Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00008/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 4 September 2017	**On 23 October 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR GIP VAN LE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr R Khubber, instructed by Turpin & Miller Solicitors
For the Respondent:	Mr N Bramble, Senior Home Office Presenting Officer (22/05/17)
	Mr S Whitwell, Senior Home Office Presenting Officer (04/10/17)

DECISION AND REASONS

1. The appellant is a citizen of Vietnam who was recognised as a refugee and granted Indefinite Leave to Remain in the United Kingdom in 1989 and who has lived here since. He appeals with permission against the decision of First-tier Tribunal Judge Telford promulgated on 21 February 2017 dismissing his appeal against the decisions of the Secretary of State to:

   (i) revoke his protection status;

(ii) refuse a human rights claim;

(iii) that his case was excluded from refugee protection by Section 72 of the Nationality, Immigration and Asylum Act 2002;

(iv) that he was excluded from humanitarian protection;

(v) that having had regard to paragraphs 398, 399 and 399A of the Immigration Rules his removal would not be in breach of the United Kingdom's obligations pursuant to the Human Rights Convention.

2. The appellant submits that:-

(i) he does not constitute a danger to the community in the United Kingdom and therefore Section 72 of the 2002 Act should not apply;

(ii) that the respondent had not established that the cessation of the provision of the Refugee Convention applies to the circumstances of this case;

(iii) that his removal would on the facts of this case be disproportionate in that he meets paragraph 399A of the Immigration Rules, alternatively that there are very compelling circumstances such that removal would be disproportionate.

3. It is necessary to set out in some detail the basis on which the appellant acquired leave to remain in the United Kingdom, and the sequence of events which lead to the respondent's decision.

4. The appellant was born in Vietnam in 1963. His parents were killed during the war and in 1979, he and his three siblings travelled to Hong Kong where they lived initially in a refugee camp. It was there that he met his wife, also a Vietnamese national, and where their son was born in 1988. In 1989 the family moved to the United Kingdom under the Orderly Departure Programme. They were recognised as refugees on arrival and were granted Indefinite Leave to Remain.

5. The appellant and his wife were divorced in 1995, and she has since remarried. He has an extended family here, as does his former wife.

6. The appellant has an extensive criminal record. Between 21 October 1996 and 6 October 2015, he was convicted on 21 occasions for 42 offences most of which were of a relatively minor nature, resulting in fines or short periods of imprisonment but on 30 June 2011 he was convicted of burglary and sentenced to 165 months' imprisonment, as a result of which he was served with a notice of liability to deportation. This was later withdrawn and on 24 February 2012 he was issued with a warning letter to the effect that if he were to come to adverse attention in the future, the issue of whether he should be deported could be reconsidered.

7. On 6 October 2015, the appellant was convicted of possessing class A drugs with intent to supply and sentenced to three years' imprisonment. Consequent to that, on 15 June 2016, the respondent served notice on the appellant that she intended to

revoke his refugee status with a view to deporting him to Vietnam. Notification the intention to revoked was also served on UNHCR.

8. On 10 October 2016, UNHCR responded to the respondent's proposed cessation of refugee status, noting that the decision to invoke the cessation clauses appeared to have been triggered by his criminal convictions which it considered ran the risk of improperly modifying the cessation clauses by adding the provisions of Article 33 (2) of the Refugee Convention, it being the view of UNHCR that this risk flows also from article 14 (4) of the Qualification Directive 2004/83/EC. UNHCR also noted that they had not been supplied with information as to the circumstances under which the appellant had been recognised as a refugee, and so it was not possible to give a substantive opinion as to whether Article 1 (C) (5) of the Refugee Convention was invoked.

9. On 13 May 2016, the respondent made a deportation order against the claimant and on 14 May 2016 decided to revoke protection status and to refuse a human rights claim. In doing so, she noted that many who had fled Vietnam in the same circumstances as the appellant had returned without being harmed.

10. It was, in any event, her view that the claimant was excluded from Refugee protection by section 72 of the Nationality, Immigration and Asylum Act 2002 and from humanitarian protection by the effect of paragraph 339D of the Immigration Rules.

