



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003801

First-tier Tribunal No: PA/53255/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 August 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TAN
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sanders instructed by JD Spicer Zeb Solicitors.
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 23 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. Following a hearing at Bradford on 10 March 2023 the Upper Tribunal found an error of law material to the decision of the First-tier Tribunal which dismissed the

appellant's appeal. The basis of the challenge to the First-tier decision was that the judge had erred as:

i) The judge failed to have regard to the medical evidence of the appellant's vulnerability as a returned VOT, in assessing risk of re-trafficking on return. This did not feature at all in the analysis of the asylum claim.

ii)The judge accepted the expertise of the country expert. The judge failed to adequately consider the cumulative factors identified by the country expert, which renders this appellant vulnerable to re-trafficking, when assessing risk on return.

iii)The judge's finding at [18] viz this appellant's attendance at a demonstration in the UK, failed to adequately consider the country evidence set out at 2.4.10 of the CPIN. The corollary of this failing is an arguable inadequate consideration of the expert's analysis of risk because of political activities.

iv)The judge's analysis of article 8 ECHR is arguably impugned by a Robinson obvious error in his article 3 ECHR analysis. In respect of article 3, it is unclear from the judge's decision (a) whether the judge was satisfied that there was a prima facie case that there would be A:2 substantial grounds for believing there would be an article 3 breach if the appellant was returned without access to medical treatment and (b) if yes, there is no consideration given to the procedural steps that flow, specifically whether this appellant would be able to access the treatment he needs and would be able to fund the treatment he needs. There is no evidence referred to in the decision, as provided by the respondent, that would address (b). In particular, the cost of medical care. The corollary of the inadequate analysis of article 3, is that there was an inadequate consideration on a case specific basis, of article 8.

2. It was accepted by the Senior Home Office Presenting Officer that material error of law had been made, in particularly in relation to the failure of the judge to deal with all elements of the applicable tests when assessing the medical evidence pursuant to Article 3 ECHR, risk of re-trafficking, and matters arising from the appellant's mental health issues.

The evidence

3. The appellant, a citizen of Vietnam born on 19 May 1989, entered the UK on 2 February 2016 and applied for asylum on 8 May 2017. His application was refused by the Secretary of State.
4. The appellant claimed that he was trafficked from Vietnam via France, where he was subjected to forced labour. He was taken to the UK in 2017 by lorry where he was forced to cultivate cannabis in different houses and was later taken to work in a brothel as a cleaner and cook.
5. The appellant also claims to have engaged in political activity in the United Kingdom against the Vietnamese government had fears persecution on return to Vietnam due to his sur place activities.

Country experts report

6. The appellant relies upon a report from Professor Bluth, a Professor of International Studies at the University of Bradford, dated 27 October 2021. After setting out his expert opinion upon the issue of trafficking and risk to political dissidents and those opposed the government in Vietnam generically Professor Bluth considers risk to be appellant in relation if returned to Vietnam from paragraph 5.5. At [5.5.9 - 10] it is written:

5.5.9 With these capabilities and a national database of all identity cards, the Vietnamese intelligence officers can run a simple reverse image search to identify anyone whose

photo has been taken during a demonstration. It would take the Vietnamese intelligence officers less than 24 hours to verify the identity of every single person who has participated in a demonstration outside the embassy using the computerised data systems in Vietnam. Vietnamese intelligence agents closely observe, monitor and record all public demonstrations outside their own embassy. This is what modern intelligence agencies (including the Vietnamese) do, and British intelligence services deploy tremendous resources to monitor electronic communications and all available sources of information on a gigantic scale, targeting any individual whose behaviour raises suspicion according to certain algorithms. The Vietnamese government will be fully aware of the appellant's activities in the UK due to the fact that other Vietnamese report to the authorities as well as a result of Vietnamese intelligence officers operating in the United Kingdom. Individuals are at risk due to any links to Viet Tan, Vietnam Path, Brotherhood for Democracy, Viet Youth for Democracy or similar groups which can lead to serious prosecution in Vietnam, whether the individual is a member or not, and whether the links are genuine or not. All well-known political activists living in Vietnam or abroad are always under surveillance by Vietnamese authorities and the Vietnamese authorities are seeking to identify other political activists to arrest and prosecute them. Hence, any links/associates to any well-known/influential activists will lead to serious persecution. The appellant would be at serious risk if returned. In my expert opinion, the appellant faces serious risks of long-term detention and torture if forced to return to Vietnam.

5.5.10 There is a serious risk that the appellant will be interrogated and mistreated by the Vietnamese authorities as someone engaging in subversive activities deemed threatening to the government. According to Article 91 of the Vietnamese penal code as applied until recently and discussed in more detail above in this report, "fleeing abroad or defecting to stay overseas with a view to opposing the people's administration" is a serious offence for which Vietnamese nationals have been imprisoned. The experience of asylum seekers who have been arrested and charged (according to practical experience of asylum seekers who have been returned from the UK and arrested on arrival confirms that the risk is real. Moreover, the law has been tightened, and the range of offences broadened in the Criminal Code 2015 which came into force in January 2018. In other words, laws have been introduced specifically designed to target persons like the appellant who are engaged in political activities against the Vietnamese government abroad. The political actions with which he is associated constitute criminal offences under the Vietnamese criminal code and the appellant may be arrested, and he will be at risk of serious persecution if returned. The Vietnamese authorities consider Vietnamese dissidents in the UK a threat because their activities damage the reputation of Vietnam and human right issues of Vietnam can affect commercial negotiations with the Vietnamese government, as has been the case in relations between the United States and Vietnam.

7. Professor Bluth writes in his conclusion that if the appellant's statement is accepted, it is plausible in relation to country evidence, he has been involved in activities against the policies and actions of the Vietnamese government, and this is an act that is always illegal in Vietnam. In relation to his sur place activities, he has violated criminal laws that were specifically introduced to target persons leaving Vietnam and engaging in anti-government activities abroad meaning he is at serious risk of persecution if he is forced to return to Vietnam.
8. In relation to the risk of re-trafficking, Professor Bluth concludes that Vietnam does not have a functioning system to protect potential or actual victims of trafficking and in particular no support for male victims. Due to his situation as a victim of exploitation without financial support, the appellant will be extremely vulnerable to labour exploitation and re-trafficking. In Vietnam there is in fact a sustained and systematic failure of state protection especially in the case of male victims of trafficking. The authorities will not be able to protect the appellant in due to his involvement with cannabis cultivation may consider him unworthy of

protection. Victims of trafficking in Vietnam are considered by the authorities as a potential threat because of the corrupt involvement of the police with traffickers and other criminal activities. The appellant remains at risk from criminals that previously targeted him and relocation within Vietnam will not keep him safe for the reasons set out in the report.

The medical evidence

9. The appellant relies upon a psychiatric report written by Dr Suleman a Consultant Psychiatrist and Honorary Senior Clinical Lecturer dated 29 October 2021. There was no challenge to the expertise of the author of this report or any reason advanced as to why weight could not be placed upon the same.

10. It is noted the assessment occurred on 21 September 2021 remotely via Zoom for approximately 1½ hours by way of an interview conducted with the help of an interpreter.

11. The report contains a reference to the appellant's GP records and relevant information extracted from the same at [6]. Dr Suleman sets out his own opinion at section [8] in the following terms:

8.1 *(1) Whether he is suffering from any mental health problems.*

8.1.1 I have based my diagnostic conclusions on my objective clinical assessment of TAN and the information in his provided GP records.

