



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

Appeal Number: PA/05111/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 8th January 2019**

**Decision & Reasons
Promulgated
On 30th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**M H T D
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bundock

For the Respondent: Ms J Isherwood

DECISION AND REASONS

EX TEMPORE JUDGMENT

- 1. Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**
- Anonymity having previously been ordered in the First-tier Tribunal and there being no application to remove the order, I see no reason to do so and the order remains in place. 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.

3. This is an appeal by the Vietnamese Appellant against the decision of the First-tier Tribunal dismissing his appeal brought on international protection grounds.
4. On a plain reading of the judge's decision he mistakenly believed that a contemporaneous attendance note from the representative of a discussion with a police officer was not available to him when in fact it had been made available in the course of the hearing. The note indicated that he had provided a witness statement to the police which was read out in open court through the mechanism of a hearsay application. The import of the point is that the judge concluded that the Appellant had not attended court to give evidence against his traffickers.
5. Ms Isherwood argued lack of materiality by pointing out that there was other evidence before the judge, to which he refers at paragraph 38, so that in any event the conclusion may have been the same. Whilst there is merit in that point, and Mr Bundock accepts that the evidence of the attendance note is not determinative, I find that it cannot be said that had the judge appreciated that he had the note it would not have made any difference. That becomes clear at paragraph 54, read back to paragraph 37, when the judge says that the Appellant did not give evidence in the trial and that he did not accept that the Appellant gave evidence via a written witness statement. The judge found that that was a matter which weighed adversely in the assessment of risk and it is not possible to say that had he appreciated the position it would not have had an impact on his assessment of risk.
6. Having found that error, I find it appropriate to set aside the decision of the First-tier Tribunal dismissing the appellant's international protection grounds of appeal relating to his asylum and humanitarian protection claim arising from his account of being a victim of trafficking and working in cannabis factories in the UK. The appeal is remitted to the First-tier Tribunal so that those can be determined afresh. In that light it has not been necessary for me to deal with the remainder of the grounds as they cover matters which will now be considered afresh at the First -tier Tribunal.
7. The Judge's findings and decisions that the Appellant is not at any risk on return based on his Catholic religion or his political opinion, referred to at paragraphs 51 and 52, are not challenged, and are not infected by error, and stand.
8. No fee is paid or payable and therefore there can be no fee award.

A handwritten signature in black ink, appearing to read 'E. Davidge'. The signature is written in a cursive, flowing style with a vertical line to the left of the first letter.

Signed
Deputy Upper Tribunal Judge Davidge

Date 08 January 2019