



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

Appeal Number: PA/03212/2017

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham

Decision & Reasons

On 15th December 2017

Promulgated

On 30th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**C T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford, Counsel instructed by Sultan Lloyd Solicitors

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Vietnam born on [] 2000. He entered the UK illegally on 17th September 2016 and applied for asylum. That application was refused on 17th March 2017 for the reasons given in the Respondent's letter of that date. However, owing to the age of the Appellant, he was granted discretionary leave to remain until 12th July 2017. The Appellant appealed the refusal of asylum and his appeal was heard by Judge of the First-tier Tribunal Gribble (the Judge) sitting at

Birmingham on 2nd May 2017. She decided to dismiss the appeal on asylum, humanitarian protection, and Articles 2 and 3 ECHR grounds, but to allow it on Article 8 ECHR grounds for the reasons given in her Decision dated 27th May 2017. Both the Appellant and the Respondent sought leave to appeal that decision and eventually permission was granted to the Respondent alone.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside. The only issue is whether the Judge erred in law in allowing the appeal on Article 8 ECHR grounds.
3. The Judge allowed the appeal on Article 8 ECHR grounds because she found that the Appellant had a private life in the UK which would be interfered with by the Respondent's decision to such a degree of gravity as to engage the Appellant's Article 8 ECHR rights. Further, the Judge found that such interference was not proportionate. In reaching that conclusion, the Judge found that the Appellant would return to Vietnam as a lone child without family support. The Judge also found that the Appellant was a victim of trafficking, and that his best interests lay in maintaining his education and accommodation in the UK. The Judge took into account the public interest and in particular the factors mentioned at Section 117B(1) to (5) of the Nationality, Immigration and Asylum Act 2002.
4. At the hearing, Mrs Aboni argued that the Judge erred in law in coming to this conclusion. The fact of the matter was that the Appellant would not be returned to Vietnam until he was an adult of 18 years of age, and therefore the Judge had erred in treating him as a child returning to Vietnam and in considering his best interests as a child.
5. In response, Mr Bedford referred to the decisions in **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123** and **CL (Vietnam) v SSHD [2008] EWCA Civ 1551** in both of which it was held that:

"The fact that the removal of the Appellant may only take place at some time in the future does not relieve the Immigration Judge of his burden of making a decision on the human rights claim".
6. Mr Bedford argued that there was therefore no error of law in the decision of the Judge.
7. I find no error of law in the decision of the Judge which I therefore do not set aside. Mrs Aboni's argument was that the Judge had erred in law in treating the Appellant as a child and considering his best interests as such. However, it is clearly established by the cases of **AM** and **CL** that this is exactly what the Judge was required to do. There is therefore no error of law in the decision of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made an order for anonymity which I continue for the same reasons given by the First-tier Tribunal.

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 his 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

Date 29th January 2018

Deputy Upper Tribunal Judge Renton