8.1.2 It is my view that TAN is suffering from Post-Traumatic Stress Disorder (PTSD) and Depressive Disorder.

8.1.3 His PTSD is likely to have been triggered by previous trauma. He describes being held by traffickers and forced to work for them. He states that he was beaten up by his traffickers during his stay in France from 2013 to 2016. He was held in one place and was not allowed to leave. He was beaten up whenever he attempted to escape. He was not given enough food and was starved. He therefore developed symptoms of PTSD include flashbacks and nightmares of previous traumatic incidents and symptoms of hyper arousal including excessive anxiety, disturbed sleep, hypervigilance and panic attacks. He also developed symptoms of depression including low mood, poor motivation, social withdrawal and suicidal thoughts. He started to avoid reminders of the trauma such as crowds or a fight.

8.1.4 It appears from his history and records that he was started on Mirtazapine 15 mg daily in April 2021 which has been gradually increased to 45 mg daily. It appears that his symptoms started to improve on Mirtazapine 45 mg daily. His flashbacks and nightmares reduced and he started to sleep better. His anxiety also decreased and his panic attacks stopped. His mood also improved and his suicidal thoughts disappeared.

8.1.5 When I assessed him on 21 September 2021, who had occasional nightmares and flashbacks and avoidance of trauma. He also had anxiety, poor concentration, poor motivation and social withdrawal. He did not have suicidal thoughts.

8.2 *(2) What treatment he requires?*

8.2.1 TAN is currently taking Mirtazapine 45 mg daily which is appropriate. In my view he will also benefit from trauma specific psychotherapy such as 8 to 12 sessions of EMDR (Eye Movement Desensitisation and Reprocessing).

8.3 *(3) What his prognosis would be without treatment?*

8.3.1 It is my view that TAN is likely to recover with recommended treatment in 6 to 9 months. However, without treatment his depression and PTSD are likely to get worse and it is likely that his suicidal thoughts will return.

...

8.6 (6) *Whether he is at risk of self-harm or suicide?*

8.7 (7) *How any such risk will be affected by his removal to Vietnam.*

8.7.1 I have addressed these two questions together.

8.7.2 TAN does not have self-harm or suicidal thoughts at present. However, it is my view that his suicidal thoughts are likely to return if made to return to Vietnam because his flashbacks and nightmares will become worse due to increased reminders of the trauma.

12. In his oral evidence the appellant confirmed that he had started the trauma focused work recommended in the report in April 2020 and that he was still receiving therapy for the same. He confirmed he had received help with his problems in that the crisis team had come to help him and introduced him to a GP who also introduced him to the local mental health team.
13. When asked whether he had specifically started the Cognitive Behavioural Therapy (CBT) he confirmed that he had not yet started the same and that although he had had some treatment this year and continues to receive treatment it was not of that nature.

Discussion and analysis

14. The weight to be given to the report of Professor Bluth was challenged on the basis it was submitted he had stepped into the role of an advocate. It was submitted that a number of questions being put to the expert from the source of the questions, from the appellant's representative, did not help the job of the expert which is to give an opinion on country conditions and not assume the role of the tribunal. It was submitted Professor Bluth had gone beyond that brief which devalues the weight that could be given to the report. It was argued that the report downplayed Home Office issues and that little weight should be placed upon this document.
15. The position of the Home Office is that the appellant's account is not credible and that there is no merit in his claim. It is argued the appellant faces no risk as a result of attending the demonstration in the UK and that he had not done anything to deal with mental health issues even though treatment was available that he required. It was submitted it was also relevant that there had been nothing to update the medical evidence available.
16. In relation to the assertion the appellant is not credible, his nationality is not disputed, nor his attendance at the one demonstration in 2017, and he has been found to be a victim of trafficking in modern slavery. The issue is whether he faces a real risk on return.
17. In relation to the submission that no weight should be placed upon the report of Professor Bluth, a number of other sources of information have been provided in the appeal bundle showing that Vietnam is a source country for men and women who migrate abroad, many of which are trafficked from Vietnam to other countries by gangs. It is also relevant that it is been accepted by the Secretary of State that TAN was a victim of trafficking.
18. The date of Prof please report is set out above which post dates the Secretary of State's Country Policy and Information Note Vietnam: Victims of trafficking version 4.0, April 2020.

19. It is also the case that criticising Professor Bluth for answering questions that have been put to him by those instructing him in the preparation of the report is unjustified. It is also important to consider the structure of the report which sets out general country background information before moving on to answer those specific questions.
20. I find I can place weight upon the content of the report dealing with general country conditions. Whether those conditions when applied to the specific circumstances of the appellant give rise to a real risk is a matter for the Tribunal not the country expert. His view has, however, been considered as part of the factual matrix.
21. The appellant claimed his mother passed away and his father abandoned him aged 14 and that he was homeless and lived on the street polishing shoes as noted by the First-tier Tribunal, and that his wife is also a victim of trafficking. She has her own claim for international protection pending.
22. The Secretary of State's position in relation to risk of re-trafficking is set out at [35 – 39] of the refusal letter where it is written:
 35. Consideration is given below to the risk posed due to the fact you are a victim of trafficking, the possibility of being re-trafficked if you were to return to Vietnam or that you will be found by the traffickers and killed (AIR Q38).
 36. The Vietnam country policy and information note: Victims of Trafficking dated April 2020 version 4.0 states:
 - 2.4.1 'In the reported case of Nguyen (Anti-Trafficking Convention: respondent's duties) [2015] UKUT 170 (IAC), heard on 19 September 2013 and 15 December 2014, and promulgated 25 March 2015, the Upper Tribunal held 'If the appellant were able to return, a matter to which we shall have to return, she would not be a person of any adverse interest to the government, and the chance of coming across her traffickers is very slight. The Anti-Trafficking Convention and Article 4 do not suggest that a victim of trafficking is unreturnable to the country from which they were trafficked. We consider that she has not shown that she faces a real risk of ill-treatment on return to Vietnam, whether on account of her previous experience as a victim of trafficking or otherwise' (Paragraph 51).
 - 2.4.6 No in-country sources who spoke to the UK Home Office Fact-Finding team (HO FFT) were aware of any cases where victims had been re-trafficked. There is, however, some evidence that returnees may be at risk of re-trafficking or reprisals if they have outstanding debts. There is also some evidence to suggest that returned victims of trafficking experience discrimination and social stigma in their communities although this is not in general, sufficiently serious by its nature and repetition that it will reach the high threshold of persecution and/or serious harm (see Risk of re-trafficking and Social stigma of trafficking victims).
 - 2.4.7 It is unlikely that a person would be re-trafficked once returned to Vietnam but a persons vulnerability may effect the likelihood of this happening so each case will need to be considered on its merits. The onus is on the person to demonstrate that their profile and circumstances are such that on return they would be vulnerable to abuse or re-trafficking which would amount to serious harm or persecution.
 - 2.4.8 that factors that may increase the risk of being abused or re-trafficked include, but are not limited to:
 - The person having an outstanding debt to the traffickers
 - The person knowing the trafficker
 - The absence of a supportive family willing to take the victim back into the family unit
 - The person having no other support network to assist them and material and financial deprivation such as to mean that they will be living in poverty or in conditions of destitution

- No or little education or vocational skills
 - Mental health conditions, which may have been caused by experiences of abuse when originally trafficked'
37. While you may fall into some of the above categories listed the information outlined above, the guidance demonstrates it is unlikely a person would be re-trafficked. On top of this you have failed to explain how the traffickers have any power or influence in Vietnam and by your own admission stated he does not have any power in Vietnam (AIR Q144). You also did not establish whether there any outstanding debts owed to your trafficker.
38. Furthermore, paragraph 8.1.3 of the country policy and information note states 'when asked about the risk of re-trafficking Hagar told the UK Home Office FFT in February 2019 that they had not seen any cases where victims have been re-trafficked and the IOM stated that 'in the case of Vietnamese males travelling to the UK, we are not aware of cases of people being re-trafficked.'
39. Considering the evidence and the circumstances of your claim, it is not accepted you would be at risk of being re-trafficked if returned to Vietnam.
23. The core message that arises from all the country information is that whether a person faces a real risk of being re-trafficked depends upon a proper assessment of their individual facts and circumstances. If one looks at the reference to 2.4.8 at [36] of the Refusal letter it can be seen that a number of the categories are applicable to this appellant. Even if the appellant had not established an outstanding debt, it has been accepted he is a vulnerable individual, that he does not have a supportive family willing to take him back into a family unit, the appellant has little or no educational or vocational skills and is impacted by mental health issues.
24. I accept on the evidence that the appellant is a vulnerable individual. I accept the diagnosis of the medical experts that the appellant has PTSD and a depressive disorder and the likely outcome if he does not receive appropriate medication.
25. I do not find the appellant has not had the CBT therapy because he has refused it, he clearly has received some therapy/treatment that has been offered to him to date. It is known that there are considerable delays in some areas in the NHS providing appropriate support and therapy to those in need.
26. In relation to the Article 3 medical tests, set out in [AM \(Zimbabwe\) \[2020\] UKSC 17](#) it is necessary for me to consider whether the evidence establishes 'Real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy' [Paposhvili v. Belgium \(Application No. 41738/10\) \(13 December 2016\)](#) [2017] Imm. A.R. 867.
27. The burden lies upon the appellant to establish that if he is removed there is a real risk of a breach of the Article 3 standard and threshold which applies and that if he provides evidence which is capable of proving his case to the relevant standard it is for the Secretary of State to prove evidence countering the appellant's evidence or dispelling doubts arising from that evidence before the appellant can be removed. See AXB (Art 3 health: obligations; suicide) Jamaica [2019] UKUT 397 (IAC).
28. The appellant appears able to function on a day-to-day basis provided he receives the prescriptive medication. In relation to the availability of mental health treatment in Vietnam, the CIPU, Vietnam: Mental health care, Version 1.0, May 2021, provides an overview of the healthcare system in Vietnam.
29. In relation to mental health issues it is written at 2.2.4:

2.2.4 The same article also stated that: 'Shortage of resources, lack of psychiatric services, social stigma, and lack of mental health literacy (MHL) constitute major barriers in accessing treatment for mental disorders in general and for depression in particular'.

30. The article in question is a 2018 article entitled 'Mental health literacy: knowledge of depression among undergraduate students in Hanoi, Vietnam' published in the International Journal of Mental Health Systems.

31. At 2.2.6 is a reference to a 2018 Vietnam Briefing article which states that the mental health industry in Vietnam is still developing and that whilst the government has established the National Mental Health Programme it was noted that that only covers approximately 30% of the country and uses a very narrow list of mental illnesses.

32. 2.2.7 - 2.2.9 it is written:

2.2.7 The 2019 DFAT report stated: 'Currently, mental health and psychosocial services are provided through social welfare and social protection centres, mental health hospitals and psychosocial units in schools. The Ministry of Health is responsible for health centre and hospital services to diagnose and provide treatment for serious and persistent mental illness stemming from neurological conditions and developmental disabilities. MOLISA [The Ministry of Labour, Invalids and Social Affairs] provides social support policies for social protection beneficiaries and services for serious cases. The Ministry of Education and Training provides psychosocial counselling units in schools and life-skills training.'

2.2.8 The DFAT report further added: 'NGOs are increasingly providing mental health and psychosocial related services, and familial and community-based support is also common. In 2011, the government introduced a program for social support and community-based rehabilitation for people with mental illness for the period 2011 to 2020 (known as Decision 1215). This program focuses on the family and community provision of spiritual and material support, and rehabilitation.'

