



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-005141

First-tier Tribunal No: PA/62190/2023  
LP/04659/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

22<sup>nd</sup> January 2025

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KELLY**

**Between**

**LH**  
**(ANONYMITY ORDERED)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Jack Dingley, Counsel instructed by Deus Nexus  
Solicitors

For the Respondent: Ms Zoe Young, Senior Home Office Presenting Officer

**Heard at Bradford on the 10<sup>th</sup> January 2025**

**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 member of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

## *Introduction*

1. The Appellant is a citizen of Vietnam. The respondent refused her protection claim on the 22<sup>nd</sup> November 2023 and her appeal against that refusal was dismissed by First-tier Tribunal Judge Fareilly on the 5<sup>th</sup> September 2024. The appellant was granted permission to appeal against Judge Farrelly's decision and hence the matter came before me.

## *Background*

2. The essence of the appellant's claims before the First-tier Tribunal can be summarized as follows. She was brought up as a Roman Catholic in an orphanage in the Nghe An Province of Vietnam until the age of 16. Having left the orphanage in 1999, she undertook unpaid work for a family by looking after their children. She was made homeless in the following year and forced to work as a prostitute in a brothel from which she escaped in 2003. She met her husband in the following year. They married in 2005 and the appellant subsequently gave birth to their two children. Inspired by a church sermon, the appellant attended two demonstrations against the Vietnamese government's handling of environmental issues. The demonstrations were on the 14<sup>th</sup> February and the 3<sup>rd</sup> April 2027, respectively. She was detained by the police following the first demonstration before being released after a few hours having been warned not to participate in any further demonstrations. She nevertheless attended the second demonstration where she narrowly escaped further arrest by the police. Fearing adverse consequences from her attendance at the second demonstration, she left Vietnam on the 10<sup>th</sup> April 2017, arriving in the UK in June of that year. She was then subjected to forced domestic servitude, having been given false identity details by those who had trafficked her from Vietnam. She escaped after five days and sought assistance from the police, who in turn arranged for her referral under the National Referral Mechanism (NRM). She now suffers from post-traumatic stress and fears that she will be arrested and ill-treated on return to Vietnam due to her political activities.

## *Findings of the First-tier Tribunal*

3. In summary, the First-tier Tribunal Judge found that (1) the appellant's credibility is "significantly undermined" by the fact that she admits to having given false details "about her personal history" when first interviewed following her arrival in the United Kingdom [21]; (2) the appellant's current claim that she is "married with two children" is, "against her interest in that [it contradicts] the original account" of being single; it can thus be accepted [25]; (3) the appellant's recent claim to be divorced from her husband and that he has since remarried, is found to be false given that she had earlier indicated that she was in regular contact

with him [27]; (4) background information, confirming the fact of demonstrations in Vietnam on the 14<sup>th</sup> February and 3<sup>rd</sup> April 2017, “partially supports the appellant’s claim but equally may mean that she has latched onto a publicised event as part of a false claim” [23]; (5) no explanation has been provided for the late tendering in evidence of a purported summons in respect of the appellant’s attendance at the second demonstration, thereby leading to doubt as to its provenance and to limited weight attaching to it [24]; (6) “very limited weight” can be attached to the opinion of a psychologist, that the appellant is suffering from post-traumatic stress, given that it is based upon “the history given by the appellant without any question”, and that the psychologist did not have access to her GP records [30 to 36]; (7) given the above, the appellant has failed to substantiate her claim to be divorced, to have attended demonstrations in Vietnam, to be ‘wanted’ by the Vietnamese authorities, and to have been trafficked in either Vietnam or the UK [42, 43]; (8) the appellant has attended one demonstration in the UK; however, this was a small demonstration of which she was not the organiser, and it would accordingly not place her at risk on return [44].

#### *The grounds of appeal.*

#### 4. A single ground of appeal is pleaded in the written grounds -

It is apparent from the determination that Judge Farrelly has found that the Appellant was not a witness of truth. However, the determination does not entitle [*sic*, ‘enable’?] the reader to understand how and why the judge has reached the conclusion that he has.

Paragraphs [38] - [44] set out a series of conclusions in respect of the various elements of the Appellant’s claim. What the determination lacks is any reasons for the conclusions. Even on the most sympathetic reading of the determination as a whole, it is impossible for the reader to infer the reasons why the Tribunal has reached the conclusions that it has. To this extent the determination is wrong in law.

#### *Analysis*

#### 5. The pleaded ground of appeal is inaccurate. Whilst it is true that the paragraphs of the decision it cites (38 to 44) do not include reasons for the conclusions set out therein, it is nevertheless clear from reading the decision in full that the judge was basing their conclusions upon the reasons that they had given in the preceding paragraphs (21 to 37) that I have endeavoured to summarise at paragraph 3 (above). The representatives nevertheless informed me that they had agreed in advance of the hearing before me that the judge’s reasons were *inadequate* (if not entirely absent) and that they had also agreed that the decision should be set aside and re-made, I therefore allowed them to go beyond the pleaded ground of appeal in order to explain the basis upon which they had reached their agreement. I therefore now summarise those

agreed reasons as the basis for my finding that there has been a material error of law. All references are to the judge's reasons as numbered in my summary of them at paragraph 3 (above).

6. The only reason that the judge gave for disbelieving the appellant's core account of her history in Vietnam was that her credibility had been "significantly undermined" by her admission that she had given false details "about her personal history" when she was first interviewed following her arrival in the United Kingdom. Other than a discrete finding that the appellant had falsely claimed to be divorced from her husband (finding number 3, considered below) all the remaining reasons (numbers 4, 5, and 6) simply explain why 'little weight' attached to the evidence *supporting* the appellant's claimed history, rather than providing reasons for why it was disbelieved in the first place. This approach was problematic for two reasons.
7. Firstly, the judge accepted the appellant's claim that she was married with two children because this was "an admission against her interest" that contradicted her original claim to be single. However, they failed to explain why the same reasoning did not apply equally to her admission (against her interest) that she had lied in the first instance by claiming to be single. It may well have been that, as the judge observed, such inconsistent accounts made it, "very difficult to know what may be true" [21]. However, whilst this provided a possible justification for finding that the appellant had not substantiated any part of her claim, it did not of itself explain why some aspects of the appellant's claim had been accepted and others had not. The sole occasion on which the judge purported to provide a discrete explanation for their mixed findings of fact was in connection with their acceptance of the appellant's claim to have been married but their rejection of her claim to have subsequently divorced. The reason given for not accepting her claim that she was divorced (and that her husband had remarried) was that "she had earlier indicated regular contact with her husband". However, that is far from a cogent reason, for it is by no means unusual for divorced couples to remain in regular contact, especially where (as here) there are said to be children of the relationship.
8. Secondly, and possibly more fundamentally, the judge failed to consider the appellant's explanation for why she had initially given false details of her history; namely, that this was what she had been told to say by those who had trafficked her. The judge was not of course bound to accept that explanation. They were however bound to consider it.
9. For the avoidance of doubt, I reject the implication of the First-tier Tribunal Judge who granted permission to appeal (thereby raising an issue that had not been raised in the grounds themselves) that the judge arguably failed to take account of the psychologist's report as part of an holistic assessment of the appellant's credibility (the so-called 'Mbunga point') given what is said at paragraph 36 the original decision: "I have sought

not to treat this simply as an add on but have factored [the psychologist's report] into my assessment of the appellant's credibility".

10. I nevertheless accept, for the reasons set out above – reasons that were not initially pleaded in the grounds, but which were advanced by agreement between the parties at the hearing – that the Decision of the First-tier Tribunal contains errors of law in its assessment of the appellant's credibility such that it should be set aside and re-made. Given that this will inevitably involve extensive fact-finding, the parties agreed (as do I) that this appeal should be remitted to the First-tier Tribunal with none of the original findings being preserved.

### **Notice of Decision**

11. The appeal is allowed, and the decision of the First-tier Tribunal is set aside with none of its original findings being preserved.
12. The appeal is remitted for a complete rehearing before a judge of the First-tier Tribunal other than Judge Farrelly.

David Kelly

Date: 17<sup>th</sup> January 2025

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber