



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-005626
First-tier Tribunal No:
PA/50312/2022
IA/01125/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

A V N

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Lams, Counsel instructed by Sriharans solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on Friday 20 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (AVN) 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. The Appellant appeals against the decision of First-tier Tribunal Judge Bart-Stewart dated 7 February 2023 (“the Decision”), dismissing the

Appellant's appeal against the Respondent's decision dated 12 January 2022 refusing his protection and human rights claims.

2. The Appellant is a national of Vietnam. He says that he was abandoned by his parents at birth and that he was raised by a Catholic Priest, Father [B]. He says that in December 2016, he took part in a demonstration to reclaim land belonging to the church which had been seized by the Vietnamese authorities. He says that he and his house mates were later arrested. He says that he was forced to confess to being anti-government. He was detained and physically mistreated. He later said that he had also been taken to court and sentenced to term of imprisonment. He claimed to have escaped from prison with the assistance of Father [B], and left Vietnam with the assistance of an agent.
3. The Appellant flew first to Russia and then entered the UK in September 2017 where he claimed asylum. He was at that time still a minor. He was later found by immigration officials working in a nail bar. A referral was made to the National Referral Mechanism. The NRM decided that there were positive reasonable grounds for finding that the Appellant was a victim of modern slavery, but the Appellant did not pursue this further as he said that he had been helped by those who employed him in the nail bar.
4. The Respondent accepted the Appellant's age (sixteen on arrival). She also accepted his nationality. No issue was taken by the Respondent about his background and upbringing (although there is no formal concession of those facts). She did not accept that he had been politically involved, arrested, detained or mistreated as he claimed. It was not accepted that he was of interest to the Vietnamese authorities on return. It was not accepted that there were very significant obstacles to the Appellant's integration in Vietnam. It was not accepted that removal would breach his Article 8 ECHR rights.
5. By the time of the hearing before Judge Bart-Stewart, the Appellant had been diagnosed as suffering from a moderate depressive episode and at risk of suicide. He relied in that regard on a report of Dr Salah Dhumad, MBCHB, MRCPSYC, MSC CBT, MA IR, Consultant Psychiatrist dated 22 January 2023 ("the Psychiatric Report"). That was not before the Respondent at the time of her decision nor at the time of her review.
6. Judge Bart-Stewart found the Appellant's account not to be consistent with background evidence ([27] of the Decision). She found inconsistencies in the Appellant's account ([28] to [30]). Whilst accepting that the Respondent had not expressly challenged the Appellant's account as to his upbringing, she did not accept that the Appellant was an orphan ([30]). Nor did she accept that Father [B] existed ([30]). She therefore dismissed the appeal on protection

grounds. At [35] of the Decision, the Judge dealt briefly with the Appellant's Article 8 claim, finding that there would be no very significant obstacles to the Appellant's integration in Vietnam and that removal would not breach his rights under Articles 3 or 8 ECHR. She therefore also dismissed the appeal on human rights grounds.

7. The Appellant appeals on six grounds which can be summarised as follows:

Ground one: the Judge failed to take into account the Psychiatric Report when relying on inconsistencies in the Appellant's evidence.

Ground two: the Judge accepted or did not reject the Appellant's evidence about his physical injuries and should have allowed the appeal on that basis. It is said that the Judge has misdirected herself by failing to have regard to relevant case-law. Under the same heading, it is said that the Judge's reasoning on the Article 8 grounds is inadequate.

Ground three: the Judge erred in finding that Father [B] did not exist. This was not disputed by the Respondent and amounts to "a complete ambush".

Ground four: the Judge failed to provide reasons for her finding that the Appellant is not an orphan (particularly where this was not disputed by the Respondent).

Ground 5: the Judge's finding that there is no evidence that the Appellant will be destitute is "absurd", particularly having regard to his claimed background and that he is cared for by the local authority as a "looked after child" whilst in the UK. This ground overlaps with grounds three and four which challenge the underlying findings.

Ground 6: the Judge did not consider whether the Appellant would face very significant obstacles to integration as a victim of trafficking.

8. Permission to appeal was granted on 10 March 2023 by First-tier Tribunal Judge J C Hamilton as follows (so far as relevant):

"..3. The appellant's representative does not appear to have raised the issue of the appellant's vulnerability at the hearing. However the Judge was aware that it was raised in Dr Dhumad's instructions and that Dr Dhumad had recommended various adjustments and allowances be made regarding the appellant's evidence (paragraphs 15 and 16).