2.2.9 An article published in 2019 in the journal Innovations in Global Mental Health, titled 'Challenges in Integrating Mental Health into Primary Care in Vietnam' stated that: 'Vietnam has a weak mental health system governance with no mental health policy and legislation and an ineffective action plan. Like other developing countries, Vietnam is having institutional approach in providing formal mental health services such as psychiatric hospitals and social protection centers. Informal community care providers which care for most of people with mental disorders were ignored by the government. In addition, mental health human resource is facing shortage in terms of quantity and limited quality.'

33. There is reference to hospitals providing mental health care services and a list of pharmaceutical drugs available in facilities to treat mental health care conditions which have not been shown to be not suitable or insufficient to meet the appellant's needs in terms of prescriptive medication.

34. One issue that arises with regard to mental health in Vietnam is the societal attitude. The appellant has, however, sought the assistance of doctors in the UK and has a diagnosis of his particular needs and treatment currently received which could be provided to treating physicians within Vietnam. It is not made out there is a subjective element present in this appeal that will hinder the appellant seeking appropriate treatment in Vietnam.

35. I find that although not to the standard of that he has benefited from it the UK, there are suitable mental health services available in Vietnam, particularly in the larger cities.

36. The appellant's claim was that he attended the Formosa demonstrations in the UK in 2017 in the UK. He states these were organised by the Viet Tan Party who posted pictures of the demonstration on social media.

37. It is not disputed there were demonstrations against the Formosa environmental disaster which occurred in April 2016 as a result of a toxic spillage which caused large-scale water pollution and affected individuals health. In paragraphs 2.4.10 and 2.4.11 of the CPIN Vietnam: Opposition to the State, Version 3.0 September 2018 it is written:

2.4.10 The disaster has led to large numbers of protests against the Taiwanese company and against the government for their handling of the spill. The authorities have sometimes sought to disrupt the protests through violence and arrests, although there is no evidence to suggest that all those arrested remain in detention. Human rights defenders and bloggers who took part in demonstrations or who have reported on the disaster have been subject to harassment and arrest (see Protests and Arrests/detention and treatment by the state).

2.4.11 Whilst people have been arrested and detained for their involvement in 'Formosa' protests the treatment incurred is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm. Some high-profile activists, who have been responsible for raising awareness of the disaster and organising demonstrations have been subjected to ill treatment and if they can demonstrate that they have come to the adverse attention due to the nature of their profile/involvement in demonstrations then they are likely to be at risk of persecution and/or serious harm. Each case however, must be considered on its facts.

38. It is noted the appellant does not claim to have been involved in political activities in Vietnam and relies upon his sur place activities in the UK. In relation to demonstrations/protests is written in section 6.2 of the CPIN:

6.2 Demonstrations/protests

6.2.1 The 2017 DFAT Report noted that: 'Individuals and groups who protest against the Government or openly criticize the CPV are likely to attract adverse attention from authorities. Credible in-country contacts stated that actively protesting against land confiscation, human rights issues or the government's handling of issues will result in protests being shut down, police intimidation and harassment. 'DFAT assesses low-level protesters and supporters often feel intimidated by police presence, and are sometimes detained and released the same day by authorities. There have been a few reported cases of uniformed and plainclothes officers using violence to break up protests in 2016, such as beating protesters with batons to disperse crowds.'

6.2.2 The 2018 Freedom House report stated that 'Freedom of assembly is tightly restricted. Organizations must apply for official permission to assemble, and security forces routinely use excessive force to disperse unauthorized demonstrations. The use of social media platforms to organize protests has prompted the government to periodically block access to them.'

6.2.3 HRW's 2018 report stated that 'Authorities require approval for public gatherings and refuse permission for meetings, marches, or public assemblies they deem to be politically unacceptable. In September, police used excessive force while dispersing protesters in front of the entrance of a Hong Kong-owned textile factory in Hai Duong province. Many people were injured.'

6.2.4 The BTI report stated that 'Despite legal restrictions and threats of crackdown by the police, Vietnamese citizens continued to express their views through numerous protests in 2015 and 2016.'

