Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07004/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 10 January 2020	**On 15 January 2020**

Before

Upper Tribunal Judge Pickup

Between

QV
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Ms L Bashow, instructed by Parker Rhodes Hickmotts Solicitors
For the respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Gibbs promulgated 8.10.19, dismissing his appeal against the decision of the Secretary of State, dated 17.6.19 to refuse his protection claim made on 10.1.19, certifying the same under section 72 of the 2002

Act, and to maintain the decision made on 5.10.18 to deport him from the UK following his conviction and sentence of two years' imprisonment for production of cannabis.

2. First-tier Tribunal Judge Grant-Hutchison refused permission to appeal to the Upper Tribunal. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Kamara granted permission on 27.11.19.

3. At the outset of the hearing, Ms Bashow applied for the hearing to be heard in private, on the basis of the reporting restrictions. However, given that I have made an anonymity direction I saw no reason to justify holding the hearing in private. As it happens, no other party was present during the hearing.

4. Without advance notice, Ms Bashow also sought to amend the grounds of application to include a matter that had not been pleaded and in respect of which no permission had been granted. She asserted that this was a *Robinson* obvious point. In summary, it was submitted that it was an error for the judge to address the s72 certification issue first and that he should have determined first whether the appellant was a victim of trafficking. Ms Bashow asserted that a finding on trafficking in the appellant's favour would mean that the judge could not have reached a conclusion to uphold the certification on the basis that he had committed a serious crime and that he was a danger to the community. I do not follow the logic of that argument and as, in any event, the judge concluded that appellant was not a victim of trafficking the issue is not material to the outcome of the appeal. Further, as no application or notice had been given of the proposed amendment and no permission granted, I refused the application.

Error of Law

5. For the reasons set out below, I found no material error of law such as to require the decision of the First-tier Tribunal to be set aside.

6. In summary, the appellant's claim is that that he was trafficked out of Vietnam, having borrowed from illegal moneylenders to finance his clandestine journey to Russia and later to the UK, where he was forced to tend plants in a cannabis production operation in residential property. He was caught during a police raid. He fears return to Vietnam because he cannot repay the money he borrowed. However, for the reasons set out in the CPIN 2.1, this is not a Convention reason. However, he also claims that on return he would face a real risk of unlawful killing or inhuman or degrading treatment such as to entitle him to humanitarian protection.

7. The appellant had claimed to be the victim of trafficking but the NRM concluded that he was not a trafficking victim.

8. The factual basis of the claim was rejected by the respondent after applying paragraph 339L of the Immigration Rules. It was also considered that there would be a sufficiency of protection available to him, and that it would not be unreasonable or unduly harsh to expect him to relocate within the vast landmass and huge population of Vietnam to a place such as Ho Chi Minh City or Da Nang in order to avoid the alleged moneylenders.

9. By the operation of section 72 and on the basis of the rebuttable presumptions that he has been convicted of a particularly serious crime, namely involvement in the production of cannabis in an operation capable of producing significant quantities for commercial use, and that his continued presence in the UK constitutes a danger to the community, the appellant was excluded from protection under the Convention. Further, pursuant to paragraph 339D he was also excluded from humanitarian protection, for the same reasons.

10. The factual claim to have been trafficked to the UK and to be at risk of mistreatment from moneylenders on return was also rejected by the First-tier Tribunal, for the reasons set out in the decision.

11. Judge Gibbs concluded at [38] of the decision that the appellant had not rebutted the presumptions under s72 and therefore the appeals on Convention and humanitarian protection grounds were dismissed.

12. The judge then went on to consider article 3 ECHR. After taking account of the two expert reports, the claims to be a victim of trafficking and to be at risk on return from moneylenders were rejected, for the reasons set out in the decision. Neither did the judge accept that the appellant's mental health concerns were sufficient to meet the high threshold under article 3 ECHR. In brief terms set out from [51] onwards, the judge concluded that the appellant could not meet the requirements of paragraphs 399 or 399A of the Immigration Rules to show very significant obstacles to integration on return to Vietnam. Neither were there any compelling or compassionate circumstances. The appeal was dismissed on all grounds.

13. The grounds of appeal argue that the First-tier Tribunal erred in:

    (a) assessing credibility of the appellant's factual account of being at risk from moneylenders;

    (b) A flawed approach to the country expert report by failing to engage with the detail of the report, the experience and qualification of the expert, the credibility against the expert's opinion and that the expert was not basing her opinions on the appellant's account alone;

    (c) Failing, when considering the s72 certification, to consider large parts of the sentencing remarks, and failing to consider the objective and the expert evidence holistically;

    (d) Making a limited consideration of the medico-legal expert report without any regard to the diagnosis and the detail of the report;

(e) Assessing the credibility of the trafficking claim by focusing almost entirely on two issues to find the appellant not credible, without having adequate regard to the descriptive detail in the appellant's account of being the victim of trafficking and his explanation for the delay in the full account being given; and

(f) If the above grounds are made out, making an inadequate article 8 assessment.

14. In granting permission, Judge Kamara considered it arguable that the judge erred in "concluding that the country expert based her opinions solely on the appellant's account given the expert's opinion as to the plausibility of that account when viewed against country information. It is further arguable that there were multiple errors in the judge's treatment of the psychiatric report."

15. The according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor, unless the exercise is irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions, the appraisal of the evidence or assessment of credibility, or the evaluation of risk does not give rise to an error of law.

16. Grounds 2 and 4 assert that the judge's approach to the country expert report and the medico-legal report was fundamentally flawed. The grounds and the grant of permission assert that the country expert report was discounted because the expert based her opinions as to plausibility solely on the appellant's unchallenged account. However, I do not agree with that characterisation of the judge's reasoning. A careful reading of the decision reveals that the judge gave anxious scrutiny to the evidence and in particular the expert reports in comparison to the appellant's account and the other facts and circumstances of the case. It is not the case that the judge rejected the expert opinion on the sole basis of having accepted the appellant's factual account as truthful. The judge carefully assessed the various aspects of the appellant's accounts to have borrowed from moneylenders, to be the victim of trafficking, and to have a genuine fear of those moneylenders because he is unable to repay his debt. At [45] the judge accepted that the account of travel from Vietnam was equally consistent with a person voluntarily paying his way and using agents to do so, as with a person being trafficked. The judge also agreed that the amount of money the appellant said he paid was consistent with country background information.

17. The judge also took the appellant's account into consideration alongside a number of features which the judge considered to be at odds or inconsistent with the moneylaundering/trafficking claim. The judge was entitled to take into account evidence pointing against the appellant's account. For example, the judge bore in mind the appellant's account that he and his mother had previously been able to borrow money for medical

bills and that he could have done so again to travel abroad. There was also significant doubt about the account as to how he came to relocate from working in Russia to the UK. Another example is that at [42] of the decision, the judge found the peculiar claimed arrangement of his alleged oppressors arranging for his 'wages' to be sent to his mother in Vietnam was inconsistent with the claim to be the victim of trafficking. The judge was also entitled to take into account that at some stages the appellant had given a positive account that he was not held or forced to work against his will. Of significance in this regard is the fact that the appellant consistently and steadfastly maintained what he now claims to be a false account all the way through his arrest, prosecution, trial and sentencing, as well as in the trafficking assessment. The judge was entitled to point out that the appellant was sentenced on what he now claims to be a false basis that he had distanced himself from the people who brought him to the UK, that he had not been mistreated, was not held prisoner and had a key so that he was free to come and go whilst working in the cannabis production operation. Various other aspects of the account suggested to the judge that the appellant was not operating in a climate of fear, including, for example, failing to follow the instructions as to what to say if caught, allegedly given to him by Mr Tang.

18. The judge was also entitled to point out that it was only after the decision to deport him that his account changed to claim he had been trafficked and ill-treated. He had previously consistently claimed to have been well-looked after. At [33] and [34] the judge also pointed out that in July 2019 the appellant failed to disclose that he had any mental health issues or that he had been the victim of torture, and yet by that stage he had been separated from those who could do him harm for over a year. It was in the light of those considerations and after carefully considering the expert evidence that the judge concluded that the expert opinion that a delay in disclosure of mistreatment would be normal in such cases could not be accepted. The judge found it significant that not only did the appellant fail to disclose his present account, but that he positively put forward what he now claims to be a false account of being well-treated and did so consistently to the Home Office, to his legal representatives, and before the Crown Court. The judge was entitled to point out that this aspect of the appellant's case, his ability to put forward a consistent but allegedly false account, was inconsistent with the expert opinion that his treatment impacted his mental health and thus his ability to concentrate and focus in interview and that this feature had not been addressed by the expert. Neither were the inconsistencies addressed in the expert evidence. Ms Bashow stated that this was because the expert had not been asked to comment on that issue, but that is not the fault of the judge; she had to take the evidence as it was.

