



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

PA/02944/2019

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons Promulgated
On 5 November 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[K T]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Appellant's representative: Mr T Ruddy, of Jain, Neil & Ruddy, Solicitors

DETERMINATION AND REASONS (P)

1. This is an appeal against the decision of FtT Judge Gillespie, promulgated on 27 August 2019.
2. The grounds are set out in an application dated 10 September 2019, paragraphs 1 - 12. The FtT granted permission on 27 September 2019, summarising the grounds thus:

“The grounds assert that the judge erred in consideration of the case in line with the guidance in *Nguyen* [2017] EWCA Civ 258 and failed to consider the factors that render this appellant more vulnerable on return and at greater risk of being recognised as a former victim of

trafficking and of being re-trafficked, including her mental health problems. The grounds are arguable.”

3. The grant of permission refers to a case of no relevance. The case referred to in the grounds is *Nguyen* (Anti-Trafficking Convention: respondent’s duties) [2015] UKUT 00170 (IAC) (which does not involve the same appellant).
4. A hearing on error of law took place before me at Edinburgh on 13 February 2020. Mr Ruddy appeared for the appellant. Mr M Clark, Senior Presenting Officer, appeared for the respondent.
5. Mr Ruddy submitted that the foremost point of the grounds was that although the respondent accepted the appellant’s account, the judge based his decision on adverse credibility findings, in particular about the appellant having no family support in Vietnam, when there had been no dispute about what she said, and no challenge in cross-examination or in the respondent’s submissions. The judge mentioned his concerns in course of submissions for the appellant but he had not put any questions to her or provided an opportunity to revisit the issue by way of further oral evidence. It had been submitted for her that in such circumstances it would be incorrect to reach adverse findings.
6. Mr Ruddy referred also to [28] of the decision, where the judge finds that the appellant would have no problems on return to her home area because her trafficking did not begin there. He said that was illogical because her accepted account was that the traffickers began by luring her from home.
7. Mr Clark accepted that the judge erred by finding that the appellant had no family support, when that had not been a matter of controversy. He said that if the case were to proceed to a fresh decision, the respondent would not adopt that point, and would not challenge what the appellant said on that matter. He also accepted that the judge erred on where the trafficking began.
8. Mr Clark submitted that the errors were immaterial, because the outcome would inevitably have been the same, applying *Nguyen*. I see nothing in *Nguyen* to that effect.
9. In a decision dated 14 and issued on 19 February 2020, I found that the two above errors required the decision to be set aside.
10. The grounds make further challenges, mainly by reference to a country expert report and to medical evidence; but as a fresh decision was required, taking those aspects of the evidence into account, it was unnecessary to resolve those grounds.
11. Parties had not applied to introduce further evidence. They agreed that no rehearing of evidence was appropriate.

12. The case was listed to be heard on 23 April 2020, for final submissions on the decision which should be substituted. It was indicated in the error of law decision that outline written submissions from both sides would assist.
13. The pandemic intervened, and that hearing did not proceed. In a note and directions, issued on 12 May 2020, the UT took the view that the case might be suitable for resolution “on the papers by way of written submissions only”. The UT set a timetable for parties to respond accordingly, and to state any objection to such procedure.
14. Mr Ruddy, for the appellant, filed full written submissions on 1 June 2020, and copied these to the respondent.
15. By a further note and directions issued on 16 July 2020, the UT directed the respondent either to comply with directions, or to apply to extend time.
16. To date, there are no submissions on file from the respondent.
17. The UT may now fairly and justly proceed to resolve the case, based on all materials on file, in terms of rules 2 and 34.
18. *Nguyen* (Anti-Trafficking Convention: respondent’s duties) [2015] UKUT 00170 (IAC) is not country guidance, and does not say anything which requires this appeal to be dismissed, after correcting the errors made by the FtT.
19. The most relevant framework for deciding this appeal is not in country guidance or in other case law, but in the respondent’s “*Country Policy and Information Note, Vietnam: Victims of trafficking*”, version 4.0, updated in April 2020 (in similar terms to the note referred to in the FtT). The submissions for the appellant are closely based on that policy and on its supporting information. The policy section includes the following:
 - 2.4.7 It is unlikely that a person would be re-trafficked once returned to Vietnam but a person’s vulnerability may affect the likelihood of this happening so each case will need to be considered on its merits. The onus is on the person to demonstrate that their profile and circumstances are such that on return they would be vulnerable to abuse or re-trafficking which would amount to serious harm or persecution.
 - 2.4.8 Factors that may increase the risk of being abused or re-trafficked include, but are not limited to:
 - The person having an outstanding debt to the traffickers
 - The person knowing the trafficker
 - The absence of a supportive family willing to take the victim back into the family unit
 - The person having no other support network to assist them and material and financial deprivation such as to mean that they will be living in poverty or in conditions of destitution
 - No or little education or vocational skills

- Mental health conditions, which may have been caused by experiences of abuse when originally trafficked
20. The appellant has been trafficked and abused from place to place within Vietnam; in Russia and France; and within the UK, in Cardiff, Liverpool, and Glasgow.
 21. In a report dated 20 May 2019, the appellant's GP describes "symptomology consistent with complex, multiple traumas" with a "significant impact on the appellant's mental wellbeing" and opines that she meets the criteria for complex PTSD.
 22. Dr Tran Thi Lan Anh, a country expert, opines in her report dated 24 May 2019 that the support system for trafficking victims in Vietnam is poor and that, "Due to her vulnerable status she ... will be an easy target for human traffickers if she is returned and ... at serious risk of being re-trafficked".
 23. It is not clear from the evidence that the first two "bullet points" of paragraph 2.4.8 of the policy are met, but the history raises at least a suspicion that traffickers and abusers maintained their interest in the appellant over a protracted period, wherever she went. On evidence which is not in dispute, the other four "bullet points" are all met. I take into account that the UK offers support to returnees, but the respondent has not provided any details of what would be available in this case, and such support is inevitably finite.
 24. The appellant would be at risk in her home area. The evidence in this case does not defeat the claim on grounds of legal sufficiency of protection, or of internal relocation.
 25. The appeal, as brought to the FtT, is allowed on asylum and on human rights grounds.
 26. No anonymity direction has been requested or made.



2 November 2020
UT Judge Macleman