Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02235/2019

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 26 September 2019	**On 23 October 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

NN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Bradley, AJ Bradley & Co
For the Respondent: Mr Govan, Senior Presenting Officer

DECISION AND REASONS

1. I make an order for anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting disclosure of any matter that may lead to the identification of the appellant and other parties to these proceedings. Any breach may lead to contempt proceedings.

1. This is an appeal by a national of Vietnam who was born in 1998. She has a partner TP, who is also Vietnamese. They have a daughter born in this

country in April 2019. None of the family members as lawful status in the UK.

2. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Agnew who for reasons given in her decision dated 13 June 2019 dismissed the appellant's appeal against the decision of the Secretary of State refusing the appellant's protection and human rights claim for reasons given in a decision dated 25 February 2019. The claim had been made in August 2018 on the basis of the appellant's political opinion, her religion, and membership of a particular social group as a victim of trafficking.

3. As to her immigration history, the appellant's case is that she left Vietnam in March 2017 after obtaining a visa to study in Spain where she was kidnapped and held in a house for approximately a year and a half. It appears that her kidnappers from whom she ultimately escaped were instrumental in her reaching the United Kingdom in June or July 2018. She was encountered by the authorities in a nail bar in July 2018.

4. The Secretary of State accepted that the appellant was a victim of trafficking in the light of a reasonable grounds decision having been made that led to such a finding on 2 August 2018. The respondent did not however accept the appellant had been persecuted in any way by the Vietnamese authorities due to her Christian religion nor was it accepted that she had been politically active in Vietnam or was of adverse interest to the authorities as a consequence.

5. The Secretary of State considered the appellant would be able to seek protection from the Vietnamese authorities with regard to any fear of the traffickers and of re-trafficking in the light of country information. A case had not been made out under the Immigration Rules or on Article 8 grounds in respect of the appellant's family and private life.

6. Judge Agnew did not accept the appellant's account of what had happened in Vietnam which included attendance at a number of demonstrations in relation to the "Formosa issue" (a company that had released toxic waste into the sea) and membership of a political group called "The Hoang Duc Binh Group" which it was claimed had led to her arrest and ill-treatment. It was also claimed that her continued attendance at demonstrations had led to the issue of three arrest warrants and thus the decision to leave the country. The appellant's Christianity had been an aspect of the authorities' interest in her when attending the demonstrations.

7. In respect of events in Spain, the appellant had posted information on Facebook mentioning the wrong doings being done by the communist party in Vietnam and she had received messages via this medium threatening to kill her if she returned. That threat extended to Spain where her antagonists knew she lived. This led her to move from Murcia where she had been studying to Barcelona. On arrival and whilst looking for somewhere to stay, she was kidnapped in the street and held for one

and a half years, during which she was forced to have sex with men on a daily basis. She ran away by escaping from a car when two men (apparently her captors) were smoking outside and the door was open.

8. Judge Agnew carried out a detailed assessment of the evidence, in the course of which she noted the Country Information regarding the 'Formosa disaster', and concluded at [19]:

> "19. The appellant's account does fit with the background information regarding events following the Formosa disaster and the violence of police against protesters. However, she does not claim to have been a high-profile activist in Vietnam in any form, on the internet or in person. The claimed level of attention from the police given to the appellant before she left, following her, visiting her home looking for her, detaining and releasing her but also subsequently issuing a number of arrest warrants or summonses seems disproportionate to what she claimed she did in Vietnam. That is, attending some demonstrations and handing out leaflets a couple of times of which contents she is surprisingly vague and only for a short time (she claimed in interview that she was only with the group for 1 month). Nevertheless, it is claimed that her activities in Vietnam were compounded by the internet activities she carried out in Spain."

