decision:**

**The First-tier Tribunal decision is vitiated by a material error of law. The case is remitted back to the First-tier Tribunal for a fresh (de novo) hearing, before a judge other than judge of the First-tier Tribunal Nicholls.**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants in this appeal are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



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Signed:  
Upper Tribunal Judge Blum

16 January 2018  
Date: