Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12012/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Remotely by Microsoft Teams
On 18 November 2021

Decision & Reasons Promulgated
On 25 November 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

N M T T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L Mair, instructed by Oakmount Law Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

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Introduction

2. The appellant is a citizen of Vietnam who was born on 13 July 1979. The appellant arrived in the United Kingdom in October 2011 with entry clearance as a visitor valid until 8 January 2012. Thereafter, the appellant remained in the UK without leave. On 4 December 2016, she claimed asylum. The basis of her claim was that she is a victim of trafficking/modern slavery.

3. On 8 February 2017, a referral was made to the National Referral Mechanism for the Competent Authority to determine whether the appellant is a victim of modern slavery. On 14 February 2017, the Competent Authority concluded that she is a victim of modern slavery.

4. On 21 November 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. The Secretary of State accepted, as had the Competent Authority, that the appellant had been imprisoned and subjected to sexual abuse and servitude by traffickers in the UK. However, the Secretary of State did not accept the appellant's claim that she was being pursued by human traffickers based in Hungary or that she had outstanding debts to money lenders in Vietnam and so would be at real risk of persecution or serious harm if returned to Vietnam.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge Obhi on 19 November 2020. At that hearing, the appellant did not give evidence and her Counsel indicated that the appellant did not pursue her claim for asylum or under Art 3. Her claim was restricted to Art 8, including a claim based upon her private life under para 276ADE of the Immigration Rules (HC 395 as amended).

6. In a determination sent on 10 December 2020, Judge Obhi dismissed the appellant's appeal. In particular, the judge dismissed the appellant's appeal under Art 8 of the ECHR.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal to the Upper Tribunal on a single ground. The judge had failed to consider the appellant's claim under Art 8, based upon her private life, under para 276ADE(1)(vi). The judge, it was contended, had only considered the appellant's Art 8 claim outside the Rules.

8. Permission to appeal was initially refused by the First-tier Tribunal (RJ Zucker) on 19 January 2021. However, on renewal, the Upper Tribunal (UTJ Rintoul) granted the appellant permission to appeal on 1 March 2021. The basis of that grant of permission was as follows:

> "It is arguable that the judge erred in her assessment of whether the appellant met the criteria set out in paragraph 276ADE(1)(vi); it appears that the issue of obstacles to

returning to live in Vietnam were raised (see [38]) (*sic*) but the judge considered only the 'medical' aspects of Article 8."

9. On 22 March 2021, the Secretary of State filed a rule 24 response. In that response, the respondent accepted that the judge had not directly addressed para 276ADE in her determination, but contended that that omission was not material as the judge's findings in relation to the appellant's claim outside the Rules would, in effect, have resulted in the judge finding that there were not "very significant obstacles" to her integration under para 276ADE(1)(vi).

The Hearing

10. The appeal was listed for hearing on 18 November 2021 before me at the Cardiff Civil Justice Centre. I was based in the Cardiff CJC and Ms Mair, who represented the appellant, and Mrs Aboni, who represented the Secretary of State, joined the hearing remotely by Microsoft Teams.

The Submissions

11. At the outset, Mrs Aboni accepted that the judge had erred in law by failing to consider para 276ADE(1)(vi) and whether the appellant had established that there were "very significant obstacles" to her integration on return to Vietnam. Mrs Aboni accepted that this had been a live issue relied upon by the appellant's Counsel. However, relying upon the rule 24 response, Mrs Aboni submitted that that error was not material. She submitted that the judge's findings in paras 52-56, albeit in respect of the appellant's claim under Art 8 outside the Rules, should lead me to conclude that the judge would inevitably have rejected the appellant's claim under para 276ADE(1)(vi). She pointed out that the judge had found that the appellant would be able to obtain medical treatment on return to Vietnam and would have a support network. There were, Mrs Aboni submitted, no other factors that could have led the judge to conclude that there were "very significant obstacles" to her integration on return.

12. On behalf of the appellant, Ms Mair submitted that the judge had simply not considered the relevant test under para 276ADE(1)(vi) and he had failed to carry out the broad "evaluative test" as to integration set out in Kamara v SSHD [2016] EWCA Civ 813 at [14] per Sales LJ.

