



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10709/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House by MS
Teams
On the 18 January 2022**

**Decision & Reasons
Promulgated
On the 28 February 2022**

Before

**THE HON. MRS JUSTICE HEATHER WILLIAMS
UPPER TRIBUNAL JUDGE OWENS**

Between

**VPN
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Fraczyk, Counsel instructed by J M Wilson

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION MADE PURSUANT TO RULE 40(3) OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Chana sent on 4 June 2021 dismissing his appeal against the decision dated 22 October 2019 refusing his protection and human rights claim.

2. The hearing was held remotely by Microsoft Teams. We were satisfied that a face-to-face hearing could not be held because it was not practicable and that all of the issues could be determined in a remote hearing. The parties confirmed that they could see and hear each other and there were no problems with connectivity. Neither party complained of any unfairness.
3. The appellant is a citizen of Vietnam. There has been a positive conclusive grounds decision by the National Referral Mechanism that he has been the Victim of Modern Slavery in the UK. His claim for asylum is based on his fear of serious harm at the hands of loan sharks in his home area in Vietnam and of being re-trafficked. He asserts that there is no sufficiency of protection, and that internal relocation is not available to him. He also claims to be at risk as a result of his 'sur place' activities in the UK. He further asserts that there are very serious obstacles to his reintegration to Vietnam and his removal from the UK would constitute a disproportionate breach of Article 8 ECHR.
4. In the rule 24 response the respondent conceded that the judge had made a material error of law because there had been procedural unfairness in the way that the appeal had been conducted.
5. We are in agreement. The appellant submitted reports in advance of the hearing that he has complex PTSD and he was assisted by a support worker from the Helen Bamber Foundation. The judge decided that he was a vulnerable witness. During the hearing the appellant became distressed, punched a wall and in doing so he injured his hand and was conveyed to Accident and Emergency because of his poor mental health and physical injury. This is recorded by the judge at [28]. At [30] the judge records the representative's submission that "the appellant should be present at his hearing for the hearing to be a fair hearing". The respondent concedes in the rule 24 response that the appellant's counsel applied to adjourn the hearing on the basis that it should not proceed in the appellant's absence.
6. The respondent concedes that the judge did not explicitly consider the adjournment request made at this stage and did not give any reasons for proceeding with the appeal. We are satisfied from the decision that the judge did not demonstrate that she had applied her mind as to whether it was fair to continue with the appeal in the absence of the appellant at all and secondly that there is no explanation as to why she thought that it was fair to continue in the absence of the appellant. In our view, even had an adjournment request not been made the judge should have considered whether to adjourn the appeal of her own accord where the appellant was vulnerable and had been taken to hospital during a hearing. The respondent also concedes that the error was compounded by the judge then going on to make negative credibility findings about the

appellant in relation to matters which were not put to him because he was not present. We are satisfied that the decision is so vitiated by procedural unfairness in these circumstances that it cannot stand and must be set aside in its entirety subject to the preserved findings.

7. We preserve the judge's finding at [36] that the appellant is a Victim of Modern Slavery.
8. The First-tier Tribunal may need to determine the scope of any other concession made on behalf of the respondent. For the avoidance of doubt, our decision does not impact upon the status or extent of any such concession as may have been made by the respondent's representative at the First-tier Tribunal hearing.
9. Various comments have been made by the appellant's representative in relation to the way the hearing was conducted. The grounds of appeal address only the fairness or otherwise of proceedings and we do not find the need to make any further findings on the conduct of those present in the hearing. It is for the appellant to decide whether to pursue these matters.
10. It will be for the First-tier Tribunal to make any further directions in light of any further medical evidence adduced regarding the appellant's capacity or ability to participate in the hearing and to make directions on appropriate reasonable adjustments.
11. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. We are satisfied that the parties have given such consent at the hearing, but we have summarised our reasons above for the benefit of the parties.

Disposal

12. Both parties were of the view that given the concession that there had been procedural unfairness, the appellant is yet to have a fair hearing and that the appeal should be remitted to be re-heard with the finding in respect of modern slavery preserved.

Notice of Decision

13. The decision of the First-tier Tribunal involved the making of an error of law.
14. The decision of the First-tier Tribunal is set aside in its entirety apart from the finding preserved at [7] above.

15. The appeal is remitted to be heard de novo before a judge other than First-tier Tribunal Judge Chana.

Anonymity Order

This appeal concerns a claim made under the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Signed

Date: 18 January 2022

R J Owens
Upper Tribunal Judge Owens