



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02693/2019

THE IMMIGRATION ACTS

Heard at Glasgow
on 15 August 2019

Decision & Reasons Promulgated
on 21 August 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

WAI [C]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Katani, of Katani & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Malaysia, born on 3 December 1991. The respondent refused his asylum and human rights claim for reasons set out in a letter dated 7 March 2019.
2. A panel of the FtT comprising Designated Judge Murray and Judge Rea dismissed the appellant's appeal by a decision promulgated on 17 May 2019.
3. The appellant's grounds of appeal to the UT are attached to his application for permission dated 31 May 2019. The FtT granted permission on 17 June 2019.

4. Ground 1 says that the FtT misunderstood the significance of the finding under the “National Referral Mechanism” (NRM) that the appellant was a victim of trafficking, and the appellant has been “prejudiced” as a result.
5. Ground 2 is that the FtT made contradictory findings at [23 & 24 c], and that [24 c] is irrelevant to risk on return.
6. Ground 3 says that at [24] the FtT (a) did not consider, or did not adequately consider, the reasonableness of relocation within Malaysia, and (b) erred by saying the appellant had not sought assistance of the police in Malaysia, when he had said at Q/A 130 - 131 of his interview that he did.
7. Ground 4 says that in assessing insurmountable obstacles, the FtT failed to take into account that the appellant had been assessed as a victim of human trafficking, and made no finding on whether “being in witness protection” would be an insurmountable obstacle to family life.
8. Having heard submissions from both parties, I reserved my decision.
9. Ground 1 is rather vague about the significance which should have been attached to the NRM finding, how that demonstrates error by the FtT, and how that impacted on the outcome of the appeal. Explaining the ground further, Mr Katani said that the SSHD, through the NRM, accepted that the appellant was a victim of trafficking. That was tested on the balance of probability, a higher standard than applies to a protection claim. He said that it was therefore inconsistent for the respondent to issue a decision on the protection claim declining to accept that the appellant had a genuine and well-founded fear of loan sharks. Both decisions drew on the same interview and other evidence, and so could not rationally come to different conclusions on credibility. The matter had been raised as a “preliminary issue” in the FtT, in the hope of obtaining a concession on credibility from the respondent. On such a concession, the case would have turned only on sufficiency of protection and internal relocation.
10. I asked why no copy of the NRM decision was before the FtT. It appears that the respondent does not, as a matter of policy, file copies of NRM decisions in subsequent appeals. The appellant might have filed a copy, but did not. Parties agreed that nothing turned on its absence, because all that such decisions say is that it has been accepted that the party was a victim of trafficking, with no further details or analysis.
11. The respondent’s decision of 7 March 2019 says at [44], “Your NRM decision was made on 17 May 2018 and it was concluded that you are a victim of human trafficking. Your status as a victim is, therefore, assessed in a separate decision under the NRM process, whereas this letter considers whether you need international protection”.

12. After analysing the appellant's account in some detail, the decision says at [63], "You have not been able to say who borrowed the money, how much money was borrowed, the name of the man who made you work, the name of the woman you worked with or the location of the café you worked at. Furthermore, the account you gave the police about the police not being interested in the loan shark is inconsistent with external evidence."
13. The decision continues at [64], "In light of all the evidence above it is not accepted that you have a genuine and well-founded fear of a loan shark".
14. While the submissions for the appellant focused on those passages, I note also that under the heading "assessment of future fear" the respondent at [81] found "no genuine subjective fear" and at [81] found that any fear was "not objectively well founded".
15. The decisions of the respondent and of the FtT need to be read carefully and in detail, but once that is done, there is no inconsistency.
16. The respondent and the FtT accepted that in Malaysia in 2007, when he was aged 15, the appellant was forced by a loan shark to work in a café over debts owed by his father, brother and sister – which amounted to trafficking.
17. Nothing in their decisions departs from that.
18. It did not follow from accepting that past state of affairs that the appellant on return to Malaysia in 2019 would be at risk from a loan shark.
19. The FtT at [23] explained the extent to which the appellant's account was credible, which included being a victim of trafficking. At [24] the FtT went on to the question whether there was "a real risk that the persecution or ill treatment he has suffered will be repeated in the event of his return ...".
20. The FtT was plainly entitled to find that the evidence disclosed no such risk. The reasons given are plainly sensible.
21. Everything else in the case is incidental.
22. Ground 2 turns on the same oversimplified view of the decisions separately reached on past trafficking and on further risk. There is, for the reasons above, no contradiction between [23] and [24 c].
23. As to ground 3 (a), the case did not turn on relocation, but on absence of risk.
24. Ground 3 (b) does show an error or oversight at [24 e]. By his own account, the appellant and his family made more than one complaint to the police. The FtT gives no reason for taking those efforts not to be serious. However, nothing turns on that.

25. Absent a finding of risk, there was no evidence which might realistically have reached the high test of insurmountable obstacles to family life (ground 4).
26. The grounds do not show that the making of the decision of the FtT involved the making of any error on a point of law, such that it ought to be set aside. That decision shall stand.
27. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

15 August 2019
UT Judge Macleman