39. A point made by the First-tier Tribunal in its decision in relation to the risk arising from the attendance outside the Vietnamese embassy in April 2017 is set out at [18 - 19] in the following terms:

18. The second facet of the asylum appeal relates to the Appellant's attendance at one demonstration outside the Vietnamese Embassy in April 2017. I have a number of

concerns about Prof Bluth's report in relation to this aspect of the appeal. In paragraph 5.1.3, Prof Bluth states that the Appellant has been "engaged in political activity in the United Kingdom against the Vietnamese government". I am not satisfied that this is an accurate statement. There is no analysis as to that which Prof Bluth goes on to describe as the Appellant's "expression of political opinion" or "political "loyalties". The Appellant's account was that he had no political profile in Vietnam and that he did not engage in any political activities there. He has attended one demonstration in the UK in order to support his partner, rather than because of any views of his own, and the photographs simply show him holding a banner bearing the caption "Formosa out of Vietnam". This is a reference to the Vietnam marine life disaster, also known as the Formosa disaster or the fish death disaster, which was a water pollution crisis breaking out in Vietnam at least from 6 April 2016. Reports indicate that the disaster involved massive fish deaths in the seas of four provinces in central Vietnam: Ha Tinh, Quang Binh, Quang Tri, and Thua Thien-Hue. The main perpetrator was identified as Hung Nghiep Formosa Ha Tinh Ltd, which discharged toxic industrial waste into the sea through its underwater drainage pipes. Formosa itself accepted responsibility for the disaster on 30 June 2016. I am far from satisfied that carrying a banner in one protest against the company can be accurately described as activity against the Vietnamese regime. Prof Bluth speaks of the potential for "reverse image" identification of the Appellant from a Vietnamese ID card. It appears from his report that ID cards were not introduced until 2016, by which time the Appellant had left the country. I am not satisfied, therefore, that he would have an ID card and I have already dismissed the possibility of him being identified from tax records.

19. I am not satisfied, on the basis of the evidence before me, that the Appellant's image has appeared on the social media account of Viet Tan. There was no documentary evidence in support of that assertion. Such evidence could reasonably have been expected. The Appellant has been represented throughout these proceedings. Indeed, his representatives were in communication with the Respondent after each of his interviews. In those circumstances, even if he did not have access to the internet, there is no reason why his representatives could not have made a search for evidence on his behalf. Reasonably, he was given time to provide evidence, but he did not do so. Even if the Appellant had been identified, his activity could not be described as anything more than at the lowest level. It was some five years ago. He would have nothing to conceal on return in terms of political activity.
40. Although the decision of the First-tier Tribunal was set aside I make identical findings as it was not made out that the appellant would have any tax records which could be used as a source of potential identification and that he had left Vietnam before the introduction of the photographic identity cards specifically referred to by Professor Bluth. Indicating that the Formosa company should be removed from Vietnam does not establish a direct challenge the authority of the Vietnamese state or indicate that the appellant would have an adverse profile sufficient to give rise to a real risk on return on the basis of any of the evidence or material provided. I do not find there is sufficient evidence to warrant a finding that the appellant has a genuine adverse political opinion that would give rise to real risk, even on implied basis, on return to Vietnam.
41. I find it has not been made out the appellant faces a real risk as a result of his sur place activities, and it is not established that the first or second part of the AM (Zimbabwe) test is made out, on the base it has not been established that there is, on account of the absence of appropriate treatment in Vietnam or lack of access to such treatment, a risk of the appellant being exposed to a serious rapid in an irreversible decline in his mental health. I find treatment is available and accessible with insufficient evidence to support a finding that the appellant would not be subjectively or objectively able to access the same.
42. The remaining element of the appellant's case is therefore that relating to the risk of re-trafficking.

