



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006078

First-tier Tribunal No: PA/50056/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 23 October 2023**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**TMHD**

**(NO ANONYMITY ORDER MADE)**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

Respondent

**Representation:**

For the Appellant: Mr Puar, Counsel instructed by NLS Solicitors

For the Respondent: Mr Howells, Senior Presenting Officer

**Heard at Cardiff Civil Justice Centre on 6 October 2023**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and her family. Failure to comply with this order could amount to a contempt of court.**

**DECISION MADE PURSUANT TO RULE 40(3) OF THE**  
**TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Lester sent on 25 October 2022 dismissing her appeal against the respondent's refusal of her protection and human rights claim.

2. The judge found that the appellant was not at risk of serious harm and that it would not be a disproportionate breach of her human rights if returned to Vietnam.
3. At the outset of the error of law hearing, Mr Howells, for the respondent, conceded that the judge had made material errors of law in line with Grounds (i), (ii), (iv) and (v).
4. The respondent firstly conceded that in a very long decision the judge's findings were contained in two pages at the end of the decision and were very brief. The respondent conceded that the judge had not properly engaged with the expert report which was not before the previous Tribunal and dealt with the plausibility of the appellant's claim to be a victim of abuse in Vietnam and the risk on return to her as an unmarried mother as well as the impact on her child.
5. The respondent also conceded that there was voluminous evidence of the appellant's poor mental health before the Tribunal which supported the medical expert's diagnosis. It was an error by the judge to discount the expert medical evidence on the basis that the appellant was lacking in credibility without careful consideration of the GP records, which demonstrated a longstanding history of suicidal ideation. This error infected the judge's analysis both of Article 3 ECHR and the assessment of the best interests of the appellant's child. The judge did not make any express findings as to the risk of suicide if forcibly removed.
6. Mr Howells also recognised that although the judge had given consideration to the best interests of the child this was very brief and failed to take into account his mother's significant mental health problems and the background evidence on the treatment of children with unmarried parents in Vietnam.
7. The only ground which was not conceded was that the judge had failed to consider issues of sufficiency of protection and internal relocation because the judge had not found that the appellant was at risk in her home area. These issues may become relevant on remittal.
8. Finally, Mr Howells also conceded that although not raised in the grounds of appeal there was a "Robinson obvious" point in that there was no reference in the decision to the appellant being treated as a vulnerable witness on account of her mental health nor any indication that this was taken into account when assessing the appellant's credibility and the claim more generally.
9. I am satisfied that the respondent's concession is entirely appropriate. The decision contained several errors of law which are material because they are capable of affecting the outcome of the appeal. The decision is therefore set aside in its entirety with no findings preserved. Both representatives agreed that the appeal should be remitted to the First-

tier Tribunal because of the extent of the factual findings which need to be made and out of fairness to the appellant.

10. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing, but I have summarised the reasons for the benefit of the parties.

**Notice of Decision**

11. The decision of the First-tier Tribunal involved the making of an error of law.
12. The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.
13. The decision is remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Tribunal Judge Lester.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

10 October 2023