



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09974/2015
IA/42498/2013

THE IMMIGRATION ACTS

Heard at Field House
On 4 February 2016

Decision Promulgated
On 11 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DUONG VAN NGUYEN
(Anonymity Direction Not Made)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer

For the Respondent: Mr T Hodson (counsel), instructed by Elder Rahimi, solicitors

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Schaerf, promulgated on 17 November 2015, which allowed the Appellant's appeal under Article 3 of the European Convention on Human Rights, and under the Immigration Rules.

Background

3. The Appellant was born on 1st October 1985 and is a national of Vietnam.

4. In March 2004 the appellant was trafficked into the UK for Labour. He escaped from traffickers in 2006 or 2007. On 22 December 2009 he came to the attention of the respondent who served a notice of liability to removal as an illegal entrant. In mid-February 2013 the appellant submitted an application for indefinite leave to remain outside the Immigration Rules. On 27 September 2013 the respondent refused that application. On 15 October 2013 the appellant appealed against that decision.

5. On 25 March 2014 the appellant claimed asylum. On 21 July 2014 the respondent refused his claim, but the decision was not sent to the appellant until 26 June 2015. On 31 March 2014 the competent authority concluded that there were reasonable grounds to believe that the appellant was a victim of human trafficking, and on 21 July 2014 the respondent confirmed that the competent authority had conclusively found that the appellant had been trafficked.

6. The appellant appealed against both the decision of 27 October 2013 and the refusal of his claim for asylum dated 21 July 2014.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. Designated Judge of the First-tier Tribunal Shaerf ("the Judge") allowed the appeal against the Respondent's decision on article 3 ECHR grounds and under paragraph 276ADE of the Immigration Rules.

8. Grounds of appeal were lodged and on 8 December 2015 Judge Parkes gave permission to appeal stating inter alia

"The Judge's reasons appear to accept the evidence of the expert without reference to the evidence cited by the Secretary of State in the Refusal Letter. As such the findings made are arguably insufficiently reasoned and it is arguable that the decision was not open to the Judge on the basis of the evidence available."

The Hearing

9. Mr Tarlow, for the respondent, moved the grounds of appeal. Although there are three grounds of appeal, he drew matters clearly into focus when he told me that the Secretary of State's position is that there has been inadequate consideration of the appellant's ability to return to Vietnam. He told me that there was evidence before the Judge of a supportive return package from "refugee action" which would enable the appellant to return to Vietnam and obtain the documents that he needs to re-establish

himself there. He told me that the Judge placed undue weight on an expert report and did not consider the background materials relied on by the respondent. He argued that the decision is inadequately reasoned because the Judge did not balance each strand of background material before reaching the conclusion that greater weight can be placed on the expert report. He urged me to set aside the decision and substitute a decision dismissing the appellant's appeal.

10. Mr Hodson, for the appellant, adopted the terms of the rules 24 response served on 2 February 2016. He told me that at [40] and [41] the Judge considers the experts report & notes that no challenge is taken to the expert's qualifications and experience. At [41] the Judge does not just consider the expert report but considers other background evidence before reaching a conclusion that there is a lack of support for victims of trafficking in Vietnam. He reminded me that between [26] and [36] the Judge records the submissions that were made to him. He told me that the decision, when read as a whole, cannot be viewed as inadequately reasoned; that the Judge has given careful consideration to the background materials before concluding that he can place reliance on the expert report, which (he told me) is carefully referenced and detailed. He told me that the facts as the Judge found them to be, when viewed against the reliable background information, could only lead the Judge to the view of the appellant's return would breach his rights in terms of article 3 ECHR, and that there are very significant obstacles to reintegration into Vietnam. He urged me to dismiss the appeal and to allow the decision to stand.

