



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

Appeal Number: PA/01480/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 May 2017**

**Decision & Reasons Promulgated  
On 24 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**PQ  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Moffatt of Counsel instructed by Wilson Solicitors LLP  
For the Respondent: Mr K Norton of the Specialist Appeals Team

**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.**

**DECISION AND REASONS**

## **The Appellant**

1. The Appellant is a Vietnamese national born in April 1999. On 27 September 2014 he clandestinely entered the United Kingdom and the next day claimed asylum as an unaccompanied minor. The following day the local social services conducted an age assessment and decided he was an adult. When advised of this on the same day he absconded in consequence of which his asylum claim was considered to have been abandoned. Some eleven months later the Appellant was arrested on suspicion of cultivating cannabis in respect of which no further action was taken. He was then accepted into the detained asylum process. When interviewed he claimed to be a victim of trafficking and in September 2015 the Competent Authority determined there were no reasonable grounds to show that he was a trafficking victim and his asylum claim was refused.

## **Hearing History**

2. The Appellant was unrepresented at the First-tier Tribunal hearing of his appeal. The substance of his claim is found at paragraphs 7-12 of the decision of Judge of the First-tier Tribunal Rothwell promulgated on 8 January 2016. The Appellant continued to be detained and it was not until 8 April 2016 at a detention advice surgery that he obtained legal advice and instruct his solicitors.
3. They then lodged an out of time an application for permission to appeal. On 27 April 2016 Designated Judge of the First-tier Tribunal Manuell extended time but refused permission to appeal. The application was renewed to the Upper Tribunal and on 1 April 2016 Upper Judge Gill granted permission to appeal because it was arguable Judge Rothwell may have erred in law in her assessments of credibility and future risk.
4. By a judgment in judicial review proceedings handed down on 22 February 2017 Upper Tribunal Judge Kopieczek found the Appellant's date of birth to be as he claimed and that he was a minor. He attained his majority shortly before the hearing before me.
5. The evidence before Upper Tribunal Judge Kopieczek included two expert reports and oral testimony from Dr Juliet Cohen, a well-known and highly respected expert in this jurisdiction and an expert report and oral testimony from Ms Christine Beddoe, a specialist advisor on human trafficking and child exploitation as well as a statement and oral testimony from Ms Helen Joyce a project worker at the Children's Society, and three statements signed by the Appellant on 6 July, 12 October and 5 December 2016.
6. At the hearing, Mr Norton for the Respondent produced a copy of a letter of 2 May 2017 from the Respondent to the Appellant confirming that the Competent Authority had made a conclusive finding that the Appellant is a victim of trafficking.

### **The First-tier Tribunal Decision**

7. The Appellant was unrepresented before the First-tier Tribunal. The Judge in the absence of any evidence other than the Appellant's assertions properly relied on the age assessment of the local social services. She noted he had not claimed asylum in France and had absconded from social services. In the circumstances she found the presumption contained in Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2014 militated against his credibility. She did not accept his account of the deaths of his mother when he was young and of his father later in a road accident caused probably by his drinking. This led her to conclude the Appellant would not be at risk from any gang in Vietnam on account of any liabilities for payment of debts incurred by his father. She accepted the Appellant had lived with his grandmother in France until her death and that he was the victim of forced labour in the form of debt bondage arising from circumstances on or subsequent to his arrival in France. She did not accept his claims to have been trafficked out of Vietnam or to be at risk on return. She went on to dismiss the appeal on all grounds.

### **The Upper Tribunal Proceedings**

8. In the light of the judgment of Upper Tribunal Judge Kopieczek in the challenge to the age assessment by the local social services I find the First-tier Tribunal Judge's adverse credibility findings that the Appellant was not a minor and her adverse credibility findings relying on the presumption he was an adult are sufficiently unsafe as to amount to a material error of law.
9. Conscious of the considerable time which has elapsed since the Respondent's refusal decision, the prolonged detention of the Appellant as both a minor and a victim of trafficking and having regard to the overriding objective, I asked the parties if there was any objection to my proceeding to deal with the substantive appeal and re-making of the decision. Neither had any objection.

### **Findings and Consideration**

10. I take account of the criticisms, highlighted by Mr Norton, made of Dr Cohen and Ms Beddoe in the judgment of Upper Tribunal Judge Kopieczek at paragraphs 297-310 and also that the substance of the findings of each of them was accepted.
11. I am satisfied to the lower standard of proof that the Appellant has been the victim of trafficking in France and into the United Kingdom and, on the evidence recorded by Dr Cohen, a victim of sexual abuse in France.
12. I enquired what for the purposes of this appeal constituted the relevant Particular Social Group (PSG) for purposes of the Refugee Convention claim. I indicated that in respect of the return of the Appellant to Vietnam I

had difficulty in immediately identifying the relevant PSG. The Appellant's account of debt bondage and fear of persecution in Vietnam had been found not credible and he had been the victim of trafficking and sexual abuse outside Vietnam. Ms Moffatt for the Appellant did not seek seriously to identify a relevant PSG.

13. Looking at the evidence in the round, I find to the lower standard that the Appellant will be at risk of serious harm on return to Vietnam by reason of his extreme vulnerability evidenced by the findings of the First-tier Tribunal and the expert evidence, even after taking account of the fact that the Appellant is now a few weeks over the age of 18. The appeal is allowed on humanitarian protection grounds by way of reference to Article 15(b) of the old Qualification Directive (2004/83/EC) and paragraph 339C of the Immigration Rules. For similar reasons, the Appellant succeeds on his claim that his return to Vietnam would place the United Kingdom in breach of its obligations under Article 3 of the European Convention.

### **Anonymity**

14. The anonymity direction and anonymization order made by the First-tier Tribunal is continued but I have adopted the anonymising initials used by the Upper Tribunal.

### **NOTICE OF DECISION**

**The decision of the First-tier Tribunal contained a material error of law and is set aside to a limited extent. The following decision substituted:-**

**The appeal is allowed on humanitarian protection grounds.**

**The appeal is allowed on human rights grounds (Article 3).**

Signed/Official Crest

Date 12. v. 2017

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal

### **TO THE RESPONDENT: FEE AWARD**

No fee has been paid and so no fee award can be made.

Signed/Official Crest

Date 12. v. 2017

Designated Judge Shaerf

A Deputy Judge of the Upper Tribunal