4. The Judge's adverse credibility findings were a material factor in the decision to refuse the appeal. It is arguable the Judge failed to engage with the issue of whether the appellant was a vulnerable witness and the impact that had on an assessment of the appellant's credibility. It is arguable that this is a material error of law. I therefore grant permission on the basis of ground one.

5. The remaining grounds appear much weaker. However I grant permission on those grounds as well."

9. The matter comes before me to consider whether the Decision contains errors of law. If I conclude that it does, I then have to decide whether to set aside the Decision in consequence of those errors. If I do so, I

then have to decide whether to re-make the decision or remit the appeal to the First-tier Tribunal to do so.

10. I had before me a bundle of documents running to 224 pages (pdf) which includes the core documents for the appeal and the Appellant's and Respondent's bundles before the First-tier Tribunal. I refer to documents in that bundle so far as necessary as [B/xx].
11. Having heard submissions from Mr Lams and Mr Wain, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

DISCUSSION

Ground One

12. As this ground was identified as the strongest by Judge Hamilton when granting permission, it was unsurprisingly the main focus of Mr Lam's submissions.
13. The starting point for this ground is the Psychiatric Report which is at [B/21-40]. Reliance is placed in the grounds of appeal on [14.5] of the Psychiatric Report where Dr Dhumad says this:

"I have noticed that [the Appellant] was confused about some aspects of his account, in particular, the period of his detention; he said to me he was detained for five months and told his GP earlier that he was detained for three months GP [sic]; this is also mentioned in his previous account to the Home Office. In my opinion, patients with PTSD develop memory difficulties in relation to traumatic events, and the length and duration of such events are normally confusing. It is common to see different time frames for such events. In my opinion, these discrepancies are clinically explained due to PTSD and should not be seen as credibility issue."

14. Judge Bart-Stewart dealt with the Psychiatric Report at [15] and [16] of the Decision as follows:

"15. The documents before me are those uploaded to CCD and include the respondents and appellants bundles. The latter consists of an Amnesty International Report Vietnam 2021, a Human Rights Watch report 2021, USSD Vietnam human rights report 2020, Freedom House report 2021, witness statement of the appellant dated 14 June 2022 and a letter from Swindon Social Services dated 30 June 2022. There is also a psychiatric report by Dr Salah Dhumad, Adult Consultant Psychiatrist, dated 22nd January 2023 following an interview with the appellant on 20th January 2023 by video link. Dr Dhumad indicates that he had the appellants medical records as well as the appellant and respondents bundle. He was asked: -

- The mental health diagnosis
- Whether the Client suffers from PTSD due to the arrest, detention, torture he claims to have suffered.
- What treatment he should be receiving, bearing in mind his age on arrival, vulnerability, and what the claim to have suffered arrest

detention and torture due to his attending the protest against the Government [sic].

- Whether he is at risk of suicide on return as he has no family to return to and he claims to fear risk of re arrest and detention due to escaping the prison.
- Whether he is fit to give evidence at Court and if he is, whether he should be treated as a vulnerable witness.
- Any other comments.

16. He diagnosed the appellant as suffering from a moderate depressive episode, feeling low in mood, lacks energy and worries and suicidal. He was hopeless and could not sleep with poor appetite and concentration. He also suffers from post-traumatic stress disorder. He considered that the appellant required a combination of cognitive behavioural therapy and medication. He was fit to attend his hearing and give evidence with appropriate adjustments. The discrepancy in the account as to whether he was detained for 5 months or 3 months can be explained by his PTSD.”

15. The point made by the Appellant in his first ground is not that the Judge did not have regard to the Psychiatric Report but rather that the Judge did not take it into account when reaching her findings on credibility.
16. As Judge Hamilton pointed out, the Appellant’s barrister before Judge Bart-Stewart did not ask for the Appellant to be treated as a vulnerable witness. The Judge was nevertheless aware that he may be one and that he needed adjustments when giving his evidence. No complaint is made that the Judge did not take the Appellant’s vulnerability into account when taking his evidence at the hearing.
17. Mr Lams submitted however that the Psychiatric Report was part of the evidence which needed to be assessed in the round when looking at credibility. He relied in particular on “the Mibanga duty” as explained in the guidance of this Tribunal in QC (verification of documents; Mibanga duty) China [2021] UKUT 33 (IAC) (“QC (China)”. The guidance in this regard as given in QC (China) is as follows:

“The Mibanga duty

(2) Credibility is not necessarily an essential component of a successful claim to be in need of international protection. Where credibility has a role to play, its relevance to the overall outcome will vary, depending on the nature of the case. What that relevance is to a particular claim needs to be established with some care by the judicial fact-finder. It is only once this is done that the practical application of the “Mibanga duty” to consider credibility “in the round” can be understood (Francois Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367). The significance of a piece of evidence that emanates from a third party source may well depend upon what is at stake in terms of the individual’s credibility.

(3) What the case law reveals is that the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in which the fact-finder goes about this task is a matter for them. As has been

pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome.

18. I did not find reference to either Mibanga or QC (China) of much assistance. I accept of course as a matter of trite law, that evidence has to be considered in the round particularly when it comes to issues of credibility. However, the reference to "cogency and relevance" of particular evidence which therefore requires express consideration has to be read in context. The Psychiatric Report and views of Dr Dhumad about the apparent inconsistency in relation to one element of the Appellant's case which might be explicable by his PTSD is not of a similar nature to background evidence or a document from a third party tending to support (or indeed undermine) an appellant's case. It is a possible explanation for one inconsistency but no more.
19. Mr Lams pointed out that the Respondent had not taken issue with the Psychiatric Report. That is unsurprising since it was not before the Respondent at the time of her decision under appeal nor at the time of her review. The Psychiatric Report is dated 22 January 2023, three days prior to the hearing (and in fact one working day prior to the hearing). As Mr Lams pointed out, the Respondent did not seek an adjournment to deal with its late production but it is a brief report so that is not surprising.
20. In any event, more importantly, I do not understand the Judge to have taken issue with Dr Dhumad's opinion. At [30] of the Decision, in the course of her findings, the Judge pointed out that the Respondent had not challenged the Psychiatric Report with the implication there that what was said in the report was accepted.
21. However, the real issue is whether the Judge took into account the Psychiatric Report when reaching her findings on credibility, in particular when considering the inconsistencies in the Appellant's account at [27] to [30] of the Decision.
22. As Mr Wain pointed out, although the Judge was not asked to treat the Appellant as a vulnerable witness when considering his evidence, she appears to have done so. In particular, when considering credibility, the Judge took into account that the Appellant was a minor when the events on which he relied took place. Thereafter, she began her credibility findings with reference to the background evidence. That is consistent with the Joint Presidential Guidance Note in relation to vulnerable witnesses, in particular at [10.3], where a Judge is directed to "take account of potentially corroborative evidence" in such cases.

In this case, that was the background evidence. As Mr Lams pointed out, the background evidence potentially corroborated the Appellant's account about the existence of land disputes and lack of tolerance by the Vietnamese authorities of opposition to it. However, the Appellant's account of arrest, lengthy detention (beyond one day) and prosecution does not sit well with the background evidence referred to at [26] of the Decision in relation to demonstrations and protests.

23. Turning then to the Judge's consideration of the Appellant's own evidence, her starting point was that his case was not consistent with the background evidence about the police's attitude to one single protest and to what were low-level protesters at very small gathering ([27]). She there had regard to the Appellant's inconsistency about the numbers arrested.
24. Judge Bart-Stewart pointed at [28] to the vague nature of the Appellant's evidence about the detention and being taken to court. She said that he had not given any explanation for the inconsistencies in his evidence. Whilst it might be said that the Psychiatric Report was such an explanation in relation to the length of detention, Dr Dhumad did not comment on other more significant inconsistencies such as what had happened when the Appellant was detained and being taken to court (which was a later development in his case - see [48] of the Respondent's decision at [B/213]). As the Respondent points out, the Appellant has not explained why he did not mention this earlier. Dr Dhumad makes no comment on the development of the Appellant's case nor why he might have forgotten such a crucial element of it.
25. At [29] of the Decision, the Judge finds not to be credible the Appellant's account of his release from detention. Her findings in that regard cannot be impugned based on the Psychiatric Report.
26. I will come on to [30] and following of the Decision as that does not relate directly to the Appellant's protection claim. As the foregoing illustrates however the Judge did not place express reliance on the inconsistency which Dr Dhumad seeks to explain in the Psychiatric Report. The Judge's findings are based on an inconsistency between the Appellant's case and the background evidence, the vague nature of his evidence, change in his case and the implausibility of parts of his account.
27. The Judge was entitled to find the Appellant not to be credible for the reasons she gave. Those do not include any express reference to the inconsistency in length of detention to which Dr Dhumad made reference in the Psychiatric Report. The Judge's starting point was the background evidence and the consistency or otherwise of the Appellant's case against that evidence. She took into account parts of the Appellant's evidence unaffected by Dr Dhumad's comments. She

was entitled to do that. I therefore conclude that there is no error identified by the Appellant's first ground.

Ground two

28. Other than a passing reference to Article 8 ECHR in the second ground (which I deal with alongside the sixth ground), the focus of the second ground is that, having found the Appellant credible as to the suffering of physical violence, the Judge should have allowed the appeal. Reliance is placed on Chiver [1997] INLR 212 ("Chiver").

29. This part of the Appellant's case was considered by the Judge at [30] of the Decision as follows:

"I do not accept as credible that the appellant took part in a demonstration in Vietnam nor that he was arrested or detained. The appellant claims that he is an orphan who was abandoned by his parents and brought up by a Catholic priest. There is no evidence that this Priest existed although he claims that an Internet search revealed that the priest had died. It should have been possible to produce that evidence. Although it was not specifically challenged by the respondent that the appellant is an orphan, I do not find this to be the case. There is a positive reasonable grounds decision that the appellant is likely a victim of modern slavery. He is likely a child who has been trafficked from Vietnam to the UK to work. He was flown to Russia and then driven by car and lorry before arriving in Swindon where he claims to have happened upon a Vietnamese couple who owned a nail bar where he was found behind the counter. The appellant withdrew the NRM claim it appears to protect a couple. His mental health condition has not been challenged by the respondent. His description of physical violence was consistent in his witness statement and interview. In his submission Mr Mupara conceded the case bears the hallmark of trafficking."

30. My reading of that paragraph as I pointed out to Mr Lams is that the Judge was providing a possible alternative causation for the Appellant's mental health problems and physical ill-treatment. Although Mr Lams accepted that there was no medical evidence about any physical injuries (including in the medical notes at [B/42-47]), the Judge was entitled to accept the Appellant's case that he had been subjected to physical violence. That is consistent with the guidance in Chiver. However, she did not have to accept his account of when and how he had been subjected to physical violence.

31. The Judge at [30] of the Decision considered that the Appellant may well have been the victim of trafficking (which would be consistent with the positive reasonable grounds decision in relation to modern slavery in the UK). As the Judge said at [33] of the Decision, the Appellant did not put forward a case that he was the victim of trafficking. However, such a case would be consistent with background evidence as set out at [31] and [32] of the Decision and, moreover, as Mr Wain pointed out and as recorded at [30] of the Decision, the Appellant's barrister

accepted that the case bore “the hallmarks of trafficking” (which acceptance overcomes my concern that the Judge’s findings at [30] might be inconsistent with the findings at [33] of the Decision).

32. The Judge’s acceptance of the Appellant’s account of being subjected to physical violence has to be read in context. It is not an acceptance of the Appellant’s account of why and when he was mistreated. As such, it did not affect the issue of whether the Appellant would be at risk on return (unless he claimed that he would be at risk of re-trafficking which it is made clear at [33] of the Decision that he did not). The second ground is not therefore made out.

Grounds three to five

33. Ground three takes issue with the Judge finding that Father [B] did not exist, and that the Appellant was not an orphan as he claimed. It is said that this was an ambush as it was not an issue between the two parties. The fourth ground overlaps with this and asserts that the Judge did not provide reasons for his finding that the Appellant was not an orphan as he claimed. Both grounds overlap with the Judge’s finding in relation to risk of destitution on return.
34. The findings challenged by the third and fourth ground are at [30] of the Decision and therefore set out above.
35. Although the Respondent did not expressly take issue with the Appellant’s account that he was an orphan brought up by Father [B], she did not concede it either. As Mr Wain pointed out by reference to [31] of the decision letter at [B/211], the only facts accepted were the Appellant’s nationality and age.
36. Although Mr Lams objected to Mr Wain’s reliance on the Presenting Officer’s note of the hearing before Judge Bart-Stewart, he was unable to assist me with whether there had been any cross-examination about the Appellant’s account of being an orphan or being brought up by Father [B] as he was not Counsel before Judge Bart-Stewart. I therefore allowed Mr Wain to make reference to the Presenting Officer’s note which indicated that questions had not been asked with any direct bearing on this topic.
37. However, the reason why the Judge did not accept that Father [B] exists or existed is given. The Appellant himself said that Father [B] had died and that he had learnt this from the internet but provided no evidence. As Mr Wain submitted and I accept, the Appellant’s own evidence was the source of the Judge’s reason. This was not a requirement for corroboration contrary to the Court of Appeal’s judgment in MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216. Consistently with what is said in MAH (Egypt), the Appellant having relied on there being corroborative evidence could be expected to provide it and had not done so. Moreover, the reason

for the Judge's disbelief came directly from the Appellant's evidence and the issue cannot therefore be said to be an ambush. The Judge was entitled to disbelieve the Appellant for the reason she gave.

