



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10985/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 13th December 2018

Decision & Reasons Promulgated
On: 04th January 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

TD
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Ms Mellon, Counsel instructed by Wilsons LLP
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Vietnam born in 1973. She appeals on protection and human rights grounds against the Respondent's decision of the 12th October 2017 to refuse to revoke a deportation order against her and to grant her leave to remain.
2. The appeal comes before me pursuant to a transfer order made by Principal Resident Judge O'Connor on the 18th October 2018. The matter already had a

long and complex history to that point but for the purpose of this decision the key events are as follows:

- i) The Respondent signed a deportation order against the Appellant on the 7th January 2014 on the grounds that her removal was conducive to the public good following her conviction for production of a controlled drug (cannabis – class B) on the 1st October 2013.
- ii) On the 18th May 2016 the Appellant received a second such conviction and was sentenced at Liverpool Crown Court to 12 months' imprisonment with a recommendation for deportation.
- iii) The Appellant claimed asylum in December 2016 and in representations made on her behalf in February 2017 asked the Respondent to revoke the deportation order against her on protection and human rights grounds.
- iv) The Respondent refused to grant leave and to revoke the deportation order on the 12th October 2017.
- v) The First-tier Tribunal (Judge Shiner) dismissed the Appellant's appeal on the 3rd April 2018. Although the Tribunal accepted various important aspects of the Appellant's evidence (findings to which I return below) it was not satisfied that she faced a real risk of harm if returned to Vietnam today. Nor was the Tribunal satisfied that the Appellant had shown her deportation to be a disproportionate interference with her Article 8(1) rights.
- vi) The Appellant successfully applied for permission to appeal against the protection decision, but by its decision of the 14th May 2018 the First-tier Tribunal (Judge ID Boyes) refused permission to appeal against the Article 8 findings.
- vii) On the 31st July 2018 the matter came before Upper Tribunal Judge Rimington. At that hearing the Secretary of State conceded that there were material errors in the First-tier Tribunal's approach and invited Judge Rimington to set the decision of Judge Shiner aside. The particulars of those errors are set out in Judge Rimington's decision (appended) but in summary they were that the First-tier Tribunal failed to consider or make findings on an important element of the Appellant's account, namely her claim that her convictions – particularly the latter one in Liverpool – arose from a trafficking situation. This error had infected the Tribunal's overall assessment of the risk that the Appellant may be re-trafficked should she return to her home area of Vietnam where, it was accepted, she owed a considerable amount of money to loan sharks who were connected to an

international trafficking gang. Judge Rimington accepted the Respondent's concession and set the decision of the First-tier Tribunal aside, whilst expressly preserving many of its findings as to past events.

3. My task was to remake the decision in the appeal. That task was made immeasurably easier by the thorough case preparation of the Appellant's legal representatives and the considered and measured submissions of Mr Bramble. I am grateful to all concerned. The parties invited me to proceed to remake the decision on the basis of the preserved findings of the First-tier Tribunal. In headline terms the Tribunal accepted that the Appellant had been trafficked into the United Kingdom and had suffered serious harm as a result: I set out the particulars of that evidence below. In respect of the 'Liverpool incident' Mr Bramble accepted, on the lower standard of proof, that this had occurred in the manner described by the Appellant and that her latter conviction had in fact arisen from a situation in which the Appellant had been taken against her will to a house where cannabis was being grown and forced to work there. In light of the largely positive credibility findings made by the First-tier Tribunal I consider that this was a concession properly made on behalf of the Secretary of State.

