



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001117

First-tier Tribunal No: PA/51446/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

18th October 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

KLH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer of Counsel, instructed by Deus Nexus Solicitors Ltd
For the Respondent: Mr A Basra, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 18 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Davies promulgated on 17 February 2023 in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 7 April 2022 was dismissed.
3. The Appellant is a national of Vietnam, born on 23 January 1997, who made a protection and human rights claim on 5 October 2019 on the basis that he would be at risk on return to Vietnam because of his political views as a member of the Viet Tan party and because his father was on a watchlist in Vietnam having been removed from the police force. The Appellant had previously been in the United Kingdom as a Tier 4 (General) Student.
4. The Respondent refused the application the basis that the Appellant's claim was inconsistent and it was not accepted that he was a member of the Viet Tan or that he had attended demonstrations or had any high profile involvement, nor had he been targeted by officials. Further it was not accepted that the Appellant's parents had been targeted or arrested because of the Appellant. As such the Appellant would not be at risk on return, was not entitled to humanitarian protection and removal would not breach Articles 2 or 3 of the European Convention on Human Rights. The Appellant did not meet any of the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules for a grant of leave to remain on family or private life grounds. Finally the Respondent considered the Appellant's mental health but found that the high threshold for a breach of Article 3 on this basis was not met.
5. Judge Davies dismissed the appeal in a decision promulgated on 17 February 2023 on all grounds. The Judge accepted that the Appellant's father was on a watchlist in Vietnam but not that his parents had been targeted because of any activity by the Appellant. The Appellant's claim was found not to make sense in relation to his parents in particular. It was further found that the Appellant had not established that he had been politically active prior to 2019 or of any adverse interest to the authorities prior to that time and at best, since, he had been a member of the Viet Tan Friendship Association with a low profile. As such the Appellant would not be at risk on return to Vietnam. The human rights appeal was also dismissed, primarily on the basis that medical treatment was available to the Appellant on return.

The appeal

6. The Appellant appeals on four grounds as follows. First, that the First-tier Tribunal erred in law in failing to consider and treat the Appellant as a vulnerable witness on the basis of his accepted mental health problems. Secondly, that the First-tier Tribunal erred in law in making unsafe credibility findings given that there was evidence available of his bus and flight tickets to the United Kingdom via Laos. Thirdly, that the First-tier Tribunal erred in law in failing to consider all matters cumulatively, including that he was more likely to be of interest to the authorities because his father was already on a watchlist. Finally, that the First-tier Tribunal erred in law in failing to consider all of the background country evidence available in the CPIN, which does not say that a low-level activities is never at risk and referred to crackdowns by the authorities since 2018.
7. At the outset of the oral hearing, Mr Basra indicated that there was force in the first ground of appeal in that there was reference to the Appellant being vulnerable on account of his mental health in the papers but no consideration of or application of the Presidential Guidance for vulnerable witnesses. There was

however no medical evidence as to the impact of the Appellant's poor mental health on him relevant to the assessment of his appeal. It was not accepted that there was any merit in the other grounds of appeal.

8. On behalf of the Appellant, Mr Greer relied primarily on the first ground of appeal that the First-tier Tribunal was under a duty to consider and apply the Presidential Guidance but failed to do so and in any event should have had regard to the Equal Treatment Benchbook which sets out the possible impact of poor mental health on a person. Whilst it was accepted that there was no medical evidence as to the impact on this Appellant, it was submitted that it was still an error of law to give the matter no consideration at all.
9. In relation to the second ground of appeal, Mr Greer highlighted the evidence that was before the First-tier Tribunal as to the Appellant's travel back to the United Kingdom from Vietnam via Laos, not all of which was translated, but the document confirming a change to his flights was in English and not taken into account. The remaining grounds of appeal were said to be interwoven with the assessment of credibility.

Findings and reasons

10. The key issue in this appeal is in the first ground of appeal in relation to whether the First-tier Tribunal erred in law in failing to apply the Joint Presidential Guidance on Vulnerable Witnesses. It is first necessary to consider what information was available to the First-tier Tribunal about the Appellant's mental health.
11. In the Appellant's skeleton argument, it is submitted that the Appellant "*has mental health vulnerabilities occasioned by his experiences and he is suffering from depression, he seeks to be treated as a vulnerable witness. A will seek an initial discussion at the start of any proceedings on what reasonable adjustments the Tribunal may be able to facilitate in order to minimise the risk of re-traumatisation.*" The document included a footnote link to the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. There is nothing to suggest that the issue was raised separately prior to the hearing (for example to request any specific adjustments and there was no CMRH) or during the hearing itself.
12. The medical evidence available to the First-tier Tribunal is primarily from 42nd Street, a charity providing mental health support which sets out their engagement with the Appellant and his symptoms (without specific diagnosis which they are not able to provide) as well as medication prescribed and use of Cognitive Behaviour Therapy, as well as a wait for further therapy. The letter sets out the impact of the asylum process on the Appellant but does not include any detail as to the impact of his mental health on matters that may be relevant to the assessment of his claim or credibility. There is a short separate confirmation from the Appellant's GP that the Appellant is suffering from anxiety and depression and is undergoing talking therapies, but again no information as to the impact of the Appellant's mental health.
13. The Joint Presidential Guidance places the primary responsibility for identifying vulnerable individuals and what is required on their representative, but it is also clear from the guidance that there is a duty on the First-tier Tribunal to raise issues as well as these may not have been recognised by a representative (or not adequately raised as seems more likely in this case). In paragraph 3 of the

guidance, it is stated that the consequences of a persons vulnerability differ according to the degree to which an individual is affected and it is a matter for the Tribunal to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before it, taking into account the evidence as a whole.

14. Whilst there was no evidence at all before the First-tier Tribunal of the impact of the Appellant's mental health on matters which may be relevant to his appeal and no requests for any practical measures requested for the hearing; there was still a duty on the Judge to expressly consider the guidance and state how it has been applied (or if not, why not). Although in the absence of any specific evidence it is difficult to see what precisely the First-tier Tribunal could or should have taken into account as a matter of substance that could have had any material impact on the outcome of the appeal, it is a matter that was required to have been expressly considered, even if only to the extent of identifying the vulnerability, even if there was no effect on the assessment of the evidence as a result (as required in paragraph 15 of the guidance). It was an error of law for the First-tier Tribunal to fail to do so and although it may not have materially affected the outcome, it is impossible to say that with any certainty without the assessment having been made and as this is essentially a matter of procedural fairness, it is normally accepted that such an error is material. For these reasons, the First-tier Tribunal decision must be set aside and the appeal remitted to the First-tier Tribunal for a de novo hearing.
15. The remaining grounds of appeal add nothing of substance to the first ground of appeal and do not need to be considered in any detail given that there will be a de novo hearing in any event. In relation to the second ground of appeal, I would however note that there was evidence before the First-tier Tribunal of the Appellant's travel from Vietnam to the United Kingdom via Laos (albeit not all of it was translated) which was not taken into account, particularly in paragraph 23 of the decision. In light of the other findings, this would not alone have been material to the outcome of the appeal, but in any event can be considered in the further hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal for a de novo hearing before any Judge except Judge Davies.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5th October 2023