38. Although I accept that the Judge did not provide express reasons for disbelieving that the Appellant was an orphan, her finding in that regard flows from her finding about the existence or otherwise of Father [B]. As she did not believe that Father [B] existed, it followed that the Appellant must have been brought up by someone and it would naturally be the case that this would be his parents.
39. For the foregoing reasons, I do not accept that any error is disclosed by the Appellant's third and fourth grounds. In any event, whether Father [B] existed and whether the Appellant is an orphan as he claimed has no direct bearing on the Appellant's protection claim which was considered and rejected by the Judge for reasons unconnected with the account of the Appellant's background. I accept however that there is an overlap between grounds three and four and the Appellant's fifth ground.
40. The target of the Appellant's fifth ground is the finding within [35] of the Decision when considering Article 8 ECHR and whether there would be very significant obstacles to the Appellant's integration in Vietnam that the Appellant does not risk destitution. Paragraphs [34] and [35] of the Decision need to be considered together in this regard. At [33] of the Decision, the Judge found by reference to the Appellant's own case and relevant case-law that the Appellant would not be the subject of re-trafficking. That flows from the Judge's finding at [30] of the Decision that the Appellant may well be a victim of trafficking (even though he did not actively pursue such a case). The Judge went on as follows:

"34. ... The appellant would be returning as a single young man of no interest to the authorities. He said he left Vietnam legally on his own passport. I find that he is not at risk for convention reason nor is there real risk of serious harm if he is returned to Vietnam. The background evidence is there is reintegration support and assistance available from the government and NGOs including financial support and community rehabilitation (CPIN 7.1 and 7.2).

35. The appellant does not meet the requirements for leave to remain under the Immigration rules in respect of family or private life. There is no reason why the Appellant would not be able to re-establish the support network he enjoyed previously in Vietnam. There is no evidence to support the submission that the appellant would be destitute. The fact that he is treated as a child in care to the age of 25 in the UK where he has no family or other means of support is not evidence that the Appellant would have very significant obstacles to his reintegration into life in Vietnam on his return. He has only been outside the country for 5 years. He said he went to primary and secondary school in Vietnam. He is likely to still have contacts there. He is able to return to his home area or stay in the city. He

can also seek support from government and NGOs. I do not find that there would be a violation of Article 3 or 8 ECHR if he is returned.”

41. That passage amply explains the Judge’s finding regarding destitution on return. The Judge explains the difference between the position in the UK where the Appellant remains in the care of the local authority because he has no family here and due to his age on arrival and the position in Vietnam where the Judge has found that the Appellant may still have family. In any event, the Judge points to background evidence to support her finding that the Appellant would be able to obtain assistance from government and other organisations in Vietnam. The Judge was entitled to reach the finding she did for the reasons she gave. Accordingly, there is no error disclosed by the fifth ground.

Ground six

42. The thrust of the Appellant’s challenge to the Judge’s reasoning on Article 8 ECHR is that it is too brief and inadequately reasoned (see ground two). It is said at ground six that, the Judge having been found that the Appellant is likely to have been a victim of trafficking, the Judge has failed to factor that into account when considering whether there are very significant obstacles to integration in Vietnam.

43. Taking the latter point first, ground six does not bear scrutiny. The Judge considers the point at [33] and [34] of the Decision but concludes that it is not relevant. That was a finding open to her.

44. As to the Article 8 consideration as a whole, Mr Wain accepted that it was brief. However, it has to be looked at based on the way in which the Appellant put his case. The skeleton argument ([B/17-20]) makes no reference to Article 8 at all. As noted at [14] of the Decision, the Respondent points out that even the issue of whether there were very significant obstacles to integration in Vietnam was not put in issue by the Appellant. The only (oblique) reference to Article 8 being in the skeleton argument is at [13] of the Decision where it is said that “[t]here is reference to the appellant still being under the care of social services and his family whereabouts in Vietnam still unknown. Returning him to his home country would be unduly harsh”. That is the case which the Judge addressed in particular at [35] of the Decision. She might have gone on to consider Article 8 outside the Immigration Rules but since that was not the case put forward by the Appellant, there was no obligation on her to do so.

45. I therefore conclude that the sixth ground does not disclose any error of law.

CONCLUSION

46. The Appellant's grounds do not disclose an error of law. Accordingly, I uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

NOTICE OF DECISION

The decision of Judge Bart-Stewart dated 7 February 2023 does not contain an error of law. I therefore uphold the decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 September 2024