



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

Appeal Number: PA/03920/2019

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 13 February 2020**

**Decision & Reasons  
Promulgated  
On 3 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**TLP**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Bashow, instructed by Legal Justice solicitors  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was born in 2000 and is a female citizen of Vietnam. She appealed to the First-tier Tribunal against a decision of the Secretary of State dated 12 April 2019 refusing her application for international protection. The First-tier Tribunal, decision promulgated on 1 October 2019, dismissed the appeal on asylum grounds but allowed it on humanitarian protection grounds. The appellant now appeals, with permission, to the Upper Tribunal in respect of the asylum appeal.
2. The judge found that the appellant was a victim of trafficking from Vietnam for the purposes of sexual exploitation. He dealt with the appeal on asylum grounds at [13-14]. Directing himself to the Upper Tribunal decision in *SB (PSG – Protection Regulations – Reg 6) [2008] UKAIT 00002*, he observed that that case stressed the need to determine whether former victims of trafficking for sexual exploitation were entitled to asylum protection by reference to the facts of the case and prevailing and specific country conditions. He noted that the issue had not been addressed in submissions before him and concluded that trafficking victims in Vietnam ‘are not recognised in law as forming a particular social group within the Convention’s ambit’. The judge concluded that, ‘in view of the Regulations’ criteria and case law’, the appellant does not fall within the definition of a 1951 Convention particular social group in Vietnam. He found that ‘whilst trafficking victims do share the immutable characteristic of having been trafficked, they are not perceived as different or having a distinct identity in Vietnamese society. They are also regarded as equal before the law and state protection is generally available to them.’
3. Ms Bashow, who appeared before the First-tier Tribunal and the Upper Tribunal, submitted that the judge had, having rejected the appeal on asylum grounds, proceeded to make findings on the background material relating to Vietnam which should have led him to reverse his initial finding and to conclude that the appellant was a member of a particular social group. The judge had observed [18] that victims of sexual trafficking on return to Vietnam faced ‘tremendous difficulty in reintegrating into their communities. Stigmatised by society and traumatised by their experience, they generally do not have the education skills necessary for gainful employment. These women are at high risk of being re-trafficked.’ At [19], the judge considered a report of the Asia Foundation (cited in the CPIN) and indicated his agreement with the findings of that report that victims of trafficking faced ‘punishment from government authorities for illegal border crossing or stigma from being labelled a prostitute.’ At [22], he considered a USSD report of 2018 noted that ‘endemic social stigma associated with victimhood and concerns over retribution in their local communities are likely discourage many victims [of sexual trafficking] from seeking or benefiting from protection services.’ These findings and observations led the judge to allow the appeal on humanitarian protection grounds, an outcome with which the Secretary of State has not sought to disagree.
4. I agree with the submissions of Ms Bashow. I consider that the judge was incorrect at [13] to characterise the instant appeal as lacking a factual

basis for a claim on the Convention ground of membership of a social group. That factual basis did indeed exist in this appeal as the judge himself acknowledges in his subsequent analysis. I agree that the frequent reference to the stigma of being a victim of trafficking for sexual exploitation lends significant weight to the appellant's submission that the judge should have concluded that she is a member of a particular social group. The main reason given for rejecting the asylum claim at [14], namely that victims were regarded as equal before the law and able to access state protection is contradicted by the judge himself in his comments regarding the strength and ubiquity of the social stigma suffered by victims which prevents them from seeking or benefiting from protection services provided by the Vietnamese state. At [25], the judge also quoted with approval the conclusions of the appellant's own expert report to the effect that the police force in Vietnam 'remains the most corrupt institution in the world' and that officers are very likely to collude with traffickers to pass victims back into their clutches. Whilst I do not consider the judge's conclusions to be perverse, I do find that his analysis of the background material and the expert report and the findings he reached should properly have led him to reconsider his earlier rejection of the asylum appeal. Accordingly, the appeal is allowed.

**Notice of Decision**

The decision of the First-tier Tribunal is set aside. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 12 April 2019 is allowed on asylum and Article 3 ECHR grounds.

Signed

Date 14 February 2020

Upper Tribunal Judge Lane

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

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