9. In relation to the Facebook postings, the judge observed at [20] to [23]:

> "20. Ms Macleod submitted that the fact that the appellant had absolutely no evidence of her alleged postings on her Facebook account in Spain against the government in Vietnam or the threats made to her life on Facebook showed it was a total fabrication. It was convenient that the appellant claimed there was "no way" she could produce evidence of her postings because her account had allegedly been closed down.
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> 21. I have noted above that there is background information that the Vietnamese authorities will approach Facebook to close some accounts although judging from the figures of their requests to Google in 2017, they do not make many requests. However, the fact that they can and do is in favour of the appellant as it is consistent with her account that her anti-government postings led to her account being blocked.
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> 22. Having noted this, however, the appellant has made no effort to obtain confirmation from Facebook that her account was blocked. Whilst corroboration is not required in asylum cases, because it is frequently impossible to obtain, in this case the appellant via her legal representatives could have written to the Facebook organisation asking for information as to her account and why it was blocked, if it was.
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> 23. That there is no evidence that any steps have been taken by the appellant to question the blocking of her account whilst she was in Spain, studying at college, or in the UK when she is legally represented, and yet she has obtained other alleged documentary corroboration of her account from Vietnam, I find not helpful to the appellant's claims that she was making such postings in Spain

> and her account was blocked on the request of the Vietnamese authorities."

10. As to the death threats whilst in Spain, the judge considered that the failure by the appellant to report this as "not helpful to the credibility of [her] claims"; (see [25]).

11. In relation to documentary evidence of the adverse interest in Vietnam, being the 'Invitation Notices' the judge concluded at [28]:

> "28. I do not believe the appellant would be able to live and study a course in English which she said took 2 or 3 months before she left Vietnam if the police were actively looking for her to arrest her, given she failed to report after the 3rd 'Invitation' in November 2017. I do not believe that she would have been able to avoid them, despite claiming they came to her house many times."

12. After observing that the appellant had been allegedly hiding from the police who were regularly calling at her home and her claim was that she had attended "an appointment with the Vietnamese Embassy in Hanoi to obtain a visa to go to Spain" Judge Agnew questioned the credibility of this, specifically in [30] as follows:

> "30. Over and above this, I do not believe if the appellant had received 3 'Invitation Notices' or arrest warrants, as they were referred to by both legal representatives as well as the appellant, and had responded to the first one, at which time she claims she was arrested and detained for the day until her parents came for her and obtained her release, as well as receiving 2 more arrest warrants, the appellant would not have mentioned this in her substantive interview."

13. The judge was clearly concerned by the absence of reference to the three invitation notices or arrest warrants by the appellant at her substantive interview but was not persuaded by the explanation and she considered their late production "seriously damaging" to her credibility.

14. In respect of the trafficking claim, she observed at [35]:

> "35. I note that the appellant has been accepted as a victim of trafficking by a competent authority and it is not for me to go behind this finding. However, I would note that I do not find credible the appellant's claim made at the hearing that she escaped from her traffickers in "late June or early July", she had no idea which country she was in and yet on the same day she "eventually wandered into a nail bar" in a seaside town in Fife and which, having entered, met the man with whom she had been having a relationship when she was in Vietnam and with whom she became pregnant with his baby in July."

15. And as to the appellant's relationship with TP:

> "36. The appellant's partner is living in the UK illegally. He has not claimed asylum. He was detained by the police in a nail bar at

> the same time as the appellant in early July. I asked the appellant about whether he had made a claim for asylum and she said he tried to apply but nothing happened. I asked her what she meant by this answer and she said he had not yet applied. I asked why he had not done so and she said that he could not speak the language. She said she tried to get a solicitor for him but he did not know how to do it yet. However, I pointed out that the appellant had solicitors. I asked why her partner, if he wanted to claim asylum, could not just attend her solicitor and claim asylum with their help. She replied she did not know. I found the appellant's evidence was discrepant, claiming first that her partner had tried to apply for asylum and then later, for various reasons, he had not done so."

16. The grounds of challenge argue the following points.

    (i) No consideration had been given as to whether the appellant should be entitled to asylum based on her account of trafficking.

    (ii) The judge had ignored the lacuna in the evidence regarding the "notorious difficulty many organisations have had with Facebook, including Parliament".

    (iii) The judge had failed to consider whether in the light of the similarity in the handwriting on two of the invitation notices whether there may be a "standard police officer" who penned such invitations.

    (iv) The judge had become confused regarding the embassy visit in Hanoi, having referred to the Vietnamese Embassy.

17. In granting permission to appeal Designated First-tier Tribunal Judge Shaerf considered the appellant had not been asked whether she had made any efforts to contact Facebook and furthermore that the grounds for appeal gave good reasons regarding the challenge based on the arrest warrants being in the same hand. The judge had not addressed the issue of the appellant having moved to a different area in the context of the timing of the invitation notices. He concluded:

> "The express grounds are sufficient to conclude that the findings of the Judge may be so inadequately evidenced or reasoned as to amount to an arguable error of law. I would add that the Judge made adverse credibility findings about peripheral matters but did not make any express findings about the substance of the Appellant's claim that on return to Vietnam she was at risk because of her political activities and her faith other than the rather generic rejection of the political element of the claim at paragraph 37."

18. Mr Bradley had been instructed in June 2019 after the appeal had been dismissed and he had been the author of the grounds of challenge. He had only become aware of the grant of permission a week ago and he had not seen all the papers although had seen the refusal letter. I gave him time to read the respondent's bundle and he was provided with a copy of the decision by the Competent Authority (CA) although I note that a copy

had been served on the solicitors who were acting at the time of the appeal before the First-Tier Tribunal on 8 February 2019.

19. That decision is in brief terms. It explains that on 7 February 2019 it was decided that there were reasonable grounds to believe the appellant was a victim of human trafficking and that, following further investigations, the CA had concluded that the appeal was a victim of human trafficking. It continues in terms with reference to the pending asylum claim under which "... full consideration will be given to your risk on return to your home country, taking account of the finding that you are a victim of modern slavery". It is explained that further consideration would be given as to whether leave should be granted if the protection claim is refused. Mr Govan explained that it was not the Home Office practice to provide reasons on a grant although these could be obtained.

20. The CA decision is in the court file and I am satisfied that it was before the judge. Mr Govan also explained that the reference to the CA had been by Police Scotland on 25 July 2018 which evidently followed the encounter of the appellant by the authorities in the nail bar in Leven. The refusal decision refers to the reasonable grounds decision having been made on 2 August 2018. That is the extent of the knowledge of this aspect. The appellant's solicitors did not obtain any more detail prior to the hearing although it was open to them to do so. The judge was not told of matters that were taken into account for the decision and she considered the case on the basis advanced by the appellant in her screening interview on 14 August 2018 and the asylum interview on 14 January 2019.

21. Some of the answers given at interview were corrected in a letter from the appellant's solicitors dated 28 September 2018 which included clarification that the prostitution referred in the interview had been in Spain. The solicitors provided more information in response to a written request from the respondent on 7 November 2018 which included reference to the appellant having been in Spain for 5 to 6 months from March 2017 until she became aware of being in the UK. She was unaware of her location due to her kidnap during the intervening period. This response also explained in reply to a question regarding mental health care, that the appellant was pregnant and receiving "psychological input from Anchor - Dr Jen Meeson Gray".

22. At the substantive interview the appellant explained that she was well and had no medical conditions and that the only medication she was receiving were vitamins. She had learned about the opportunity to study in Spain from a lady from her village whom she had travelled with. Her father had paid the college and she had learned English before leaving. She had been interviewed about her visa at the "Vietnamese embassy in Hanoi". An airport pickup had taken them from Madrid to Murcia where she had lived with 4 other Vietnamese. She described an average day at her college on a six month course. A death threat message had led her to leave Murcia and she had applied to a college in Barcelona which she had travelled to by train. On arrival whilst she was looking for accommodation,

two men and a woman put a handkerchief on her face and put her inside a car. She was taken to a house where she was beaten and where she was forced to have sex with men. She thought she had been there about one and a half years. At some point she was moved to another house and she escaped when she was in a vehicle when on waking, she saw two men smoking outside and fled. The appellant was not able to say how she had ended up in the vehicle. When asked about her final destination, she had run to a residential area and saw a place with male Asian people and a statue of Jesus; that was the nail bar she had gone into in about June. The owners who were Vietnamese provided her with accommodation but she had not done any work in the nail bar nor was there any pressure to do so. Her partner was not working there.

23. Corrections to her answers were provided but none related to the trafficking aspect except the indication that she would be beaten up (after her kidnap) if she did not do as she was told. The appellant's witness statement does not materially depart from the account of kidnap and clarifies that the threat in Murcia related to her online political activity. As to her return as a victim of trafficking the appellant explains that her family had taken out a bank loan which they were repaying and she would be unable to receive the same level of support from them. She was scared that the traffickers would find her wherever she was.

24. I now turn to the first ground of challenge which argues that no consideration had been given by the judge as to whether the appellant should be entitled to asylum on account of the trafficking alone. A number of factors in the Home Office CPIN report are set out but significantly no reference to the tribunal decision in *Nguyen (Anti-trafficking Convention: respondent's duties)* [2015] UKUT 170 (IAC) which is cited in the refusal letter.

25. Mr Bradley considered error arose as the result of the absence of any finding on this element of the claim. Mr Govan accepted there had not been a clear finding. Both are right. The judge clearly had credibility concerns on this aspect but did not consider that she could go behind the CA decision. Such a course would have been open to her being the mirror of the approach explained in *ES (s82 NIA 2002; negative NRM) Albania* [2018] UKUT 00335 (IAC)**.** But in my judgment if the judge had answered the question whether the trafficking posed a risk to the appellant if returned, she could have only concluded that such a risk had not been demonstrated. As I reminded Mr. Bradley the burden of proof lay with the appellant. The evidence did not show that her kidnappers they had any connections to or in Vietnam; the appellant's account has been consistently that she came with a view to study in Europe and that she pursued a course in Murcia for most of its tenure. She was not lured to Barcelona but had gone there after establishing that she could study there. There is no evidence that the source of threats that triggered this move were in anyway connected to the strangers who seized her when she was looking for accommodation. Despite the decision of the CA, it was open to the judge to consider whether a different conclusion was

warranted after hearing the appellant and considering the evidence. That is not the course she took. If there were circumstances that led to the CA's decision which would have been relevant to risk it was incumbent upon the appellant's representatives to obtain the material and make their case. There is nothing in the appellant's evidence that was before the judge to show that the circumstances that led the appellant coming to Europe were connected to the events that occurred in Barcelona and there is nothing to show that she would be at any threat from those who seized her were she to be back in Vietnam. I have carefully examined the account of this aspect (as noted above) and how it evolved from the time the appellant was screened. This ground of challenge is not made out.

26. The next ground relates to the issue over the absence of evidence regarding the Facebook account which the appellant claimed had been taken down. The ground makes an evidential assertion as to the "notorious difficulty many organisations have had with Facebook, including our own Parlaiment [sic]...". The country information includes extracts from a download from a site called 'the Vietnamese' that refers to claims by the government's head of the "Internet management authority" that the government had been working with Facebook and Google to remove thousands of videos and accounts and from Reuters that refers to Vietnam being set "...to tighten clamps on Facebook and Google, threatening dissidents". A Vietnam Country Report from Freedom House refers to the success of the government in compelling Facebook and Google to remove "hundreds of accounts".

27. The judge noted that this material at [22] was consistent with the appellant's account which in her statement explains her belief that her account had been blocked and that she had tried to search for her old account and that the "whole profile has disappeared". The judge's note of the evidence reveals that she asked the appellant as to her Facebook account "did you not ask FB directly why you could not access your account" to which she replied "I did not know how to ask them". It was then put to her "presumably you could have contacted them online and asked what the problem was" to which the appellant replied "I do not know how to do that, I asked my friends and they told me if I had posted a lot of info against V they can have my FB closed".

28. The appellant has had advisers throughout and it has been reasonably open to them to assist her in obtaining evidence on this aspect. In my judgment the judge was entitled to question the absence of evidence on this aspect which feeds into the issue of whether the appellant's claimed postings led to the threats in Spain and to her decision to move to Barcelona.

29. The next ground takes issue with the overall credibility analysis with reference to a "structural failing". It is argued that there were possible explanations for the Invitation Notices being in the same handwriting. Mr Bradley argued that the judge had erred by reaching a conclusion on this aspect before looking at the documents in the round in an overall

assessment. In addition he argued that that the judge had not made a clear finding on whether the Facebook account had been blocked and that she had "teetered" on her findings on the Invitation Notices. He also added to the mix of the argument, although not raised in the grounds, that the judge had failed to have regard to the appellant's vulnerability by reference to the trafficking as an explanation for the absence of reference at interview to the issues of these notices.

30. I begin with the last point. It is correct it is not a ground of challenge. Even if I were persuaded otherwise, I do not consider that the point has any merit. There was no evidence before the judge that the appellant had difficulties with giving her account. At the outset of the substantive interview she said that she was well and fit and that she had no medical conditions or that she was taking any medication. At its conclusion she explained that she had no fears in the UK and by inference those who had trafficked her to this country were not considered a threat. She answered in the negative when asked if there was anything else that she feared in Vietnam and, in response to whether she had any questions at all, the appellant asked for a print out. She confirmed her health and said "no" when asked if there were further documents that were required to be submitted. The interview had been conducted by video conferencing and was followed, as I have observed above, by a number of requested corrections, none of which referred to any concern as to the appellant's health or ability to recall matters. Prior to the interview the appellant's representatives had signed and submitted a form confirming their assistance which in part addresses the planned interview. No preference was indicated as to the gender of the interpreter and interviewer and the appellant explained that she had no documents to submit.

31. I read to the parties the judge's note of the cross-examination on the issue of timing of the revelation of the Invitation Notices. The judge explained that she was still unclear why there had been no mention of the notices at interview. The appellant responded that she did not think about it at the time and that she was pregnant. Earlier in cross-examination she was asked why she had not mentioned the issue of three "arrest warrants" before and the appellant responded she had mentioned "that" in the second interview but did not know if "they understood me". Thereafter the appellant explained that after the refusal she had called her father and told him that she had been refused because she did not have evidence to prove she had been arrested. He had sent them to her.

32. I pause to note that there was no mention of the notices in the subsequent corrections and it is apparent from the answers at the hearing that the decision to obtain the papers only came about after refusal.

33. The judge noted in [26] of her decision the "extremely good condition" of the originals bearing in mind they were issued in 2016 and noted also their identical appearance although issued on separate days. She did not reject them simply for these reasons but it is clear that she considered these aspects went to the weight that could be given to them. The

signature appears to be the same which suggests the same authorship. Whilst I accept that the judge's observation that the same handwriting was used was not a legitimate weight factor her conclusions on the account was however after an evaluation of a number of the aspects of the evidence and I do not consider the error over the handwriting is enough to dislodge the force of the remaining credibility concerns. It is correct that she did not make a finding on whether the appellant had been active on Facebook but in the light of her reservations on this feature of the evidence it is clear from her conclusions as a whole that she rejected the entire account as not credible.

34. I accept that the decision might have been better structured but when considered in its entirety, I am persuaded that the credibility findings were open to the judge and that she did give sustainable reasons for rejecting the account. It is clear to me that she approached the task with an open mind, gave credit for the matters that supported the account and gave adequate reasons for her doubts in the course of the evaluation of the evidence. This did not mean that the judge did not consider that evidence in the round before rejecting the account. It is correct the doubts about the trafficking surfaced after the rejection of the account but there is no reason to believe that the judge did not have this aspect in mind having noted at [9] the positive CA decision. Her doubts over the account of the circumstances of the trafficking were in effect an expression of concern over what might otherwise have the positive pull of such an event. In granting permission, the First-tier Tribunal Judge observed a failure by Judge Agnew to address the appellant having moved to a different area. This is a misconception; in [11] of her statement the appellant did not say that she had moved to a different area but that she "...would leave the house so that the police could not find me".

35. This leaves the final ground. It was the appellant who first referred to the "Vietnamese" embassy in Hanoi in the interview where she explained that she had been interviewed for her Spanish visa. In order for this ground to have any purchase it needs to be established that the judge proceeded on the basis of the absurd notion that Vietnam has an embassy within and that it had power to issue Spanish visas. It is clear that the judge used the description of the Spanish embassy given by the appellant at interview which was perpetuated by the respondent in the refusal letter. The context in which the judge considered this aspect was the appellant's ability to study a course in English for 2 or 3 months, the frequency of the police visits to her home and travel to and attend the embassy for the visa. It is evident that this public profile was an aspect that troubled the judge in the light of the claims of continuing police interest. It cannot be said that the judge proceeded on a misapprehension as to the status of the embassy. This ground too is not made out.

36. As I explained at the beginning of the hearing, combing through a judge's credibility findings will often find a tangle and the issue is whether any is major, to use the metaphor of Lord Wilson in *KV (Sri Lanka) v SSHD* [2019] UKSC 10. In this case there were tangles but I am satisfied that the judge

came to a decision open to her on the evidence and any infelicities did not result in any material error. Legally sustainable reasons were given why the appellant was not believed. This appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

Signed Date 18 October 2019

UTJ Dawson
Upper Tribunal Judge Dawson