



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12244/2017

THE IMMIGRATION ACTS

Heard at Newport
On 24th January 2019

Decision & Reasons Promulgated
On 11th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

T T B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss N Quadi of Counsel instructed by Migrant Legal Project

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant is a female Vietnamese citizen born 15th February 1991. She appealed against a decision of Judge Richards-Clarke (the judge) of the First-tier Tribunal (the FtT) promulgated on 12th June 2018.
2. The Appellant made a human rights claim and a claim for international protection. Her son born 8th May 2013 is a dependant in her claim.

3. The Appellant's claim for international protection was made on the basis that she had been the victim of human trafficking and therefore was a member of a particular social group. In summary the Appellant explained that she came to the UK on 13th December 2011 as a Tier 4 student. She had married in Vietnam in June 2009. In addition to her son who was born in the UK, the Appellant and her husband have another son born 24th December 2009.
4. The Appellant had arrived in the UK without her husband. She claimed that he became jealous and he had physically abused her while she was in Vietnam. In June 2012 the Appellant's husband and eldest son came to the UK. On arrival the husband joined some Vietnamese friends and set up a cannabis factory. The husband started to abuse the Appellant and demanded that she cease her studies and use her parents' money to invest in the cannabis factory.
5. The couple moved to London with the husband still being involved in cannabis factories. He told the Appellant to contact her parents and obtain further funds. When the Appellant refused her husband returned to Vietnam taking the eldest son with him and the Appellant has not seen her son since.
6. In Vietnam the appellant's husband and his associates contacted her parents to request further funds to subsidise the Appellant's education in the UK. Her parents took out a substantial loan to provide the money.
7. Thereafter the husband returned to the UK and the Appellant was held against her will and was under the control of her husband and his criminal associates.
8. When the Appellant attempted to escape, she was discovered by her husband who raped her in front of other men who also raped her. Following the rape, the Appellant became pregnant and the husband refused to accept that the baby was his.
9. In mid-2014 one of the cannabis factories was raided by the police and the Appellant's husband was convinced that the Appellant had informed the police. She was told that she would have to pay back the money that was lost in the raid by working in one of the cannabis factories or working as a prostitute.
10. Shortly after this the Appellant managed to escape, together with her son, and sought help from her half-brother in Bristol. The Appellant's parents told her that loan sharks had attended their home in Vietnam and threatened them on numerous occasions.
11. The Appellant claimed asylum on 3rd August 2015. In September 2015 the Appellant was referred to the National Referral Mechanism. On 10th November 2017 the Competent Authority concluded that the Appellant had been the victim of human trafficking. She was therefore granted discretionary leave from 10th November 2017 until 9th November 2018 because she was receiving ongoing treatment as a result of her experience as a victim of human trafficking.

12. On the same date, the Respondent refused the Appellant's asylum, humanitarian protection and human rights claim. The reasons for this decision are contained in a letter dated 10th November 2017 which runs to 25 pages. In very brief summary the Respondent noted that the Appellant held a student visa valid between 7th November 2011 and 12th October 2012. The Respondent accepted the Appellant's nationality. It was not accepted that she was the member of a particular social group as the Respondent's view is that trafficking victims do not have a distinct social identity in Vietnam. It was accepted that the Appellant had been the victim of trafficking and that her husband had intended to force her into prostitution or forced labour. It was accepted that the Appellant had a genuine subjective fear on return to Vietnam as her husband had threatened that her parents would be attacked, and that if the Appellant returned to Vietnam she would be sold into prostitution in China or she would be made to transport drugs to Laos.
13. The Respondent considered that there is in Vietnam a sufficiency of protection provided by the authorities, and the Appellant could also relocate to a different area in Vietnam where she would not be at risk. The Respondent placed reliance upon the Upper Tribunal decision Nguyen [2015] UKUT 170 (IAC) in which it was held that a victim of trafficking would be able to return to Vietnam without being of adverse interest to the government, and the chance of the person coming across the traffickers is very slight. It was also found in paragraph 52 of that decision that there is a sufficiency of protection in Vietnam.
14. The Respondent therefore did not accept, because of the existence of sufficiency of protection from the authorities and a reasonable internal relocation option, that the Appellant had proved that she would be at risk if returned to Vietnam, and did not accept that if the Appellant and her son returned to Vietnam, that this would breach Article 8 of the 1950 European Convention on Human Rights.
15. The appeal was heard on 24th May 2018. The judge found the Appellant to be a vulnerable witness because she had been the victim of trafficking, and had mental health issues. It was agreed that credibility was not in issue, and the appeal proceeded on the basis of submissions only.
16. The judge found the Appellant would be able to turn to her family in Vietnam for support and that there existed in Vietnam a sufficiency of protection from the authorities. It was also found that the Appellant had a reasonable internal relocation option. The appeal was dismissed on all grounds.
17. The Appellant applied for permission to appeal to the Upper Tribunal relying upon three grounds. Firstly, it was submitted the judge erred by finding the Appellant would receive support from her parents. The Appellant's evidence was not disputed by the Respondent, and this evidence was to the effect that her parents were indebted to her previous traffickers, had been forced to sell their business and mortgage their house, and continued to receive threats from the traffickers/loan sharks who regularly attended their property.

