IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003235

First-tier Tribunal No: HU/00193/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued
On 12 September 2024

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

THANH THUY PHAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Ms Young, Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 2 September 2024

DECISION AND REASONS

1. The Appellant, a citizen of Vietnam, entered the UK with a grant of leave until 24 July 2017, which was subsequently extended until 5 September 2020. On 23 November 2020 she was convicted and sentenced for a number of offences relating to the supply of drugs and the proceeds of crime. Some sentences were to be served concurrently, and some consecutively. In aggregate the length of the term of imprisonment that was imposed was 81 months, but individually no sentence exceeded a term of 48 months immediate custody.
2. The Respondent indicated her intention to deport the Appellant as a result, and after considering her response made a Deportation Order on 24 December 2021, and refused her deemed human rights claim on 30 December 2021. The Appellant duly appealed that refusal, and her appeal was heard and dismissed by First-tier Tribunal Judge Hatton in a decision promulgated on 15 June 2023. The Appellant sought permission to appeal that decision to the Upper Tribunal, and permission was granted to her by decision of Judge Boyes of 24 July 2023.
3. Thus the matter comes before us.

The hearing

4. By email of 20 August 2024 at 0808 the Appellant complained to the Tribunal that her solicitor was no longer able to help her with the appeal, and she requested an adjournment so that she might find another lawyer. Her solicitors had not however sought to come off the record as acting for her, and were contacted by the Tribunal. They advised that the Appellant had not paid their fees, but if the hearing were conducted by CVP they would represent the Appellant pro bono. The application for an adjournment was duly refused, and the decision notified to the Appellant by the email address she had used to make the application.
5. When the appeal was called on for hearing at 1000 hours there was no attendance from either the Appellant, or any representative on her behalf, and it was duly stood down for enquiries to be made. Tribunal staff were eventually able to contact the Appellant's solicitor by telephone, who advised that he was in a café, but would log in to the hearing within thirty minutes. Thereafter there was no response to the Tribunal's attempts to contact him.
6. At 1145 the appeal was called on for hearing once more. There had been no further communication from the Appellant's solicitor and no attempt to log into the hearing. There had been no attempt to log into the hearing by the Appellant, and she had not attended the hearing centre. There had been no communication for either to advise of a reason why there had been no attendance, and no application for an adjournment.
7. In the circumstances we were satisfied that both the Appellant and her representative had been properly served with notice of the hearing, and that both knew the application for an adjournment made by email on 20 August 2024 had been refused. There had been no attendance by either, and no explanation for that had been offered. There had been no further application for an adjournment.
8. We were satisfied, having considered the over-riding objective, that it was not in the interests of justice for there to be any further delay in the disposal of the appeal, and that a fair hearing of the appeal could take place, notwithstanding the absence of both the Appellant and her representative. We duly proceeded to hear the appeal.

Error of Law?

9. There are three grounds to the application for permission to appeal. The first asserts that the decision of Judge Hatton was "irrational or perverse" because of a failure to consider adequately the effect of the Appellant's deportation upon her daughter. Specifically it is asserted that he failed to properly consider that there would be a *de facto* deportation of the daughter (a British citizen) if her mother was deported, and wrongly approached the question of the daughter's integration into Vietnam by placing undue weight upon the fact that she had lived there for a period of time. The second repeats the assertion that there has been a failure to consider the *de facto* deportation of the daughter, a British citizen, as a consequence of the deportation of the Appellant. The third asserts a failure to give adequate weight to the daughter's British citizenship.
10. Although permission to appeal was granted by Judge Boyes on all three grounds, it is plain from the decision of Judge Hatton that he did expressly recognise the British citizenship status of the Appellant's daughter [33, 51. 109]. The grounds do not identify any passage in the decision that suggest he lost sight of this status. On the contrary, it is clear that he did not because he expressly considered the ability to acquire recognition as a Vietnamese citizen, and whether she would be required to renounce her British citizenship to do so [109].

11. The evidence placed by the Appellant before Judge Hatton was that her daughter had no parental relationship with either her father, or any male friend of the Appellant's. The Appellant had sent her daughter to live in Hanoi, Vietnam, for a period of 33 months, within her own extended family. Her daughter spoke Vietnamese fluently, and the evidence was that she had a very good relationship with the members of her extended family, and particularly her maternal grandparents. Her daughter had only recently returned to the UK by the date of the hearing. So although she was not yet seven years old, she had spent a very significant part of her life in Hanoi.
12. The Appellant had arranged for her daughter's education in Hanoi, and there was no evidence to suggest that whilst in Vietnam she had lacked for either suitable education or medical care. The Judge inferred from that circumstance, that this would also be the position upon return.
13. The evidence the Appellant had relied upon as mitigation before the Crown Court, of having been trafficked into the UK, and having been subject to threats from criminals, was not relied upon before Judge Hatton. The Appellant did not pursue any protection claim before the Tribunal, and Judge Hatton concluded that the claims that had been made to others of such problems were a fiction. Thus he approached the appeal, correctly, on the basis that there was no risk of harm to the Appellant, or her daughter, in Vietnam.
14. The threshold for a perversity or irrationality challenge is a high one, and we are satisfied that although professionally drafted, this complaint falls well short of the relevant standard. This was a careful and detailed decision in which all of the evidence relied upon by the Appellant was considered and analysed. The Judge had firmly in mind throughout his evaluation of the evidence, and his reasoning process, the circumstances of the Appellant's daughter and the effect upon her of the deportation of the Appellant.. His conclusion that the effect upon her would not be "unduly harsh" was well open to him, indeed on the fact of this case, it was the only realistic conclusion that he could reach.

Conclusions

15. In the circumstances we are not satisfied that the Judge fell into any material error of law in his approach to the evidence before him, and his decision to dismiss the appeal is confirmed.

Notice of Decision

The decision promulgated on 15 June 2023 did not involve the making of a material error of law. The decision to dismiss the appeal is confirmed.

JM Holmes
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
3 September 2024