13. Further, Ms Mair submitted that the judge's reasoning outside the Rules focused on the medical issues. Ms Mair submitted that the judge had not fully considered the factors relevant to that issue in his assessment under Art 8 outside the Rules. In particular, she submitted that the judge had failed to consider:

    (1) that the appellant had not been in Vietnam for 23 years since the age of 19 and had no real experience of living and working there as an adult;

(2) that she is the victim of trafficking even if the events were in the UK the impact upon her was relevant to her ability to integrate on return;

(3) material set out in the Hagar International Group Report which refers to the high level of stigma and discrimination for women in Vietnam and their reluctance to identity as the victims of trafficking as a result;

(4) although it was not put forward as an objective risk, that the appellant had a real subjective fear of return and the most recent psychiatric report was not properly examined;

(5) evidence concerning her depression and being housebound and not accessing support even in the UK;

(6) evidence from the Salvation Army support worker that, in the UK, she was only able to access public transportation or attend at the court if accompanied by a support worker from the Salvation Army.

14. Ms Mair also pointed out that the judge's reasoning, necessarily in relation to the issue of proportionality, engaged in a balancing exercise taking into account the public interest which was irrelevant in determining whether there were "very significant" obstacles to the appellant's integration on return to Vietnam. If there were such obstacles, then the public interest was outweighed.

15. Mrs Aboni made no submissions in reply.

Discussion

16. It is conceded, and I accept, that the judge erred in law by failing to consider para 276ADE(1)(vi), as that was specifically relied upon by the appellant's Counsel as is clear from the judge's decision at [34] and [37]. It was incumbent upon the judge to consider the appellant's claim that:

> "there would be very significant obstacles to the applicant's integration into the country to which [she] would have to go if required to leave the UK."

17. If the appellant satisfies the requirements in para 276ADE(1)(vi), as Ms Mair submitted, there would be no public interest in removing the appellant and she would, without more, succeed under Art 8 (see TZ (Pakistan) v SSHD [2018] EWCA Civ 1109 at [34] per Ryder LJ).

18. The requirement of "very significant obstacles" sets an "elevated threshold" which does not equate with "mere inconvenience or upheaval". The assessment is fact-specific considering all the relevant circumstances that would face an individual on return to their own country as the Court of Appeal pointed out in Parveen v SSHD [2018] EWCA Civ 932 at [9], where Underhill LJ said:

> "the task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as 'very significant'."

19. As regards integration, the correct approach was set out by Sales LJ (as he then was) in Kamara at [14] where he said this:

> "14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

20. That approach was approved by the Supreme Court in Sanambar v SSHD [2021] UKSC 30 at [54]-[55] per Sir Declan Morgan (with whom the other Justices agreed). Although said in the context of Exception 1 in s.117C of the Immigration, Nationality and Immigration Act 2002.

21. The approach is equally applicable in a non-deportation case where para 276ADE(1)(vi) applies.

22. In her determination, Judge Obhi essentially dealt with the appellant's claim under Art 8, albeit outside the Rules, at paras 51-56.

23. At para 51, the judge set out the well-known five-stage test in R (Razgar) v SSHD [2014] UKHL 27.

24. At para 52, the judge accepted that the appellant had private life in the UK even though she did not have any family or any particularly strong connections but did rely on support services and the mental health teams.

25. Then at paras 53-56, the judge dealt with the claim outside the Rules as follows:

> "53. In considering whether the appellant can receive treatment in Vietnam, I am reliant on the authorities, which deal with medical treatment. The most recent authority is that of AM (Zimbabwe). At paragraph 32 of that decision, the Supreme Court confirmed that it is for the appellant to establish that the treatment provided in the country of origin would not be sufficient and would result in a serious and irreversible decline in the appellant's health. It is only when the evidence is provided, that the Court can consider whether the severity of it is such that returning the appellant would equate to a disproportionate breach of her human rights. The appellant has not provided any such evidence over and above the unsourced opinion of Ms Khawaja, that the medication and support she currently receives would not be available. No account is taken by Ms Khawaja of the fact that the appellant's parents, her sister, and her two children are in Vietnam and

would provide a support network for her to encourage her to take medication and to assist her in attending her appointments. In addition, I note the existence of NGOs, in particular the Hagar International Group, which provides support for victims of trafficking who experience sexual abuse. There is some evidence in the Home Office Fact-Finding Mission Report that help is available to individuals such as the appellant.