18. Secondly, it was contended that the judge had failed to properly consider or make findings on the expert and supporting evidence regarding risk on return and internal relocation. The judge did not make findings upon a country expert report, and did not explain why the expert opinion was rejected. It was contended that the judge had not taken into account a psychiatric report which confirmed that the Appellant suffers with PTSD and depressive disorder. The Appellant would struggle to gain employment or support herself and her son given her acute vulnerability, and it was contended that the judge had not referred to or analysed this evidence. It was not clear why the judge had preferred evidence relied on by the Respondent as opposed to the evidence relied upon by the Appellant.
19. The third ground contended that the judge failed to properly consider or make findings upon the expert and supporting evidence which corroborates the inadequacy of state protection for victims of trafficking. Again, the judge had preferred evidence given on behalf of the Respondent without explaining why the Appellant's evidence was not accepted.
20. Permission to appeal was granted by Judge Haria of the FtT who found it arguable that the judge had failed to give adequate reasons for findings.

Error of Law

21. On 12th October 2018 I heard submissions from both parties in relation to error of law, and concluded that the judge's decision must be set aside. I set out below paragraphs 20-28 of my error of law decision dated 16th October 2018;
 - "20. The Respondent concedes that Ground 1 discloses an error of law, and in my view that concession is rightly made. I must decide whether the error is material.
 21. In my view the judge at paragraph 28, in finding that the Appellant would be able to turn to her family in Vietnam for support, does not take into account the evidence given by the Appellant, which was not challenged. This was to the effect that her parents were now indebted to the previous traffickers (as the judge did acknowledge). They had been forced to sell their business and mortgage their house. The evidence was that threats continued to be received from individuals who regularly attended the property of the Appellant's parents. Therefore her parents would be unable to provide the financial support referred to by the judge at paragraph 28 which they had previously provided to the Appellant, and the Appellant would be at risk if she returned to the family home in Vietnam as it was visited by those involved in trafficking.
 22. I find this to be a material error as in the Respondent's CPIN published in November 2016 at 2.3.5, one of the factors that indicates an increased risk of being abused or re-trafficked is the absence of a supportive family willing to take the victim back into the family unit. One of the factors indicating a lower risk of being abused or re-trafficked includes the availability of a supportive family willing to take the person back into the family unit.

23. Grounds 2 and 3 challenge findings made by the judge in relation to internal relocation and sufficiency of protection. The judge does deal with internal relocation and sufficiency of protection relatively briefly at paragraph 29. The judge accepts at paragraph 25 that the Appellant has moderately severe PTSD and a moderately severe depressive illness for which she is receiving treatment in the UK. The judge concludes that the authorities in Vietnam can provide a sufficiency of protection and there is a reasonable internal relocation option which would not be unduly harsh. As noted by Mr Howells the judge had in paragraphs previous to paragraph 29, made reference to the evidence relied upon by the parties. It is evident from paragraph 29 that the judge prefers the evidence given in the Respondent's CPIN of November 2016, and the decision in Nguyen to the expert reports relied upon by the Appellant, and the 2017 Refworld report and 2016 USSD report.
24. What is not made clear, in my view, is why the judge prefers the Respondent's evidence, and attaches very little weight to the evidence relied upon by the Appellant. I set out below the headnote to Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC);

