



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER
Extempore

Case No: UI-2023-004942
First-tier Tribunal No:
PA/55861/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

P H T
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Halliday, instructed by Latta & Co

For the Respondent: Mr A Mullen, Home Office Presenting Officer

Heard at 52 Melville Street, Edinburgh on 31 July 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Farrelly, promulgated on 22 October 2023, dismissing his appeal against the decision of the Secretary of State made on 2 December 2022 to refuse his protection and human rights claim.
2. The applicant is a citizen of Vietnam who was orphaned and then brought up by a woman in his village who he refers to as his grandmother. She was working on church land when she was attacked by members of the Red Flag Group and the police. They were in altercations, he was beaten, he received an injury to his right shoulder and was summonsed to go to the police, which he ignored. A further summons was also ignored and he then decided to flee. When he fled, he intended to go to Saigon or Ho Chi Minh City. He was then trafficked and forced to work in China until 2019. He was then taken to Russia and then on to France and finally to the United Kingdom where he was given the task of caring for cannabis plants. He was able to leave where he was and encountered the police in Scotland.
3. The Secretary of State did not accept that the appellant was at risk either on account of the incidents in Vietnam or that he was at risk of being re-trafficked by those who had trafficked him to the United Kingdom, to whom he says he still has a debt; or, that he was at risk in more a generic sense of being re-trafficked, as a person in a vulnerable situation.
4. The judge heard evidence from the appellant. He also had before him an expert report from Dr Anh Tran and an addendum report from that expert. The judge accepted that she was an expert and made a number of findings in which he accepted a significant part of the appellant's case. He accepted, at paragraph 32, that the appellant had been involved in an altercation resulting in the church building that he was injured, accepted that the police wanted to interview him and issued a summons but said however, I do not find this incident would place him at any ongoing risk. I am conscious of the passage of time and the absence of any history on his part whereby the authorities or the Red Flag Association would have any ongoing interest.
5. Turning next to the issue of re-trafficking, the judge set out his findings, such as they are, at paragraphs 33 and 34. The judge said:

“I do not see this as being a real risk factor. The appellant has had the experience of being trafficked and so will be more careful. He is almost 30 years of age. He indicated he had a grandmother and friends in his home country. There is a theoretical chance he could be relocated on the household registration scheme. However, I would find this improbable. I can see no reason why the traffickers would have any sustained interest in him. Internal relocation generally is possible.”

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6. The appellant sought permission to appeal on all three principal grounds. First, that the judge had failed to provide adequate reasons in assessing the ongoing risk from the police. Failing to engage with the expert's opinion that he would be interviewed at the airport on return, would then be transported by the police to his home district and that the local police would be notified resulting, it is likely, he would be questioned and temporarily detained, where he would also fear the risk of being abused. It is said that the judge neither made any finding as to what would happen to the appellant on return or whether he would be subject to any ill-treatment or, for that matter, what reason he would face ill-treatment.
7. The second ground is that the judge failed to make any findings as to whether the appellant did in fact owe a debt to those who had trafficked him, and consequently erred in concluding that they had no reason to seek him again and second, that the judge failed properly to engage with the background evidence as to this and the risk of re-trafficking, failing in particular to deal with the specific risk factors which would put him at greater risk than the generality of the position.
8. The third ground is that the judge failed to take into account his prior exploitation as placing him at greater risk. The fourth ground was also raised but in essence that is no longer being pursued, as it overlaps with the third ground.
9. Permission was granted on all grounds.
10. I heard submissions from Mr Halliday on behalf of the appellant, who relied on his skeleton argument. I also heard submissions from Mr Mullen. In summary, with regard to the first ground, Mr Halliday submitted that the judge had failed to make proper findings in that he had failed to engage properly with the expert's report or to explain why he did not accept what the expert had said. He said that the judge did not address whether he would be returned to his local area and failed to explain why he did or did not accept that evidence and failed to explain whether he thought that the summons would still be in existence and if not the reasons for rejecting that.
11. Mr Mullen submitted that on the facts of this case, the judge had given adequate reasons for saying why there was unlikely to be any different result, relying principally on what the expert had said at paragraphs 1.18 and 1.28 of the first report, there being an indication that no further action appears to have been taken by the police against those involved or that it had been considered as a political matter by those, as challenging the state at a local level. Mr Mullen did however accept that it was hard to resist the second ground as there was simply no findings either as to the debt or as to the continuing risk that might be and that there simply was a failure to resolve the issues.
12. I am satisfied that the judge failed properly to address the issue of risk from the police. This is a case in which the expert had given a significant and detailed account of what was likely to happen to the appellant on

return to Vietnam. This was a matter clearly put in the appellant's skeleton argument and it was incumbent on the judge to make relevant findings. In reality, the judge simply fails to engage with the expert evidence or the case put by the appellant as to what was likely to happen to him on return.

