



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13557/2016

THE IMMIGRATION ACTS

Heard at Field House
On 28th June 2017

Determination Promulgated
On 12th July 2017

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Q N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Asimwe (LR)
For the Respondent: Mr P Duffy (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Fowell, promulgated on 20th January 2017, following a hearing at Newport on 10th January

2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Vietnam, who was born on [] 1980. He appealed against the decision of the Respondent, Secretary of State, dated 29th November 2016, refusing the Appellant's claim for asylum and for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he had been involved in demonstrations in Vietnam, against the Government of China, on account of the oil drilling carried out by the Chinese Government, following which he had fled Vietnam. In the UK, he had been involved in some three demonstrations outside the Vietnamese Embassy, such that if he were now to be returned to Vietnam, he would face a risk of ill-treatment and persecution.

The Judge's Findings

4. The judge found the Appellant's evidence to be riddled with inconsistencies (see paragraph 38 onwards). The judge went on to refer to "the crux of his claim" which "centres on the demonstration in Hanoi in May 2014", and here the judge concluded that the Respondent Secretary of State's case was persuasive, "in that the demonstrations were in fact encouraged [by the Vietnamese Government] or at least tolerated by the Authorities there, given the fact that they took place at all without police intervention" (paragraph 42). Second, the judge was not persuaded that the Appellant was ever simply fleeing persecution because he travelled, "through many safe countries" (paragraph 47). He gave an account of his journey which the judge did not find to be credible (paragraph 49). In short, the judge concluded that, "the Appellant was of no interest to the Authorities in Vietnam when he left the country" (paragraph 50). The judge went on to say that, "the final aspect is the risk to which he has potentially exposed himself by virtue of attending the demonstrations before the Vietnamese Embassy" in the United Kingdom (paragraph 50). It was concluded by the judge that the Appellant would not be recognised or traced from these events, "for the same reason he could not have been traced from Hanoi" (paragraph 51).
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge failed to give adequate reasons and failed to take into account matters, such as the Appellant attending demonstrations in the UK, which would have material consequence. The grounds also state that the judge failed to make a finding on the Appellant being trafficked.

7. Before the First-tier Tribunal, the Appellant's application was rejected by DIJ Woodcraft on 15th February 2016,
8. The application was renewed to the Upper Tribunal. On 17 March 2017, UTJ Rimington rejected the challenge that the judge had erred in the findings about a lack of risk from attending demonstrations in the United Kingdom but granted permission on limited grounds ,

“Although not disclosed in his asylum interview the Appellant refers obliquely to being trafficked in his Statement of Additional Grounds. There is further evidence in his witness statement and one line reference in the representative's submissions at the hearing at [35] of the decision. Despite the series of adverse credibility findings, it is arguable that the judge should have clearly addressed the issue of trafficking...”.

9. On 11th May 2017, UTJ Rintoul gave further directions following a hearing in which it had been revealed that that on 27th August 2016, the relevant competent Authority made a decision that the Appellant was not a person who “on reasonable grounds” could be treated as a victim of trafficking (“the trafficking decision”). This decision was not referred to in the refusal letter dated 29th November 2016, and the Appellant himself made no mention of it. In giving directions, UTJ Rintoul stated that the Appellant was now to furnish a witness statement, within ten days of the date of these directions, explaining whether he had received the trafficking decision, whether it has been discussed with previous representatives, and why he had not mentioned the decision at his appeal
10. In a letter dated 22nd May 2017, from Pillai & Jones , the appellant's current solicitors referred to a letter from J D Spicer Zeb (the appellant's former solicitors, dated 18th May 2017, stating that they did receive a refusal letter from the competent Authority regarding the human trafficking matter; took the Appellant's instructions on the same, and that they did raise the trafficking aspect in the Grounds of Appeal before the First-tier Tribunal. There is then a short statement dated 22nd May 2017 from the Appellant himself, amounting to no more than some three sentences, in which he states that, “I am not sure whether we discussed about human trafficking in regards to this response or not” when referring to having received the refusal letter of 27th August 2016, which he had passed on to his former solicitors.

Submissions

11. At the hearing before us on 28th June 2017, the Tribunal reminded both representatives attending (in circumstances where the Appellant himself had not appeared today) that there was a lack of clarity as to exactly what happened in previous stages of this appeal, and this was important because the two salient issues for determination presently were: first, whether the Appellant was a victim of trafficking; and secondly, whether he would be at future risk of ill-treatment or re-trafficking on account of his earlier treatment as a victim of human trafficking. There was no evidence furnished in relation to the second matter at all.

12. Mr Asimwe, appearing on behalf of the Appellant, stated that he had specifically asked the Appellant whether there would be any risk upon his being returned back to Vietnam on account of his having been a victim of human trafficking, but his view was that this matter should be assumed by the Tribunal, and that there was nothing further he could add. What was significant, submitted Mr Asimwe, was that the Appellant had referred to his having been trafficked in his interview and in his witness statement, and this being so, the judge should have dealt with the consequences of this.
13. For his part, Mr Duffy submitted that there was no evidence of any representations having been made, in circumstances where the Appellant was legally represented before the Tribunal of Judge Fowell, in relation to the trafficking aspect of the claim, and certainly, nothing was ever suggested, and has not been now suggested, as to what the risk of re-trafficking is, were the Appellant to be returned back to Vietnam. Accordingly, there would be no error of law in the judge's determination.

No Error of Law

14. We are satisfied that the making of the decision by the judge did not involve the making of an error of law (see Section 12(1) of TCEA 2007) such that we should set aside the decision and remake the decision. Our reasons are as follows. Whereas it is the case, as Judge Rimington, in granting permission has observed, that "the Appellant refers obliquely to being trafficked in his Statement of Additional Grounds" and there are references in his screening interview and substantive asylum interview as well, this has no probative relevance to the issues at hand, in that it cannot be demonstrated that submissions were made that the Appellant would be at risk of ill-treatment or re-trafficking, specifically on account of his having been a victim of trafficking previously. Despite several requests from us to do so, Mr Asimwe was unable to show us that such submissions had been made, or that the appellant had himself claimed such a fear. It simply cannot be argued, as he appears to do, that the fact that someone has been trafficked raises a necessary inference that he faces a risk of serious harm on return.
15. The Appellant did not appear to rely on trafficking at closing submissions" and nothing that Mr Asimwe has suggested today tells us otherwise. In the Grounds of Appeal that proceeded that decision, dated 3rd February 2017, all that is said is that, "the Appellant claims to be a victim of trafficking" but that the judge failed to make a finding on this matter (at paragraph 5). There is no proper attempt to link that to a risk on return; rather, that is simply and wrongly just assumed. It is for the trafficked person to demonstrate that there is a real risk of serious harm or persecution on return to the country of nationality; that is clear from, for example, TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC) and HD (Trafficked women) Nigeria CG [2016] UKUT 454 (IAC).
16. The Appellant, in the hearing before us, has been given ample opportunity, by virtue of the directions issued on 11th May 2017, to state his claim on the basis of his having been a victim of human trafficking, but has signally failed to do so, and it remains

entirely unclear to us as to how the failure of the judge (such as it is) to refer to the Appellant as having been trafficked, "in circumstances where the matter was not specifically or orally raised before the judge" would be at risk of ill-treatment or re-trafficking simply by virtue of having been trafficked in the first place. Such a fear, if it be the appellant's case, is neither properly asserted, nor has sufficient evidence been produced in support of such an assertion.

17. In short, any error by the judge cannot be said to be a material error that would have affected the outcome of the appeal.

Notice of Decision

18. There is no material error of law in the original judge's decision. The determination shall stand.
19. An anonymity direction is made.

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.

Signed

Dated

Deputy Upper Tribunal Judge Juss

6th July 2017