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."
25. In this case there is a conflict of evidence in relation to sufficiency of protection and internal relocation. If evidence relied upon by one party is preferred to the evidence relied upon by the other party, the judge must explain why that is the case, so that the losing party knows why they have lost.
26. Paragraph 29 does not make it clear why the Respondent's evidence is preferred. It is not clear why no weight has been given to the evidence relied upon by the Appellant. That is a material error of law.
27. Therefore the decision of the FtT is set aside. The decision needs to be remade. It is not appropriate to remit this appeal back to the FtT. I have considered whether the decision can be remade without a further hearing and I have decided that would not be appropriate.
28. There will be a further hearing before the Upper Tribunal. I have decided there should be a further hearing because both parties have stated that there is further updated evidence that should be considered. The next hearing before the Upper Tribunal will be for the purpose of deciding whether the Appellant would be at risk if returned to Vietnam, and specific consideration will be given to whether there is a sufficiency of protection and reasonable internal relocation option."

Re-making the Decision

22. At the resumed hearing the Appellant attended but was not called to give oral evidence. I ascertained that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. I had the Respondent's bundle that had been before the FtT, which has annexes A-C together with the Appellant's bundle which had been before the FtT which has sections A-E. The Appellant's representatives had served a supplementary bundle which had not been before the FtT, containing sections SA and SB. Mr Howells had not received the addendum expert report dated 16th January 2019 and was provided with this. Mr Howells had not seen my error of law decision and a copy was provided.
23. Mr Howells produced the Respondent's Country Policy and Information Note (the CPIN) on victims of trafficking in Vietnam dated September 2018, the Country Policy and Information Note on fear of illegal money lenders in Vietnam dated December 2018, and a Response to an Information Request in relation to mental health care in Vietnam dated 8th October 2017. Miss Quadi submitted her skeleton argument running to 22 pages, and containing 106 paragraphs.
24. The hearing proceeded when the representatives had considered the documentation. There was no application for an adjournment.
25. I heard oral submissions. Both representatives made lengthy oral submissions which I have recorded in my Record of Proceedings and will not reiterate here. I will summarise very briefly the oral submissions that were made.
26. Mr Howells placed reliance upon the CPIN document submitted at the hearing. He placed reliance upon the objective evidence contained therein. It was submitted that this is up-to-date evidence, and confirms that there is in Vietnam a sufficiency of protection provided by the authorities.
27. It was also submitted that the objective evidence confirmed that the Appellant could relocate within Vietnam, and support was available, and such an internal relocation would not be unduly harsh.
28. It was further submitted that the Appellant confirmed in her most recent witness statement that she is not currently receiving any treatment in relation to her mental health, but is taking anti-depressant medication. Mr Howells submitted that the objective evidence showed that mental health treatment would be available in Vietnam.
29. It was therefore submitted that the Appellant had not proved that she would be at risk in Vietnam. With reference to Article 8, the best interests of the Appellant's son would be to remain with his mother. It was not accepted that the Appellant had proved that there would be very significant obstacles to her integration in Vietnam, and therefore paragraph 276ADE(1)(vi) was not satisfied.

30. In making oral submissions Miss Quadi relied upon her skeleton argument. I was asked to note that the Respondent accepts the Appellant has been a victim of trafficking.
31. It was submitted that the Appellant would not have family support if returned and would be at risk of being trafficked again. The Appellant is vulnerable and the medical evidence indicates that she suffers from PTSD and depression.
32. It was argued that the Appellant is a member of a particular social group as a victim of trafficking.
33. I was reminded that the Respondent had not challenged the Appellant's credibility. It should therefore be accepted that her parents were indebted to her former traffickers.
34. Miss Quadi pointed out that the expert confirmed that the Appellant's husband has two uncles with close ties to the Vietnamese government, one who is the vice chairman of the Ministry of Transport, and the other who is the director of the Transportation Department for Nghe An Province. Therefore, these individuals would seek to protect the husband from any criminal sanctions in Vietnam.
35. Reliance was placed upon the expert report in submitting that in practice there is no sufficiency of protection in Vietnam, and no reasonable internal relocation option. With reference to mental healthcare, reference was made to the Information Response Request produced by the Respondent, which referred to most hospitals being outdated and facing chronic overcrowding, with much of the existing medical equipment in public hospitals being obsolete and needing replacement. The budget provided by the Vietnamese state for the health sector has increased but is still too low to meet demands. There is a shortage of qualified medical staff in many hospitals. I was asked to allow the appeal.
36. At the conclusion of oral submissions, I reserved my decision.

My Conclusion and Reasons

37. I have taken into account all the evidence, both oral and documentary that has been supplied and have considered that evidence in the round. In relation to risk on return the burden of proof is on the Appellant, to the lower standard, that being a reasonable degree of likelihood.
38. The parties have agreed that credibility is not in dispute. I therefore record that the Appellant has been a victim of human trafficking. This occurred when she was in the UK, and the perpetrators were her husband and his associates.
39. I accept the Appellant has been in the UK since December 2011, and she lives with her son who was born in the UK and is now 5 years of age. The whereabouts of the Appellant's husband and her elder son are unknown. I find that the Appellant's parents are indebted to the traffickers. It is not suggested by the Respondent that the

Appellant can safely return to her home area, and I accept that the Appellant would be at risk from her traffickers if she did return to her home.

40. In considering sufficiency of protection and internal relocation I must take into account the Appellant's mental health. Dr Battersby is a consultant psychiatrist who interviewed the Appellant on 10th February 2018 and 19th February 2018. Dr Battersby confirms that the Appellant is suffering from moderately severe PTSD and a moderately severe depressive illness. Dr Battersby confirms that the Appellant's condition is unchanged from a previous report that she had written, despite having had approximately a year of psychological input. Dr Battersby had previously interviewed the Appellant in 2015. Dr Battersby confirmed at page 17 of her report that in her view the Appellant's prognosis is that it is likely that she will never fully recover from her PTSD although she may make some improvements. Dr Battersby comments that she is concerned about how frequently the Appellant disassociated during their interview and during those episodes she was unable to take in or process information, and when she became aware of where she was, she could not remember the last question she was asked. Dr Battersby comments that the Appellant is likely to disassociate more frequently when under stress. Dr Battersby comments at page 23 of her report that the Appellant has little emotional resilience and easily becomes overwhelmed by her emotions. At page 24 of the report Dr Battersby, says that the Appellant's frequency of disassociation is some of the most extreme she has observed. I place weight upon Dr Battersby's report.
41. Also contained within the Appellant's bundle is a letter dated 9th January 2018 from Dr Jessica Munafo a clinical psychologist. She confirms working with the Appellant from September 2017 until January 2018. The Appellant was initially referred to Primary Care Mental Health Services in October 2016 and referred for more specialist input for her trauma symptoms in January 2017. She was then seen for an extended period of stabilisation work by Dr Roberts from February to June 2017.
42. Dr Munafo describes the Appellant as "quite vulnerable". She comments that an unsuccessful asylum claim would likely lead to an extreme exacerbation of the PTSD symptoms, an increase in suicidal ideation, and a risk to her son's safety and wellbeing. Dr Munafo confirms in her letter that the Avon and Wiltshire Mental Health Partnership Trust would only be able to provide a further two sessions of treatment to the Appellant due to restrictions on the total number of sessions that can be offered, after which referral to Voluntary Sector Services will be made. At the time of writing it was Dr Munafo's professional opinion that the Appellant requires further trauma work and this could be accessed via an organisation such as Trauma Foundation South West although it is understood there is currently a twelve month waiting list. Dr Munafo confirms that the Appellant presents with symptoms of PTSD, with associated features of shame, depressive symptoms such as low mood, selfcare difficulties, suicidal ideation and social anxiety. I place weight upon Dr Munafo's opinion.
43. I accept that the current position is that the Appellant is not receiving counselling but is in receipt of anti-depressant medication and is receiving support from her general

practitioner who has advised that she needs further therapy and she has been referred to Bristol Therapies and is waiting to receive a letter from that organisation. The Appellant's mental health condition has not been disputed by the Respondent.