13. There are no findings as to whether it was likely or not that the appellant would be arrested or detained, simply that the passage of time would be such that it was unlikely they would proceed. That is an unreasoned and irrational finding in the light of the expert evidence, which the judge had already accepted was expert evidence on which he could rely. While he could have rejected it, he needed to explain why and he did not.
14. The judge further erred in that he failed to make any findings of what was likely to happen to the appellant on return and failed properly to address the issue of re-trafficking. The judge failed to make a finding as to whether those who had originally trafficked the appellant would be interested in him again. The evidence he had given, which was as to a matter in dispute, was whether there was an existing debt. That would have provided a reason for why the traffickers might be interested in him.
15. A failure to make a finding on that central issue renders the finding that the judge would not be interested in him unsustainable. The judge failed properly to engage with the evidence and again matters raised in the skeleton argument as to whether there was a risk to him in more general terms. As Mr Halliday submitted, simply saying that he would be more careful this time, fails properly to engage with the evidence of what had happened in the past, which is that he had been coerced. There is, I consider, a significant difference between trafficking in circumstances where the victim abducted and the circumstances where, for example, someone is deceived or duped. In the latter case, one might gain from experience and be more careful in the future, but not in the former which was the case here. Again this is not a rational finding.
16. In the circumstances, it is unnecessary for me to consider grounds 3 or 4 in any great detail as, for the reasons I have already given, the decision of the First-tier Tribunal involved the making of an error of law.
17. Accordingly, for these reasons, I set aside the decision of the First-tier Tribunal on the basis it involved the making of an error of law. The findings of fact regarding the summons and the Article 3 issues relating to health are preserved, as indeed are the findings in respect of the Red Flag Organisation, his religion and to the existence of the dispute between the Catholic Church in the appellant's home village and he was involved in an altercation, was injured and that he was summonsed.

Remaking the decision.

18. In the light of the observations made in the reasons given for finding that the decision of the First-tier Tribunal involved the making of an error of law, I asked the parties as to how I should proceed to remake the appeal.

I indicated that it was my preliminary view that the appeal could be remade now on the basis of submissions. That was because the expert's detailed evidence as to the risks on return had not been challenged and in the light of that evidence, it was reasonably likely that the appellant would be apprehended at the point of arrival and would then be taken to his local police area, that he would be at risk of being re-detained there and ill-treated.

19. Mr Mullen said that he had nothing further to add to what he had said already. Mr Halliday relied on what had been set out in his skeleton and earlier submissions.
20. The starting point must be the findings reached by Judge Farrelly in his decision. It is sufficiently clear that he accepted that the appellant had been summoned by the police but that there would be no continuing risk owing to the lapse of time. I have considered carefully the expert's opinion on this matter and I accept that Dr Anh Tran is entitled to be treated as an expert. That is also the finding of Judge Farrelly and there is no challenge to that from the Secretary of State. I accept that, as Mr Mullen submitted, there is no material to suggest that those who had been summonsed had yet been charged with any criminal offences relating to the incident.
21. But the absence of evidence is not a sufficient basis for saying that something has not happened, nor does a lack of criminal proceedings indicate that there will be no interest in a person, not least in a country where the rule of law is little respected. This issue is addressed by the expert evidence.
22. The expert wrote in a properly sourced opinion, in summary, that the appellant will be returned without immigration papers and as he does not have a passport, this will result in him being interviewed on return. That is consistent with the background evidence and it is also based, as the expert sets out at paragraph 2.4, her experience with interviews with Vietnamese asylum seekers and what happens to those who are returned. Her evidence is also that he would be returned to his place of origin where the local authorities would have all his personal details. She wrote that it is very likely his name and immigration history and the two pending summonses will be available to the local police. Again, I see no reason to doubt that. I consider also that the expert was entitled to conclude that it was likely the local authority would suspect him of escaping, not only to evade the consequences of his previous involvement, but also of conducting opposing activities abroad, even though he may not have done so. She opined that it is very likely he will be invited or summonsed to the police to answer for his escape and time abroad. As an aside, one might think that it is quite natural for the police to treat somebody who has clearly absconded from the country, with suspicion. It is her evidence that the appellant is likely to be questioned and detained at the police station or local government office where he faces the risk of abuse at the police station, which is documented at paragraph 2.8 onwards.

23. In the circumstances, I consider that it is reasonably likely that the appellant will, shortly after his arrival in Vietnam, be escorted to his local area and will then be detained by the police, who have already summonsed against him with the added factor in this case that he will be seen to have gone abroad, which I consider it is reasonable to expect, would be an aggravating factor.
24. I consider also on the basis of the expert evidence and the background evidence, which underpins it, that there is a real risk of the appellant being arrested, detained and interrogated, and subjected to ill-treatment and/or torture as would amount to persecution and/or a breach of Article 3 of the Human Rights Convention.
25. The sole issue then remains as to whether that would be for a Convention reason. Given the circumstances of the demonstration and what happened, I consider that it is likely that this would be seen certainly by an authoritarian state like Vietnam as being in opposition to that state's authority, as indeed would be leaving the country and that this is a sufficient basis for showing that there is a nexus with the Convention, which is in this case a perceived political opinion that the appellant is a person opposed to the state and the state's authority, which is pre-eminently a political matter.
26. Having reached these findings, it is unnecessary for me to consider also whether the appellant would be at risk from those who had trafficked him in the past or, more generically, at risk of re-trafficking in the future from some, as yet, unspecified trafficker.
27. For the reasons set out above, I consider that the decision should be remade allowing the appeal and accordingly, I allow the appeal on the basis that the appellant has a well-founded fear of persecution owing to a Convention reason, in this case perceived political opinion. I dismiss the appeal on humanitarian protection grounds, as the appellant falls to be recognised as a refugee, but I formally allow the appeal on human rights grounds on the basis that the appellant is also at risk of a breach of Article 3 on return to Vietnam.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by allowing the appeal on asylum grounds and on human rights grounds.
3. I dismiss the appeal on humanitarian protection grounds.

Signed
Jeremy K H Rintoul

Date: 6 August 2024

Judge of the Upper Tribunal