The Factual Matrix

4. The agreed facts are:
 - The Appellant is a 45 year old woman from Quang Binh province in central Vietnam
 - She was previously married. Her and her husband had a vegetable stall in the local market but they fell into debt because her husband was addicted to heroin. By 2004/5 the Appellant had had enough of her husband's addiction and violence towards her and left him. She continued to live in their home area, struggling to bring up her son on her own and burdened by the debts incurred by her ex-husband
 - In 2011 the Appellant met two men who offered to consolidate her debt by lending her 600,000,000 dong (*by today's rates that equates to approximately £20,000*). She could use that money to repay her other creditors, and she could repay the men by agreeing to travel to Sweden where she would pick strawberries until she had paid them back
 - The Appellant agreed to the proposal and in 2011 the Appellant sent her son to live with her sister, and left Vietnam with the men

- Soon after her arrival in Sweden the Appellant understood that she had been lied to. There were no fields and no strawberries. She was taken, along with hundreds of other captives, to some buildings in a forest. They were kept in appalling conditions and threatened
- After approximately six weeks the Appellant was taken, along with 7 other women, on a long journey by road. When they got out of the van they were in they found themselves in Germany. They were arrested, fingerprinted and released by German police officers. The women were then picked up by the traffickers again and continued their journey. They were taken to France where they were forced into the boots of cars. The cars were then placed in a container and they were transported to the United Kingdom. The Appellant suffered direct violence and sexual assault by the traffickers during this journey
- Once in the United Kingdom the Appellant was forced to work as a prostitute. In May 2013 she tried to escape along with another captive with whom she had formed a relationship. She was injured during her escape attempt and was recaptured. She was punished and then transferred to a house where the traffickers were cultivating cannabis. She was forced to work looking after and harvesting the plants
- On the 29th September 2013 the Appellant was arrested for cultivation of cannabis. She was sentenced to 6 months' in prison and recommended for deportation
- On the 13th January 2014 the Appellant gave birth to a baby girl (A). the Appellant subsequently absconded with her daughter
- In April 2016 the Appellant was captured by traffickers in Liverpool who took her and her baby to a house where she was once again forced to work cultivating cannabis. She was soon re-arrested and once again convicted of cultivating a Class B drug. She was sentenced to 12 months in prison. Her daughter was taken away from her and placed with foster carers by Liverpool City Council
- The Appellant has been assessed by Dr Kim Joliffe, a Consultant Clinical Psychologist, as suffering from PTSD, major depressive disorder and severe anxiety. The First-tier Tribunal accepted that these conditions are the sequelae of the successive traumas summarised above
- The Appellant has been examined by Dr Ruth Wilson of Medical Justice who found her body to bear 25 areas of scarring. These included scars consistent or highly consistent with her account of being variously assaulted with a heated metal stick, a scythe, a knife and razor blades. The Appellant further has injuries consistent or highly consistent with

her claim to have lost front teeth after she was punched in the face, and to have sustained a cut to her chin when her head was violently pulled down and smashed against the edge of a metal table. Dr Wilson concluded that the overall distribution and pattern of the scarring was such that it was highly consistent with the Appellant's account. On the basis of her evidence the First-tier Tribunal accepted that these injuries arose in the manner claimed, i.e. that the Appellant was subject to extreme violence by her traffickers as a means of controlling her

- It is reasonably likely that the men who loaned the Appellant 600 million dong in 2011 are directly connected to the men in Europe who trafficked the Appellant
5. I further note the unchallenged evidence in the Appellant's most recent bundle to the effect that the Appellant's sister in Vietnam has recently been involved in a road traffic accident and as of the 28th November 2018 was under the care of Dr Hoang Bach Thao at Hue General Hospital where she is in a coma, having suffered severe brain and skull trauma.

Legal Framework

6. The Deportation Order signed on the 7th January 2014 was taken pursuant to s3(5)(a) of the Immigration Act 1971:

(5) A person who is not a British citizen is liable to deportation from the United Kingdom if –

(a) the Secretary of State deems his deportation to be conducive to the public good; or

(b) another person to whose family he belongs is or has been ordered to be deported

(emphasis added).

7. The Appellant was subsequently convicted of a further offence and sentenced to 12 months in prison. In considering her application for the deportation order to be revoked I must, the parties agree, take that into account under the 'automatic deportation' provisions contained s32 of the Borders Act 2007:

32 Automatic deportation

(1) In this section "foreign criminal" means a person –

(a) who is not a British citizen,

(b) who is convicted in the United Kingdom of an offence, and

(c) to whom Condition 1 or 2 applies.

