Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12871/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 May 2018	**On 29 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

HMN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Rai, counsel.
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court.

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 23 November 2017 refusing his application for asylum or humanitarian protection.

Background.

2. The appellant is a citizen of Vietnam who arrived in the UK on 28 April 2015 and claimed asylum. He claimed that his date of birth was 17 September 1999 but following an age assessment on 5 May 2015 his date of birth was assessed to be 17 September 1997. A further assessment took place on 26 January 2016 when it was decided, giving him the benefit of the doubt, that his claimed age was correct.

3. In the light of the appellant's account about he came to the UK, he was referred to the National Referral Mechanism for the Competent Authority to consider whether he was a victim of modern slavery. On 9 September 2015 there was a positive reasonable grounds decision but on 7 March 2016 there was a negative conclusion, the Competent Authority finding that he had not been trafficked and it was not believed that he was a victim of modern slavery, servitude or forced labour.

4. The respondent's decision is set out in the reasons annexed to the decision letter of 23 November 2017. Whilst the respondent accepted that the appellant's identity and nationality were as claimed, it was not accepted that he had a genuine subjective fear of returning to Vietnam and that, even accepting his claim at its highest, he would be able to look to the authorities for protection or he could relocate to areas such as Hanoi or Ho Chi Minh City.

The Hearing before the First-tier Tribunal.

5. The account relied on by the appellant before the First-tier tribunal was summarised by the judge in [18] – [20] of her decision as follows:

> "18… he was brought up by his grandmother following his parents' death in a bus crash. He attended school until he was 12 when his grandmother died (2011). Thereafter his Uncle [C] took over his care. He was mistreated by his uncle and reported this to the police. However, although his uncle was initially detained he was later released and beat the appellant as a punishment. During this time the appellant occasionally undertook shoe shine work and his uncle made him deliver packages which he believed contained drugs.
>
> 19 In August 2014 the first appellant met Mr [D]. Three months later [C] told the appellant to go with Mr [D]. He was taken to the airport and flew to Russia where he stayed for six to seven weeks. During this time the appellant was beaten and threatened by Mr D. The appellant was then taken to France by Mr D where he stayed for three months. During this time the appellant was able to sneak outside when Mr D forgot to lock the doors but because he did not speak French or English he was unable to find help.
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> 20. The appellant was transported to the UK by lorry. Mr D gave him a mobile

> telephone which he was to hand over on his arrival. However, the appellant was detained on arrival in the UK and handed to […] Social Services."

6. The judge heard oral evidence from the appellant and had documentary evidence from both the appellant and respondent. Having reviewed the evidence, she found that the appellant's account of events in Vietnam was to the lower standard of proof credible. She commented that there were no significant inconsistencies or inherent lack of credibility in his evidence that his parents died when he was young and that he was subsequently cared by for by his grandmother and uncle. She also found that it was credible that his uncle had treated him badly and had the appellant deliver packages that he believed were drugs [21].

7. However, the judge, whilst finding it was credible that the appellant was 15 years of age when his uncle decided he should go abroad to work, was not persuaded, even to the lower standard and taking into account his age, that his departure from Vietnam was against his will. The reason she reached this decision was because of his inability to provide consistent evidence about his journey from Vietnam and his possession of a mobile telephone when he was arrested in the UK [22].

8. At [23] the judge said that with regard to the appellant's journey to the UK, in his witness statement dated 11 August 2015 (confirmed by him as reliable), he stated at para 17 that he stayed with Mr D throughout the journey, whereas in oral evidence he said that Mr D had left him in a room and brought him food. When this inconsistency was put to him, the appellant denied giving that evidence in his witness statement. Further, in his asylum interview (Q178-185), he did not mention travelling to France with Mr D, although it had formed part of his 2015 witness statement. The judge also placed weight on the fact that despite the positive conclusion of the 2016 age assessment the authors found that there were several aspects of the appellant's story that seemed somewhat unusual and that challenging him did little to relieve their concerns.

9. The next issue which concerned the judge was the appellant's account about the mobile phone that he had with him on arrival in the UK. In his evidence in the asylum interview, he said that the phone was given to him by Mr D who told him that he would be met in the UK. His evidence at interview was that he did not know how to use or access the phone but on his journey to the UK, because he was curious, he asked someone who was travelling with and he consequently put a pin on the phone for security. When he was asked why he would take this risk when the phone was Mr D's, the appellant could only say that it was because of his curiosity. The judge found this incongruous given the way in which Mr D was said to have treated him and his claim to be in fear of Mr D [24].

10. The judge was, therefore, persuaded that the appellant was an orphan and that on return to Vietnam he would not have any family to support him, his uncle having previously ill-treated him and encouraged him to leave Vietnam. She was not persuaded that the appellant was a victim of trafficking. He had left Vietnam when a

child, but he was now an adult. He need not return to his uncle and the judge found that he would not be wanted by any traffickers. She said that she had considered the country background information provided in the appellant's bundle and, whilst she acknowledged that Vietnam continued to have a problem with trafficking, she found that the focus of this was women and children and the appellant was not therefore in a risk category. She found that it was not reasonably likely that he would be at real risk on return to Vietnam either from his uncle, from traffickers or potential traffickers [25].

