



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00381/2015

THE IMMIGRATION ACTS

Heard at Field House
On 11th November 2015

Decision and Reasons Promulgated
On 19th November 2015

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

H T T B
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Malhotra, Counsel, instructed by Norton, Folgate Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Vietnam born in 1990. She left Vietnam on 11th November 2012 and was taken first to Poland, and then overland to France. On 24th July 2013 she left France and arrived in the UK. On 30th July 2013 she applied for asylum in the UK, and on 4th March 2014 there was a referral to the Competent Authority on the basis that she was a victim of trafficking. On 2nd December 2014

the Competent Authority made a conclusive decision that the appellant was a victim of trafficking. However on 17th December 2014 a decision was made refusing her asylum claim. Her appeal against the decision to refuse asylum was dismissed by First-tier Tribunal Judge N J Osborne on all grounds in a determination promulgated on the 21st May 2015.

2. Permission to appeal was granted by Upper Tribunal Judge Coker on 20th August 2015 on the basis that it was arguable that the First-tier judge had erred in law in failing adequately to consider issues of sufficiency of protection, internal relocation, amenability to being re-trafficked, pursuit by her former traffickers, lack of contact with her family members in considering whether a real risk of serious harm existed if the appellant was returned to Vietnam.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law

Submissions

4. The grounds contend firstly that the First-tier Tribunal erred in law by being procedurally unfair as the judge had not read the papers prior to the hearing and because the appellant's toddler was very disruptive in the hearing. Secondly it is argued that the First-tier Tribunal wrongly assessed the risk of re-trafficking if the appellant were returned to Vietnam because the judge did not seem to comprehend such a risk and had closed his mind to such a risk existing prior to the hearing. Consideration was not given to the fact that the appellant's parents had disappeared due to threats from the trafficker, Mr B, (see appellant's witness statement at paragraphs 26 - 30 which is not apparently contested by the respondent); the fact that the respondent's OGN on Vietnam accepts there are re-trafficking risks; and that the appellant's evidence (see Qs 31, 34 and 64 of the asylum interview) was that her traffickers were linked to a gang. Further irrelevant considerations regarding the lack of contact with the appellant by the traffickers in the UK were also brought into consideration.
5. Mr Melvin argued, in summary, that it was not material whether Mr B was linked to a gang; and there was no evidence that the appellant would be traced on her return. He argued that the moving away of the appellant's parents was also of no material significance as there was no evidence of their whereabouts or motivation for moving. The First-tier Tribunal had relied upon objective evidence to say that there was sufficiency of protection and an option to find safety by internal relocation, and thus there were no material errors of law in the decision.

Conclusions - Error of Law

6. It is not arguable that the First-tier Tribunal conducted a procedurally unfair hearing. This ground was not pursued by Ms Malhotra at the hearing. Counsel before the First-tier Tribunal did not apply to adjourn the hearing due to the noise of the child, and it was not relevant that the judge had not read the papers in advance of the hearing. In any case it would appear that the First-tier Tribunal

believed the appellant in all material respects so the situation in the hearing had no negative outcome for the appellant. It is not disputed that the applicant has been a victim of trafficking. The First-tier Tribunal finds the applicant has no relatives outside her home area where she could be housed at paragraph 19 of the decision and accepts on lower standard of proof that the appellant's parents had to move due to threats from her traffickers at paragraph 23 of the decision, and so fully accepts the factual matrix put by the appellant.

