



IAC-AH-CO-V1

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

Appeal Number: AA/04151/2014

THE IMMIGRATION ACTS

**Heard at Taylor House
On 22nd October 2015**

**Decision & Reasons Promulgated
On 6th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR ANH LONG TRAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bundock of Counsel

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

The Appellant's Claim

1. The Appellant is a citizen of Vietnam who was born on 8th June 1995. He appealed against a decision of the Respondent to refuse to grant him asylum dated 30th June 2014. His appeal was allowed at first instance by Judge of the First-tier Tribunal Samimi sitting at Hatton Cross on 25th June 2015. The Respondent appeals with leave against that decision and the matter thus comes before me as an appeal by the Respondent to establish whether there is an error of law in the Judge's decision. If there is not then

the decision will stand but if there is then the decision falls to be set aside and the appeal reheard. I will nevertheless continue to refer to the parties as they were known at first instance for the sake of convenience.

2. The Appellant's claim was summarised by the Judge at paragraph 6 of her determination:

“(i) The Appellant's father Hua Long Tran passed away ten years ago having been killed by the police. He was a fisherman and a Catholic church preacher. The Appellant's mother Tri Tran died in 2011. The Appellant's brother Ba Long Neugyen is living in Korea and his brother Honag is living in France. The Appellant has not had any contact with his brothers since they left Vietnam.

(ii) The Appellant received home schooling but from the age of 10 the police harassed his family. On one occasion his father was shot because he had tried to stand up to the police. The following day the police apologised for the shooting. The Appellant's brothers fled Vietnam several days later but the Appellant remained in Vietnam and continued to attend the catholic church. The Appellant's mother arranged for him to flee Vietnam in April 2009. The Appellant was taken to France by boat and the journey took two weeks. The Appellant stayed in a forest for another two weeks.

(iii) The Appellant travelled to the United Kingdom by a lorry. The Appellant stayed in a house for six months before travelling to Wales where he was taken to work in cannabis. On 28th March 2011 the Appellant was arrested as part of a raid on the premises and he was charged with the illegal production of drugs on 13th May 2011 at Swansea Juvenile Court. The Appellant travelled to London as he did not feel safe in Wales. In London he met a man on the street and subsequently claimed asylum on 21st October 2011. The Appellant began living at unknown place where he helped carry light bulbs for people cultivating cannabis. He stayed there for two or three weeks before being encountered by the police. He pleaded guilty at Isleworth Crown Court where he was sentenced to a community sentence order of 60 hours on 5th October 2012.

3. The Respondent rejected the Appellant's claim finding it not to be plausible and giving reasons for that conclusion summarised at paragraph 7 of the Judge's determination. The Appellant's credibility was damaged by his failure to claim at the first available opportunity after arrival in France. There were inconsistencies regarding the date of the Appellant's father's death.

The Decision at First Instance

4. The Judge considered the Appellant's credibility in the light of the fact that he was only 14 years old when he claimed asylum and was a minor who

had been a victim of trafficking to and within the United Kingdom. The Judge considered Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in the light of the Appellant's overall credibility, age and circumstances at the time of his asylum claim. The Appellant was 16 years old at the time of the screening interview and 17 by the time of his asylum interview and written statement. She therefore attached greater weight to the evidence and explanations given by the Appellant at the time of the hearing by which time he was an adult and had had the benefit of receiving support and counselling. She concluded that the Appellant had been trafficked to the United Kingdom in order to work in a cannabis factory. As a result of which he had been prosecuted and served a four month sentence before being re-trafficked to a second cannabis factory as a result of which he was arrested and received a community service order in October 2012. The UKVI concluded on 6th June 2014 that the Appellant had been a victim of trafficking.

5. The Respondent accepted that the Appellant was of the Roman Catholic faith. The Judge had before her an expert country report by Professor Christopher Bluth who stated that although officially there was freedom of religion in Vietnam the Vietnamese government was very hostile towards Christians and Christianity. Christians faced regular discrimination and harassment by the authorities and were often arrested by the police. Such persecution was getting worse. The Judge held that if returned to Vietnam the Appellant would be returning as a vulnerable young adult with limited education and no work experience. He was a devout catholic with some experience of discrimination and harassment on account of his faith. Victims of trafficking were at an increased risk of being re-trafficked greater than that faced by the general population. On the totality of the evidence the Appellant was a member of a particular social group namely former victims of trafficking. He would be at risk of future trafficking. She allowed the appeal.

The Onward Appeal

6. The Respondent appealed that decision arguing that the Judge had found in favour of the Appellant mainly on the basis of Professor Bluth's report but had not explained why she preferred his evidence to the Country of Origin Information Report relied upon by the Respondent at the appeal. The Presenting Officer had discredited the expert's report and yet the Judge had made no mention of the Presenting Officer's submissions. A sufficiency of protection existed for the Appellant.
7. Permission to appeal was granted by First-tier Tribunal Judge Simpson on the papers on 7th August 2015. Judge Simpson noted that Judge Samimi had not relied solely on the expert's report when assessing the situation for Catholics in Vietnam. She had also considered the US State Department's International Religious Freedom Report which confirmed the tension between the government and the Catholics within Vietnam. That said the Record of Proceedings showed that the Presenting Officer had made a number of submissions in relation to the reliability of Professor

Bluth's report in particular that he was not a country expert, that he had not interviewed the Appellant in person and he had not referred to the refusal letter. In those circumstances it was arguable that the Judge gave undue weight to Professor Bluth's report.

8. The Appellant replied to the grant of permission stating that the Home Office appeal should be dismissed. The submissions referred to by Judge Simpson were made in respect of another expert whose report had been relied upon by the Respondent but not by the First-tier Tribunal Judge. In any event there were no particulars given of how the evidence of Professor Bluth conflicted with the Country of Origin Information Report. In fact the Respondent's evidence in the COIR was consistent with the evidence of Professor Bluth. The submissions made by the Presenting Officer that Professor Bluth's report was either under reasoned or under supported was not truly a conflict of opinion calling for resolution. The Judge's silence on the Home Office submissions did not amount to a material error of law.
9. The Respondent's own report on religious minority groups in Vietnam conceded that a person fearing persecution in Vietnam on account of their religion would not be able to apply to state authorities for protection given that the persecution is at the hands of the state. Sufficiency of protection was not argued in respect of religious persecution in the refusal letter. In any event police capabilities were generally very limited. The expert's report suggested that local police continued to use contract thugs against citizens and to harass and beat them including religious worshippers.

The Hearing Before Me

10. At the outset the Presenting Officer very fairly submitted that there was a great deal of weight to be attached to the submissions made by the Appellant in the Rule 24 response to the grant of permission. The available country information on Vietnam was in part favourable to the Respondent's case but also in part was not, the evidence was mixed. It was nevertheless unfair of the Judge to have made so little of the submissions made by the Respondent in the appeal. The Judge had not fully stated what the Respondent's objections to the expert's report were. The Judge should have quoted all of it.
11. I did not call on the Counsel for the Appellant to make detailed submissions in response but indicated that I was going to dismiss the Respondent's appeal in this case on the basis that there was no material error of law in the Judge's determination. The assessment of the credibility of the claim was a matter for the Judge. Having established the fact that the Appellant had been persecuted and trafficked into this country, it was again a matter for the Judge to analyse the country background information to see whether the Appellant would be at future risk upon return. She did this and gave her reasons. As the Presenting Officer fairly conceded the background information does not unequivocally support the Respondent's position that there is no risk. In fact there is background

information to suggest that certain persons including religious believers are at risk in Vietnam. In those circumstances there was no error on the part of the Judge to extrapolate from her findings of past persecution to find that there was a real risk of future harm and allow the appeal. The Judge was not picking one side of the argument and without reason preferring that to the other side. Rather she was aware that even on the Respondent's side of the argument the evidence was mixed whereas on the Appellant's side the evidence was more clear cut.

12. I would make one further point which is that the Appellant has two separate convictions in this country for assisting in the production of illegal drugs. Indeed another Judge might have formed a somewhat unfavourable view of the Appellant's credibility given this criminal activity. However that the Judge in this case did not do so is not of itself an error of law. The Appellant should bear in mind that further criminality on his part should there be such would only serve to get him into more trouble with the authorities in this country and he would be wise to pay heed to that. It is for the Appellant now to put his past offending behind him and to respect the protection which this country has afforded to him.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of a material error of law and I dismiss the Respondent's appeal against that decision. The decision of the First-tier Tribunal is upheld.

Respondent's appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 5th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

No fee was payable and therefore there can be no fee award.

Signed this 5th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft