



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14068/2018

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre (remote¹)
On: 26th October 2020

Decision & Reasons Promulgated
On: 29th October 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

HDP
(anonymity order made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Sellwood, Counsel instructed by Wilson Solicitors LLP
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a male national of Vietnam born in 1977. He appeals with permission against the decision of the First-tier Tribunal (Judge Hone) to dismiss his appeal on human rights and protection grounds.

¹ The hearing was listed to be heard by Skype for Business. Unfortunately, on the morning of the hearing the Home Office experienced a national outage of its internet system so Mr McVeety was unable to join online. He was able to participate by telephone.

Anonymity Order

2. The Appellant is victim of trafficking. I must therefore 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 him or any member of his 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”

Background and Matters in Issue

3. The uncontested facts are that the Appellant is a Vietnamese man who entered the United Kingdom sometime in November 2013 with the assistance of an agent. The Appellant had willingly engaged this agent with a view to entering the United Kingdom illegally and working in order to provide for his wife and children back home. Once here he found that he had been tricked and that in fact he was under the control of a trafficking gang who, under threat of violence, set him to work cultivating cannabis. In February 2014 the police raided a building where the Appellant was being held. He fled by jumping out of a window and in doing so badly injured his back. He was hospitalised and upon his discharge, charged with cultivation of cannabis. He was convicted on the 4th July 2014 on charges of abstracting electricity and producing cannabis. He was sentenced to 9 months imprisonment.
4. The Secretary of State served the Appellant with notice of an intention to deport him. The Appellant appealed on the grounds that he required protection, and that he was a victim of trafficking. These representations were refused and the Appellant appealed. His appeal was heard by the First-tier Tribunal (Judge Osbourne) on the 12th January 2015. Judge Osbourne accepted that the Appellant had been trafficked, but dismissed the claim on the grounds that the threat from the traffickers in Vietnam was localised and that the Appellant could reasonably be required to internally relocate, or seek the protection of the Vietnamese authorities, should he return there. The Appellant was recognised as a victim of trafficking by the Competent Authority on the 29th May 2015.
5. A fresh claim was refused by the Respondent on the 4th December 2018. That was the decision appealed to the First-tier Tribunal. Before the First-tier Tribunal the Appellant’s case was that he owed a substantial ‘passage debt’ to moneylenders recommended by his traffickers, who will regard it as outstanding. He fears serious harm because he is unable to pay that debt, and because his traffickers will perceive him to have collaborated with the British authorities in providing information about the gang. The Appellant

submitted that the serious harm feared would amount to persecution for reasons of his membership of a particular social group. The Appellant further alleged that his removal would violate the United Kingdom's obligations under Articles 3, 4 and 8 of the European Convention.

6. The First-tier Tribunal dismissed the appeal on all grounds.
7. The Appellant now appeals on the grounds that in doing so the Tribunal erred in law in the following material respects:
 - i) Failure to consider the expert evidence before it, *viz* a report by country expert Professor Bluth which went to the matter of whether victims of trafficking could be considered a social group, internal relocation, sufficiency of protection and crucially ongoing risk – Professor Bluth believed that the Appellant was now at a potentially *greater* risk of harm than he was in 2013;
 - ii) Failing to take the following material matters into account in its assessment of internal flight: the fact that as a VOT the Appellant is already vulnerable, that he has been diagnosed with major depressive disorder and PTSD which will worsen should he be returned to Vietnam, that there are practical barriers to relocation namely the Ho Khau registration system and that this system is, by means of corruption and bribery, highly susceptible to abuse by loansharks and traffickers seeking to locate victims;
 - iii) Not engaging with the *Demirkaya* principle set out at paragraph 399K of the Immigration Rules. The fact that a person has already been subject to persecution must be regarded as a serious indication of the person's fear of persecution. The Tribunal did not direct itself to, or apply this principle;
 - iv) Applying the wrong standard of proof in its assessment of risk and internal flight at its §41: "it is not certain that he will come to the attention of the trafficking gangs";
 - v) In invoking s8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 the Tribunal failed to consider that any finding under that section would be void because the Appellant has been found to have been trafficked; and
 - vi) Failing to make any finding under the operative test on Article 8, as set out at paragraph 276ADE(1)(vi) – whether there are very significant obstacles to the Appellant's integration in Vietnam.
8. Before me Mr McVeety for the Respondent accepted without hesitation that the grounds were made out. There was a lack of anxious scrutiny in the decision of the First-tier Tribunal and Mr McVeety was satisfied that the Tribunal had in particular erred in failing to address the detailed expert evidence of Professor Bluth.

9. The parties agreed with me that the entire decision must be set aside and the decision remade. In view of the extensive nature of the fact finding required it was agreed that this should take place in the First-tier Tribunal.

Decision and Directions

10. The decision of the First-tier Tribunal contains errors of law such that it must be set aside in its entirety.
11. The decision in the appeal is to be remade in the First-tier Tribunal by Judge other than Judge Hone. The hearing is to be listed at Taylor House, with a Vietnamese interpreter and a time estimate of 3 hours. The Appellant is a vulnerable witness and this should be taken into account by the Judge hearing the appeal.
12. There is an order for anonymity.

A handwritten signature in black ink, appearing to read 'CBE', written in a cursive style.

Upper Tribunal Judge Bruce
26th October 2020