



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06972/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3 February 2014

Determination Sent  
On 3 March 2014

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR MINH VAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Bandegani, Counsel, instructed by Sultan Lloyd Solicitors  
For the Respondent: Mr G Saunders, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Vietnam born on 19 August 1995. He appeals against the decision of First-tier Tribunal Judge Pirotta dismissing his appeal against the decision of the respondent refusing to grant him asylum in the United Kingdom.
2. He claimed to have left Vietnam when he was 16 years old. The journey to the UK took him approximately one year. He was arrested in Lincolnshire on 16 November

2012 after medics were called to him when he was observed having an anxiety attack. He made an asylum claim on 22 November 2012 which was refused on 7 August 2013. He lodged an appeal on 24 July 2013.

3. On 22 January 2013 the appellant was referred to the National Referral Mechanism (NRM) for Potential Victims of Trafficking (PVOT). In a letter dated 14 February 2013 wrote to the appellant saying that the Competent Authority has carefully considered the circumstances of the appellant's case and concluded that there are reasonable grounds to believe that he has been trafficked. The respondent granted the appellant 45 days' temporary admission from the date of their letter "to help him recover from his trafficking experience and to allow him time to consider what you wanted to do next.". The letter went on say that at the end of the reflection period, the Competent Authority would make a "conclusive" decision as to whether the appellant was a victim of trafficking. Following this decision the UKBA would consider whether a residence permit was appropriate and he would be notified of the decision on his case. On 12 April 2013 the Competent Authority decided that there were conclusive grounds to believe that the appellant had not been the victim of trafficking.
4. On 12 July 2013 the respondent issued a Notice of Immigration Decision refusing the appellant's claim for asylum and/or human rights for the reasons set out in the refusal letter dated 10 July 2013. The respondent accepted that the appellant was a national of Vietnam, that his father was dead as a result of a land dispute. The respondent did not accept the rest of the appellant's account.
5. The respondent identified the basis of the appellant's claim as follows: his fear of return to Vietnam is that he will be forced to work for the people who he previously worked for in Vietnam. In addition, he feared that he would be homeless, as he had no family in Vietnam. The respondent considered that the appellant's claim did not meet the definition of the 1951 Refugee Convention, and his asylum claim was refused in its entirety.
6. The judge heard oral evidence from the appellant gave oral evidence and did not believe his account of events in Vietnam. The judge's reasons for her findings are set out at paragraphs 47 to 61 and repeated at paragraphs 62 to 66.
7. The judge considered the medical report from Dr. Lesley Lord concerning the appellant's scarring which, she said, recited the instructions he had given the solicitors and Dr. Lord said some of the scars were consistent with the appellant's account. Of the scars on his arms, he said he could not remember one but the other was from a knife. Dr. Lord did not give any opinion about possible alternative causes. Dr. Lord said the appellant told her that he could not remember how he obtained the scar consistent with stitching on the wound to the back of his left hand. The judge found at paragraph 48 that the appellant's scarring report shows that his explanations for the scars were inconsistent. He could not ascribe many of them to the force labour he said he had to perform or to being punished for trying to escape. The judge found at paragraph 53 that other injuries were consistent with being

beaten, which is not uncommon in Vietnam for no apparent reason as society is violent to those who cannot protect themselves.

8. The judge did not accept the appellant's account that the gang masters would have provided free passage for him to the UK in exchange for working for two years or that he would be smuggled across the world alone in a container. The objective evidence showed that the costs of being smuggled to Western Europe from Vietnam could be about £17,000-£20,000. It is not credible that the appellant would have been able to earn sufficient in two years unpaid labour moving boxes in the jungle to entitle him to a free passage to the UK with smugglers.
9. The judge was not satisfied that the appellant was put on the lorry as part of a trafficking exercise for exploitation as his account was that he was permitted to leave the lorry having reached the UK and allowed to go off on his own. His account of when and who told him that his mother was in the UK was inconsistent and not credible. She was not satisfied that he was brought to the UK as a reward for working for the gang master or that he was smuggled in for the purpose of forced labour in the UK or other types of exploitation because he was allowed to go free and has never been contacted by any of the persons involved in bringing him here.
10. The judge was not satisfied that he was rendered homeless after the death of his father or that he was forced to beg on the streets. The judge found that it was not credible that the appellant would have recognised the name of Dong Quang where he had begged by looking on the internet as he had said that there were no place names in the villages.
11. The original grounds argued among other things that it was the appellant's submission that his journey to the UK was entirely indicative of having been trafficked and that the judge failed to consider this possibility, which goes to the core of his asylum claim. Permission was however granted to the appellant to argue only three issues and they were (1) the judge's finding that the appellant could not have lived on the streets for 4 years without being taken into forced labour. The judge's finding was not based on any objective evidence. (2) The judge was unaware that the place name i.e. Dong Quang, related to a market place rather than a town. The judge who granted permission said of the other grounds that they were of less, immediately identifiable, arguable merit. (3) The judge had erred in her handling of the appeal. She had asked too many questions which were confusing. This was based on an email from the appellant's support worker who was present at the hearing. Counsel did not rely on this ground or on the ground that judge failed to properly consider that Dong Quang is the name of a market in Thai Nguyen
12. Counsel relied on his skeleton argument which recast the appellant's grounds of appeal in the following terms: the judge failed to have proper regard to the scarring report. She failed to have regard to country material and adopted a wrong approach to the evidence.

13. I raised with the parties that the judge had not made a specific finding as to whether the appellant was trafficked to the UK. I noticed particularly that this issue was not raised in Counsel's skeleton argument.
14. Counsel submitted that the approach to the appellant's appeal must be to determine whether the judge's findings are sustainable on the evidence and then to assess what risks, if any, he faces on return to Vietnam. The appellant's whole case was that to return him to Vietnam would amount to a breach of Article 3 and Article 4 of the ECHR. If he has suffered in the past then the material fact is that he is the victim of former trafficking and that gives rise to a Convention reason. I agreed with Counsel's approach.
15. Counsel argued that the judge reached unsustainable findings. Her treatment of the Convention reason was cursory. Because she did not accept the appellant's account, she concluded that he was not a member of the particular social group.
16. On the issue of the scars, Counsel submitted that the face of it, the judge appears to have given reasons to depart from the findings of Dr. Lord. However, she did not reach her findings at paragraphs 48 and 53 on the basis of the evidence. He argued that in total, nine out of the ten scarring sites identified by Dr Lord are said to be "diagnostic" of the claimed cause and one is highly consistent. Even if it was open to the judge to characterise violence in Vietnam as being meted out to vulnerable people "for no apparent reason", that failed to appreciate that according to the Istanbul protocol "diagnostic" means the "appearance could not have been caused in any way other than that described". Of the ten scars, seven were attributed by the appellant to mistreatment. There was no rational or evidential basis for the conclusion at paragraph 48 that his explanations for the scars were inconsistent. The judge was incorrect to say that he could not ascribe many of the scars to the forced labour.
17. I find that the judge made sustainable findings in respect of the appellant's scars. The judge at paragraph 53 was entitled to find on the evidence that the appellant gave an inconsistent account of the stitching of the injury on the back of his left hand. Whilst I accept that Dr. Lord described some of the scars as diagnostic, there were many scars for which the appellant had no explanation as to how they were caused. In the circumstances I do not accept the argument that the judge's finding at paragraph 48 was unsustainable. He ascribed some of the scars to being beaten and told Dr. Lord that he did not know how they were caused. In the circumstances the judge's finding at paragraph 53 was open to her.
18. Counsel argued that the judge failed to determine the appellant's account of street begging for years as a child in the round by reference to country material in support of the appellant's account. The judge had found at paragraph 47 that the appellant's evidence was not consistent with the level of begging known to take place in Vietnam or the taking of street children into forced labour. The objective country evidence shows that there is little record of abduction or forced labour of orphans, whereas many children are sold into bonded labour by their families, particularly in poor rural areas, such as the place the appellant lived with his father. Counsel

argued that the judge's finding was unsustainable because the objective evidence shows that children beg on the streets in Vietnam.

19. I find that the judge's finding at paragraph 47 has to be seen in the context of the appellant's evidence that he was taken into forced labour after about 4 years of begging in the streets. In that context I find that the judge's finding was open to her in the light of the objective evidence that she relied on.
20. Counsel also took issue with the judge's finding that the appellant's evidence was inconsistent in relation to whether the appellant had said he went to the hospital, and who told him his mother was in the UK. In this regard, Counsel submitted that the judge should not have relied on the appellant's evidence in the age assessment and, in any event, the appellant clarified his evidence in his statement.
21. I was not persuaded by Counsel's argument because as part of the age assessment, evidence would have been obtained from the appellant as his past history and circumstances. Consequently, there was nothing in the information in the age assessment that could arguably be said to be inadmissible. It was part of his case and it was open to the judge to consider it. In any event the workers relied on that evidence to believe the appellant's age. The judge did not err in looking at that evidence.
22. I agree with Mr Saunders' submission that even at its highest, if everything the appellant said was true and was accepted, he was a small boy who fell into the hands of people who forced him to work in the jungle. They caused him to be brought here and then were content to let him go. They did not force him to work in a cannabis factory in the UK. If he is a member of a particular social group, there is nothing about him which distinguishes him as a person who has been forced into servitude, shifting boxes in the jungle. In any event, the appellant is now an adult. The circumstances he found himself in Vietnam are not likely to reoccur and it is not even likely that his slave masters would have any idea that he was back in Vietnam.
23. I find that on the evidence that was before the judge, she made findings that were open to her. Her findings are sustainable and disclose no error of law.
24. The judge's decision dismissing the appellant's appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun