



IAC-HW-AM-V1

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

Appeal Number: DA/01939/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 26th April 2016**

**Decision & Reason
Promulgated
On 9th May 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

T X T

Respondent

For the Appellant: Mr A Mathews, Senior Presenting Officer

For the Respondent: Ms A F Miller of Hamilton Burns Solicitors, Glasgow

DETERMINATION AND REASONS

1. The parties are as described above, but for continuity and ease of reference the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The appellant is a citizen of Vietnam, age 34. An anonymity order made in the First-tier Tribunal remains in place. No report of these proceedings shall directly or indirectly identify the appellant or any member of her family. This direction applies to both parties. Failure to comply could lead to contempt of court proceedings.
3. On 21st August 2014, the appellant was convicted in the Crown Court in England of production of cannabis and sentenced to six months' imprisonment.
4. The respondent found the appellant's account of her history unreliable, declined to accept that she was a victim of human trafficking, and made a deportation order. She appealed to the First-tier Tribunal.
5. In his decision issued on 23rd November 2015 Judge R A Cox accepted the appellant's account in full. He found at paragraph 21 that she had been trafficked for sexual exploitation, and having escaped from that in the UK, because of her vulnerability and lack of options she was exploited again, firstly for unpaid domestic service and then for work in a cannabis factory. She engaged the Refugee Convention by reason of membership of a particular social group. At paragraph 22, the judge held that the appellant would remain at risk in Vietnam from one if not from two gang networks; that internal relocation would not solve her problems; and that the respondent's view that there would be a sufficiency of state protection was not borne out by the background evidence to which the respondent referred. The judge added that his own conclusions on those matters were further supported by an expert report at paragraphs 135 to 143.
6. The respondent does not dispute the judge's findings of primary fact. The appeal to the Upper Tribunal is on the basis of inadequacy of reasoning on the two issues of sufficiency of protection and internal relocation:
 5. ... Sufficiency of state protection is not measured by the existence of a real risk of abuse of human rights but by the availability of a system for the protection of a citizen and a reasonable willingness by the state to operate it.
 6. The country information demonstrates that there is an effective police force ... in Vietnam ... the appellant has been unable to demonstrate a sustained and systemic failure of state protection on the part of the authorities ... the judge has failed to ... address this. The judge was required to show that the appellant's fear ... was not a fear of criminal acts of individuals but a fear of a sustained pattern or campaign of persecution ... knowingly tolerated by the authorities, or that the authorities were unable, or unwilling, to offer the appellant effective protection. The judge has failed to establish this...
 7. ... The appellant has never sought assistance from the police in Vietnam ... the appellant can seek redress through the proper authorities, such as the police ... before seeking international protection.

8. ... The judge failed to adequately explain why [internal relocation] is not an option...
 9. ... The appellant could live in a different area of Vietnam where she is not known and away from those she fears ... given that [her] alleged problems with gangsters emanate from her home area. The judge failed to provide adequate reasoning as to why the appellant could not internally relocate.
 10. ... The appellant belongs to the largest ethnic group and speaks the national language ... has demonstrated a level of resourcefulness and adaptability which will stand her in good stead when making a more modest relocation within her own country ... has easily transferrable skills which could be used to obtain employment ... all positive factors in relation to her ability to support herself ...the judge appears to have ignored this...
 11. ... Hardship alone is not sufficient reason to render internal flight ineffective or unduly harsh and in failing to address these matters appropriately the judge has erred in law...
 12. Support and protection from governmental and non-governmental sources in Vietnam are generally available to victims of trafficking and internal relocation will also often be a viable option for applicants who fear reprisal from traffickers upon return...
 13. The judge finds that the appellant's problems would be exacerbated by her HIV condition and societal discrimination ...there was no evidence [to support this] and ... the appellant's condition was manageable in Vietnam.
7. Mr Matthews submitted further as follows. The judge's reasons in respect of sufficiency of protection and internal relocation were scant, almost entirely lacking. Although the judge relied upon the expert report that was largely concerned with the reality of the trafficking claim, rather than with circumstances upon return. The judge's decision at paragraph 18 referred only indirectly to the expert report, as it had been summarised in a supplementary skeleton argument by the appellant's counsel. Those references went to whether the appellant had been trafficked, a matter now resolved. Apart from that, there was only the indirect reference at paragraph 22 of the decision going to paragraphs 135 to 143 of the report.
 8. Referring directly to the report, Mr Matthews accepted that the conclusions about return to Vietnam summarised at paragraph 143 might support an outcome in favour of the appellant, but he said that nevertheless it had to be explained why those conclusions were justified. The respondent was entitled to know why the judge came down on that side rather than on the other. The judge appeared to consider that risk extended throughout Vietnam, but did not explain that conclusion. He did not concern himself in any detail with the questions whether relocation elsewhere would avoid the risk, or would be unduly harsh. Paragraph 129 of the expert report refers to a 21% rate of re-trafficking. Mr Matthews

accepted that such a rate might amount to a real risk, but he pointed out that the reference was brief and appeared to be geographically unrestricted – worldwide, rather than related to Vietnam. The question of risk to the appellant could only be considered by reference to country specific evidence. If the judge did intend to resolve the internal relocation alternative, rather than making a finding of risk throughout the country, he failed to provide any statement of the law or any analysis of what it was that would be unduly harsh. The decision should be set aside. There had been no application by either side to lead further evidence, so unless the appellant were to show any reason for re-opening the evidence, the case should be decided on the evidence to which reference had been made, and the outcome should be reversed.

9. Ms Miller firstly adopted and relied upon a Rule 24 response filed by previous agents. This argues that the judge considered the level of protection available to the appellant on return by reference to the expert report, in particular at paragraph 18 of his decision, citing paragraph 4(vii) of the skeleton argument referred to above. This in turn relied upon information from the US State Department and the Vietnamese Committee on Human Rights to the effect that traffickers operate significant networks, preventing successful reintegration, “This is emphasised by evidence that support and reintegration services could be lacking in Vietnam”. The judge considered the option of internal relocation in detail at paragraph 22. The expert report at paragraph 135 said that:

Based on evidence about protection and support offered to victims of trafficking ... it is indeed questionable whether she would be able to access adequate support if repatriated ... highlights the paucity of protection for victims of trafficking at the hands of the authorities ... and the punitive experience of some victims

The judge had considered 135 to 143 of the report in detail and was rightly satisfied in respect of internal relocation and sufficiency of protection. The respondent should not have been granted permission to dispute the findings reached, the grounds being disagreement rather than identification of error of law.

10. In further submissions, Ms Miller accepted that the re-trafficking rate cited in the report was not based on a source specific to Vietnam. However, she pointed out that paragraphs 136 and 137 on the extent of the threat on return and on the shortcomings of protection are supported at footnotes 42 and 43 by references to reports which *are* specifically about trafficking from Vietnam. She argued that the evidence which was before the judge supported his conclusions, and he gave a sufficient indication to the respondent of why the issues were resolved as they were. The judge had also stated, correctly, that the respondent’s view that there would be sufficient state protection was “simply not borne out by the background evidence the respondent sets out in her own refusal letter”.

11. This submission prompted a search for the relevant passage, which is not plainly cited. This aspect of the respondent's decision making is to be found in a supplementary letter dated 22nd May 2015, running to twelve pages, copied at pages 9 to 21 of the appellant's bundle in the First-tier Tribunal. Sufficiency of protection is dealt with at paragraphs 23 to 28 (and internal flight at paragraph 29 to 35). Paragraph 25 quotes from the US State Department Report 2012: "The police were generally effective at maintaining public order, but police capabilities, especially investigative, were generally very limited and training and resources were inadequate". There is a further quotation from Jane's Security Country Risk Assessment 2012: "The police force's role is geared more to upholding party doctrine than combating law breakers". The decision letter continues at paragraph 29, "The country information demonstrates that there is an effective police force operating in Vietnam ...you could ... report your fears to the police...". Ms Miller submitted that the background evidence cited did not justify the respondent's conclusion, but rather justified the conclusion stated by the judge. The respondent had provided no further background evidence about sufficiency of protection, whereas the appellant had supplied the expert report. As far as internal flight was concerned, there was no error in the judge's finding that the risk extended throughout the country, but the alternative reasoning was also adequate. There was no justification for setting the decision aside. If it were to be remade, all the relevant evidence had been referred to, and for the reasons given in submissions, the same outcome should be reached.
12. Mr Matthews in response said that paragraph 136 of the report did not deal explicitly with sufficiency of legal protection in Vietnam, and that was a matter which could not properly be said to be implicit either in an expert report or in a judge's conclusions. The judge reached sweeping conclusions about the effectiveness of law enforcement in Vietnam. Although the sources cited were much less than a glowing recommendation, they did justify the respondent's view that there was an effective police force to whom the appellant could make a complaint. That was all that was legally required. The judge was not entitled to conclude from the evidence before him that there was no general sufficiency of protection in Vietnam and had dealt with the matter much too casually and dismissively.
13. I reserved my determination.
14. In my opinion, the judge's reasoning on the two issues called into question has not been shown to be less than legally adequate.
15. The hearing before the judge was first and foremost a conflict over credibility, which is no longer live. Of course, the resolution of that clash did leave further important issues before a final conclusion could be reached. Those matters are dealt with relatively briefly in paragraph 22, which runs to only nineteen lines. However, from that paragraph the following can be derived. The appellant's fear of renewed persecution on return to Vietnam was found to be well-founded for the following reasons:-

