



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003386

First-tier Tribunal No: PA/56653/2023
LP/01919/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24 December 2024**

Before

UPPER TRIBUNAL JUDGE LODATO

Between

**LVP
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Khan, counsel

For the Respondent: Mr McVeety, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 2 December 2024

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

Introduction

1. I have decided to maintain the anonymity order originally made in these proceedings by the First-tier Tribunal because the underlying claim involves international protection issues in that the appellant claims to fear persecution or serious harm on return to Vietnam. In reaching this decision, I am mindful of the

fundamental principle of open justice, but I am satisfied, taking the appellant's case at its highest for these purposes, that the potential grave risks outweigh the rights of the public to know of his identity.

2. The appellant appeals with permission against the decision, dated 19 May 2024, of First-tier Tribunal Judge Mather ('the judge') to dismiss the appeal on international protection and human rights grounds.

Background

3. The procedural background and immigration history to the appeal are not in dispute between the parties. In brief summary, the appellant's case is that he would be at risk from those who trafficked him to the UK as a child, or from being re-trafficked on return to Vietnam.

Appeal to the First-tier Tribunal

4. The appellant appealed against the refusal of his claim. The appeal was heard by the judge on 7 May 2024 before dismissing the appeal on all grounds in a decision promulgated 19 May 2024. I will address those parts of the decision which are relevant to the grounds of appeal in the discussion section below.

Appeal to the Upper Tribunal

5. The appellant applied for permission to appeal in reliance on the following grounds:

- Ground 1 - the judge approached the appellant's Article 8 private life claim by asking herself the wrong question as to whether there was any imminent prospect of his removal following the decision of the Single Competent Authority to find there to be reasonable grounds that he had been the victim of trafficking.
- Ground 2 - the judge failed to reach clear findings of fact about claimed past persecution to underpin the risk assessment on return to Vietnam.

6. In a decision dated 22 July 2024, First-tier Tribunal Dempster granted permission for both grounds to be argued. The following observations were made in granting permission:

Concerning the second ground, given that the judge found the appellant to be a victim of trafficking at [30], it is arguable that the judge in finding that there was not a substantial risk of being re-trafficked on return at [38] has failed to provide adequate reasons, in particular as to whether the appellant (or his grandmother) remained in debt to the traffickers. There is thus an arguable error of law and permission to appeal is granted. For the avoidance of doubt, this grant is not limited to the ground above. The other ground may be advanced at the oral hearing.

7. At the error of law hearing, I heard oral submissions from both parties. I address any submissions of significance in the discussion section below. I indicated at the hearing that I would be allowing the appeal and remitting the matter to the First-tier Tribunal to decide the appeal *de novo*. Below are my reasons for these decisions.

Discussion

8. For reasons which will become clear, I am minded to address ground two first.
9. The central thrust of the appellant's complaint about how the judge dealt with his protection claim is that there was considerable tension in the factual analysis which went to his experience of being trafficked out of Vietnam. This tension most clearly emerges from the judge's findings at [30] and the conclusion reached at [41]:

[30] I am prepared to accept that the Appellant was trafficked to the UK when a minor although I do not accept that he is a wholly credible witness.

[...]

[41] I do not accept the Appellant has been persecuted in the past or would face future persecution on return. I do not find the Refugee Convention is engaged.

10. The findings at [30] appear to be at least partly founded on the position adopted by the respondent at section 5 of the reasons for refusal letter where it was accepted that the appellant had been a victim of trafficking before holding that he was not at risk of persecution on return. In this part of the refusal letter it was noted that the appellant claimed to continue to owe a debt to those who trafficked him and it was stated that "you owe only money relating to your having been trafficked out of Vietnam" and "it would be unlikely that in Vietnam you would encounter the traffickers whom you fear and owe money to". This strongly suggests that no issue was taken with the proposition that the appellant continued to owe a debt to his traffickers as he had initially claimed and maintained through to the substantive hearing of his appeal. At [38] of the decision, the judge accepted the points made by the respondent at section 5 of the refusal letter.
11. In addressing me on whether there was a fundamental disconnection between the judge's finding that the appellant had been trafficked as a child and yet had not been a previous victim of persecution, Mr McVeety came close to conceding that this was an error of law. While he was not minded to formally concede the matter, he referred to his position as an "open goal". He was right to recognise that it is exceptionally difficult to reconcile a finding that a child was a victim of trafficking but to then conclude that such a person has not previously experienced persecution. While it is conceptionally possible to find that the trafficking of a child does not rise to the level of persecution, the starting point must be that the commercial exploitation of a child and movement of that child across international borders is a form of persecution or at least serious harm. Where a judge finds, as here, that a trafficked child has not been persecuted, it is necessary to explain the rationale for such a finding in the clearest of terms.
12. It is fair to say to that the judge assessed various facets of the appellant's narrative and found a number to be lacking in credibility for cogent reasons. An example can be seen at [32] where the judge doubted the account of how the trafficking arrangements were initially financed. It was further doubted at [36] that his grandmother had been subsequently hounded by the traffickers since the appellant's departure. Notwithstanding these adverse factual findings, there remains a significant gap in the analysis about the nature of the appellant's experiences when he was under the control of the traffickers and if a debt remained to be paid. I agree with Ms Khan that there is nothing to indicate that

the judge addressed her mind to the important question of whether the appellant had been physically abused and beaten while he was with the traffickers. This was undoubtedly an important factor weighing on the question of whether the past experience of trafficking amounted to past persecution.

13. An important evidential touchstone in the assessment of risk on return remains the well-established and understood principle reflected in paragraph 339K of the Immigration Rules:

The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

14. In eliding the important question of whether previous experience of being trafficked as a child, and the existence of a remaining debt to the traffickers, I am satisfied that the judge has not properly or lawfully directed herself in respect of whether this was a case where there had already been a background of direct persecution. In addition, the judge herself noted (at [35]) the potential importance of the existence of an outstanding debt to the traffickers. The failure to reach findings on this dimension taints the risk assessment which was undertaken. These factors combine to leave me in no doubt that the judge did not lay the necessary fact-finding groundwork to embark on the essential risk assessment. Further, where it had first been found that the appellant was a child victim of trafficking, it was necessary for the judge to set out more fully why she went on to conclude that he had not been previously persecuted. The conclusion is difficult to reconcile with the earlier finding and had the conclusion about past persecution been resolved in the appellant's favour, it would have amounted to a serious indication of risk on return. I find the judge's assessment of risk to involve a material error of law.
15. There was no dispute between the parties that the assessment of the protection claim would have an important bearing on the intimately connected Article 8 private life claim. It follows that I am satisfied that it is appropriate to set aside the whole of the decision, including the parts which touched on the Article 8 claim. I preserve no findings of fact. It is therefore unnecessary to determine ground one because this ground falls away as a direct consequence of the findings I have reached on ground two.

Disposal

16. It was common ground between the parties that the appropriate disposal was for the matter to be remitted to the First-tier Tribunal to be determined *de novo* because a full and extensive fact-finding process is required.

Notice of Decision

I set aside the decision of the judge as it involved a material error of law. I preserve no findings of fact. The matter is to be remitted to the First-tier Tribunal to be decided *de novo* by a judge other than Judge Mather. Upon remittal, the administration of the First-tier Tribunal may wish to allocate the appeal to the Birmingham hearing centre as the appellant has recently moved to this part of the country.

Appeal Number: UI-2024-003386

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 December 2024