(2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.

(3)

(4) For the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.

(5) The Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).

(6) The Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless –

(a) he thinks that an exception under section 33 applies,

(b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or

(c) section 34(4) applies.

8. For the purpose of this appeal the relevant ‘exception’ in the 2007 Act is found at s33(2)(b):

(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach –

(a) a person's Convention rights, or

(b) the United Kingdom's obligations under the Refugee Convention.

9. If the Appellant can show that her removal would be contrary to the United Kingdom’s obligations under the Refugee Convention, the Secretary of State must revoke the deportation order and grant her a period of leave to remain. The standard by which the Appellant must discharge that burden is not the normal civil standard. Because of the matters at stake she is only required to prove her case to the lower standard of ‘reasonable likelihood’. This standard applies both to past events and to the risk of harm that the Appellant might face in the future.

10. In assessing future risk I am bound to have regard to the *Demirkaya* principle enshrined in the Immigration Rules at paragraph 339K:

339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

Discussion and Findings

11. The burden lies on the Appellant to show that she faces a real risk of persecution for one of the five reasons set out in Article 1A(2) of the Refugee Convention. Although the First-tier Tribunal found to the contrary, the

Secretary of State now accepts that the facts do engage the Refugee Convention, in that the Appellant can show herself to be a member of a 'particular social group', namely 'women who have been trafficked' in Vietnam.

12. The Secretary of State further accepted that the Appellant has been subjected to persecution/ serious harm in the past. That harm includes a) physical assault b) sexual assault c) being trafficked for the purpose of sexual exploitation and d) being trafficked for the purpose of forced labour. The fact that the Appellant has been subject to such harm in the past must be taken as a serious indication that her fears about the future are well-founded. My starting point must therefore be to ask whether there are good reasons to consider that such harm would not be repeated?
13. In relation to the position in the Appellant's home area of Quang Binh the Respondent conceded that he could not identify any such good reasons. The Appellant owes a considerable amount of money to money lenders there who, it is now accepted, are connected to the very organisation that trafficked the Appellant from Vietnam to Sweden and Germany and then into the United Kingdom. There is no reason to suppose that the Appellant would today be safe from that trafficking gang: she still owes them money, has escaped their control and moreover has supplied the United Kingdom authorities with details about their operation. Mr Bramble accepted that the gang would be motivated to either re-traffick or otherwise seriously harm the Appellant.
14. There remained the question of whether the Vietnamese authorities would be able to provide the Appellant with a *Horvath* 'sufficiency of protection'. At the hearing I noted that this had been a central feature of the Respondent's case in the original decision. The Appellant relied on a report by Christoph Bluth, a Professor of International Relations and Security at the University of Bradford. Mr Bramble took no issue with Professor's Bluth's expertise: he has been studying and researching Vietnam for over twenty years. Much of what Professor Bluth says is entirely uncontroversial. It is agreed, for instance, that Vietnam is a source country for trafficking for the purpose of sexual and labour exploitation. The features of this case are consistent with the wider patterns of trafficking observed by researchers and international organisations, namely that the Appellant was lured abroad by false promises of work, a substantial debt is involved, and that individuals such as she are often forced into trafficking situations because of the violent threats of loan sharks in Vietnam who charge exorbitant rates of interest and thus maintain control over their debtors for many years. There is an established connection between the loan sharks and the traffickers.
15. Professor Bluth does however have specific evidence to give about the ability or willingness of the state to deal with these issues. First, there is the problem of corruption. There is, he reports, some evidence to suggest that criminal activity including gambling, vice and loan-sharking has penetrated senior levels of the

police force and government. However the real problem is that lower ranking officers often collude with criminals in order to profit from their activities themselves: there is not therefore a willingness to provide protection to potential victims. Second, there are questions about the ability of the authorities to tackle these “endemic” challenges: the number of reports of police action against such gangs are relatively small in the context of the scale of the phenomenon. Mr Bramble accepted that on the particular facts of this case it was reasonably likely that the Appellant would not be able to access the protection of the Vietnamese state. That is because she would remain at risk in her home area, and because the men involved are part of an established operation there who, in light of the evidence of Professor Bluth, very likely operate with the connivance of the local police.