44. What is disputed is whether the Appellant can claim to be the member of a particular social group. In my view Vietnamese women who are victims of trafficking can form a particular social group. The UNHCR guidelines on international protection, victims of trafficking confirms that victims of trafficking can fall within the definition of a refugee. AZ (trafficked women) Thailand CG [2010] UKUT 118, confirmed that former victims of trafficking are capable of being members of a particular social group owing to their shared past experience of having been trafficked. I am satisfied that trafficked victims do possess a distinct social identity in Vietnam and my conclusion is that Vietnamese women who have been the victim of traffickers do form a particular social group.
45. In assessing sufficiency of protection, I take into account that the Appellant would not receive the support from her family who are indebted to the traffickers. I follow the guidance in Horvath [2000] UKHL 37 in which it was found that there must be in force in the country in question a criminal law which makes the violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes. The victims as a class must not be exempt from the protection of the law. There must be a reasonable willingness by the law enforcement agencies, that is to say the police and courts, to detect, prosecute and punish offenders.
46. I take into account the expert report dated 9th February 2018 prepared by Dr Tran and the addendum to that report dated 16th January 2019. Dr Tran is firmly of the opinion that the authorities in Vietnam cannot provide a sufficiency of protection to the Appellant, and there would be no reasonable internal relocation option.
47. I also take into account the CPIN dated September 2018 relating to victims of trafficking, and in particular section 2.5 which relates to protection. Vietnam has comprehensive anti-trafficking legislation and prosecutes those involved in trafficking. There were 244 convictions in 2017. The sentences imposed range from 2 to 30 years' imprisonment.
48. However, it is confirmed at 2.5.3 that while legislation exists and prosecutions occur, a lack of co-ordination across provincial agencies and poor understanding of the relevant legislation reportedly results in uneven enforcement of the law. Budgetary constraints also preclude some local authorities from pursuing trafficking cases in isolated parts of the country.
49. I take into account the decision in Nguyen but note that this is not a country guidance case, and the Upper Tribunal in that case were dealing with a US State Department trafficking in persons report dated 2010.
50. I must consider the particular circumstances of the Appellant. She cannot return to her home area and would not receive assistance from her family. She is vulnerable and has a 5 year old child. I must consider where she would live. The CPIN of

September 2018 at 8.4.1 refers to the Asia Foundation recording that when trafficking victims return to Vietnam they face tremendous difficulty in reintegrating into their communities. They are stigmatised by society and traumatised by their experience and generally do not have the education and skills necessary for gainful employment. These women are at a high risk of being re-trafficked.

51. Therefore the Respondent's own guidance indicates a high risk of re-trafficking. At 2.5.5 of the CPIN there is reference to the Ministry of Labour Invalids and Social Affairs providing protection and reintegration support and operating 400 social protection centres through local authorities which provide services to a wide range of vulnerable groups, including trafficking victims. However, the CPIN states that these centres are reported to be unevenly staffed and resourced and lack appropriately trained personnel to assist victims.
52. At paragraph 7 of Dr Tran's addendum report there is reference to the social protection centres. Dr Tran confirms that these provide shelter, care and food for people with serious mental health illnesses, abandoned newborn children, and the abandoned (without children) elderly parents/people. Dr Tran points out that these centres would only be available to the Appellant if she was recognised as a person with a serious mental illness such as lacking capacity to conduct her own activities such as eating and toileting. Dr Tran notes that the Appellant suffers from PTSD and depression and comments that it would therefore be unlikely that the Appellant will be able to access this support in Vietnam as she would not be regarded as having a sufficiently serious mental illness.
53. There is reference within the background information to trafficking victims receiving financial support. Dr Tran at paragraph 10 of the addendum report points out that this amounts to only £50.
54. Although there is evidence of prosecutions of human traffickers in Vietnam, I find that the background evidence supplied by both parties, indicates that in the particular case of the Appellant, it has been shown to a reasonable degree of likelihood that sufficiency of protection would not be provided by the authorities.
55. In considering internal relocation, I must consider whether this is a reasonable option. I find that it is not. I make this finding based in part upon the Appellant's vulnerability, her mental health difficulties, the fact that she would not have support from her family, and the lack of suitable accommodation and mental healthcare facilities.
56. With reference to mental healthcare, the Response to Information Request at 1.1.1 describes Vietnam having a commendable national mental health programme but "the services available currently cover only 30% of communes and treatment is available only for schizophrenia and epilepsy." It is however also stated that generalised anxiety disorder was added to the list of mental illnesses eligible for treatment through the national health programme, and this would include most depression related mental health illnesses.