The Grounds and Submissions.

11. The grounds seek to challenge the judge's decision for two reasons. Firstly, it is argued that, when relying on the second age assessment report, the judge cited an incomplete passage whereas the full passage, if properly cited, gave an explanation which should have been assessed in accordance with the Asylum Policy Guidance in relation to assessing asylum claims made by children and also the UN report in relation to handling trafficking cases. It is argued that the judge failed to provide any reason why she did not rely on the full passage when the passage was supportive of the appellant's claim to be trafficked or why she departed from the approach of the assessors in their report, particularly when she purportedly relied on that report.

12. Secondly, it is argued that the judge made unsupported and unreasonable findings in [25]. She accepted that Vietnam had a problem of trafficking but found that the focus was on women and children and so misdirected herself in relation to the risk categories, failing to provide a reason for finding that only women and children constituted risk categories. Further, the appellant had just turned 18 and it could not be said simply for that reason that he was not at risk as he was no longer a child.

13. In his submissions, Mr Rai adopted the grounds arguing that the judge had not taken a balanced view of the evidence. She had accepted most of the appellant's evidence but then rejected what he said about what had happened since leaving Vietnam, relying on a passage from the age assessment report which had not been fully cited. He submitted that the judge had further erred by assessing whether the appellant would be at risk by wrongly identifying the risk categories when the background evidence showed that the risk of trafficking was not limited to women and children.

14. Mr Tufan submitted that the judge was entitled to rely on the serious concerns about the appellant's credibility set out in the second age assessment report. It was not arguable that she had not taken a balanced view of the evidence. She was simply emphasising and adopting concerns set out in that report despite the positive conclusion reached about his claimed age. Further, the judge had been entitled to draw an adverse inference from the appellant's evidence about his possession of the mobile phone. She had recognised that there was a problem with trafficking in Vietnam but, in any event, in the light of her findings of fact, she had found that the appellant was not in a risk category.

Assessment of the Issues.

15. The first ground argues that the judge erred by drawing an adverse inference on credibility from the second age assessment report without fully citing the paragraph she relied on. The judge set out the following passage in [23]:

> "There are several aspects of [H's] story that seem somewhat unusual, and challenging him did little to relieve our concerns. Firstly, it seems very unusual that [H] is unable *(able?)* to ascertain a timeline for some aspects of his journey but is unable to account for other parts. His justification that he had no calendar does little to explain this. Secondly, the idea that [H] could escape, and would often walk around but would then return, despite the abusive nature of the man he travelled with. [H] justified this by saying that he did not speak the language but this did little to explain this to us."

16. The final sentence of this paragraph, not set out by the judge, is as follows:

> "However, we are mindful that H is stated to be a child, and could easily have felt helpless with no one to offer him support, therefore, this *(he)* may have felt that the best option was to stay with someone he at least knew."

17. I am not satisfied that the fact that the judge did not set out the last sentence of the paragraph indicates that she was not taking a balanced view of the evidence or that she was not fully aware of this comment made by the assessors. It sets out their view of a possible explanation, but it was for the judge to decide issues of fact in accordance with the lower standard of proof in the light of the evidence as a whole. She was entitled to take into account matters which the assessors had regarded as 'somewhat unusual' and giving rise for concern.

18. The judge did not rely only on the comments in the age assessment report for reaching her adverse findings. She also identified a number of discrepancies in [23] which she was entitled to regard as undermining the credibility of the appellant's account and she also referred to her concerns about his evidence in respect of the mobile phone at [24]. It is also clear, when the appellant's evidence is considered as a whole, that were there were considerable discrepancies (also referred to in the respondent's reasons for decision) and it was for the judge to decide what inferences could properly be drawn from these conflicting accounts.

19. There is also no reason to believe that the judge did not give proper weight to the appellant's age or was unaware of the guidance in the Asylum Policy Guidance or in UN report in relation to handling trafficking cases. She would have been well aware of the need to approach the evidence of a child or young adult with care and of the fact that there may be a number of explanations why his statements might be inconsistent or contradictory.

20. The second ground argues that the judge erred by taking too restrictive view of those who might be at risk of trafficking in Vietnam. The judge acknowledged that Vietnam continued to have a problem and said that the focus of this was women and

children and that the appellant was not therefore in a risk category. However, I do not read the judge's comments as discounting the possibility that a young adult might in his particular circumstances be at risk. The judge was entitled to make a finding of fact that the appellant had not been a victim of trafficking, a decision also reached by the Competent Authority, and that he would not be wanted by traffickers. Having made those findings, she was entitled to conclude that he would not be at real risk of being trafficked on return.

21. For these reasons the grounds do not satisfy me that the judge erred in her assessment of credibility or of whether the appellant would be at real risk of serious harm on return. I am satisfied that her findings and conclusions were properly open to her for the reasons she gave.

Decision

22. Accordingly, the First-tier Tribunal did not err in law and this appeal must be dismissed.

23. In the light of the issues raised in this appeal and the age of the appellant, I am satisfied that this is a proper case for an order to be made under Rule 14 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I make an order prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

Signed: H J E Latter Dated: 25 May 2018

Deputy Upper Tribunal Judge Latter