Analysis

11. There is no great dispute about the facts in this case. It is accepted that the appellant is an orphan who was trafficked from Vietnam to be used as slave labour. It is beyond dispute that the appellant has now been in the UK for more than 10 years. No challenge is raised to the Judge's finding that the appellant's asylum appeal does not succeed. The focus in the appeal before me is on whether or not the Judge has considered all of the background materials, and whether or not he has given adequate reasons for placing significant weight on a report prepared by Prof Seddon.

12. At [14] the Judge correctly sets out the burden and standard of proof. At [15] the Judge lists the documentary evidence placed before him. Between [21] and [25] the Judge summarises the Home Office presenting officer's submissions. In the last sentence of [21] the Judge records that the Home Office presenting officer "*... did not make any submissions why Prof Seddon's report should not be accepted in whole or in part.*" At [40] the Judge records "*the respondent made no challenge to Prof Seddon's qualifications or to the content of his expert report.*" Neither of those findings of the Judge are challenged.

13. It is not disputed that there were other background materials before the Judge including the details of the assistance on offer from refugee action. Between [21] and [36] the Judge records the submissions made by both parties' advocates. No challenges is taken to the quality of the summary of submissions contained there. The Judge records in detail the background materials he was referred to.

14. The details of the voluntary assisted return reintegration programme operated by refugee action is contained at paragraphs 34 and 35 of the reasons for refusal letter sent to the appellant on 26 June 2015. It is there that the summary of what is contained on a website is rehearsed by the respondent. In so far as that is evidence it is the only evidence of the reintegration programme relied on by the respondent which was placed before the Judge.

15. In this appeal what the respondent really asks is why didn't the Judge provide reasoning in the decision for preferring the detailed and unchallenged expert report which he found to be consistent with 183 pages of background materials placed before him, to 31 lines contained in two paragraphs of the reasons for refusal letter setting out a summary of reintegration programme which the respondent said the appellant "... *may be eligible for*".

16. In Detamu v SSHD [2006] EWCA Civ 604 the Court of Appeal said that it was an error of law to give no weight to the report of an expert who had clearly indicated his expertise and the sources for his information. In FS (Treatment of Expert evidence) Somalia [2009] UKAIT 00004 the Tribunal held that Immigration Judges have a duty to consider all the evidence before them when reaching a decision in an even handed and impartial manner. In assessing the evidence before them they must attach such weight as they consider appropriate to that evidence. It may on occasions be appropriate to reject the conclusions reached by an expert. What is crucial is that a reasoned explanation is given for so doing.

17. The Judge has not taken an incorrect approach to the expert evidence. The Judge clearly considers the expert's qualifications and the content of the expert report. At [14] he notes that the respondent raises no challenge to any aspect of the expert's report. At [41] he summarises the background evidence & finds that it is consistent with the expert's report and the expert's conclusions.

18. It is clear from the decision that at the First tier the respondent did not place reliance on paragraph 34 and 35 of the reasons for refusal letter, and did not argue that the availability of an assisted return's package rendered the expert report redundant.

19. It is clear from a careful reading of the decision that having taken account of the background materials and the expert report the Judge drew the conclusion that the support systems available in Vietnam are limited and that the appellant faces "...*destitution and a lack of capability to access the limited support systems*". In doing so the Judge clearly rejects the respondent's argument that the provision of travel documentation, assistance with flight arrangements and a potential payment of up to £1500 is enough to overcome the difficulties highlighted in the background materials and the expert report.

20. The Judge's finding that the appellant would face destitution if returned to Vietnam is sufficient to support a conclusion that the appellant's article 3 ECHR rights would be breached by return, and is clearly sufficient for finding that there are very significant obstacles to the appellant's reintegration into Vietnam.

21. The Judge's fact-finding exercise cannot be faulted. The conclusions reached by the Judge are conclusions which were manifestly open to him to reach on the facts as he found them to be.

22. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

23. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

24. No errors of law have been established. The Judge's decision stands.

DECISION

25. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed

Date 8 February 2016

Deputy Upper Tribunal Judge Doyle