



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/02964/2012

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 September 2014**

**Determination Sent  
On 23 October 2014**

**Before**

**UPPER TRIBUNAL JUDGE STOREY  
UPPER TRIBUNAL JUDGE PETER LANE**

**Between**

**T N  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Mr P Draycott, instructed by Paragon Law  
For the respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Vietnam, born on 2 January 1994, who came to the United Kingdom in January 2009 and claimed asylum after being put in the care of Social Services. Although his asylum application was refused, the appellant was granted leave to remain in the United Kingdom until 1 July 2011. He appealed against that decision but absconded in early 2010, which appears to have led to his appeal being withdrawn. In March 2010 the appellant was assessed as a potential victim of trafficking; although he was later found not, in fact, to have been trafficked. He sought leave to remain in the United Kingdom on 30 June 2011. That application was refused on 2 March 2012.

2. The appellant appealed against that refusal. On 9 July 2012 his appeal was heard at Birmingham by First-tier Tribunal Judge Grimmett. There were two aspects to the appellant's claim to be in need of international protection. The first related to his assertion that he had been subjected to ill-treatment in Vietnam because his father had worked for the US Army. The First-tier Tribunal Judge found that the appellant had not made good that aspect of his claim; and no complaint is made about that finding.
3. The second basis upon which the international protection claim rested was the issue of trafficking. The judge had before her expert reports from Dr Seddon and Dr Thullesen. Based on that evidence, and the appellant's own testimony, the judge concluded that the appellant had been trafficked from Vietnam for the purposes of economic exploitation. In this regard, she noted that the appellant and members of his family had been locked up whilst on a boat; physically abused by the men in charge of the trafficking; confined whilst in the Czech Republic; separated from an aunt when the traffickers put them into different lorries; and used by a Vietnamese woman in the United Kingdom as an unpaid domestic servant, having been enticed to leave his foster family.
4. At paragraph 14 of her determination, the judge found as follows:-

"14. The appellant struck me as an extremely diffident and shy young man. His evidence to the various professionals shows that he did not want to disclose any information about the lady with whom he was living for fear of getting her into trouble. Similarly he did not disclose his own address in Vietnam and gave differing accounts of his arrival in the UK. Looking at his situation of forced transportation across various countries and then his sudden and unexpected departure from his foster home to work as a domestic servant I am satisfied that it is reasonably likely that the appellant was trafficked for the purposes of exploitation.

...

16. The findings in his cousin's appeal concluded that it was likely that she had been trafficked for the purposes of prostitution and that she was probably still working as a prostitute in the United Kingdom. The Immigration Judge found her to be at risk if returned because of her situation. Those findings are not binding on me but there was no evidence before me to suggest that the conclusions of the First-tier Tribunal were in any way unreliable".

5. The reference to the appellant's cousin is significant, in that the appellant and his cousin were trafficked together from Vietnam, carrying on alone after his aunt had been separated from them. The judge continued:-

"17. I am satisfied therefore that the appellant has shown that he was trafficked from Vietnam and that he is a vulnerable young man. Even though he is now over 18 years of age he is still receiving support from Social Services. His social worker Mr Singh said that the appellant

disappeared from his foster care after being in the United Kingdom for a year and was discovered four months later in Birmingham. That does not suggest as the appellant claimed that the Vietnamese family told him to return to Leicester to find out what his immigration status was as he claimed. He was returned to foster care rather than being placed in more independent accommodation as would be normal for a child of his then age due to his vulnerability. He was kept in foster care until his 18<sup>th</sup> birthday. He was then placed in a temporary council flat and had made good progress but was in the social worker's view still immature and dependent on staff. They were in touch with him on a weekly basis to ensure that he did not abscond and also in close contact with the college that he attended. He had help from an organisation called Youth Shelter to ensure that he had practical and emotional support. That evidence supports my own view of the appellant as an immature and nervous young man.

