



Upper Tribunal  
(Immigration And Asylum  
Chamber)

Appeal Number: PA/01734/2017  
THE IMMIGRATION ACTS

Heard at: Field House  
On: 20 November 2017

Decision and Reasons Promulgated  
On: 4 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MS HUONG THI TRAN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: No attendance

For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Vietnam. She appeals with permission against the decision of First-tier Tribunal Judge J Bartlett, who dismissed her asylum, humanitarian protection and human rights appeal in a decision promulgated on 4 April 2017.
2. Notice of the hearing was sent to the appellant at her address on record on 28 September 2017. The matter was stood down until 1pm. However, there was still no appearance.
3. I am satisfied that the appellant has been notified of the hearing and I consider it to be in the interests of justice to proceed with the appeal.
4. In granting the appellant permission to appeal, First-tier Tribunal Judge M J Gillespie found with regard to the protection claim that there is no error of law identifiable in the findings of Judge Bartlett on this issue.

5. The appellant was unrepresented at that stage and submitted an application for permission to appeal which she signed and dated. Judge Gillespie then considered whether there were other potential grounds of appeal apparent which would not be obvious to the lay person.
6. He decided that there was an arguable error of law affecting the decision on the human rights claim. He noted that Judge Bartlett considered the human rights claim first through the lens of the Immigration Rules and has made an unequivocal finding that the appellant would meet the requirements of paragraph 276ADE(1) (vi).
7. Judge Bartlett found that the appellant has no family who could support her in a financial or practical sense if she returned to Vietnam. She had no financial resources of her own. She had no accommodation to return to in Vietnam. Having regard to all those circumstances, Judge Bartlett considered that the appellant would face very significant obstacles to her integration in Vietnam as on return she would be a single lone female with a low level of education, no family support, no accommodation and no money [29].
8. As noted by Judge Gillespie however, Judge Bartlett nevertheless concluded that there is no appeal available on the grounds that the decision fails to conform with the Rules. Further analysis of the case proceeded under the residual protection of Article 8, in respect of which, notwithstanding the early finding that she would face such obstacles to integration in Vietnam as would engage Rule 276ADE, the Judge held that removal would not constitute a disproportionate interference.
9. Judge Gillespie granted permission on the basis that the latter conclusion was arguably inconsistent with the former conclusion. It is particularly so as a claim under Rule 276ADE is one recognised by the respondent as a human rights claim. If therefore she met the more stringent human rights protection under 276ADE it is arguably not rational to hold that she fails to engage the wider protection under Article 8.
10. The respondent did not seek to cross appeal the findings regarding Rule 276ADE.
11. Ms Ahmad accepted that there has been an error on a point of law for the reasons set out by Judge Gillespie. She noted that there is no error of law relating to the asylum findings.
12. She accepted that the decision should be set aside and remitted to the First-tier Tribunal for a fresh decision to be made and that the findings in the asylum and humanitarian protection claims are to be preserved.
13. There should be a fresh decision made with respect to the Article 8 claim only.

### **Notice of Decision and Directions**

The decision of the First-tier Tribunal contains an error on a point of law and is set aside.

The matter is remitted to the First-tier Tribunal at Hatton Cross for a fresh decision to be made under Article 8 of the Human Rights Convention.

The findings in the asylum and humanitarian protection claims are to be preserved

The appellant is permitted to file and serve further evidence relating to her Article 8 claim seven days prior to the date of the hearing.

Anonymity direction not made.

Signed

Date 1 December 2017

Deputy Upper Tribunal Judge C R Mailer