- (i) She had been disowned by her parents.
 - (ii) She had no other relatives who might help.
 - (iii) She would return as a single lone female without a place to live or likely means of employment. Although very well presented before the judge, she was not well-educated and had no particular skills. [That analysis is at least as likely as the suggestion in the grounds of appeal to the UT that she had resourcefulness and adaptability to stand her in good stead. The grounds on that point are a plain attempt to reassess factual findings properly reached by the judge.]
 - (iv) The appellant would be at real risk of re-trafficking from her original trafficking gang, or other similar gangs, particularly perhaps the former, because they would not regard her “debt” as paid off, especially in view of her escape.
 - (v) An individual who had purported to help the appellant was either a member of the original gang or of another gang. In either event, the appellant was at risk from one or two such networks.
 - (vi) The appellant’s problems would be exacerbated by her HIV condition and societal discrimination.
 - (vii) Internal relocation would not solve these problems. The respondent’s view of sufficiency of protection was not borne out by the background evidence the respondent cited.
 - (viii) The judge’s conclusions on those two issues were supported by the expert report at paragraphs 135 to 143.
16. It is permissible to incorporate reasoning by reference to materials which are available to both parties. There has been no criticism of the qualifications and standing of the expert, and no suggestion that the judge was not entitled to accept her conclusions, although of course it remained for him and not for her to make the final decision.
17. The expert report is supported by background references and by the expert’s own experience (paragraph 138). In my opinion, that was sufficient to justify the judge’s conclusion on the risk of re-trafficking. Organised crime is by definition extensive, and the judge was entitled to conclude that this was a risk which extended throughout Vietnam. In the alternative, the factors to which he referred were sufficient to justify the conclusion that internal relocation would be unduly harsh. The background evidence together with the report was at least as amenable to the judge’s assessment of sufficiency of protection as to the respondent’s. The conclusions reached by the expert at paragraph 143 are properly supported. The decision and the report must be read together. Taken as a whole, they form a legally adequate explanation to the respondent of why the appellant has succeeded in establishing her case. Appeals should not be conducted by an endless search for reasons upon reasons.

18. I am fortified in these conclusions by reference to the respondent's document "Victims of modern slavery - frontline staff guidance", version 3.0, published on 18th March 2016. This includes the following:

Women who are victims of trafficking may face serious consequences if they return to their home country, particularly if they were forced into prostitution or sexual exploitation. This may take the form of:

Reprisals or retaliation from trafficking rings or individuals

Discrimination from their community and families

The risk of being re-trafficked or the risk of becoming a victim of modern slavery again.

In some cases it will be necessary for you to consider internal relocation...

You must consider each case on its merits.

You must assess the evidence in the country reports on the current country situation for sufficiency of protection and specific trafficking support. For example is support available for victims of trafficking, and the police able to protect them from being re-trafficked. This needs to be looked at in light of the applicant's ability to move or seek protection.

19. The judge found all these features present in this case, and they all tended towards a resolution in the appellant's favour. There was no evidence of any significant support being available to victims of trafficking on return. Mr Matthews was right to point out that the test for legal sufficiency of protection is not an effective guarantee, but there was very little to suggest that the police are of any real use to victims in the appellant's position.
20. The determination of the First-tier Tribunal shall stand.



28 April 2016
Upper Tribunal Judge Macleman