Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07283/2019

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 11 November 2019	**On 03 December 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

V L T
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Mahmud, Counsel instructed by Norton Folgate Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker and so is entitled to privacy.
2. This is an appeal by a citizen of Vietnam against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent on 17 July

2019 refusing him asylum, humanitarian protection and leave to remain on human rights grounds.

3. The short point is that the appellant lost his appeal because he was disbelieved and Mr Mahmud argues that the reasons for disbelieving the appellant are unlawful. Having reflected on those submissions and on Mr Kotas' contrary arguments I have come to the conclusion that, broadly, Mr Mahmud is right.

4. The essential problem is that the First-tier Tribunal Judge has not engaged with the appellant's case. Two main reasons are advanced for disbelieving him. The first is that he was untruthful about his age in a screening interview and the second is that there was a considerable delay in his claiming asylum and the claim appeared to be prompted by his being discovered by an illegal working enforcement unit at a nail bar.

5. However, there are important counter arguments that do not appear to have been considered.

6. First, although there is clear evidence of inconsistency about the appellant's age the evidence is not of a particularly high quality. It appears to be based on a difference between something said in a screening interview and something said in a full asylum interview. It is well-known that screening interviews are primarily for the convenience of the Secretary of State to ensure that an application is allocated correctly and is therefore mistakes by the interviewing officer on matters of detail may be excusable. It is the appellant's case that he told the truth and there was mistranslation. Importantly, there is no obvious advantage to him in telling lies about his age. Certainly, by the time the present claim was considered, he was, on any version of events, an adult.

7. I am far from saying that the appellant has given a satisfactory explanation for the differences in the recorded evidence but he has given an explanation and there is no indication in the decision that it has been considered.

8. Second, although this asylum claim was prompted precisely as indicated by the appellant being found working, it is the appellant's case that he has previously claimed asylum. This much is accepted by the Secretary of State who considered if the "second claim" was a claim at all with reference to paragraph 353 of HC 395.

9. The appellant claimed asylum here on 24 November 2017 and said that he had entered on the day that he claimed asylum. He was released in April 2017. The Secretary of State said that he absconded. The appellant said that he had made a claim and was waiting its outcome. Again, I am not suggesting that this is a compelling or powerful explanation but it is an explanation and it does not appear to have been considered.

10. I ask myself if, in fact, the case is hopeless even if the appellant is telling the truth. It does not seem a strong claim taken at its highest. It is based on his being ill-treated at a political demonstration some years ago but if he is telling the truth then it is reasonable to think he has been persecuted in the past and particular care is needed before deciding that he could return to the country or some part of it safely. Paragraph 19 of the Decision and Reasons includes the following sentence:

> "The Tribunal finds that in the context of being of no interest he would not have taken the drastic step of forfeiting the deeds of his house as a 16 year old to come to the UK. The Tribunal finds that he is actually born in 1994 and was deliberately smuggled into the UK to work, hence he absconded after his first claim in the location where he was finally encountered".

11. I do not understand why the judge has written off the suggestion that the appellant at a tender age forfeited the deeds of his house to travel to the United Kingdom. As Mr Mahmud submitted, I found entirely appropriately, his youth could have made him vulnerable to the wiles of those who brought him into the United Kingdom. He may simply have made a bad deal. I recognise that this is a matter of argument rather than legal error but the judge's reasoning is unsatisfactory because it is based on a premise that the appellant was not of interest. It is his case that he is of interest and the evidence has not been considered in the round.

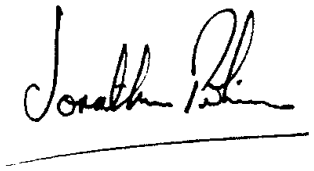
12. The use of the phrase "deliberately smuggled into the UK" is one that should ring alarm bells in the case of a young person from Vietnam. I must hope that his representatives have given very careful consideration to their instructions and are satisfied that the appellant is not a victim of trafficking.

13. That said, I do not wish to raise the appellant's hopes. There are obvious difficulties in his case but I am satisfied that the decision for the reasons given is unsatisfactory. It is set aside and I direct the appeal will be heard again in the First-tier Tribunal.

Notice of Decision

14. The appeal is allowed. I set aside the decision of the First-tier Tribunal and I direct that the case is heard again by the First-tier Tribunal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 29 November 2019