43. It has been found the appellant is a victim of modern slavery and trafficking but there is no final conclusive ground decision from the Competent Authority. This is a common occurrence as has been commented upon by the High Court and Court of Appeal. It is settled law, however, that a person does not have an entitlement to a grant of discretionary leave on the basis of the 'reasonable likelihood' decision. It also does not appear on the fact that it is necessary for the appellant to be granted a period of discretionary leave for recovery and recuperation as he has already had the benefit of investigation and treatment by the mental health services.
44. The assertion that there are no facilities for men is undermined by the entry at 7.1.3 of the CIPU, Vietnam: Victims of trafficking, version 4.0, April 2020 at paragraphs 7.1.3 where it is written:

"representatives from MOLISA informed the UK Home Office FFT in February 2019 that there are no government run shelters specifically for victims of trafficking; or vulnerable people staying one shelter. They told the FFT that there were 400 government run shelters for vulnerable people and play not separate shelters for men, women or children. According to MOLISA, the law states that victims are allowed to stay in the shelter for a maximum of 60 days. Whilst there, they can receive help support, (including mental health support), legal support, accommodation and food. They can also get all the services are free. MOLISA confirmed to the FFT it during 2018 500 victims of trafficking receive support.

45. It is not the case that the appellant, as an individual being returned from the UK, will be effectively abandoned. At paragraph 7.2.4 it is written:

"AAT told the UK Home Office FFT that they have developed a programme of community rehabilitation with a mobile team as they stated that 99.9% of victims do not want to go to shelters. AAT also told the FFT that the British Embassy gives them a list of those being returned, one normally sheltered in UK Salvation Army centres prior to their return. The AAT have a moral contract with National Crime Agency (NCA) and the British Embassy which makes them responsible if victims suffer negative pressure from the authorities in Vietnam as the authorities are not given the returnees details because of European laws, which restrict the dissemination of information. AAT are able to organise training courses for those who have returned to support their reintegration and go back to check on the current situation of a number of victims who were returned from the UK.

46. The FFT reference is to a fact-finding team. Further details of NGO support services available is set out 7.2.7.

47. Although there is information indicating potential risk of an individual who has been traffic to UK being re-traffic when returned to Vietnam, especially if they own their traffickers an unpaid debt (which has not been found to be an element present in this appeal) there is reference to paragraph 8.1.3 of the CIPU in the Refusal letter where it is written:

8.1.3 When asked about the risk of re-trafficking Hagar told the UK Home Office FFT in February 2019 that they had not seen any cases where victims have been re-traffic and the ILM stated that 'in the case of Vietnamese males travelling to the UK, we are not aware of cases of people being re-traffic'.

48. The appellant has not provided sufficient evidence to show, when all the information forming evidential jigsaw has been considered, that he has established he faces a real risk of harm sufficient to entitle him to a grant of international protection under the Refugee Convention or articles 2 or 3 ECHR from the authorities in Vietnam or otherwise. I find the appellant has not established a real risk that he will be re-traffic if returned to Vietnam,

notwithstanding his lack of educational qualifications and lack of family support, or that he will face destitution as a result of being without help and assistance in enabling him to re-establish himself.

49. I do not find the appellant has established insurmountable obstacles to his reintegration.
50. I do not accept the appellant has made out an entitlement to a grant of leave to remain in the United Kingdom on the basis of this Article 3 ECHR medical needs for the reasons set out above.
51. Accordingly I dismiss the appeal.
52. It emerges from the evidence that the appellant's wife, who is with him in the UK, has made her own protection claim. The appellant's account is that he went to the Formosa demonstration in the UK to support his wife. If she has a genuine adverse political view that is known to the authorities in Vietnam, or there is anything in her case that entitles her to a grant of leave to remain in the United Kingdom with their child, it may be open to the appellant to make a fresh claim based on Article 8 ECHR; predicated on the family relationship he has with his wife and his child. That is not, however, a matter before me today as the outcome of the appellant's wife's claim and any resultant appeal, if appropriate, is not known.

Notice of decision

53. I dismiss the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 August 2023