



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

Appeal Number: PA/07665/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

Decision & Reasons

On 9 November 2018

Promulgated

On 19 February 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

T S N

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Ms Capel, instructed by Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, TSN, was born in 1985 and is a male citizen of Vietnam. The appellant first entered the United Kingdom illegally in 2009. He was convicted of cannabis production and was sentenced to twenty months' imprisonment. He did not challenge the subsequent deportation order. He was removed to Vietnam on 6 May 2014. By 10 December 2015 the appellant was back in the United Kingdom and again arrested for immigration offences. On 26 January 2016 he made an application for

asylum he claimed to have been trafficked. The Competent Authority found that the appellant had been trafficked, a finding with which the Secretary of State does not disagree. However, by a decision dated 4 May 2017, the appellant's application for asylum was refused. Representations made in respect of Article 8 ECHR were also rejected and the Secretary of State refused to revoke the deportation order. The appellant appealed on asylum and human rights grounds to the First-tier Tribunal (Judge Herwald) which, in a decision promulgated on 19 March 2018 allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. Judge Herwald found that the appellant was at real risk of being re-trafficked back to the United Kingdom if he were to be removed to Vietnam. The Tribunal had the benefit of a report from Dr Tran which indicated that problems in Vietnam with sufficiency of protection for male trafficked victims together with limited availability of shelters for such individuals. The Secretary of State relies upon the United States Department of State (USSD) Report on Trafficked Persons from Vietnam (2016). This document indicates that traffickers in Vietnam are prosecuted. The respondent argues that the Vietnamese authorities are willing and able to take criminal proceedings against traffickers. Dr Tran also drew attention to problems with internal relocation in Vietnam. Those problems included high rents and a serious risk of destitution. In his oral submissions, Mr Tan who appeared for the Secretary of State before the Upper Tribunal, told me that, although there were no shelters specifically from male trafficked victims, there were shelters for victims generally. Mr Tan also relied upon the Upper Tribunal decision in *Nguyen* [2015] UKUT 170. The Tribunal in that case found that there was a sufficiency of protection provided by the authorities in Vietnam for female victims of trafficking. Mr Tan submitted that the principles of the case and in particular the evidence before the Tribunal was of relevance to all trafficked victims, not merely females. In addition, the appellant would have the benefit of funds provided to him by the United Kingdom Government for returning voluntarily to Vietnam. Such funds would assist him to avoid destitution.
3. Ms Capel, who appeared for the appellant, provided me with a helpful Rule 24 response. This response points out that the case of *Nguyen* is not a country guidance case although it was reported. She submitted that the appellant in *Nguyen* was a female victim of trafficking and that the Tribunal had identified evidence that the Vietnamese authorities did assist the (invariably female) victims of sex trafficking. Ms Capel submitted that Dr Tran had described the availability of support services for victims of trafficking in Vietnam as "at best fragile and extremely limited". As regards the Facilitated Returns Scheme (FRS) Judge Herwald had made a specific finding that the appellant would not benefit from the FRS [18(c)]. However, the appellant had received money under the FRS on a previous return to Vietnam but this had not assisted him as he had been re-trafficked. As regards internal flight, the traffickers had located the appellant on his last return to Vietnam and there is an incentive for them

to do so again; the appellant owes them money and had damaged their business by escaping as Judge Herwald found to be the case. Moreover, internal movement within Vietnam requires registration; those who exercise internal flight may be identified more quickly by those which seek to harm them. The absence of adequate accommodation in a shelter or otherwise will also rapidly expose the appellant as an outsider living beyond his home area and thereby expose him the risk of hostility and harm.

4. Ms Capel also submitted that the Conclusive Grounds decision regarding trafficking post-dated the appellant's criminal conviction and the decision to make a deportation order. In effect, the Competent Authority had concluded that the appellant had been trafficked on at least two occasions, on both occasions, he had been used to cultivate cannabis.
5. Ms Capel's submissions were well made and accept them. There is also another powerful factor at operation in the appellant's case. The Secretary of State's case is that the appellant, with the assistance of the FRS, can return to Vietnam and live safely there without being re-trafficked. The appellant's experience would seem to indicate otherwise. He has returned once before, has been located by traffickers and returned to the United Kingdom where he was a second time and forced to work for traffickers and/or their associates cultivating cannabis. Past persecution or ill-treatment is a strong indicator of the likelihood of such treatment occurring in the future and the appellant's experience would appear to fit that paradigm. The appellant's circumstances now are not materially different from the last time he was removed and re-trafficked. Moreover, the Secretary of State's arguments regarding the availability of internal flight and shelter accommodation (arguments not supported by Dr Tran, the expert witness) are not compelling. Judge Herwald has considered all the evidence which was relevant and has not taken into account the irrelevant evidence. The judge has reached conclusions which were available to the Tribunal on the evidence. Indeed, the reasons I gave above, I find that his assessment of risk on return was legally sound. The Secretary of State's appeal is dismissed.

Notice of Decision

This appeal is dismissed.

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

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

Signed

Date 1 February 2019

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 1 February 2019

Upper Tribunal Judge Lane