54. Whilst I note what she says about her parents and her children's whereabouts not being known to her, this is not reasonably likely, as she lived in Hungary for many years and was supporting her family in that country financially and by her own account, she returned there in 2009.

55. Whilst I appreciate that the appellant has been the victim of trafficking and has claimed abuse at the hands of her husband and is clearly mentally unwell, the case does not reach the high threshold required by the established case law as she has failed to provide any evidence of the care she receives in the UK, in the form of medication and mental health social network support would not be available to her in Vietnam.

56. In making my decision I have also borne in mind that the wider public interests, the enforcement of Immigration Policy and the need to protect the UK's economy, including its healthcare and Social Services."

26. There is no doubt that the focus of the judge's assessment outside the Rules concerned the appellant's healthcare needs and whether, in fact, she would have any support from family in Vietnam. Those factors were, of course, relevant to assessing whether there were "very significant obstacles" to her integration in Vietnam under para 276ADE(1)(vi). I accept, however, Ms Mair's submission that the test of "integration" identified by Sales LJ in Kamara required a broader assessment of the impact of the appellant's return to Vietnam to determine whether there were "very significant obstacles" to her integration into life in Vietnam. I accept Ms Mair's submissions that there were matters not considered by the judge which would be relevant to that, including the impact upon her of being the victim of trafficking (albeit that the abuse occurred in the UK), her subjective fear and, and these are my words not those of Ms Mair, her vulnerability as identified in all the evidence before the judge. Also, to the extent that she made findings in relation to the claim under Art 8 outside the Rules, it is fair to say that, although the grounds do not specifically challenge the judge's findings, the judge's assessment of the appellant's circumstances was equally unduly limited.

27. In order to establish that the judge's error by failing to consider para 276ADE(1)(vi) was not material, Mrs Aboni has to persuade me that it was *inevitable* that the judge would have made an adverse finding on the issue of whether there were "very significant obstacles" to the appellant's integration on return to Vietnam. As is, of course, clear the judge gave no indication as to how she would have applied that test to the evidence before her and the appellant's circumstances. She gave no consideration to it at all. The findings are incomplete. I am not satisfied that, if the judge had fully considered the appellant's circumstances, she would inevitably have found that there were not "very significant obstacles" to her integration in Vietnam

on return and the judge's failure to consider that issue was, therefore, material to her decision to dismiss the appeal under Art 8.

28. For these reasons, therefore, I am satisfied that the judge materially erred in law in dismissing the appellant's appeal under Art 8 of the ECHR.

Decision

29. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

30. Having indicated my decision at the conclusion of the hearing, both representatives invited me to remit the appeal to the First-tier Tribunal in order to remake the decision under Art 8 both in relation to the Immigration Rules (in particular para 276ADE(1)(vi)) and outside the Rules.

31. Mrs Aboni accepted that the judge's findings (and decision) in respect of the claim outside the Rules, in particular in paras 52-56, should not stand, The judge, on remittal, should reach a fresh decision in respect of Art 8 outside the Rules (if necessary) and make relevant findings in that respect also. I agree with that approach not least because it would be wrong to restrict the judge's assessment outside the Rules and their ability to make relevant findings given that, as yet, no findings have been made in relation to the Rules themselves.

32. Accordingly, the appeal is remitted to the First-tier Tribunal in order to remake the decision under Art 8. The appeal to be heard by a judge other than Judge Obhi

33. Before Judge Obhi, the appellant did not pursue her asylum claim, it would appear in part because she was unable to give evidence given her circumstances. Ms Mair indicated that the appellant might, at the remittal, wish to take the opportunity to give evidence and might wish to rely upon asylum grounds. It will be a matter for the First-tier Tribunal Judge to determine whether they consider it appropriate to allow the appellant to pursue her asylum claim in the remitted appeal.

Signed

Andrew Grubb

Judge of the Upper Tribunal
19 November 2021