IAC-AH-VP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05229/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th February 2016	**On 25th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

T N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sills (Counsel)
For the Respondent: Ms Brockleby-Weller (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M A Khan, promulgated on 24th September 2015, following a hearing on 28th August 2015. In the determination, the judge dismissed the appeal of the appellant, whereupon the appellant subsequently applied for, and was

granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Grant of Permission

2. On 12th November 2015, permission to appeal was granted by the Upper Tribunal on the basis that the determination of Judge M A Khan arguably contained material errors of law and that the findings are not supported by reasons. The Tribunal failed to set the developments in the evidence in the context of the appellant's young age, and that there were errors of fact in that some of the evidence in the asylum interview is overlooked. Moreover, the consideration of "internal flight" has been undertaken in the context of the findings of credibility in relation to the appellant, thereby leading to a distorted view of the availability of internal relocation.

3. A Rule 24 response dated 10th December 2015 was to the effect that the judge at paragraph 38 did have specific regard to the appellant's age when making his credibility assessment. The evidence was considered to be vague and evasive. The judge gave sound and persuasive reasons for disbelieving the appellant.

Submissions

4. At the hearing before me on 15th February 2016, Mr Sills, appearing on behalf of the appellant, relied upon the Grounds of Appeal. He submitted that first, the judge referred to the appellant's age at paragraph 38, but did so only by way of a generic reference. There was no consideration of the appellant's age in relation to the specific findings made against the appellant, namely, in relation to the time when disclosure was made, and her description of the money lenders. The generic reference to age was inadequate. The appellant's age was relevant to considering why the appellant had not given details of kidnapping at the outset.

5. Second, the judge referred to the appellant's evidence on various occasions as being "vague and evasive" however, where such a description is given, it is incumbent upon the judge to explain why and where the evidence is vague and evasive. The judge did not do so. My attention was directed to paragraph 41 and paragraph 43.

6. Third, the judge failed to give reasons in relation to the appellant's father. The appellant had initially not referred to any threat from the father. She had then gone on to say that she was afraid of the father, when pressed further, she said that she did not fear the father but this was only because she would not be living with him if returned, given that she would be going back to the grandmother.

7. Finally, the assessment of internal relocation was completely out of context, because it normally should be done at the end of all the findings of fact in relation to the appellant. In this case, the judge considered

internal relocation in the context of the credibility of the testimony given by the appellant, and this made no sense whatsoever.

8. For her part, Ms Brockleby-Weller submitted that if one takes a closer look at the evidence, it is clear that the judge was right to describe the evidence as being "vague and evasive". For example, if one compares the screening interview at 3.2 with the screening interview at 3.1 where the appellant explained as to why she came to the UK, it is clear that there is an inconsistency.

9. Similarly, at question 7 the appellant is asked, "Do you fear anyone else" and the appellant mentions her father, whom she had not mentioned before. This was clearly an attempt to embellish the evidence. At question 9 she is asked, "What do you fear your dad will do to you" and she replies that he is not going to do anything to her. The fact is that the various statements are not consistent with each other. The judge had the benefit of hearing the appellant give evidence and his conclusion was sustainable.

10. As for internal relocation, the judge rejected everything about the claim and therefore it was unsurprising that the judge would also reject any suggestion that the appellant could not be returned because of concerns over internal relocation. At paragraph 43 the judge observes how the grandmother, who continued to live in Vietnam, had no problems from anyone.

11. If that was the case, then the appellant would simply go and live with the grandmother and she would not have any problems either. This was a case where the judge had looked (see paragraph 48) at the broader evidence and had found the appellant not to be a credible witness.

12. In reply, Mr Sills explained once again that the approach recommended by the Presenting Officer today at this hearing in terms of taking a "holistic account" of the determination was inappropriate because the judge had to pin down the evidence when he referred to the evidence as being vague and evasive, but failed to do so. Insofar as there were ambiguities, such as the threat from the father, the appellant had plainly explained this away but the judge failed to heed that explanation in the proper manner.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. I come to this conclusion notwithstanding Mr Sills' powerful submissions before me. On the face of it, it is plain that a dismissal of the evidence on the basis that it is "vague and evasive" does require a proper articulation of the evidence by the Tribunal.

14. In this case, however, if one were to look at the evidence given it is clear that inconsistencies can be found in the oral evidence and the claim at the screening interview (see paragraph 45 of the determination).

15. Furthermore, the judge makes it clear that, "The appellant could not explain how in a country of 90,000,000 people, her mother's creditors would be able to find her or even know that she has returned to Vietnam" (paragraph 43).

16. Moreover, as the judge found the appellant would be returning to live with the grandmother, who continued to be in that country without any fear of ill-treatment.

17. The judge's reasoning is set out at paragraphs 43 to 46 in a credible manner, and although the evidence relied upon is not set out, upon examination it is clear that such evidence does exist, so that it cannot be said that the error, such as it is, is a material one by the judge in the determination.

Decision

There is no material error of law in the original judge's decision. The determination shall stand.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge Juss 21st April 2016