



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

Appeal Number: AA/08606/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

**Determination
Promulgated**

On 16th May 2014

On 6th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR H D B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rory O’Ryan (Counsel)

For the Respondent: Mr Neville Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Frankish promulgated on 9th January 2014 following the hearing at Bennett House on 18th December 2013. In the determination, the judge allowed the appeal of the Appellant on human rights grounds, but dismissed it on asylum grounds and on grounds of humanitarian protection under the Immigration Rules. Both the Appellant and the Respondent Secretary of State thereafter applied for permission to appeal to the Upper Tribunal. The Respondent Secretary of State did so on the basis that the appeal had been allowed on human rights grounds. The Appellant himself did so on the basis that the judge had erred in law in refusing the appeal on asylum grounds. The Respondent’s appeal was allowed (although the Respondent then subsequently granted the Appellant discretionary leave to remain

until 2016), but the Appellant's appeal remains undetermined in this application for permission before the First-tier Tribunal. It is in these circumstances that the matter arises before me.

The Appellant

2. The Appellant is a male, a citizen of Vietnam, who was born on 9th September 1994. He appeals against the decision of the Respondent Secretary of State refusing him asylum dated 21st August 2013.

The Appellant's Claim

3. The Appellant's claim is that he would face mistreatment in Vietnam if returned there on account of his race and membership of a particular social group, namely, that he was trafficked from Vietnam to the United Kingdom by gang members in his local area. The Appellant's claim is that shortly after his father died, when he was aged 8, his mother remarried, and placed the Appellant in the care of his paternal grandparents who were in their 80s. The Appellant and his family were all poor paddy farmers. The grandparents gave him accommodation but the Appellant had to beg or do scraps of work for a living. After two months of this, six gangsters coerced him into a criminal life. The grandparents reported this to the police but the police did nothing about this. The gangsters found out and threatened the grandparents. At the age of 11, the Appellant suffered the first of some half a dozen arrests for theft. The police did not believe the Appellant's defence of coercion and tortured him to secure a retraction. They also sought a bribe from the grandparents. Eventually the Appellant was trafficked from Vietnam to the UK.

The Judge's Findings

4. The judge observed how the Appellant had been criticised by the Respondent Secretary of State for giving an unsubstantial account in respect of the trafficking by the gang to the UK. The judge observed, however, that "he does give detailed particulars of the names of several of the gang members."
5. Secondly, the judge observed how the medical report was characterised by two features. First, the omission of any exaggeration by attributing all his marks of injury to the account on which he relies; and second, the finding that the marks he attributes to his experiences are consistent (for example, the stab marks and the electric baton marks).
6. Third, the Appellant was challenged in cross-examination as to why his experiences have not made their way into the account he put forward in his age assessments, but the Appellant had explained that the first assessment was very soon after he arrived, and that he has learnt to fear authority, and was never believed by the police at home about the subject to criminal coercion from about the age of 10.

7. The judge observed, fourthly, that “a lot of red herrings have crept into this case” one of which was the question about his age assessment (paragraph 23).
8. Fifth, the judge had regard to Professor Mark Sidel’s report which stated that the Appellant was at risk through collusion between the corrupt police and the criminal gangs. Furthermore, the expert report also observes that “it is very difficult to subsist in the absence of any network of social or family connections” (paragraph 24).
9. Finally, the judge held that the Appellant “will simply face the difficult future of being a scantily - educated young man needing to achieve economic self-sufficiency” which “might be a hard life but it does not amount to asylum status” (paragraph 25).
10. The judge however, allowed the appeal on human rights grounds observing that, since his arrival in the UK, the Appellant “has clearly established a very sound private life and there will be a very severe wrench” if the Appellant was now removed, such that it will be disproportionate, given that he came to the UK seven years ago (paragraph 26).

Grounds of Application

11. On 21st January 2014, the Respondent Secretary of State made an application for permission to appeal, on the basis that the judge had allowed the appeal because he had expressed sympathy and admiration for the fact that the Appellant had done very well his arrival in the UK, but sympathy and admiration alone were not enough, to secure success under Article 8 ECHR grounds. On 27th February 2014 permission to appeal was granted to the Secretary of State’s application. In the meantime, however, on 24th January 2014, the Appellant himself had made an application for permission to appeal as well on the basis that the judge had erred in failing to determine whether the Appellant was at real risk of serious harm in Vietnam by being subject to further enforced labour by a gang other than the original gang that had targeted him in Vietnam prior to his departure. This application by the Appellant was acknowledged in a notice of receipt dated 27th January 2014. However, it was never determined. To make matters even more complex, by a decision dated 21st January 2014, the Appellant was granted by the Respondent Secretary of State “discretionary leave to remain up until 8th July 2016.”

Submissions

12. At the hearing before me on 16th May 2014, Mr Neville Smart, appearing on behalf of the Respondent Secretary of State, submitted that the only appeal before this Tribunal was the appeal of the Respondent Secretary of State as permission had only been granted with respect to the Respondent’s application. However, since the Respondent had on 21st January 2014 granted discretionary leave to remain to the Appellant until 2016, he would make an application under Rule 17 for the appeal of the Respondent Secretary of State to be withdrawn. I indicated that I will have

no reason to refuse this application. Mr Rory O’Ryan, who appeared for the Appellant, did not object to this course of action.

13. However, what Mr Rory O’Ryan did submit, was that this Tribunal should determine the Appellant’s application for permission to appeal on asylum grounds. This is because the Appellant had provided a notice to the First-tier Tribunal dated 6th February 2014 under Section 104(4A) and Section 104(4B) of the 2002 Act, and under Rule 18 of the Asylum and Immigration Tribunal (Procedure) Rules 2005, giving notice that the Appellant had been granted leave to remain, and that the Appellant wished to pursue his appeal nonetheless on the grounds specified in Section 84(1)(g) of the 2008 Act, which related to the Refugee Convention.
14. Applying Section 104 of the 2002 Act, I find that an appeal brought under Section 82(1) is not abandoned in this case, notwithstanding the fact that the Appellant has been granted discretionary leave to remain, because his appeal is one that relates to the Refugee Convention (see Section 104(4B)). If the application for permission was not determined by the First-tier Tribunal, despite having been acknowledged as received by the administrative authority, then the Upper Tribunal can under Section 4 of the 2007 Act, determine the application for permission to appeal. I so determine it and I grant permission.
15. I do so on the basis that the judge below, in what was otherwise a very careful and comprehensive determination, did not consider whether the Appellant upon return to Vietnam would be subjected to forced labour from the gang other than the original gang which had targeted the Appellant and trafficked him to the UK. This issue is particularly important not least in the light of the report from Professor Sidel (referred to a paragraph 24 of the determination) that the Appellant remains at risk through collusion between a corrupt police force and criminal gangs, and that this risk is enhanced by the failure of the Appellant to fall back on a network of social or family connections. Given that “anxious scrutiny” must be applied in an asylum claim, the facts of this case are sufficiently as serious to require a proper and thorough consideration of these issues. Thus, whilst I allow Mr Smart to withdraw the appeal of the Respondent Secretary of State before me, given that the Appellant has been given leave to remain here until 2016, I do at the same time also allow the application of the Appellant to have his asylum claim reheard again by the First-tier Tribunal. Under Practice Statement 7.2, therefore, I direct that this matter is reconsidered again by the First-tier Tribunal specifically in relation to the risk that attaches to the Appellant from other gangs, he having been the victim of human trafficking already, if he goes back to Vietnam. All findings in favour of the Appellant are to be preserved. I direct that the appeal be heard by a judge other than Judge Frankish.

Decision

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. The appeal is allowed on behalf

of the Appellant insofar as his asylum claim is concerned and this is to be heard by a judge other than Judge Frankish, with all favourable findings preserved, but the appeal of the Respondent Secretary of State is hereby dismissed.

17. Anonymity order is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

5th June 2014