



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004770

First-tier Tribunal No: PA/52519/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12th January 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HVN

(Anonymity order made)

Respondent

Representation:

For the Appellant: Ms Young, a Senior Home Office Presenting Officer.
For the Respondent: Ms Mair, instructed by Turpin Miller Solicitors.

Heard at Phoenix House (Bradford) on 5 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the above respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the above respondent, 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 Secretary of State appeals with permission a decision of First-tier Tribunal Judge Hollings-Tennant ('the Judge'), promulgated following a hearing at Manchester on 22 September 2023, in which the Judge allowed the appeal on both asylum and human rights grounds.

2. The above respondent is a citizen of Vietnam who claimed he left his home country in May 2018 and travelled to Russia. He eventually entered the United Kingdom clandestinely by lorry in June 2018, claiming he remained under the control of the people traffickers who brought him to this country at all times.
3. On 10 January 2021 the above respondent came to the attention of the authorities when he was arrested on suspicion of cultivating cannabis. He was referred by the Staffordshire Police to the National Referral Mechanism on 22 January 2021. A positive reasonable grounds decision in respect of criminal exploitation was made by the Competent Authority.
4. On 8 February 2021 the above respondent was convicted at Stoke-on-Trent Crown Court of producing a controlled drug (Class B cannabis) for which he was sentenced to 16 months imprisonment. The above respondent was served with the decision to deport him from the United Kingdom on 10 March 2021 and on 22 December 2021 claimed asylum.
5. In a conclusive grounds decision by the Competent Authority dated 26 July 2021 the above respondent was recognised as a victim of modern slavery in respect of forced criminality in the United Kingdom. On 23 November 2021 the above respondent raised an international trafficking claim. Whilst that was initially rejected the Judge records the matter was reconsidered and that a positive reasonable grounds decision was made on 8 August 2023.
6. The appeal before the Judge was against the Secretary of State's refusal of the protection and human rights claim, dated 28 September 2022.
7. The Judge having considered the evidence with the required degree of anxious scrutiny sets out the following findings at [43 to 45]:
 43. What is clear is that this Appellant is a vulnerable young man who is susceptible to exploitation. When he was released by his traffickers in this country he did not seek out the authorities but found himself in yet another difficult situation, at first not recognising that he was again being subjected to exploitation. It seems to me that this factor serves to increase the risk of re-trafficking and calls into question whether the Appellant would have the wherewithal to seek protection from the local authorities in an area of relocation. He may well not recognise that he is being exploited before it is too late for him to seek protection, though I take into account that he has been provided with support as a victim in this country and may be better placed to recognise such situations in the future. I place some weight on his vulnerability and the risks arising in respect of re-trafficking in assessing the extent to which relocation is reasonable or indeed safe.
 44. Having considered all relevant factors, I find that the Appellant has provided sufficient evidence to establish there is at least a reasonable degree of likelihood that he faces a real risk of re-trafficking should he return to another location. I reach the conclusion that there would not be effective state protection readily accessible to him, having placed significant weight on the expert evidence presented in this regard. I also find that it would be unduly harsh to expect him to relocate to another area within Vietnam. I reach this conclusion based on the cumulative effect of several factors weighing in the Appellant's favour: (i) the fact that he holds a genuine subjective fear of the original traffickers to whom he owes a substantial debt; (ii) his vulnerability to exploitation and a real risk of re-trafficking in an area of relocation; (iii) the lack of family or a wider support network in an area of relocation; (iv) his reluctance or inability to seek effective protection and the fact that the Vietnamese authorities may not recognise him as a victim of trafficking; (v) the likely situation of poverty he will find himself in which further increases his susceptibility to re-trafficking.

Conclusions

45. In summary, having carefully considered all the evidence presented in the round, to the lower standard of proof that applies in such matters, that of a reasonable

degree of likelihood, I find that the Appellant has provided sufficient evidence to establish he faces a real risk from his original traffickers in Nghe An and a real risk of re-trafficking in an area of relocation for the reasons set out in my findings of fact above. This brings him within the scope of the Refugee Convention as a member of a particular social group. Therefore, I find that his claim engages the United Kingdom's obligations under the Refugee Convention and his appeal falls to be allowed. In the circumstances, it is not necessary to consider Article 8 of the ECHR.

8. The Secretary of State sought permission to appeal asserting the Judge had made a material error of law in relation to the asylum claim in (1) finding the trafficking decision as determinative of the protection claim rather than assessing the decision as part of the evidence to be assessed, as required, (2) failing to consider all make findings as to why the above respondent failed to claim asylum at the first opportunity, (3) in suggesting that although the Judge found the criminals who trafficked the appellant part of a criminal network and they visited his parents in order to collect money due this did not mean they necessarily had connections to the Vietnamese authorities, (4) In respect of the claimed loan, the Judge failed to point to any evidence that existed and that even if the parents were visited is claimed there is no reason the appellant could not live elsewhere [30], (5) the Judge finds the appellant faces a real risk but has failed to make an assessment in respect of the evidence or the credibility of the appellant.
9. Permission to appeal was granted by another judge of the First-tier Tribunal on 2 November 2023 on the basis that having read the decision and the application for permission to appeal if the Secretary of State is correct there is an arguable error of law and permission to appeal is granted.
10. The appeal is opposed by the above respondent in a Rule 24 response dated 22 December 2023 the operative part of which reads:
 6. The SSHD's grounds include the following five points, each of which is responded to by the Appellant in turn:
 - a. Point 1: The Respondent alleges that the FTTJ has treated the trafficking decision as determinative of the protection claim, rather than assessing the decision as part of the evidence. Response: The Appellant recalls, as set out above, that the Respondent accepted that the Appellant was a victim of trafficking at the hearing, so there can be no material error disclosed in relation to this point.
 - b. Point 2: The Respondent alleges that the FtTJ has failed to consider, or to make findings as to why the appellant failed to claim asylum at the first opportunity, having been released by his captors and then that living with a Vietnamese man for around two years, who found him work growing cannabis. Response: The Appellant recalls, as set out above, that there was no challenge to the Appellant's credibility and as such there can be no materiality to what is, at best a s. 8 point, and at worst, ill-conceived given the Appellant was subjected to further trafficking for the purposes of criminal exploitation before he could raise his claim for protection.
 - c. Point 3: The Respondent alleges that the FtTJ makes a finding that the criminals who trafficked him are part of a criminal network, that they visit his parents in order to collect money but they do not necessarily have connections to the Vietnamese authorities. Response: The Appellant notes that no material error of law is articulated here, there is simply a recitation of the FtTJ's findings.
 - d. Point 4: The Respondent alleges that in respect to the claimed loan, the FtTJ fails to point to any evidence, for example the loan agreement which it is said that the appellant's parents are said to have signed. It is submitted that even if 4 the appellant's parents are visited as claimed that there is no reason why the appellant could not live elsewhere. As an adult male there is no reason he should require the support of family members in order to establish himself.

Response: The Appellant notes that the Respondent appears to be simply rearguing his case, but as recorded in the determination, the Respondent at the hearing “acknowledged there is an ongoing risk that the traffickers would target the Appellant on return to Nghe An” and the FtTJ says “It is noteworthy that the Appellant’s evidence that his parents regularly give money to those who come to collect it and have been threatened with violence on the occasions they are unable to pay is not challenged by the Respondent” [26]. Furthermore, the Respondent has not pointed to any alleged material errors of law with regard to the FtTJ’s conclusions on internal relocation.

- e. Point 5: The Respondent alleges that at [37] the FTTJ finds that the appellant faces a real risk, but has failed to make an assessment in respect to the evidence, or the credibility of the appellant. Response: As highlighted repeatedly above, there was no challenge whatsoever to the Appellant’s credibility which was expressly accepted by the Respondent at the hearing.

Discussion and analysis

11. Guidance has been provided by the Upper Tribunal to judges responsible for considering applications for permission to appeal. There is an expectation that such judges will consider the application with the appropriate degree of anxious scrutiny, including the determination under challenge and relevant supporting material, and produce a decision explaining why they think it is arguable that an error of law has been made and why it is material to the decision.
12. It is not acceptable for a grant permission to appeal to effectively say that if the person seeking permission to appeal makes out their case the error will be material as that, arguably, could apply to every application for permission to appeal.
13. I find no merit in the challenge to the determination. The Court of Appeal have made it abundantly clear that judges of the First-tier Tribunal, based upon their expertise in this area of law, are deemed to have applied the law, to understand the law, and to have made rational factual findings, unless it is shown otherwise. It does not matter whether another judge would make the same decision or whether the person seeking permission to appeal likes the decision under challenge or not. The key question is whether it has been established the Judge has erred in law in a material manner. I find in this appeal that has not been shown to have occurred.
14. It is clear the Judge considered the evidence with the required degree of anxious scrutiny.
15. Ground one claims that the Judge erred in focusing upon the trafficking aspects as being determinative. The Judge sets out the issues that required consideration in accordance with the new issue based approach adopted by the First-tier Tribunal. The first of these was to establish whether the appellant had made out that he face persecution for a Convention reason.
16. The relevant Convention reason is membership of a particular social group. The social group in question is as a victim of trafficking. The Judge was therefore required to focus upon the trafficking issue to establish whether this aspect of the appeal had been made out. On the evidence the Judge does make such a finding and it has not been shown that such a conclusion is outside the range of those reasonably open to the Judge on the evidence.
17. The Judge did not stop there, however, and went on to consider quite properly whether even if the above respondent faced a real risk of being re-trafficked and being persecuted on return, there was a sufficiency of protection available from the Vietnamese authorities and/or internal relocation option available within Vietnam away from his home area. The Judge found neither of these to be made out. It has not been shown that those findings are outside the range of findings

reasonably open to the Judge on the evidence. The findings are adequately reasoned.

18. The Judge therefore allowed the protection appeal as three key issues had been explored and warranted such a conclusion. These were (1) the existence of a Conventional Reason including risk of persecution, (2) the lack of effective sufficiency of protection from the authorities in Vietnam, and (3) it not being found reasonable to expect the above respondent to internally relocate within Vietnam.
19. Ground 2, asserting the Judge failed to consider or make findings as to why the respondent failed to claim asylum at the first opportunity, does not establish arguable legal error. Section 8 of the 2004 Act makes this a matter the Judge was required to consider but the Judge does refer to the chronology and it is not a point that has been shown to be determinative of the appeal. As noted in the Rule 24 reply there is evidence, in any event, of further trafficking. Even if the above respondent had delayed in claiming asylum that does not undermine the Judge's findings in relation to the existence of a Convention reason or in relation to sufficiency of protection or internal flight findings, on the facts.
20. Ground 3, suggesting that although the Judge found the criminals who trafficked the appellant were part of a criminal network and they visited his parents in order to collect money due, this did not mean they necessarily had connections to the Vietnamese authorities, does not establish legal error. The ground does not specifically plead an error of law and does not no more than suggest a view of the author of the grounds, which is not sufficient.
21. Ground 4 asserting that in respect of the claimed loan, the Judge failed to point to any evidence that existed and that even if the parents were visited it is claimed there is no reason the appellant could not live elsewhere [30], is without merit, as the Judge clearly finds that there is no reasonable internal flight option available to the above respondent.
22. Ground 5 asserts the Judge finds the above respondent faces a real risk but has failed to make an assessment in respect of the evidence or the credibility of the appellant, but such claim is without merit. There was no challenge the credibility of the above respondent which was accepted. The Judge clearly considered the evidence with the required degree of anxious scrutiny and properly assessed the weight to be given to the same.
23. Having reviewed the material available to the Judge, the grounds on which permission to appeal is sought, the grant of permission to appeal, Ms Young's submissions, together with the rule 24 response, I find it has not been made out the Judge's conclusions are irrational, contrary to the law and/or evidence, or outside the range of findings reasonably open to the Judge on the evidence. On that basis I find no error of law material to the decision made out.

Notice of Decision

27. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 January 2024