



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number PA/12677/2018 (V)**

**THE IMMIGRATION ACTS**

**Heard at George House via Skype for  
Business  
On Monday 11 November 2020**

**Decision & Reasons  
Promulgated  
On Monday 16 November  
2020**

Before

**UT JUDGE MACLEMAN**

Between

**H H P**

and

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr T Ruddy, of Jain, Neil & Ruddy, Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This determination is to be read with:
  - (i) The respondent's decision dated 16 October 2018, refusing the appellant's claim on all available grounds.
  - (ii) The appellant's grounds of appeal to the First tier Tribunal.

- (iii) The decision of FtT Judge Mrs D H Clapham, promulgated on 2 April 2019.
  - (iv) The appellant's grounds of appeal, stated in his application to the FtT in 4 paragraphs, challenging [63, 65 and 66] of the FtT's decision.
  - (v) The appellant's further grounds of appeal in his application to the UT, 1 (a) - (c), elaborating on the first set of grounds.
  - (vi) The FtT's and UT's refusals of permission, on the view that the grounds were only disagreement on the facts.
  - (vii) The joint minute between the parties in the Court of Session, quoted below.
  - (viii) The UT's grant of permission, in light of the Court's interlocutor and the joint minute.
  - (ix) The respondent's response under rule 24, dated 14 October 2020.
2. I conducted the hearing on 11 November from George House, Edinburgh. Representatives attended remotely. No members of the public attended, either in person or remotely. The technology enabled an effective hearing. I am obliged to both representatives for their clear and accurate submissions.
3. The joint minute agrees that the UT erred in law when refusing permission:
- i. At [66] ... the FtT found that the expert report overstated the [appellant's] mental health problems;
  - ii. At 5.1 of the expert report [by Dr TRAN Thi Lan Anh, dated 5 December 2018] it was stated that according to the medical report of 19 November 2018 [by Dr Geraldine M Kelly] the [appellant] ... suffered from anxiety, trauma and depression; the language used by [Dr Tran] corresponds to the description in [the medical report]; [Dr Tran, in his conclusion] was of opinion that the [appellant] was thereby at increased vulnerability inter alia to a serious risk of being re-trafficked;
  - iii. The conclusion ... is among the sections of the report argued in the grounds not to have been taken into account by the FtT in assessing the risk of re-trafficking;
  - iv. In taking its decision on permission to appeal to itself, the UT did not consider whether the FtT arguably erred in law in its assessment of the expert report in that regard ... As such the UT assessment of risk was inadequate.
  - v. Parties reserve their position on the remaining issues.

4. The error identified in the joint minute is not only arguable, but established. The country expert did not overstate the appellant's mental health condition. He derived his view from the medical report. That error played a part in the FtT's evaluation of the expert report.
5. The main points in Mr Ruddy' submissions were that the judge gave too much significance to the appellant being unable to explain how he was identified at a demonstration, a matter not within his knowledge, and only one aspect of his claim about events in Vietnam; that she was unreasonably critical of the appellant's evidence that his enquiries about his mother were fruitless; and that she overlooked sections of the evidence about the risk of re-trafficking. Although the judge at [65] set out factors, derived from case law, relevant to that risk, she did not go on to recognise that several of those apply to the appellant.
6. At [66] of her decision the judge said there was "nothing to suggest that the appellant owes the traffickers any money", but that does not sit well with his accepted history, or with the passage at interview to which Mr Ruddy referred, part of what the appellant said about Vietnamese men who put him to illegal work in the UK:  
Q 164. Did you ask them how much you were going to be paid?  
A. No they told me to pay off the cost of the travel, I did not dare to ask them anything.
7. Having heard the submissions of Mr Ruddy, Mr Diwyncz conceded that various errors of law were shown in the decision, and it could not safely stand. It was agreed that the case required a fresh hearing in the FtT.
8. (As Mr Diwyncz suggested, it may be useful in the FtT to refer to the respondent's Country Policy and Information Note on trafficking in Vietnam, most recently updated in April 2020. The note incorporates the case law mentioned above.)
9. The decision of the First-tier Tribunal is set aside. The case is remitted to the FtT for a fresh hearing, not before Judge Clapham.
10. 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 his 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.



12 November 2020  
UT Judge Macleman

### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.