11. The respondent also considered that the claimant's deportation would not be in breach of articles 3 or 8 of the Human Rights Convention, having had due regard to the relevant provisions of the Immigration Rules relevant to deportation.

12. The appeal came before the First-tier Tribunal on 3 February 2017. The appellant was represented by counsel who was instructed only to submit that the matter should be adjourned. That application was refused for the reasons given by the judge at [9] – [11], [14]and [17]- [19]

13. The judge found that:

    (i) the appellant had not rebutted the presumption that he presents a serious risk to the community [27];

    (ii) the appellant did not qualify under paragraph 276ADE of the Immigration Rules [28]; that his case was not exceptional [28]; that article 8 did not apply [28] there being [29] no valid separate claim; that the appellant's evidence was entirely incredible [28]; that his "private life rights are properly and lawfully breached due to his poor immigration history" [28]; that the appellant had no family life here [29], [30];

    (iii) even if article 8 were engaged [31], removal would nonetheless be proportionate.

14. On that basis, he dismissed the appeal.

15. The appellant sought permission to appeal on the grounds that the judge had erred in failing :

    (i) to give adequate consideration of article 8, given the acceptance that he had lawfully resided in the United Kingdom for more than half his life [2.1.1];

    (ii) to have regard [2.1.2] to the relevant rules and legislation, including section 117C of the Nationality, Immigration and Asylum Act 2002, as well as paragraph 399A of the Immigration Rules [2.1.3], instead focusing improperly on paragraph 276ADEof the Rules [2.1.4];

    (iii) to take into account the appellant's long lawful residence in the UK, the length of his absence from Vietnam and the lack of any ties to Vietnam [2.1.5] and [2.1.6]

16. On 23 August 2016, First-tier Tribunal Judge Bird granted permission on all grounds.

17. I heard brief submissions from both representatives at the hearing on 22 May 2017, both representatives being in effect in agreement that the decision of Judge Telford contained so many errors that it needs to be set aside and remade in its entirety.

18. It is regrettable that nowhere in Judge Telford's decision is there any indication that he was aware that this was a revocation of protection appeal, or that it was a deportation appeal; nor does it appear that he paid any regard to the relevant statutory provisions, the relevant Immigration Rules, or relevant case law. Judge Telford in a number of passages [28], [30] and [32] appears to have used stock paragraphs which had little or no proper application in this appeal.

19. Judge Telford failed to have proper regard to the following matters:

    (i) That the immigration decisions in issue was a revocation of protection as well as a refusal of a human rights claim;

    (ii) Whether, revocation of refugee status notwithstanding, the appellant was at risk of serious harm on return to Vietnam;

    (iii) That the relevant provisions of the Immigration Rules are set out in paragraphs A398, 398 399A

    (iv) That paragraph 276ADE was irrelevant given that the appellant could not in any event meet the suitability requirements owing to his convictions;

    (v) That both sections 117B and 117C of the 2002 Act were applicable;

20. In addition, Judge Telford erred:

(i) In concluding that the appellant's evidence was entirely incredible, yet accepting parts of it, without giving adequate reasons for either;

(ii) In concluding that the appellant had a "poor immigration history" when he had lived here lawfully since 1989;

(iii) In failing to address the factors required to be considered under paragraphs 398 and 399A, including the length of time spent here with Indefinite Leave to Remain, and the lack of ties to Vietnam

21. Accordingly, I was satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

Remaking the decision – hearing 4 September 2017

22. I heard evidence from the appellant, the appellant's brother, and the appellant's son. The appellant and his brother gave evidence with the assistance of an interpreter.

23. The appellant adopted his witness statement, adding that if allowed to remain in the United Kingdom he would comply with the law and that he would not commit the crimes he had committed before.

24. The appellant said he had lived in the United Kingdom since 1989 and had not visited Vietnam since he had left. He had a brother in the United Kingdom, a sister in Canada and another brother who had died. He said that his parents were dead.

25. The appellant said that he is in contact with his son by telephone, talking to him every night and that he would describe his relationship with his son as being very good.

