



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER Appeal Number: AA/03217/2014**

THE IMMIGRATION ACTS

Heard at Bradford

On 17th December 2014

Determination

Promulgated

On 23rd December 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MS NHUNG THI NGUYEN

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rehman, of Counsel

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Vietnam born 6th January 1973. She had appealed to the First-tier Tribunal against the decision of the Respondent dated 29th April 2014 refusing to grant her asylum/Humanitarian Protection in the UK.
2. In summary the Appellant claims to have been a victim of trafficking to the UK for an unlawful purpose. Her claim is that she was initially made to work as a domestic caring for a young child, but after five months she was

told she must grow cannabis. She escaped her captors but claims a fear that if returned to Vietnam she will be harmed or killed by those who trafficked her because she has not repaid the money she owes them for bringing her to the UK.

3. The Appellant's appeal was set down for hearing on 19th June 2014. The Appellant did not attend the hearing. On 18th June 2014 the Tribunal received a faxed request from Rachel Read, the Appellant's support worker, seeking an adjournment of the hearing the following day as the Appellant felt unable to attend the hearing because she was unwell. The fax was not received until late in the day on 18th June and the support worker was telephoned and put on notice that any decision on an adjournment would be a matter for the Judge on the day.
4. Hearing nothing further and applying Rule 21 of the Tribunal Procedure Rules 2006 the Judge proceeded to hear and determine the appeal in the absence of the Appellant. The appeal was dismissed.
5. The Appellant appealed the FtT's decision on the grounds that there was good reason for her non-attendance on 19th June 2014 and that it would be procedurally unfair for the Appellant to be disadvantaged in her claim to protection being dismissed without her being given the opportunity to be heard. Permission to appeal was given by UTJ O'Connor on 7th October 2013.

The UT Hearing

6. Before me the Appellant was represented by Mr Rehman of Counsel; Mr Diwnycz appeared for the Respondent. Mr Rehman sought leave to adduce medical evidence in the form of the Appellant's GP Patient Records. Although this request to introduce these documents was made last minute, Mr Diwnycz raised no objection and therefore in the interests of justice I admitted them.
7. Mr Rehman submitted that the patient records when read together with the fax from the support worker showed that the Appellant was unwell on 18th June 2014 (the day before the hearing). The medical records also showed that the Appellant attended a drop-in medical centre and that following on from that she attended her GP surgery on 19th June although this was also on a drop-in basis. Although she was at the surgery at 8:30 am on 19th June, she was not seen until 11:00 am. She was advised to take fluids and rest. She was unable to get a message through to the court and in any event at 11:30 am, not having heard from the Appellant, the Judge proceeded to hear the appeal in her absence. The Appellant was diagnosed at a later date as suffering from Hepatitis B.
8. Mr Diwnycz defended Judge Hindson's determination and pertinently pointed out that even to date there is no medical evidence (produced) to substantiate the Appellant's claim of being diagnosed with Hepatitis B by

the Royal Hallamshire Hospital on 1st July 2014. However with his customary fairness Mr Diwnycz did not press his defence too strongly.

Error of Law

9. I am satisfied that the Appellant's illness prevented her from attending the hearing on 19th June. No criticism can be attached to Judge Hindson for proceeding as he did; it is clear that he was not made aware of the full situation. That lack of information led the Judge to determine the appeal but with the result that a procedural unfairness has occurred such as to vitiate the FtT's decision and amount to an error of law.
10. Having announced that I was satisfied that the FtT's decision must be set aside for procedural unfairness, both representatives were in agreement that the appropriate course in this appeal is to remit it to the FtT for a full re-hearing. It is appropriate that the FtT makes fresh findings of fact. No findings of fact are preserved from Judge Hindson's decision.

Decision

11. The FtT decision of 19th June 2014 dismissing the Appellant's appeal is hereby set aside. The matter is remitted to the First-tier Tribunal for a full rehearing before any Judge (not Judge Hindson).

Signed

Date **17th December 2014**

Judge Roberts
Judge of the Upper Tribunal