18. I am satisfied that he has been trafficked to the United Kingdom by those seeking to exploit him. I am not satisfied that he has shown that he is at risk of persecution because I do not believe he has shown even on the low standard that his father was with the US Army. I am satisfied however that because he has been trafficked to the United Kingdom and as he is still young and clearly immature for his years he would be at risk if returned. The documents I have seen make it clear that he did not believe that he was being exploited by the Vietnamese family who made him work for them and that he is clearly at risk of others who may wish to take advantage of him. The background evidence shows that there is little protection from trafficking in Vietnam and no help for those who are trafficked.
19. It is difficult to assess what might occur if the appellant were to be returned and for that reason I am not satisfied that he has shown that he is at risk of a breach of his Article 3 rights because of the severity of ill-treatment that would be needed for such a claim. I am satisfied however that he is in need of humanitarian protection because of his personal vulnerability and immigration history of being trafficked”.

6. Unsurprisingly, both the appellant and the respondent obtained permission to appeal the judge's decision. On 15 January 2013 the case was heard in the Upper Tribunal by Judge Hanson, sitting in Birmingham. In his decision, Judge Hanson noted that the respondent did not seek to challenge the finding that the appellant had been trafficked for exploitation. For the appellant, it was submitted that, as a victim of trafficking, the appellant had been ill-treated for a Refugee Convention reason; namely, membership of a particular social group. The judge concluded that, even if the appellant had suffered persecutory ill-treatment in the past as a result of his trafficking, there were “good reasons to find that such persecution or serious harm will not be repeated”. In this regard, Judge Hanson pointed to various reports, which indicated that progress was being made by Vietnam in combating the trafficking of persons within or from that country. Accordingly, although the Upper Tribunal set aside the determination of the First-tier Tribunal, it

substituted a decision to dismiss the appeal against the respondent's decision to refuse to vary leave.

7. The appellant challenged that decision. On 12 February 2014 the Court of Appeal allowed the appellant's appeal and remitted the matter to the Upper Tribunal "for redetermination". On 9 June 2014 Upper Tribunal Judge Pitt held that the effect of the Court of Appeal's order was to take "the appeal back to the permission stage, permission to appeal against the decision of the First-tier Tribunal having been granted by Designated First-tier Tribunal Judge Digney on 6 August 2012".
8. Judge Pitt considered that the findings of the First-tier Tribunal, that the appellant had been trafficked "made it, at the very least arguable, that those facts gave rise to a refugee claim and that it was a material error to fail to address that aspect of the appellant's refugee claim. That part of his claim must now be re-made".
9. Judge Pitt considered that the First-tier Tribunal's rationale for concluding that the appellant was in need of humanitarian protection was legally flawed. The reason for this was that, since the First-tier Tribunal had impliedly found that there was no real risk of Article 3 harm, that is to say harm falling within Article 15(b) of the Qualification Directive, the only basis upon which the First-tier Tribunal could have decided that the appellant was in need of humanitarian protection would have been under Article 15(c). However, that provision was clearly inappropriate, dealing as it did with a "serious and individual threat to life or person by reason of indiscriminate violence in situations of international or internal armed conflict". As a result, Judge Pitt set aside the First-tier Tribunal's determination, concluding that the appeal "will be re-made as regards the appellant's refugee, Article 3 and 8 ECHR and humanitarian protection claims on the basis of his accepted profile as a previously trafficked minor" (paragraph 22).
10. In reaching a determination in this case, we have had regard to all documentary evidence before us. This is contained in two bundles, prepared by the appellant in connection with the 26 September 2014 hearing, running respectively to 209 and 33 pages; the respondent's COI Report on Vietnam (9 August 2013); a U.S. State Department Report on trafficking (2014); an IOM-Vietnam counter-trafficking document; and the IOM-Vietnam report of a workshop held in July 2014 "to discuss the identification of victims of human trafficking, their special health needs and the provision of appropriate care and assistance".
11. Also before us was the determination of Immigration Judge Frankish, sitting at Stoke on 12 April 2010, in which he allowed the appeal of the appellant's cousin, who had been trafficked with him. At that time, the appellant had disappeared from his foster home. The appellant's cousin was found credible by the judge. She described being raped by a Vietnamese man on a boat during the journey to the United Kingdom. The

judge found her to be “a very vulnerable young woman in the UK, she was so before she came to the attention of the authorities and will remain so on return. The difference is that a well-developed welfare system is in place to try to help the appellant here. There will be far from adequate protection for her on return”. The judge accordingly concluded that the cousin, whilst not entitled to refugee status (on the basis that she was not a member of a particular social group), nevertheless was entitled to humanitarian protection by reason of the risk of serious harm, if returned to Vietnam.