16. The final matter to be considered is whether it would in all the circumstances be reasonable to expect the Appellant to relocate within Vietnam in order to avoid the traffickers. The clear import of all of the evidence before me is that it would not. Whilst the Appellant is physically fit and able to work, and may even be able to call upon members of her family for some support, there are a number of other factors which mean that her existence is likely to fall below an acceptable standard. These are:

- i) There remains some risk from the large and multi-national gang who have already trafficked her. Professor Bluth notes that in order to resettle anywhere in Vietnam the Appellant would need to register her household with the local authorities. It is known that criminal gangs are able to bribe the police in order to locate potential/former victims;
- ii) Even if that risk were not established to the requisite standard the Appellant remains at risk of being subject to exploitation again in the future. Her consistent evidence has been that she and her family were already extremely poor, and as a result heavily indebted. These are precisely the characteristics which would render her vulnerable to being trafficked again. That this is so is recognised by the Respondent’s own guidance on the issue *Victims of Modern Slavery – frontline staff guidance*;
- iii) The Appellant has particular characteristics which increase that vulnerability yet further. In her most recent report, dated the 9th December 2018, Dr Joliffe concludes that the Appellant is still suffering from PTSD, depression and anxiety disorder. She believes that if returned to Vietnam these conditions would worsen, rendering the Appellant less able to function, “including making safe and reasoned decisions”. As the ‘Liverpool incident’ illustrates, her mental health issues – and the fear of

violence that has already been visited upon her – means that the Appellant is more likely to comply with attempts to coerce her;

- iv) Even absent a risk of re-trafficking the aforementioned mental health conditions will make it less likely that the Appellant will be able to work and provide for herself in a safe and sustainable way.

17. There is, unfortunately, one other factor in this case which satisfies me in itself that it would not be reasonable to expect her to relocate within Vietnam. The Appellant's daughter A remains in the care of Liverpool City Council. At present it would appear extremely unlikely that this child, currently subject to an order by the family court, could or would be deported with the Appellant (see below). On the facts before me child A was removed from the Appellant's care because she was being sent to prison. She was being sent to prison because she committed a crime whilst under the control of her traffickers. The Appellant's current legal representatives are, I am told, making efforts to secure further visitation rights to enable her to see her daughter regularly or even one day for the child to be returned to her care. In circumstances where mother and child have been separated as a direct result of mother being trafficked, it would in my view be a flagrant interference with her Article 8 rights to remove her to Vietnam without her daughter, and where any chance of maintaining a relationship with her would be severed. I am satisfied that to do so would be contrary to the United Kingdom's obligations under ECHR but would also constitute "unduly harsh" circumstances in the context of the Refugee Convention. It is reasonably foreseeable, and likely, that such final separation from her daughter would have a devastating impact on the Appellant's already fragile mental health.

18. It follows that the appeal must be allowed.

19. I would add this. The papers before me indicate that on the 10th June 2016 the Secretary of State took a decision to deport the Appellant's daughter 'A' as the family member of a person subject to a deportation order. The order itself was signed on the 31st August 2016. I have no information about whether that order has been challenged by Liverpool City Council, who are currently responsible for this child. Since the child is subject to an order of the family court she cannot be removed from the jurisdiction: in light that, and of my decision, the Respondent will no doubt review the position of A and withdraw the decision to deport her.

Anonymity

20. This is a protection claim that involves evidence of sexual abuse and the wellbeing of a minor. Having had regard to Rule 14 of the Tribunal Procedure

(Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

21. The decision of the First-tier Tribunal contains an error of law such that the decision has been set aside (See attached).
22. The appeal is allowed on protection grounds.
23. There is an order for anonymity.

Upper Tribunal Judge Bruce
Dated 14th December 2018