7. I find that the assessment of risk is flawed for a number of reasons however. The First-tier Tribunal failed to make a finding as to whether the appellant was trafficked by an individual or a person with links to wider criminal organisations, see paragraph 23 of the decision, which I find to be essential to an assessment of risk on return. There is also no evidence to support the contention that the appellant would be "less amenable to being trafficked" and would be "likely to be of less interest to traffickers" due to have a young child, as is contended at paragraph 31 of the decision. Further the lack of pursuit of the appellant in the UK does not rationally lead to the conclusion that she would not be pursued in Vietnam and there is no evidence to support such a conclusion, but this is relied upon repeatedly in the decision, see paragraphs 23, 27 and 34 of the decision. In addition there is no consideration given to the accepted fact at paragraph 23 of the decision that her parents had been pursued by the trafficker and whether this has implications for the appellant's safety. I therefore find that in the circumstances the conclusion that "the Appellant had broken free from her traffickers" at paragraph 23 and later relied upon to find that there would be sufficiency of protection/ no real risk at paragraphs 27 and 34 is insufficiently reasoned.
8. It is also clear (and accepted by Mr Melvin) that the findings on humanitarian protection at paragraph 36 relate to another case, and are wholly erroneous.
9. I therefore informed the parties that I set aside the decision of the First-tier Tribunal but preserved the findings of Judge Osborne which were not argued by any party to be subject to error: namely that the appellant had no relatives with whom she could find accommodation outside her home area and that her parents had been threatened by her trafficker, Mr B, and had been forced to move away from their home in 2013.
10. The parties were happy to proceed with the re-making hearing, although I granted Mr Melvin a one hour period to prepare submissions. It was agreed that the only issues were risk on return, and thus the focus was on whether there was sufficiency of protection in Vietnam for the appellant or whether she had an internal flight alternative by which she could find safety.

Re-making – Submissions

11. Mr Melvin relied upon the reasons for refusal letter and the objective evidence in that letter. In summary in relation to the appellant's particular case he submitted that the appellant had not shown that Mr B was influential or powerful. She had not shown there was any evidence he would find her in a country of 92 million

people. It was now two years since he had any contact with her. There was no evidence as to how far the appellant's parents had had to move. There was no evidence that traffickers would take a woman with a child.

12. In relation to the country of origin evidence Mr Melvin drew attention to the OGN on Vietnam, section at 3.11 on trafficking, dated June 2013 and material in the refusal letter. He submitted that it was clear that significant funds had been allocated to combat trafficking by the government; since 2012 there had been more criminal penalties; that there were prosecutions of traffickers; and there were three shelters in the largest urban areas for trafficked women. As such there is sufficiency of protection and reasonable options for the appellant to internally relocate.
13. Ms Malhotra submitted in summary that the credible evidence in the appellant's witness statement and interview record was that Mr B, her trafficker, was a rich and influential man with contacts with gangs who had threatened her father, whilst she was in Paris, and said that he would sell her as a prostitute in China. As a result of Mr B's threats her parents had left their local area. There could be no evidence going to this risk other than the appellant's testimony as evidence from a trafficker that they intended to re-traffic an appellant would be very unlikely to be available and would not be credible. The appellant had said that she could not find safety by going to a shelter as these were inadequate and might be checked by Mr B, or by approaching the police, and had no relatives to go to who could assist her. She maintained that there was no reason to think that because Mr B had not contacted her in the UK he would not wish to do so if she returned to Vietnam or that he would not force her into prostitution because she had a child.
14. Ms Malhotra relied upon the background evidence in the Country of Origin Information Report dated 9th August 2013 and the OGN on Vietnam. She argued, in summary, that this evidence showed that there was a very significant trafficking problem in Vietnam and that this problem was increasing. Some of the traffickers also used children to carry out begging on their behalf. The Vietnamese laws on trafficking did not comply with international standards, and did not address the problem of debt bondage (the background to this appellant's trafficking) sufficiently. There was insufficient use of law enforcement and insufficient use of prosecution of traffickers, and overall the protection for victims was inadequate too. There were far too few facilities and shelters for victims of trafficking, and there would be issues for an appellant with children in these places. It was clear that a real risk of re-trafficking had been shown to the required standard of proof.
15. At the end of the hearing I reserved my decision.

Re-making Conclusions

16. The appellant's description of Mr B is that he is a rich and influential loan shark who lives in HP, which is a major city in Vietnam near to H in the north of the country near to CB town (which is on the small island of CB) where the appellant used to live with her parents. Mr B had a number of successful businesses in

different cities in Vietnam and business links abroad. The appellant was trafficked into the sex trade by Mr B to repay a loan provided to her parents. It is clear from the history of the appellant, which has been believed, that Mr B worked together with a trafficker called Mr C based in Vietnam, another trafficker called G based in Poland; another Vietnamese trafficker called D who was based in France, and a couple of others who ran the brothel in the UK. The appellant says in her evidence that Mr B knows gangsters, which is consistent with this history. It is also accepted that he threatened the appellant's parents after she had been taken to Paris that she would be sent to China as a prostitute if she returned to Vietnam; and that they subsequently had to leave their home due to his threats. I note that the COIS Vietnam 2013 at paragraph 24.09 notes the connection between money lenders and traffickers, and that family members who cannot pay off debts have been subjected to violence.

17. I find that Mr B should be seen as an influential, wealthy and well connected trafficker with internal and international trafficking associates. I will therefore assess risk on this basis. I do not find that the fact that Mr B has not contacted the appellant in the UK to be of any significance as he may well fear the effectiveness of British law enforcement or the UK may be beyond his reach in this respect. I also do not find that it is a protective fact that the appellant has a young child. As is clear from the country of origin materials (COIS Vietnam 2013 paragraph 24.04) children can be exploited by traffickers for begging purposes, and in any case there is no reason to assume that anyone prepared to engage in the trafficking of human being for sexual exploitation would show any compassion to the fate of the child of a person they wished to traffic – and this is reflected in the fact that children and babies may be trafficked for adoption too, see paragraph 22.36 of the COIS Vietnam 2013. I find that Mr B would have the capacity (given the history of trafficking the appellant to the UK) and motive (given the outstanding debt owed by her parents which equates to approximately £10,000) to traffic the appellant to China for prostitution, and note from the material on trafficking that there is a very significant trafficking of women and children to China from northern provinces of Vietnam, see paragraph 24.02 of the COIS Vietnam 2013.
18. The appellant claims that the police would not assist her as debt bondage agreement is seen as a private matter by them in Vietnam. This is consistent with the COIS Vietnam 2013 report, which relying upon the US State Department TiP Report 2013, states that the Vietnamese government has failed to provide adequate remedies to those who experience debt bondage. The COIS Vietnam 2013 concludes at paragraph 24.12 that prosecutions were inadequate to address all forms of human trafficking in Vietnam; and that victim identification is poor, see paragraph 24.15. It is clear that Vietnam has a large, and quite significantly unquantified problem of trafficking for prostitution, see paragraph 22.34 of the COIS Vietnam 2013. It is also clear from the US State Department Report on Vietnam for 2012 cited in the reasons for refusal letter (p.4 of 10 at bottom of page) that police investigative capabilities are generally very limited.

19. The appellant says she would be at risk throughout Vietnam from Mr B; and would not be able to access a shelter or have other means to support herself as a single mother with a young child as a woman who has only ever worked helping her parents fishing business; and in the context that it is accepted that she does not have relatives to turn to for such help.
20. It is clear that Vietnam is a country with a large population and a number of major cities, some of which are at a distance from the appellant's home area. There are also some NGOs working with victims of trafficking and at least three shelters for victims of trafficking.
21. I find however on the facts of this particular case that I am satisfied on the lower standard of proof that Mr B would have the motivation, wealth and skills to seek out the appellant if she were in Vietnam, and that his targeting of her parents is indicative of this fact, as he would wish to recover his debt. I am not satisfied that there would be sufficiency of protection in Vietnam given the facts set out above, Mr B's wealth and connections and his history of trafficking this appellant relatively recently. I am satisfied that the appellant would not be able to find safety by relocating internally, particularly given that she would be very likely to have to seek reliance on shelters (which are relatively few in number), as she is a single mother without previous experience of employment beyond helping her parents, without relatives she can turn to and would thus be relatively easy to locate for Mr B.
22. I find that the appellant has been subject to persecution and threats of very serious harm in her previous trafficking by Mr B. Having considered all of the evidence presented by the parties to the Tribunal, in accordance with paragraph 339K of the Immigration Rules, I am not satisfied that there would be sufficiency of protection or that the appellant could find safety through internal relocation so I do not find that there are good reasons why that persecution and serious harm would not be repeated were she to be returned to Vietnam.
23. It is accepted by the respondent in the reasons for refusal letter that the appellant raises a claim which falls within the auspices of the Refugee Convention and that former victims of trafficking from Vietnam can form a particular social group. I find that the appellant would face a real risk of serious harm by reason of her membership of a particular social group if returned to Vietnam, and is entitled to be recognised as a refugee.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the decision in the appeal by allowing the appeal on asylum and human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of her protection claim.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 18th November 2015

Fee Award Note: this is **not** part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award. I have decided to make a whole fee no fee award because no fee was paid.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 18th November 2015