



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07302/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 11th December 2019**

**Decision & Reasons Promulgated
On 20th December 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

T V N

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Radford (instructed by Turpin & Miller LLP)
For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and Reasons of First-tier Tribunal Judge Row promulgated on 25th September 2019 shortly after a hearing which took place on 19th September 2019.
2. The Appellant in this case is a Vietnamese national who turned 19 on 1st June this year and therefore was just 19 when the judge heard the appeal. However, he arrived in the UK two years earlier, when he would have been 17. He claimed to have been trafficked and ill-treated, all of which was rejected by the judge. The judge noted that there had been a negative Decision from the National Referral Mechanism and while the judge referred to there having been a further referral, there was no new

information before him, the Presenting Officer was unable to assist and the appellant's representative did not seek an adjournment on that basis. So in that regard the judge cannot be criticised.

3. The judge did go on to consider an expert report but rejected it on the basis that the expert had accepted everything said by the Appellant, which was contradicted by what he had told the NRM as to the reason for his coming to the UK and the means by which he did so, which did not involve trafficking. The judge noted at paragraph 34 that the Appellant was an adult male in good health with family support in Vietnam and found that he would not be at any risk on return.
4. At first blush, a reading the Decision and Reasons suggests that it is a fair assessment of the evidence as recited therein. However, it has been pointed out by Ms Radford that in fact there is other evidence that the judge wholly failed to deal with. In particular his reference to the Appellant being a young healthy adult was not borne out by the bundle of evidence provided to the judge which included a letter from a very experienced psychotherapist who referred to very real difficulties with the appellant's memory, his sleep pattern, an inability to recall, his waking from nightmares, a blankness of mind and a mistrust of people. Not only would that have impacted on his abilities at the hearing, it would clearly impact upon his ability to recount what had happened to him and would have suggested perhaps that he was not a young healthy adult male as the Judge found.
5. To have assessed the Appellant's credibility without taking into account his particular vulnerabilities as set out in that letter, the judge has made an error of law. His credibility is at the heart of his case. The error of law is thus material. The Appellant should have been treated as a vulnerable witness, not just at the hearing as he clearly was, but in the assessment of his evidence.
6. A further matter which has arisen subsequently, and which will be of relevance when the matter is to be reheard, is the fact that the NRM has now made a positive reasonable grounds Decision. A final Decision is still awaited and it will be sensible for that to be dealt with prior to the matter being reheard.
7. As I am setting the Decision and Reasons aside in its entirety and credibility needs to be redecided, it is appropriate, particularly given the fact that we are now waiting for the NRM, for it to be remitted to the First-tier Tribunal. The hearing centre where it was heard before was Birmingham. I set aside the Decision of Judge Row in its entirety and I allow the appeal to the extent that it is remitted to the First-tier Tribunal for a full rehearing on all matters. **It should be listed only after the NRM have concluded their reporting. A Vietnamese interpreter will be required.**

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed
2019

Date 16 December

Upper Tribunal Judge Martin