26. Cross-examined the appellant confirmed that he had applied for a travel document from the Home Office and had used it travel to Canada to visit his sister in, he thought 2001, excepting that the document showed that it had been 2002.

27. The appellant said that he would return to Birmingham if released and that he would stay with his brother. He said that he would look for work as he did not have a job to return to.

28. It was put to him that although he had said he would not commit a crime again, that had not stopped him in the past but he said he did not know what else to say that he is sorry for what he had done and that he would be hoping to be given another chance.

29. The appellant said that he had been in contact with his son through his brother and that at the previous hearing when he had said he had no connection with his son what he had meant is not in direct contact.

30. Asked if he knew why he had claimed asylum, the appellant said that he had come from Hong Kong with his wife and that his wife had been invited to come here by her brother. He said that he was young when he arrived from Hong Kong and that he thought that he had left Vietnam in 1979 and travelling to Hong Kong. Asked if there was any reason why he could not return apart from a lack of family, employment and ties, he said he did not really know what the problems would be there. He said that the family had been fishermen and he had left Vietnam at the age of 16.

31. In response to my questions the appellant said that he had left Vietnam because his father had been put in prison also he said he thought his father had been put in prison for attempting to leave the country.

32. The appellant's son adopted his witness statement adding that he was in contact with his father by mobile phone and had been since February. He said that they were in contact two to three times a week depending on circumstances and their relationship was now better than had been before. And it was because they were now in communication.

33. Mr Le said that he thought his father would obey the law. He said that he could not move to Vietnam that he had only ever been for a short holiday two years ago. He said it would be difficult for him if his father were removed to Vietnam.

34. In cross-examination Mr Le said that he was not in contact with his father every day and that he had been back in direct communication since March 2007. He said that prior to that direct contact was non-existent that is when he was 18 but this had only been at home to relatives. He said he would not have any family in Vietnam on his father's side that he would not be able to support him if he were deported to Vietnam and having enough difficulty supporting his wife. He said he did not know why his father had obtained refugee status and that his mother is still alive but had a very bad relationship with the appellant.

35. I then heard evidence from the appellant's brother who adopted his witness statement confirming that he is in contact with his brother by telephone but that he had not been able to visit him. He said he thought that his brother would respect the law if allowed to remain that he felt sure this was the case.

36. He said that they had no-one left in Vietnam to help support him as they had left when they were young and that he would go to Vietnam with him. He said he had a wife and five children in the United Kingdom.

37. In cross-examination the appellant's brother said that he had a half sister in Vietnam whom he believed lived in Saigon, the family had when they lived in Vietnam lived near Hanoi. He said that he had been a bricklayer in Vietnam before leaving for Hong Kong. He said that his father had been imprisoned because when they had been trying to use a publicly owned boat to leave Vietnam he felt that he did not know why his father was trying to leave Vietnam.

38. In re-examination he said he had no contact with his father's second wife or her relatives.

The law

39. The grounds of appeal in this case are set out in section 84 of the 2002 Act and are as follows:-

> (1) An appeal under section 82(1)(a) (refusal of protection claim) must be brought on one or more of the following grounds—
>
> (a) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention;
>
> (b) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
>
> (c) that removal of the appellant from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).
>
> (2) An appeal under section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.
>
> (3) An appeal under section 82(1)(c) (revocation of protection status) must be brought on one or more of the following grounds—
>
> (a) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations under the Refugee Convention;
>
> (b) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection.

40. Section 72 of the 2002 Act provides (so far as is relevant) as follows:-

> Section 72 Serious criminal
>
> (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
>
> (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom is he is –
>
> (a) convicted in the United Kingdom of an offence, and
>
> (b) sentenced to a period of imprisonment of at least two years.
>
> …

(9) Subsection (1) applies where –

(a) a person appeals under Section 82, 83 [**F1**, 83A] or 101 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention, and

(b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).

(10) The Tribunal or Commission hearing the appeal –

(a) must being substantive deliberation on the appeal by considering the certificate, and

(b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the grounds specified in subsection (9)(a).

41. I am satisfied that, as Mr Whitwell submitted, there has in this case been an escalation in the appellant's offending as can be seen by the list of offences as set out in the PNC printout. Between 21 October 1996 and 6 October 2015 the appellant was convicted of 42 offences on 21 occasions which resulted in relatively minor penalties. He was, however, convicted on 30 June 2011 at Birmingham Crown Court and sentenced to sixteen months' imprisonment prison for burglary and, although being served with a notice of liability to deportation on that occasion which was subsequently withdrawn, the Secretary of State warned him in writing that if he should come to adverse notice in the future that further consideration would be given to the question of whether he should be deported.

42. On 6 October 2015 the appellant was convicted for the possession of crack cocaine with intent to supply and also with possession of heroine with intent to supply, both of those being class A drugs. In sentencing him, His Honour Judge Bond made the following remarks:-

> JUDGE BOND: stand up please, Mr Le.
>
> I have to sentence you for possessing crack cocaine and diamorphine, commonly known as heroin, with intent to supply to other people. I sentence you on the basis that you supplied to people who were already addicted to Class A drugs, and that they would come to your flat to buy these drugs.
>
> In sentencing you there is no dispute that because of the nature of your dealing and role you played, this was your own operation and you were dealing in order to make money. I accept that you were doing it to fund your own habit but, whichever way you look at it, you still made a financial reward.

> You had significant cash at home, £585, which indicates to me some of your profits from dealing in drugs. The value of the drugs in your possession when the police raided your flat on 26 June of this year amounted to £3,260 worth. In total there were 331 separate deals of crack cocaine and heroin, which indicates to me the level of dealing that you were undertaking.
>
> Mr Le, you do not need me to tell you of the consequences of being addicted to Class A drugs. Being an addict yourself, you know the abject misery it causes. In my experienced of being a judge at this court, I know because I see it day in day out that Class A Drugs cause addicts to commit crime, often it is robbery, dwelling house or, as in your case, dealing in Class A drugs - all serious criminal offences that carry custodial sentences.
>
> You are a man who is now aged 51; I understand that you came to this country in the mid-1990s from Vietnam, You have offended frequently through that period of time but you have always been dealt with by the courts by non-custodial measures or by relatively short custodial sentences.
>
> You have some convictions for possessing cannabis and I am told you are - in fact, I only see one conviction for such offence ,you also have a conviction for possessing a Class A drug.
>
> I do not the details of it but you were dealt with by way of a conditional discharge so it must have been a very small amount. This is the first time that you are being dealt with for offences involving the supply of Class A drugs to others.
>
> The Sentencing Council's guidelines for offences help judges in sentencing peoples like you. It has been that this is a Category 3 offence; it is agreed that you have a significant role. The category range is between three trial, with a starting point of four and a half years.
>
> Taking into account all the matters that I have mentioned, including the submissions that have been ably made on your behalf by Mr Bryce, I have come to the conclusion that, weighing everything up in the balance, the appropriate starting point in your case is four and a half years after a trial.
>
> Although you- did not indicate a guilty plea in the Magistrates Court, I have been told that there were difficulties in your representation in that court accordingly, I am prepared to give you maximum discount for your guilty pleas today. So I will discount your sentence by a full one-third, so on count one and count two you will go to prison for three years concurrent on each count

43. It is important that the judge accepted that the appellant was dealing in drugs in order to make money albeit to fund his own habit and also that there were 331 separate "deals" found in his possession. Also, it is of note that the appellant was given a maximum discount for his guilty pleas resulting in a one third discount noting as a parting point in this case from four and half years to three years.

44. I have considered carefully the OASys Report which it appears was completed on 6 April 2016, albeit that the printout is dated 1 September 2017. I note from this that the OGRS3 score indicates a 21% transfer of general offending in a year of community sentence/discharge and 36% transfer of general offending within two years of discharge. I note also [2.6] that it was noted that the appellant did not recognise the impact and consequences of offending on the victim,

community/wider society now that he appeared to be easily led [2.7]. Equally I note that at [2.11] that although the appellant admitted to being involved in the local drugs culture he denies supplying drugs to others and at [2.12] that

> "Mr Le has an entrenched pattern of behaviour. This is of acquisitive crime relating to thefts – shoplifting to fund his drugs misuse. He also has convictions from motoring offending, drugs, threatening words and behaviour, burglary and common assault. He was unable to recall the details of threatening words and behaviour offence but said that the common assault was thus as a result of a fight he had with his friend who owed him money. Mr Le's convictions have been dealt with by way of community orders, conditional discharge, imprisonment and financial penalties. He has no previous for intent to supply.

45. It is noted also [2.13] the offences represent an escalation of seriousness and of part of an established period of similar offending.

46. It is not in doubt that the appellant's offending behaviour results from his drug addiction which it appears started around 1995; that he had stopped between 1999 and 2005 when he worked as a chef in Swansea but that he relapsed into drug use when he returned to Birmingham and began to be associated with other drug users [8.9]. In this context, I note that the appellant's evidence is that he intends to return to Birmingham.

47. It is noted at [11.10] that the fact the appellant has previously violent related convictions indicating he may be prone to act aggressively in conflict situations. That aside, the assessment of risk of serious harm at pages 22 onwards indicate little risk of this albeit that there is an OVP one year score of twelve and a two year score of 21 [at page 24] giving a low overall risk of violent offending. The risk of serious harm summary at page 28 indicates that the local community risk (of 10.1), the risk is likely to be at its greatest on release or that it is noted that he is due to be deported. It is of note that at Section 10.6 the risk of custody is given as low which in all contexts but equally at page 31 there are a number of factored links to the risk of re-offending including accommodation, finance, lifestyle, drug misuse, behaviour and attitudes. Whilst the appellant is in the lower category on OGRS and OVP the latter being in relation to violent offending, it is at 29% and 42% after two years, a medium risk under the OGP probability of proven non-violent reoffending.

48. Mr Khubber submitted that the applicant is at less risk now given that he has shown through tests that he has been free from drugs since his conviction albeit that this was in prison. It was submitted also that the drug taking had originated in the breakdown of the appellant's marriage in the 1990s and submitted that he has now come to terms with his past offending and requirements in terms of future conduct.

49. It is significant that it is the view of those compiling the OASys Report the appellant had not accepted he has supplied drugs to others. It is also worrying that he appears intending returning to Birmingham. Whilst he intends to stay with family, given the appellant's history and the increasing seriousness of his offending behaviour which

includes offences of violence albeit that they are not recent I am not, despite Mr Khubber's submissions that the applicant is not violent, satisfied that he does no longer constitute a danger to the community. The fact that he is not violent does not mean that, for example, his dealing with drugs does not do harm to the community precisely the matter addressed by the judge in the sentencing remarks.

50. Whilst I accept that there are some positive indicators in respect of the appellant, I consider that viewing the evidence as a whole, given the significant risk that he presents to the community as identified in the OASys report that the presumption that he constitutes a danger to the community is not rebutted.

51. Accordingly, despite the strenuous efforts by Mr Khubber about what the appellant has said in evidence, I am not satisfied that the presumption is rebutted.

Cessation

52. As was noted in **RY (Sri Lanka) v SSHD [2016] EWCA Civ 81** it is open to the United Kingdom to revoke refugee status of one making a Section 72(2) certification but it is not obliged to do so.

53. The Secretary of State did, however, in this case undertake both exercises. Given that the applicant was recognised as a refugee many years ago, it is necessary to consider Dang (Refugee – query revocation – Article 3) [2013] UKUT 00043.

54. The question then is: does the fact that the appellant's status has been ceased make any difference to the decision under challenge? That is, does it make a difference that he remains a refugee under the Refugee Convention?

55. In the light of Dang, I am satisfied that the purported revocation pursuant to paragraph 58A and 59A(v) of the Immigration Rules is not effective. Nevertheless, that does not affect the issue under Section 32 of the UK Borders Act 2007 as the appellant does not come within Section 33(2)(b) as the non-refoulement provisions in Article 33 would not apply in this case given that the Section 72 certificate has been upheld.

56. Accordingly, whether or not the appellant is a refugee (or has ceased to be a refugee), his removal would not be in breach of the United Kingdom's obligations under the Refugee Convention. Thus, it is unnecessary for me to consider whether or not the appellant is a refugee as even if the respondent has not made good her assertion that the cessation provisions apply, he could not succeed on the ground that removal would be in breach of obligations under the Refugee Convention.

57. In the circumstances therefore it is unnecessary for me to consider whether the cessation clause has properly been invoked. Further, in any event, it would make no material difference to the legality of removal not least as it is conceded by Mr Khubber in his skeleton argument at Section 4.2.1 that he has not submitted the removal would constitute a breach of rights under Article 3 or humanitarian protection under the Qualification Directive. Under the circumstances, it is

unnecessary for me to consider whether the appellant's removal would be a breach of Article 3.

Immigration Rules

58. The Immigration Rules relevant to this case provide are 390, A398, 398B, 399A, 390 which, so far as is relevant provide:

390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:

(i) the grounds on which the order was made;

(ii) any representations made in support of revocation;

(iii) the interests of the community, including the maintenance of an effective immigration control;

(iv) the interests of the applicant, including any compassionate circumstances.

390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.

A398. These rules apply where:

(a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;

(b) a foreign criminal applies for a deportation order made against him to be revoked.

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

…

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or …

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and
(b) he is socially and culturally integrated in the UK; and
(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

59. The issue is whether in this instance, the appellant satisfies paragraph 399A, it being agreed that he is a person to whom paragraph 398(b) applies.

60. I accept that in this case the respondent has concluded that the applicant has been resident in the United Kingdom for most of his life and that he is socially and culturally integrated into the United Kingdom. Or it may be a somewhat generous concession given the long history of offending and the fact that the appellant is still not able, it appears, to give evidence without the assistance of an interpreter.

61. In assessing what is meant by integration, I bear in mind what was said in **Kamara v SSHD** [2016] EWCA Civ 813 at 14:-

> In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

62. I am satisfied by the evidence I have heard from the Appellant and his witnesses that there are in effect no ties of a family or friendship nature that the appellant has now to Vietnam. I accept that he has never been back there and he left the country in 1979 and has never been back.

63. Mr Khubber submits that there are a number of factors to be taken into account in assessing the significant obstacles. These are as noted above the absence for 38 years, the lack of family, the fact the appellant left when he was a child and that he had resided lawfully in the United Kingdom for most of his life. Mr Khubber also relised on the ties with the older brother which are described as close and the relationship with the adult son. Other matters prayed in aid are the fact that the appellant is free from drugs and his conviction, that his offending was related to drug taking and that his ties to Vietnam apart from nationality were extremely thin.

64. What is not, however, addressed in any substantial way is the nature of obstacles other than those which are, it appears, to be inferred from the ties to the United Kingdom.

65. There is little in the way of evidence that the appellant would have difficulty getting employment or accommodation. It is not, for example, said that as was the case with Mr Kamara that the appellant would have no familiarity with the norms of how Vietnamese society conducts itself or that he would be unable to adapt to the cultural context.

66. That said, even a cursory glance at the Home Office's country materials on Vietnam cited in the refusal letter shows that the country has changed markedly since the appellant left. It would appear that the human rights situation although poor is

better than it was. There also appears to have been a significant improvement in the economy.

67. This is not a case in which the appellant suffers from ill-health. I am satisfied by the evidence I have had that there is in reality no possibility of financial support for a family in the United Kingdom. His son is recovering from a serious illness and has his own family to support and is unable to contribute. Similarly, although I accept the appellant's brother may wish to help, I consider that in reality is he is unable to do so given that he has a wife and five children and has limited resources of his own. Whilst I note that the appellant's brother said that he would travel with him to Vietnam, I consider this to be at best an aspiration and an offer made out of the best motives but it seems unlikely that he will do so at least for anything more than a temporary basis.

68. Mr Khubber submitted that the appellant would be subjected to a significant culture shock on return to Vietnam, a country which it would appear has changed significantly since the appellant was last there some 38 years ago. That again is an inference and is not based on what the appellant himself said. The appellant himself said very little and did not give much evidence about the difficulties he himself would face on return. While I can accept that he has no ties there, there is no further elaboration of the difficulties that would occur and I bear in mind that the burden is on him to satisfy the high threshold that there would be very significant obstacles to his integration again into Vietnam.

69. Turning to what is noted in Kamara about integration, I have considered what would prevent the appellant from establishing again a private life in Vietnam. He would, I accept, be starting from scratch. He does speak the language, and has some skills as a cook. He would, however, have no familiarity with how that society now works, but it is not evident that he could not learn that, or that he would suffer unduly while doing so. I consider that there is insufficient evidence to show that reintegration into life in Vietnam would not be possible for this appellant, or that obstacles in doing so could not readily be overcome.

70. Taking all the factors into account I consider that there may well be difficulties that the appellant will have in reintegrating into Vietnam, he does not satisfy the burden to show that there would be very significant obstacles. I am therefore not satisfied that the appellant meets the requirements of the Immigration Rules.

Article 8

71. In assessing Article 8 I bear in mind that I must apply Sections 117B and 117C of the 2002 Act. I turn first to Section 117B. The appellant has not shown that he is capable of speaking English to any great degree and, it appears, despite living here for 28 years still requires an interpreter. There is insufficient evidence to show that he is financially independent. There is no evidence that he will acquire employment on release from prison.

72. That said, he has a substantial private life in the United Kingdom and that was established whilst he was here lawfully and it cannot be said that his status here was precarious certainly not before he was notified of an intention to deport him, which was many years after he was granted indefinite leave to remain.

73. I accept that the appellant's relationship with his son is to be treated as part of his private life. There is nothing in the evidence before me which suggests a protected family life exists between them or between the appellant and his brother. All three are adults and the contact between the appellant and his son in particular has been very limited until recently.

74. Turning to Section 117C, I bear in mind that the deportation of foreign criminals is in the public interest and that the more serious offence the greater the public interest in the deportation of the appellant. In this case he was sentenced to three and a half years in prison. That is by any stretch a serious crime and the offence of which he was convicted, in dealing in class A drugs, is serious given not least the damage that drug addiction causes through society as set out in the judge's sentencing remarks.

75. For the reasons set out above I am not satisfied that the exception in Section 117C(4) applies nor is it suggested that the exception in sub-section (5) applies.

76. There are, however, additional factors which in addition to those considered above in assessing whether the appellant meets the requirements of the Immigration Rules is taken into account. These are the age at which the appellant left Vietnam, the lack of ties he has to that country, the length of time he spent in the United Kingdom and, essentially, the difficulties that he would have adjusting again to a country with which he has no familiarity at the age of 54. I am prepared to accept also that there would be a degree of culture shock, the indications from material provided being that Vietnam has changed almost out of recognition in the very nearly 40 years since the appellant left. Those are factors which weigh in favour of the appellant.

77. On the other hand, there are significant factors which weigh against him which are, in addition to those set out above, the fact that his offending was carried out over a significant period, with increasing seriousness and that he persisted in his criminal behaviour after he was given a warning by the Secretary of State. Indeed, the convictions for possession with intent to supply class A drugs post-date that warning.

78. Whilst it is said that he is unlikely to re-offend, I am not satisfied that is so. He may well have ceased to take drugs whilst in prison but given his past history of going back to his associates in Birmingham and continuing to take drugs in the past, I am not satisfied that he would not do so again in the future. That is even supportive of his son who lives in Manchester, and his brother. There is also I consider a significant risk of re-offending given what is said in the OASys Report and there is also the risk of harm to the community which would flow from further drug dealing.

79. I have no doubt that the appellant will have significant difficulties in adjusting again to life in Vietnam but he was warned of the consequences of continued criminal behaviour yet he chose to continue in that path.

80. Taking all of these factors into account and whilst I accept that the appellant would have significant difficulties on return to Vietnam that it may well be difficult for him to maintain the same level of telephone contact with his son and brother as previously, I am not satisfied that the very significant weight to be attached to the public interest in deporting foreign criminals is in this case outweighed. For these reasons I dismiss the appeal on all grounds.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law. I set it aside.

2. I remake the decision by dismissing the appeal on all grounds.

3. No anonymity direction is made.

Signed Date: 19 October 2017

Upper Tribunal Judge Rintoul