



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003328
First-tier Tribunal No:
PA/56789/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 October 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
UPPER TRIBUNAL JUDGE RASTOGI

Between

DTT
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Islam, Counsel instructed by Burton & Burton Solicitors
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

Heard at Field House on 2 October 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 is a citizen of Vietnam. He claimed asylum in the United Kingdom on the basis that he was at real risk of persecution on account of abuse and/or re-trafficking if returned to Vietnam. The respondent refused that claim on 7 September 2023. On 28 May 2024 First-tier Tribunal Judge Landes ("the judge") dismissed the appellant's appeal against that refusal ("the decision"). The

appellant appeals, with permission, to the Upper Tribunal to decide whether the judge had made material errors of law in that decision.

2. At the error of law hearing we had regard to the 251 page appeal bundle; the respondent's Rule 24 Notice and skeleton argument and a minute from the hearing before the judge which the respondent filed. We heard oral submissions from both representatives and at the end of the hearing we reserved our decision.

3. The decision was challenged on four grounds, summarised as follows:

Ground 1: the judge accepted the appellant had been trafficked from Vietnam but, when considering sufficiency of protection, failed to have regard to section 7 onwards of the Country Policy and Information Note Vietnam: version 5 December 2023 ("the CPIN") or the objective evidence within the appellant's bundle;

Ground 2: the judge materially erred in law as she failed to apply the objective evidence to the appellant's case;

Ground 3: having accepted the appellant owed a debt, the judge failed to consider his risk from traffickers which is material in light of its impact on the ability of the police to protect the appellant and the scale of corruption in Vietnam;

Ground 4: the judge failed to consider whether internal relocation would be unduly harsh; how he would be able to support himself in a different city and whether he would come to the notice of traffickers.

4. At the hearing, Mr Islam confirmed that Grounds 1 and 2 were essentially the same. In fact, there is considerable overlap between them all and for that reason we adopt a more holistic analysis of the decision, in light of the specific points raised in the grounds as a whole.

The legal framework

5. The appeal to the First-tier Tribunal arose in the context of the appellant's claim for international protection. The right of appeal arose from section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The First-tier Tribunal's jurisdiction was to determine whether the removal of the appellant from the United Kingdom would be unlawful as it represented a breach of the United Kingdom's obligations under the Refugee Convention or (if applicable) under section 6 of the Human Rights Act 1998 (see section 84 (1)(a) and (c) of the 2002 Act).

6. Pursuant to sections 11 and 12 of the Tribunal and Enforcement Act 2007 ('the 2007 Act'), the appellant has a right to apply to the Upper Tribunal to establish if an error on a point of law has been made.

The Decision of the First-tier Tribunal

7. There were a number of facets of the decision which were not challenged within the grounds and which Mr Islam confirmed were not challenged. They are:

a) the appellant had failed to undermine the conclusion in the age assessment, namely that his date of birth is 3 March 2000 and he had failed to show to even a reasonable degree of likelihood that he was a child at any relevant time [15];

b) it is reasonably likely the appellant was recruited or transported to Germany by a group facilitating illegal migration; that he was exploited in Germany [5] and that there was an element of deception involved about that. Hence the judge concluded the appellant was also trafficked to Germany [25];

c) the adverse findings the judge made about the appellant's credibility [14], [33];

d) he is likely to owe a debt to his traffickers and he does not have many educational and vocational skills [33];

e) the appellant had failed to show that he does not have a supportive family (even if only an aunt) willing to take him back or that he has no other support network to assist him [33].

f) he does not have any physical or mental health problems [33];

g) victims of trafficking may experience discrimination or social stigma but that does not amount to persecution [34];

8. The judge also made the following findings of note:

a) there is, in general, sufficient protection for people at risk of re-trafficking [27];

b) there are factors which may increase a person's risk of being re-trafficked [28];

c) there was no reason the appellant could not obtain protection from the authorities [30] and it is sufficient [34];

d) there is nothing to indicate that his trafficker has any particular influence over the police or the authorities such that the appellant could not receive protection [31];

e) there is nothing to indicate that the traffickers would trace the appellant to Hanoi if he relocated there [32];

f) the appellant had failed to show he would be vulnerable to abuse or re-trafficking [34];

g) it would be reasonable for the appellant to relocate if he was concerned about returning to a place from which he was trafficked; he will be able to obtain an unskilled job [34];