19. In Durueke (PTA: AZ applied, proper approach) [2018] UKUT 00197 (IAC), the Upper Tribunal held that "permission should only be granted on the basis that the judge who decided the appeal gave insufficient weight to a particular aspect of the case if it can properly be said that as a consequence the judge who decided the appeal has arguably made an

irrational decision." Further, "Particular care should be taken before granting permission on the ground that the judge who decided the appeal did not "sufficiently consider" or "sufficiently analyse" certain evidence or certain aspects of a case. Such complaints often turn out to be mere disagreements with the reasoning of the judge who decided the appeal because the implication is that the evidence or point in question was considered by the judge who decided the appeal but not to the extent desired by the author of the grounds or the judge considering the application for permission." I find that in large part, at least, the grounds pleaded in this case are disagreements.

20. Whilst the expert country evidence may suggest that many elements of the appellant's factual claim are consistent with the country background information and therefore plausible, and whilst this is obviously relevant to the credibility assessment, that does not require the judge to accept the account. The task of the judge was to assess whether in the round the claim was credible to the lower standard of proof. In doing so, it is clear from the decision that the judge took the expert evidence and the plausibility of the appellant's factual claim into account. However, the judge set out several factors that she concluded were inconsistent with the claim. The judge was entitled to reach a different view of the evidence. Nothing in the grounds demonstrates that the judge's approach was fundamentally flawed or irrational. On the evidence and for the reasons given, the judge was entitled to reach the ultimate conclusion that the claim was not credible. In effect, the ground is an elaborate disagreement with the conclusion reached.

21. Ms Bashow also criticised the judge's reliance on the appellant's changing account as undermining of his credibility. It is point out that the medico-legal report addressed delayed disclosure and trauma may impede ability to recall events or answer questions. Ms Bashow pointed out that even the CPIN accepted that delayed disclose was to be expected in a victim of trafficking. However, on reading the decision as a whole, I do not accept that the judge ignored or discounted this evidence. When assessing this evidence in the context of the evidence as a whole, the judge pointed out that the appellant had several opportunities to present his claim, to the Home Office, the NRM, the Courts, but only changed his account after the decision to deport him was made. Further, rather than having difficulties remembering or presenting a consistent account, he was in fact able to maintain a consistent account on several different recounting of his case with no indication of difficulty in recollection. In those circumstances, the judge was entitled to limit the weight to be given to the medico-legal report in the overall assessment of the evidence. Adequate and cogent reasoning has been provided for the conclusions reached that the appellant was not trafficked but made his own way to the UK, even if he borrowed money to do so, and was working for wages rather than being forced to tend the cannabis production operation. Once again, the grounds are a mere disagreement. That assessment of credibility of the account clearly took into account the expert evidence but, as stated above, plausibility is not the same as credibility.

22. Ground 3 asserts that in assessing the seriousness of the offence, the judge failed to take into account the whole of the sentencing remarks and was selective in those parts relied on. However, in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC), the Upper Tribunal stated that, "It is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost." It was not necessary for the judge to set out the whole of the sentencing remarks, or even to summarise them. At [27] the judge made clear that she had made a careful consideration of the sentencing remarks. The judge was entitled to reach the conclusion that the appellant had been convicted of a serious crime and that he was a danger to the community. The reasoning provided at [27] onwards is cogent and sustainable. The judge was also entitled to take into account when assessing risk that the appellant now claims that the mitigation made before sentencing presented a deliberately false account to the Crown Court, asserting that he had distanced himself from those who brought him to the UK, that he was not held prisoner, and that he was well-treated and free to come and go as he pleased. In reality, this ground is also no more than a disagreement with the decision and an attempt to reargue the appeal.

23. None of the remaining grounds pleaded, most of which either overlap the above considerations, or stand or fall with them, are material to the outcome of the appeal and it is not necessary to address them.

24. It was for the judge to assess the weight to be accorded to the evidence. It is clear from the decision, for example at [12] where the judge accurately summarised the basis of the appellant's case, that a holistic approach to the evidence has been taken and cogent reasoning sustainable on the evidence has been provided. In the circumstances, I find no material error of law in this decision and the appellant's appeal to the Upper Tribunal must fail.

Notice of Decision

25. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Upper Tribunal Judge Pickup

Dated 10 January 2020