12. The findings of Judge Frankish underline those of Judge Grimmett in the present case, regarding the undoubted trafficking of both individuals from Vietnam to the United Kingdom. The trafficking of the cousin plainly had sexual exploitation at its core. What plainly lay behind the trafficking of the appellant, on the basis of the preserved findings, was economic exploitation. It is impossible to regard the events surrounding the appellant’s disappearance from his foster home in the Midlands and eventually re-appearance in Birmingham as anything other than the culmination of that process.
13. We find that, on the facts of this case, the trafficking of the appellant for forced labour constituted serious harm. Paragraph 339K of the immigration rules is therefore engaged, with the result that the harm “will be regarded as a serious indication of the appellant’s well-founded fear of suffering future such harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated”.
14. With that in mind, we have carefully considered the background and expert evidence. We have taken account of the submissions of Mr Jarvis, regarding the progress that has been made in tackling trafficking in Vietnam. This includes the greater willingness on the part of the authorities to prosecute those responsible for trafficking and the increasing provision that is being made for shelters for those who have been, or might be, trafficked. However, we accept the submissions of Mr Draycott, which are that, notwithstanding those improvements, serious difficulties remain, particularly (and importantly) so far as concerns trafficking for the purposes of forced labour. This is made plain by the U.S. State Department Report of 2014, upon which reliance was placed by Mr Jarvis. There we find:-

“Many officials lacked an adequate understanding of the definition of trafficking, particularly labour trafficking, which often resulted in their failure to identify victims or pursue criminal investigations in cases”.

“The government of Vietnam sustained law enforcement efforts to combat the transnational sex trafficking of Vietnamese women and girls but made minimal progress in prosecuting labour trafficking offences”.

“The government of Vietnam primarily pursued labour trafficking cases as administrative violations under the country’s labour laws, which do not provide criminal penalties”.

...

“... Efforts to identify and provide protection to labour trafficking victims or domestic victims remained inadequate”.

“The government did not provide adequate legal protection or assistance to victims of forced labour in Vietnam or abroad”.

15. Judge Grimmett remarked upon the diffidence and shyness of the appellant, a matter also remarked upon by the various professionals with whom he had come into contact. Whilst Mr Jarvis was right to point to the fact that the appellant is being encouraged to stand on his own feet and assume responsibility (he is currently engaged in running a nail bar), the picture he presents in September 2014 is not, we find, materially different from that of July 2012. The appellant’s history of exploitation in Birmingham is, we consider, strongly indicative of what lies in wait for him, upon return to Vietnam. We say that despite acknowledging that the respondent would seek to put in place mechanisms to secure that, upon arrival, the appellant would be offered help and support. In his particular case, we do not consider that this alleviates the real risk of exploitation of this vulnerable young person. He is at real risk of being subjected to forced labour, including being re-trafficked for that purpose, with the likely potential for additional ill-treatment, such as he and his cousin encountered before.
16. On the basis of the appellant’s past experiences, his present continuing vulnerability and the absence, in his case, of sufficient state protection, we consider that there is a real risk of the appellant suffering serious harm, contrary to Article 3 of the ECHR and Article 15(b) of the Qualification Directive, following return to Vietnam. He is, accordingly, entitled to international protection. Whether that comprises protection under the Refugee Convention depends upon whether the appellant’s persecution would be by reason of his membership of a particular social group.
17. On this issue, we also find in favour of the appellant. Although no longer a child, the appellant’s appearance and immaturity mean that he is likely to be regarded as a child, upon return. In this regard, we observe that Lloyd LJ in DS (Afghanistan) v Secretary of State for the Home Department [2011] INLR 389 said:-

“Does membership cease on the day of the person’s 18<sup>th</sup> birthday? It is not easy to see that risks of the relevant kind to a child would continue until the eve of that birthday and cease at once the next day”.
18. Similarly, in KA (Afghanistan) and Ors [2012] 1 WLR 615 Maurice Kay LJ found that “apparent or assumed age is more important than chronological age”, when considering forced recruitment or sexual

exploitation of vulnerable young males, given that “persecution is not respectful of birthdays”.

**Decision**

19. The appellant’s appeal is allowed on Refugee Convention grounds.

**Order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2005**

20. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant in these proceedings.

Signed

Date

Upper Tribunal Judge Peter Lane

17/10/2014