9. Consequently, the judge dismissed the appellant's claim on protection and Article 3 grounds [35].

Discussion and Conclusions

10. At the hearing, Mr Islam amplified and clarified the grounds of appeal. He submitted that the grounds all arose from the judge's failure to consider the rest

of the background material contained within the CPIN rather than just the policy guidance at the beginning. He accepted that the relevant background material to which he says the judge failed to have regard was contained within the CPIN rather than elsewhere in the bundles before the judge. In particular, he submitted the judge failed to have regard to paragraph 9.5 of the CPIN which was raised in the appellant's skeleton argument ("ASA") and which was before the judge and paragraphs 12.2 and 12.3 although he was not able to say whether these paragraphs were specifically drawn to the judge's attention. Nevertheless, his overarching submission was that the CPIN was clearly a relevant document, it is not particularly long and it was incumbent on the judge to have specifically considered it.

11. When asked what the CPIN said that was likely to have made a material difference to the judge's decision, Mr Islam confirmed that the evidence contained therein about debt bondage supported the appellant's claim that he was at risk of being re-trafficked. He confirmed the appellant's position which is that there is not sufficient protection or a reasonable internal relocation alternative against that risk. He submitted that the judge's finding that the appellant had been trafficked out of Vietnam was also a relevant factor going to risk. He confirmed he was not seeking to challenge the judge's other findings rejecting the appellant's claim that other risk factors (summarised at [28-29] of the decision) applied to him [33].
12. When pressed on the scope of the judge's finding about debt, Mr Islam confirmed that there was no finding about the amount of the debt, nor did the appellant ever provide evidence as to the amount, aside from referring to it as "large". He directed us to section 9 of the CPIN where there was some evidence about the likely cost of travelling to Europe. We return to this below.
13. We find there to be force in the submissions made on the respondent's behalf that the judge cannot be criticised for failing to have regard to background material to which she was not specifically taken. That submission is put into sharper focus when considered in light of [6] of her decision where the judge said:

"I discussed the documents with the representatives. I observed to Ms Mudara that although the appellant's bundle contained over 100 pages of background material, the skeleton argument referred only to a few pages. She told me that not all the background material was relevant, and she would refer me in submissions to anything else which was relevant."
14. The judge had the ASA, but that only made reference to paragraphs 3.1.4 and 9.5 of the CPIN (see para. 11 of the ASA). The appellant did not provide a note of the hearing before the judge. The one provided by the respondent does not contain a note of the appellant's submissions, so there is no evidence of what else, if anything, the judge was directed to. Nevertheless, we accept that at [26] the judge said that both parties' submissions relied mainly on the CPIN (and one other document but the judge did not find that of assistance and that is not challenged within this appeal).

15. We remind ourselves that the judge is a judge of a specialist tribunal. She is expected to know the law and she is not required to set out each piece of evidence to which she was taken. In order to decide whether there is evidence that calls into question whether or not she has failed to take into account a material piece of evidence from the CPIN, to which we accept she was directed in its entirety, we find it is necessary to consider those parts of the CPIN to which Mr Islam directed us.
16. We return first to the question of the debt. The significance of debt as a factor increasing the risk of re-trafficking is not really in dispute. It was a factor the judge recognised at [28] and [33]. In fact, given her adverse credibility findings, it was almost the only factor she found to place the appellant at enhanced risk (save for limited educational and vocational skills [33]).
17. As for the amount of the debt, we note there is consistent evidence from a number of sources informing the CPIN that the debt accrued by travelling abroad to work and the consequential interest is likely to be high [9.5.2; 9.5.6; 9.5.7]. The debt is owed to either family or smugglers. Here, the debt is owed to the appellant's trafficker. We also note from the same sources, that debt appears to be one of the main factors resulting in the risk of continued exploitation. On its face, this appears to run counter to the judge's findings at [34] that the appellant's circumstances do not render him vulnerable to abuse or re-trafficking.
18. However, we do not find that apparent conflict to amount to an error of law on grounds of irrationality or failing to have regard to material facts, and certainly not a material error of law. We reach that conclusion for two primary reasons.
19. Firstly, when considering the effect of debt and the resulting risk, the background material generally pre-supposes there is some nexus between the person and the smuggler. By that we mean that the smuggler knows of the person's whereabouts (see 9.5.5) or knows their family or of any property they may have (see 9.5.3; 12.2.5; 12.3.7; 12.3.8) and it is through this nexus that pressure can continue to be put on the person or threats of harm are made so as to compel continued exploitation (whether directly through the original trafficker or otherwise).
20. Contrast this with the appellant's position as he claimed or as the judge found. At the date of hearing, he has been away from Vietnam for a period of over 3 years and outside the control of his traffickers for about 3 years having fled from them in Germany. It is not his case that the traffickers know his family in Vietnam. He was trafficked from Saigon, not his home area. The judge did not find his trafficker to have any influence within the state apparatus in Vietnam [31-32]. In these circumstances, it is difficult to see both how the appellant's presence would be known to the trafficker (assuming he does not return to Saigon which the judge accepted he would not want to do [32]) or otherwise what method was open to the trafficker to exert pressure on the appellant such that he was vulnerable to re-trafficking or exploitation to make good his debt.
21. When the judge's decision is considered in the light of the decision read as a whole, we find her conclusion at [34] that the appellant would not be vulnerable to abuse or re-trafficking to be one available to her on the evidence before her. We are not satisfied that the parts of the CPIN to which we were taken, point to a

