



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: PA/02692/2018

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 7<sup>th</sup> December 2018**

**Decisions & Reasons  
Promulgated  
on 11<sup>th</sup> January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DEANS**

**Between**

**TD  
(Anonymity direction made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr J Bryce, Advocate, instructed by Just Right  
Scotland

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision by Judge of the First-tier Tribunal Fox dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Vietnam. He arrived in the UK as an unaccompanied minor. He made a claim for international protection

based on political and religious grounds. The Competent Authority in the UK found that the appellant was trafficked within France prior to entering the UK.

3. The Judge of the First-tier Tribunal made adverse credibility findings against the appellant. Permission to appeal was granted on three grounds in particular. It was arguable that the judge erred (a) by failing to make a finding as to whether the appellant would be at risk returning to Vietnam as a victim of trafficking; (b) by failing when considering Article 8 to take into account English language certificates obtained and lodged by the appellant; and (c) by failing to have regard to the Joint Presidential Guidance Note No. 2 of 2010: Child, vulnerable adult and sensitive appellant guidance.
4. In his submission for the appellant Mr Bryce referred to a poor underpinning for the judge's adverse credibility findings. There was no regard to the Presidential Guidance on children and vulnerable adults. The judge did not properly take into account the finding that the appellant had been trafficked. The whole fact-finding exercise needed to be carried out again.
5. For the respondent Mrs O'Brien indicated that she was unable to defend the decision because of the strength of the arguments put forward on behalf of the appellant. She would not object to the appeal being remitted.
6. While a number of defects in the decision have been identified, the approach of the Judge of the First-tier Tribunal to the issue of trafficking provides a particular illustration of the weakness of the findings made. At paragraph 32 of the decision the judge notes that the respondent accepted that the appellant was a victim of trafficking. The judge also notes that the report on trafficking was not before him. At paragraph 34 the judge states that as the trafficking report is not before him it is difficult for him to accept that the appellant would be at risk on return from traffickers in Vietnam. The judge records at paragraph 36 that the appellant himself "does not identify any fear of individual or groups of traffickers." In the next paragraph, paragraph 37, the judge finds the appellant has "not demonstrated that he has any real and genuine fear of return to Vietnam."
7. While acknowledging the respondent's acceptance that the appellant was a victim of trafficking, the judge proceeds to question the implications of this finding, seemingly on the slender basis that the report on the trafficking of the appellant was not before him. From this position the judge then concludes that the appellant would not be at risk from traffickers on return to Vietnam. What is lacking in this approach is any reasoned analysis of the risk that might arise to the appellant from trafficking. Instead of carrying out

an analysis the judge presents a few doubts and queries of his own, which do not form an adequate basis for the findings he then makes.

8. The parties were agreed that the adverse credibility findings made by the judge should not stand. In view of the extent of the fact-finding exercise now required, remittal is appropriate in terms of paragraph 7.2(b) of the Practice Statement. The decision is set aside and the appeal remitted to the First-tier Tribunal, with no findings preserved, to be reheard before a differently constituted tribunal.

### **Conclusions**

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
10. The decision is set aside.
11. The appeal is remitted to the First-tier Tribunal, with no findings preserved, to be reheard before a differently constituted Tribunal.

### **Anonymity**

The First-tier Tribunal did not make a direction for anonymity. A direction has now been sought on behalf of the appellant. Having regard to the age and circumstances of the appellant, including the finding that he is a victim of trafficking, and in order to preserve the positions of the parties until the appeal is finally decided, I consider an anonymity direction should be made in the following terms. Until a court or tribunal directs otherwise no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and the respondent. Failure to comply with the direction may lead to contempt of court proceedings.

M E Deans  
24th December 2018  
Deputy Judge of the Upper Tribunal