



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

Appeal Number: PA/02995/2019

THE IMMIGRATION ACTS

Heard at Glasgow
On 28 November 2019

Decision & Reasons Promulgated
On 3 December 2019

Before

UT JUDGE MACLEMAN

Between

H T D

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A J Bradley, of A J Bradley & Co, Solicitors
For the Respondent: Mr M Clark, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Lea dismissed the appellant's appeal by a decision promulgated on 13 May 2019.
2. The applicant's grounds of appeal to the UT, set out in her application dated 28 June 2019, say that it was an error at [31] to take it that, "The case of *Nguyen* shows that there is sufficiency of protection for victims of trafficking in Vietnam". The grounds say that *Nguyen* is not authority on that point, and that the FtT failed to consider that the appellant met several of the criteria for risk on return, including the fact that she would be a single mother without a partner.

3. The citation in full is *Nguyen* (Anti-Trafficking Convention: respondent's duties) [2015] UKUT 00170 (IAC).
4. UT Judge O'Callaghan granted permission on 9 July 2019, saying that parties were expected to inform the UT of the status of the appeal by the appellant's partner, PA/04295/19.
5. The appellant's partner has in the meantime unsuccessfully exhausted his appeal rights.
6. Mr Bradley said that it had been an error to approach the case on the basis of the appellant returning to Vietnam with her partner, because that did not reflect the circumstances as they then stood.
7. Mr Clark said that any error on that point was immaterial, because as matters have since developed, it is to be presumed that the appellant, her partner and their child would return as a family unit.
8. In course of submission it transpired that the judge's view at [31] of *Nguyen* stems from the refusal letter at [11] and [17] and from the respondent's Country Policy and Information Note, "Vietnam: Victims of Trafficking" version 3.0, September 2018.
9. As Mr Bradley submitted, *Nguyen* is authoritative, but only to this effect: "The duties of a signatory to the Council of Europe Convention on Action against Trafficking in Human Beings include responsibility towards a victim of historical trafficking into the country from which they later travel (untrafficked) to the signatory state". It is not a reported case on sufficiency of protection in Vietnam.
10. *Nguyen* at [52] includes the sentence, "There is evidence, in the US State Department Report of 2010, referred to in [50] above, to support the respondent's conclusion in the decision letter that there is a sufficiency of protection provided by the authorities in Vietnam". That is a finding for purposes of the individual case before the FT, not a general conclusion to be applied in other cases unless there is evidence to the contrary.
11. The CPIN at 2.5.5 goes on to quote the USSD Report of 2010 on the government making "some efforts to protect victims of transnational sex trafficking" although "it did not make sufficient efforts to protect or identify victims". That takes matters even further away from general sufficiency of protection.
12. Mr Clark submitted that the decision of the FtT was sufficiently thorough at [29 - 30] on factors relevant to risk on return, and should stand. There was also the factor of assistance available from the respondent, which the judge did not mention.
13. I reserved my decision.

14. If it was an error to proceed on the basis that the appellant, if she returned, would do so in family, that is no longer material.
15. It appears that parties in the FtT did not refer the judge directly to *Nguyen*, and that the respondent's refusal letter and CIPIN have led her into error on what that case held. Further, the underpinning evidence offers poor support for the proposition of general sufficiency of protection.
16. The outcome would not necessarily be different, but for that error. However, the matter was given significance, such that the decision cannot stand as a satisfactory resolution of the case.
17. There is a presumption that the UT will proceed to remake decisions, of which parties are reminded in directions issued with the grant of permission.
18. Although Mr Bradley had filed some further evidence with view to remaking the decision, including a psychological report and a country expert report, he sought a fresh hearing in the FtT, at which further updating evidence from the appellant and her partner might be led.
19. There was some merit in the submission by Mr Clark that the UT should proceed to remake the decision. However, as, in effect, an entirely fresh decision is required, it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to set aside and to remit to the FtT. The member(s) of the FtT chosen to consider the case are not to include Judge Lea.
20. The FtT made an anonymity direction, which is preserved.



28 November 2019
UT Judge Macleman