different conclusion even on the lower standard of proof nor do they give rise to a concern that the judge failed to have regard to the relevant sections of the CPIN.

22. Secondly, and following on from this, is the materiality issue. Even if the appellant is at real risk of re-trafficking or abuse as a result of the debt he owes his trafficker in his home area, the judge's findings were that there was sufficient protection for him or a reasonable internal relocation alternative. In the context of the appellant's circumstances as outlined above, it is difficult to challenge the judge's findings that his trafficker could not locate the appellant in Hanoi [32] and this did not appear to be expressly challenged in either the written grounds or in oral submissions.
23. Turning to sufficiency of protection and internal relocation, neither in the written grounds nor in oral submissions did the appellant direct us to parts of the CPIN to which the judge should have had regard to demonstrate that the respondent's guidance in the CPIN as to sufficiency of protection (summarised by the judge at [27]) or internal relocation were wrong or should not apply to this appellant.
24. As a judge of a specialist tribunal, the judge can be treated as knowing that the policy guidance at the beginning of a CPIN is the respondent's interpretation of the country evidence and it is necessary to ensure that the background evidence supports those conclusions. In the absence of any submissions that a particular part of the CPIN calls into doubt whether or not the judge undertook what was required of her, this tribunal is also entitled to assume she did so.
25. In any event, in our judgement the judge did in fact address her mind to the issue of sufficiency of protection and internal relocation over and above simply applying the general position. Firstly, the judge noted at [30] the appellant's evidence that the police did nothing when he was robbed of lottery tickets. She gave adequate reasons why that was distinguishable and her findings on that point were not challenged. Secondly, at [31] she gave reasons why she did not find the appellant's trafficker to have influence over the state authorities, such that the appellant may not have sufficient protection, and she gave adequate reasons for that. That part of her decision was not challenged either. Thirdly, in another unchallenged part of her decision [33] she found against the appellant in terms of his life in Vietnam and so did not find him to lack support in Vietnam nor the complete inability to work. The judge then applied that at [34] and concluded it was "reasonable for the appellant to relocate if he is concerned about returning to the place from which he was trafficked". This paragraph demonstrates that the judge was aware that it was not sufficient just to find there was a place of safety to which the appellant could go but also where it was reasonable for him to go. She gave brief, but adequate reasons for this finding which in our judgement was one that was open to her on the evidence as she found it to be. We add, in passing, that given that Vietnam is a country of some 104 million inhabitants, the appellant's evidence fell far short of what would have been required for a sustainable finding that internal relocation was unsafe or unreasonable.
26. Drawing all of the above together, we do not find any of the grounds, to reveal a material error of law in the judge's decision which was tailored to the issues and sufficiently reasoned. The grounds do not amount to any more than a disagreement with the judge's conclusions.

Notice of Decision

The decision is not infected by any errors of law so it stands.

SJ Rastogi
Judge of the Upper Tribunal
Immigration and Asylum Chamber

8th October

2024