



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

Appeal Number: PA/06899/2019

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 10 December 2019**

**Decision & Reasons Promulgated
On 19 December 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**[T N]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, Counsel instructed by WTB Solicitors LLP

For the Respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 16 September 2019 Judge Dearden of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a national of Vietnam, against a decision made by the respondent on 8 July 2019 refusing his protection and human rights claim. On 7 March 2019 the National Referral Mechanism concluded he was a victim of modern slavery.
2. The judge accepted (as had the respondent) that in Vietnam the appellant had been a street child who had experienced an “unsettling and dreadful upbringing” (25(1)); had been trafficked to the UK (25(2)); had been forced

to work in a cannabis factory in the UK; had been responsible for alerting the police to its existence when he escaped (25(3)); had been placed with foster parents (Mr and Mrs Pilkington) who had helped him in many ways, including in his education (25(4)); and that he suffers from Hepatitis B and C (25(5)).

3. The judge noted that the appellant's home city was Hai Duong, which is relatively near Hanoi. Whilst not accepting that the appellant was in debt to traffickers. Given that the judge stated that the appellant "*quite understandably ... does not know whether the [appellant's] traffickers still exist there*" (in his home area) (my emphasis), I consider that he was effectively prepared to proceed for the purposes of the protection grounds of appeal on the basis of whether or not there would be a viable internal relocation alternative (26(3) and (4)). I note this because at 26(8) and 27 in the context of considering paragraph 276ADE and Article 8 ECHR, the judge appears to conclude (to different effect) that the appellant had not established risk in the home area, "bearing in mind the length of time since he left". As I explained to Mr Tan, I am not minded to take this as a point against the appellant's grounds (if I had taken the point, all of the appellant's grounds would have fallen away, which Mr Tan agreed would be curious, given the state of pleadings and lack of respondent response to date). In the context of the protection grounds, the judge focussed exclusively on whether there would a viable internal relocation alternative in a large city many miles away such as Saigon.
4. The grounds of appeal are four-pronged, it being submitted that the judge erred in:
 - (a) failing to address the appellant's case on relocation;
 - (b) wrongly conflating issues of relocation with issues of protection;
 - (c) wrongly conflating vulnerability with naivete; and
 - (d) failing to particularise why objective evidence demonstrating a lack of protection in Vietnam is to be disregarded.
5. I am grateful to the excellent submissions I received from both representatives. Mr Greer highlighted the Pathway Planning Assessment made by Lancashire County Council which [page 40 of the appellant's bundle] listed a number of risk factors which included that the appellant had not lived independently, had low educational attainment, physical ill-health and that there was "inability to keep himself safe ... It is felt that [the appellant] remains vulnerable to abuse and exploitation".
6. I am not persuaded that the judge erred in law. As the author of the grounds and Mr Greer noted, grounds (a) and (b) are interconnected. Their main thrust is that the judge only dealt with the issue of safety or "the question of whether there exists a risk and/or protection for the appellant in Vietnam". That contention is belied by a proper reading of the judge's decision. As regards the safety limb, the judge found at 26(3), in what can only be a reference to internal relocation, that, contrary to the appellant's claim "[t]here is no evidence to suggest that the traffickers [in

his home city] have access to any national database and I consequently find that the Appellant would be safe to a practical standard ...". The appellant's representatives have not advanced any arguments or identified any evidence to cast doubt on that finding.

7. As regards the "reasonableness" limb, contrary to the contention in grounds (a) and (b), the judge did plainly give separate consideration to the issue of whether it was reasonable for the appellant to relocate. Having identified the need for each case to be considered on its merits (paragraph 26(7)), the judge had regard to a number of circumstances going both to the appellant's individual circumstances and the general country conditions. The judge noted that the appellant had no supportive family but that he spoke the language of Vietnam (27(8)) and "could use his skills and maturity which he had acquired to regain employment there [in Saigon] assisted by a relocation grant" (27(8)). Whilst it is true that the judge's identification of some of the relevant circumstances is contained under headings relating to paragraph 276ADE of the Immigration Rules (paragraph 26(8)), it remains the case that he had these circumstances in mind when assessing his protection grounds of appeal as well. It is also clear that the judge understood that in the context of his protection claim the reasonableness assessment was distinct from the risk assessment: see for example his references in paragraph 26(7) and 27 to whether the appellant could "reasonably relocate". The judge also considered in the course of the same assessment the general country situation, referring in paragraph 26(9) to the US State Department Report on Human Rights 2018 and the US Department of State Trafficking Report dated 20 June 2019. At 26(10) the judge referred to the treatment of the issue of reasonableness in **Januzi [2006] UKHL 5**, noting that the essential test of reasonableness was one of which relocation would be "unduly harsh".
8. The appellant's ground (c) alleges that the judge "conflated vulnerability with naivete". It was argued in this connection that the factors that place individuals at risk of trafficking and exploitation are not limited to whether an individual has "wised up". The ground pointed out that relevant factors must encompass lack of family and friendship networks, secure accommodation or income or work experience; and young age as a survivor of trafficking. However, I am satisfied that the judge did take such factors into account. On the judge's analysis it was likely that the appellant would find employment and would also have the assistance of a grant from the Home Office if he left voluntarily. The judge noted that there were non-governmental organisations available to assist persons who return to Vietnam. In paragraphs 26(7) and (8) the judge addresses, inter alia, accommodation and job training and education. Thus the judge's reference to the appellant now being "exceedingly sceptical" if confronted with job offers (26(1)) and being able to use his "skills and maturity which he has acquired" (26(8)) reflected a wide-ranging and balanced assessment of the issue of the risk of re-trafficking. The judge considered the appellant's health circumstances and concluded they were not serious. Clearly the judge considered that the appellant had benefited

tremendously in his development as a young adult from the fostering he had been receiving from Mr and Mrs Pilkington.

9. Mr Greer highlighted the Pathway Planning Assessment from Lancashire County Council. I note first of all that the grounds themselves do not refer to it. Considering it as relevant to the grounds nevertheless, as far as can be ascertained, this report must have been based on facts as they stood in April 2018 at the very latest (the date he ceased being in the Council's care) and the risk factors are primarily if not exclusively addressed to the appellant's position in the UK. The judge noted at paragraph 8 that he had taken into account the appellant's bundle containing this report. I am satisfied that the judge properly took account of it and properly focused on the most recent evidence, post-dating April 2018, which included statements from Mr and Mrs Pilkington, who both considered the appellant was still vulnerable.
10. As regards ground (d), I consider it devoid of arguable merit. It effectively asserts that the judge should have found either that there was no sufficiency of protection in general in Vietnam or no sufficiency of protection for victims of trafficking. However, the judge considered the background evidence with care (and did not solely rely on earlier Tribunal country guidance) and it was entirely within the range of reasonable responses for the judge to conclude at 26(9) that:

“The Availability of Protection

Paragraph 39 of the Reasons for Refusal Letter deals with the US Department of State Report on Human Rights 2018 and in particular the Ministry of Public Security. **Paragraph 40** deals with the support and protection available to victims of trafficking but **Pages 10 and 11** of the Refusal Letter deal with various reports which have been studied before drawing the conclusion that the Appellant has failed to establish there is a sustained and systemic failure of state protection on the part of the authorities in Vietnam.

In an attempt to be brief in this Determination I will not re-hash all the representations made in the lengthy Reasons for Refusal letter.

Mr Holmes rightly draws to my attention **Page 155** of his bundle being the US Department of State Trafficking Report dated 20 June 2019. It is observed that the government decreased law enforcement efforts and the number of trafficking cases identified are declining instead of increasing. However the number of trafficking offences identified is in my conclusion small in light of the 90 million plus population of Vietnam. The same report indicates that the government maintained efforts to prevent trafficking and implemented the third phase of the 2016 - 2020 Nationality Trafficking Action Plan.

Whilst Mr Holmes identifies in the Respondent's own instructions to its officers at Page **212** of the Respondent's bundle that whilst legislation exists and prosecutions occur, a lack of coordination across provincial agencies resulted in uneven enforcement of the law. But in the same


section it is clear that trafficking for sexual and labour exploitation is prohibited under the law and the government has comprehensive anti-trafficking legislation and prosecutes those involved in trafficking.

Mr Holmes draws to my attention **Page 227** of his bundle at **Paragraph 8.4.1** but I find that this applies to women who are at high risk of being re-trafficked. It is said that there are no specialised long term support services for men who are victims of trafficking on return to Vietnam, but concerns over retribution in the local community are discouraging many victims from seeking or benefitting from protection services. This does not really apply in the case of this Appellant simply because he was living in a restaurant and in my conclusion could internally relocate as far away as Saigon”.

11. Mr Greer highlighted the fact that the country background evidence before the judge noted that Vietnam’s status had declined to the lowest Tier 2 level – namely that of “Watchlist” – and was characterised by a decrease in government efforts to protect victims. However, the judge specifically made reference to and evaluated this decrease. In light of the contents of this report read as a whole, which continued to classify Vietnam as a Tier 2 country, not a Tier 3 one, he was quite entitled to conclude that it did not demonstrate either a general insufficiency of protection in Vietnam or an insufficiency of government protection for victims of trafficking upon their return – see in particular page 157 of this report under the heading “Prevention”. Mr Greer complains that the judge “did not engage thoroughly with the background evidence”, but the references to thoroughness indicate a mere disagreement with the judge’s assessment.
12. Like Judge Dearden, I recognise that the result of this decision will be upsetting both to the appellant and Mr and Mrs Pilkington, the latter who have done (and are still doing) a great deal to assist the appellant. However, I can only interfere with the decision of a FtT Judge if satisfied there is a material error of law. I cannot discern any such error. The judge approached the evidence objectively and reached conclusions that were entirely open to him on the evidence.
13. For the above reasons I conclude that the judge did not materially err in law. His decision to dismiss the appeal is upheld.
14. An anonymity direction is made.

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: 16 December 2019

Dr H H Storey
Judge of the Upper Tribunal