



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

PA/01956/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons Promulgated  
**On 30 July 2020**

Before  
UPPER TRIBUNAL JUDGE MACLEMAN

Between  
**L B D**

Appellant

and

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

Respondent

**DETERMINATION and REASONS (P)**

1. The appellant is a citizen of Vietnam. It is accepted that she was trafficked into prostitution in Vietnam, China, and France before claiming asylum in the UK. The respondents' decision dated 18 February 2019 finds that she is not entitled to asylum because sufficient protection is provided by the authorities in Vietnam, and she would not be at risk as a lone woman, or as a single mother with her son, [37-64]; and that she could reasonably relocate to Hi Chi Minh City, or elsewhere, [65-75].
2. (The respondent also held that the claim did not fall within a Refugee Convention category, [76-77], but that is not presently an issue.)
3. The respondents' decision at [10] lists evidence provided by the appellant, ending with "unrecognisable copies of photographs".
4. FtT Judge Fowell dismissed the appellant's appeal by a decision promulgated on 17 October 2019. He did not accept the appellant's

account about targeting of her family, the disappearance of her son, or her brother being beaten to death. He did not find her credible “beyond the facts found by the NRM”, [39]. He disagreed with the respondent about a Refugee Convention category, [52]. He found no risk of re-trafficking, [53-57]. He disagreed with the respondent also about sufficiency of protection and internal relocation, [58-60], but held that availability of family support was such that there was no real risk on return, [61].

5. Judge Fowell recorded evidence in the appellant’s bundle, including, at [10], photographs, a police report, and death certificates of her parents and her brother. At [30-31] he noted that the appellant’s representatives had said at the interview that further documents would be supplied within a week, but that had not been done by the time of the refusal letter nearly two years later. He therefore found “no procedural unfairness in the Home Office challenging this subsequent evidence”. At [33-38] he found these items unreliable.
6. The appellant sought permission to appeal to the UT.
7. Ground 1 is “procedural unfairness and illegality”. It is contended that the Home office “sought to depart from their reasons for refusal letter” and to challenge the authenticity of documents not previously challenged, and that “neither the Home Office nor the judge” were entitled to do so “on the date of the hearing”.
8. Ground 2 is “risk of re-trafficking”.
9. UTJ Blundell granted permission by a decision dated 19 and issued on 20 December 2019. He noted that ground 1 did not accord with [10] of the respondent’s decision and with [30-31] of the FtT’s decision, and observed that the point should be resolved by evidence from representatives that the documents had been placed before the respondent as claimed. The rest of the grounds were thought to be “less strong” but permission was not restricted.
10. On 25 February 2020, the appellant changed her representatives.
11. By a note and directions issued on 1 May 2020 the UT took the provisional view that it would be appropriate to determine without a hearing whether the FtT erred in law and, if so, whether it should be set aside. Parties were also given the opportunity to submit on whether, notwithstanding those directions, a hearing was necessary.
12. The appellant has filed a submission in response to directions, received by email on 12 May 2020. Under the heading “skeleton argument”, her representatives say on ground 1 that the relevant documents were served on the respondent by previous representatives “in late 2017 ... shortly after the asylum interview” and that if concerns were raised at the hearing, the appellant should have been “given adequate time to address those new issues”. Previous representatives have not responded to a

request for a record of delivery of the documents to the respondent. They did receive the appellant's file. They produce from it a letter from a translation company dated 13 November 2017 as "the only evidence we have to prove" that those solicitors "submitted those translations to the Home Office".

13. The submission attaches two case reports, but makes no comment on any light they might shed on error of law in this case.
14. The appellant does not suggest that a hearing is required.
15. The SSHD has filed a submission dated 21 May 2020. This says, very briefly, that the grounds are only disagreement; the respondent maintains that the documents in question were not before the decision-maker; and the decision of the FtT should not be set aside.
16. The SSHD's submission says at (d) that the appeal "may be difficult to determine on the papers". That is rather cryptic, if not self-contradictory. It appears to be aimed at how remaking might proceed, if the decision were to be set aside, rather than whether there is error of law.
17. I am satisfied, in all the above circumstances, that this is a case where the error of law issue may properly be resolved without a hearing, applying rules 2 and 34.

#### Ground 1.

18. The appellant raised procedural unfairness at the hearing, [23], but she did not ask for an adjournment.
19. Although much time has gone by, the appellant has not yet suggested that there is anything else she might have advanced in support of the authenticity of her documents.
20. There is no reason to think that the appellant's case would have been any better even if the judge had (of his own initiative) seen fit to adjourn.
21. The judge at [33-38] gave various reasons, in which no error has been shown, for finding the documentary evidence unreliable. He did not there mention the late stage at which they were produced.
22. The appellant has not referred to anything in the terms of the respondent's decision, or anywhere else in prior procedure, which might reasonably have led her to believe that the police report and death certificates were accepted as genuine, or that this chapter of her account was undisputed.
23. There is only the faintest of reasons for thinking that the documents might have been submitted before the respondent's decision was made. To the

contrary, the listing of documents in the decision, and the absence of reference to the matters to which they relate, strongly suggest that those matters were not before the decision-maker.

24. Ground 1 discloses no procedural unfairness.

Ground 2.

25. The appellant's submissions do not take this ground any further. It is only insistence and disagreement. It identifies no error on any point of law.

26. The decision of the FtT shall stand.

27. The FtT made an anonymity direction, which remains in place.

28. The date of this determination is to be taken as the date it is issued to parties.



UT Judge Macleman

Date: 20 July 2020

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent" is that appearing on the covering letter or covering email.**