57. The same Response to Information Request does, as pointed out on behalf of the Appellant, make reference to most hospitals being outdated and having to deal with chronic overcrowding. Hospitals in major cities like Ho Chi Minh and Hanoi often do not have the capacity to serve both local and provincial patients. Much of the existing medical equipment in public hospitals is obsolete and needs replacement and many hospitals lack sufficient equipment for surgery and intensive care units. There is a shortage of qualified medical staff in many hospitals and the total budget for the health centre has increased but is still too low to meet the demands.
58. I therefore conclude that some of the objective evidence relied upon by the Respondent does in fact support the views of Dr Tran, in relation to mental health facilities in Vietnam, and the difficulties that the Appellant would face in finding accommodation.
59. My conclusion, taking into account the lower standard of proof which is a reasonable degree of likelihood, is that it has been proved that there would not be a sufficiency of protection for the Appellant, and she would not have a reasonable internal relocation option in Vietnam. As I conclude that she is a member of a particular social group I find that she is entitled to a grant of asylum. She is therefore not entitled to a grant of humanitarian protection.
60. If the Appellant was not the member of a particular social group I find that she would be entitled to a grant of humanitarian protection because of the risk that she would face if returned to Vietnam. I also conclude that the Appellant would be at risk of treatment that would breach Article 3 of the 1950 Convention, and that she would be at risk of inhuman or degrading treatment or punishment if returned to Vietnam.
61. Turning to consider Article 8 I find that the Appellant has established a private life in the UK and she has family life with her son. The best interests of the son would be served by remaining with his mother. It is not claimed that the Appellant can satisfy Appendix FM in relation to family life and I find that to be the case. The son is not a qualifying child as he is not a British citizen and he has not accrued seven years' continuous residence.
62. I consider paragraph 276ADE(1)(vi) which entails the Appellant proving that there would be very significant obstacles to her integration into Vietnam. In considering this I follow the guidance in Treebhawon [2017] UKUT 0013 (IAC) in which it was found that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even when multiplied, are unlikely to satisfy the test of very significant obstacles.
63. In relation to integration I follow the guidance in Kamara [2016] EWCA Civ 813. This confirms that there must be a broad evaluative judgment. It must be considered whether an individual is enough of an insider in terms of understanding how life in the society in the country of return is carried on. The individual must have the capacity to participate in life in that country and have a reasonable opportunity to be

accepted there and operate on a day-to-day basis. The individual must be able to build up within a reasonable time a variety of human relationships to give substance to their private or family life.

64. I conclude that the Appellant has proved there would be very significant obstacles to her integration. Her vulnerability and mental health difficulties are a significant factor. There is also the fact that she has previously been the victim of human trafficking, and I find that there would not be a sufficiency of protection, nor a reasonable internal relocation option available to her. She would not be able to access family support for the reasons explained earlier.
65. In considering Article 8 I have taken into account section 117B of the Nationality, Immigration and Asylum Act 2002. The maintenance of effective immigration control is in the public interest. On this point it is relevant that I find that the Appellant is entitled to asylum because she would be at risk in Vietnam, and she satisfies paragraph 276ADE(1)(vi). It is in the public interest that a person seeking leave to remain can speak English and is financially independent. The Appellant has not proved that she can speak English, nor is she financially independent. These are considerations that I have taken into account.
66. I also place little weight upon the private life that the Appellant has established while in the UK with a precarious immigration status. Notwithstanding these findings, my overall conclusion is that to remove the Appellant from the UK would be disproportionate and a breach of Article 8, given the risk that I find she would face, and that she satisfies paragraph 276ADE(1)(vi).

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. I substitute a fresh decision.

I allow the Appellant's appeal on asylum grounds. Therefore, the Appellant is not entitled to humanitarian protection.

I allow the Appellant's appeal on human rights grounds with reference to Articles 3 and 8.

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 her or any member of her 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
Deputy Upper Tribunal Judge M A Hall

Date 5th February 2019

**TO THE RESPONDENT
FEE AWARD**

No fee has been paid or is payable so there is no fee award. If a fee had been paid or payable I would not have made a fee award as the appeal has been allowed because of evidence presented to the Tribunal that was not before the initial decision-maker.

Signed
Deputy Upper Tribunal Judge M A Hall

Date 5th February 2019