



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04898/2017

THE IMMIGRATION ACTS

Heard at Field House
On 25 September 2017

Decision & Reasons Promulgated
On 24 October 2017

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

M D
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Butler instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr N Bramble, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Chana dismissing his appeal against the respondent's decision to make a

deportation order against him as a foreign criminal pursuant to sections 32, with reference to section 33, of the UK Borders Act 2007. It is the appellant's case that he is at risk of treatment contrary to the Refugee Convention, alternatively that he is entitled to humanitarian protection or that he is at risk of treatment contrary to Articles 3 and 8 ECHR.

2. The index offence relied upon is the appellant's conviction on 16 October 2015 for being engaged in production of cannabis, a Class B controlled drug. He was sentenced to 2 years 6 months imprisonment for that offence.
3. It is accepted by the respondent, following a decision by the Competent Authority on 20 September 2016 (page 74 in the appellant's bundle), that the appellant is a trafficked person and victim of modern slavery. In addition, the appellant produced a rule 35 report dated 15 March 2017 from Dr I Sayed at Harmondsworth Detention Centre, indicating that scars and injuries on the appellant's body may be due to his claimed history of being repeatedly beaten by his employer in Vietnam.
4. The appellant also relied on a medico-legal report on the appellant's psychological difficulties, prepared by Dr Brock Chisholm BSc (Hons), MSc, DCLinPsych, CPsychol, AFBPsS. Dr Chisholm identifies his specialist field as 'mental health difficulties following traumatic events, asylum seeker and refugee mental health'. Dr Chisholm had not seen any medical records for the appellant. Dr Chisholm did not find that the appellant met the criteria for any mental health diagnosis, though he was clearly anxious and did not feel that he had yet escaped his traffickers. His wife and child were at risk if he did not pay the debt they said he owed for bringing him to the United Kingdom. The appellant did not have PTSD, nor, despite a low and anxious mood, did he meet the criteria for major depressive disorder. The appellant was not suicidal, but was coping poorly with detention and might become mentally ill should it continue.
5. There was also a country report from Dr Thi Lan Anh Tran, LLB, LLM, PhD in International Law. His main area of research was international human rights law in socialist political country systems, including China, Vietnam, Cuba and North Korea. He visits Vietnam annually for research, teaching and consultancy. Before coming to the United Kingdom for his PhD and Masters' thesis, the witness worked from 1997-2013 as a senior official of the Vietnam Government. Dr Tran's opinion was that the appellant would face significant challenges and difficulties on return to Vietnam: the appellant lacked the relevant ID documents and would have to re-register, as his registration in his residence district would have lapsed. When he re-registered for Hô Khâu, either in his home area or an area of relocation, his former trafficker would be able to locate him.
6. There were a huge number of trafficking victims in Vietnam and despite preventative efforts from the government, international organisations and NGOs, the numbers were continuing to increase. Dr Tran considered that any legal protection was more apparent than real: in practice, the support system for human trafficking victims in Vietnam was very weak. He considered that there was a high risk of the appellant being re-trafficked if returned to Vietnam.

7. First-tier Tribunal Judge Chana noted that the sole issue for her was the risk to this appellant on return to Vietnam. She found that the appellant was not a credible witness and that 'it is clear to me that he came to this country voluntarily and he was not trafficked into the United Kingdom'. The Judge appears to have relied on an erroneous summary in the respondent's bundle, which suggests that the applicant's claim to have been trafficked was rejected by the National Referral Mechanism, with only his modern slavery (forced labour) claim accepted. The Judge did not invite submissions before going behind the respondent's concession that she would not seek to reopen the finding of the Competent Authority that the appellant had been trafficked.
8. The Judge noted the evidence in the rule 35 report but discounted it, on the basis that the injuries described could have other causes. At [62], having found the appellant not to be trafficked, she dismissed the report of Dr Tran as based on the appellant's account of trafficking, which she rejected. She placed no weight on the expert's evidence about the lack of effective protection for victims of trafficking on return to Vietnam at [10.2] in Dr Tran's report:

"10.2 In my professional opinion, the Applicant would face many significant challenges and difficulties if he is returned to Vietnam. He does not have any ID paper including a birth certificate or national ID card. He would also need to re-register his 'Hô Khâu'. Without those ID papers, he is almost considered as an 'illegal migrant' in Vietnam. In order to survive, he might be forced to do exploitative work to support him. In addition, the Applicant is at high risk of being the target of human traffickers as he is in a vulnerable state and has no protection available to him from family or relatives. The risk to the Applicant would be the same in every part of Vietnam. In order to be able to live in Vietnam he needs the Hô Khâu' Re-registration. Consequently he would have the risk of coming to the attention of his former trafficker/loan shark () if he is returned to Vietnam. So, I believe that the Applicant's fear of the enormous risk of being returned to Vietnam is fully justified."

9. The decision of the First-tier Tribunal cannot stand. I hereby set it aside and substitute a decision allowing the appeal.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision.

I re-make the decision in the appeal by allowing it.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Dated: 23 October 2017