



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

Appeal Number: PA/01824/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2019**

**Decision & Reasons
Promulgated
On 22 November 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**HNL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bennie, counsel instructed by Thompson & Co Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Cohen, promulgated on 19 August 2019. Permission to appeal was granted by Upper Tribunal Judge Stephen Smith on 14 October 2019

Anonymity

2. No direction has been made previously, and there is no reason for one now

Background

3. The appellant arrived in the United Kingdom on 28 June 2016 with leave to enter as a Tier 4 migrant valid until 15 April 2018. She returned to Vietnam on 20 January 2017, returning on 2 February 2017. On 26 March 2018 the appellant applied for asylum.
4. The appellant's asylum claim was based on belonging to a politically active family, her father being a member of the Viet Tan party. She stated that she was detained for two days in Vietnam when she returned there in January 2017, after visiting her father who had been arrested at a demonstration. The appellant left Vietnam after she was served with a summons to appear before the authorities. Shortly after her departure from Hai Phong, individuals came looking for the appellant and assaulted her mother and brother-in-law. On 20 June 2018, the appellant gave birth to a son 'L,' in the United Kingdom.
5. By way of a letter dated 12 February 2019, the Secretary of State refused the appellant's asylum claim. In general, the respondent found that the credibility of her claim was undermined in a number of respects. Consequently, it was not accepted that she was at risk of ill-treatment on return to Vietnam. Nor was it accepted that she would be at risk on account of being a single mother. Neither the appellant nor her son met the requirements of the Rules relating to Article 8. The Secretary of State did not accept that the medical issues affecting L, because he was born with a brain tumour, amounted to exceptional circumstances nor that the high threshold in Article 3 medical cases had been reached.

The decision of the First-tier Tribunal

6. The First-tier Tribunal judge noted that the only treatment received by L were quarterly scans which he could have in Vietnam. He also rejected the expert opinion as to the existence of social stigma against lone mothers. The remainder of the appellant's account was rejected on credibility grounds.

The grounds of appeal

7. The grounds of appeal argued that the Tribunal made the following errors;
 - a. Making material mistakes of fact
 - b. Failing to take matters included in the expert report into account
 - c. Unlawfully dismissing evidence as being uncorroborated
 - d. Drawing conclusions of inherent incredibility
 - e. Failure to take into account or resolve conflicts
 - f. Wednesbury irrational reasoning
8. Permission to appeal was granted on the basis sought
9. The respondent filed no Rule 24 response.

The hearing and Decision on error of law

10. Mr Whitwell helpfully indicated that he did not oppose the first ground which concerned the mistakes of fact in the First-tier Tribunal judge's decision and reasons.
11. The mistakes of fact included that the judge was mistaken regarding several features of the appellant's return to Vietnam as well as wrongly believing a medical report regarding injuries to the appellant's brother and mother, concerned the appellant, consequently making adverse credibility findings.
12. As I agreed with Mr Whitwell's submission, there was no need to hear from Mr Bennie. The judge's decision was rendered unsafe by these errors. The decision is set aside in its entirety for remaking at the First-tier Tribunal as the appellant has yet to have a fair hearing of her appeal.

Decision

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

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of one day by any judge except First-tier Tribunal Judge Cohen.

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

Date 21 November 2019

Upper Tribunal Judge Kamara