



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07413/2018

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice

**Decision &
Promulgated**

Reasons

On 18 February 2019

On 21 02 2019

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**KVN
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Muzira of Counsel instructed by Thompson & Co Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Widdup promulgated on 6 December 2018, in which the Appellant's appeal against the decision to refuse his protection and human rights claims, in the context of deportation, dated 30 May 2018 was dismissed.

2. The Appellant is a national of Vietnam, who was first encountered in the United Kingdom in 2012, at which point he claimed to be an unaccompanied minor (albeit he has since stated that he is in fact 13 years older than originally claimed) and absconded from foster care two days later. He next came to the attention of the authorities in 2017 when he was arrested by the police, following which on 4 December 2017 he was convicted of production of a class B drug and was sentenced to 12 months' imprisonment. The Appellant claimed asylum in early 2018 on the basis that he was at risk from loan sharks in Vietnam and had been trafficked by them to the United Kingdom to work here without remuneration, albeit there is a negative conclusive grounds decision in which he is not accepted as a victim of trafficking. The Respondent refused the Appellant's claim on the basis it was not considered to be credible, and in any event, there was a sufficiency of protection and the option of internal relocation within Vietnam available to the Appellant.
3. Judge Widdup dismissed the appeal in a decision promulgated on 6 December 2018 on all grounds. Before the First-tier Tribunal, the only ground pursued on behalf of the Appellant was in relation to his protection claim, it being accepted that he didn't meet the family and private life exceptions to deportation under the Immigration Rules. In summary, the appeal was dismissed on the basis of adverse credibility findings against the Appellant.

The appeal

4. The Appellant appeals on the basis that the First-tier Tribunal erred in law in failing to make adequate findings on the core of the Appellant's protection claim; focusing on and attaching too much weight to the delay in making a protection claim; failing to give sufficient weight to the finding that the Appellant's claim was consistent with background evidence and further in placing reliance on the Appellant's previous agreement to be voluntarily returned to Vietnam (albeit withdrawn) on the basis that there was a real possibility given his hearing problems that he did not understand the nature of the disclaimer that he signed.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Scott Baker on all grounds, with a further comment that there appeared to be no consideration by the First-tier Tribunal as to whether the Appellant should be treated as a vulnerable witness.

Findings and reasons

6. At the oral hearing before me, Mr Bramble conceded that there was sufficient merit in the grounds of appeal for the finding of an error of law and the parties agreed that in the circumstances the decision of the First-tier Tribunal should be set aside and the appeal remitted for a de novo hearing before the First-tier Tribunal.

7. This concession on behalf of the Respondent were appropriately made and I agree that there was an error of law in the decision under appeal. The First-tier Tribunal accepted that the Appellant's account was consistent with both expert and medical evidence, as well as being supported by background evidence, but in any event the Appellant's claim was not found to be credible. The reasons for this included that when the Appellant was first encountered by the police in 2012, he gave a false identity and failed to claim asylum at the time. It was not accepted that when he was placed in foster care at that time he continued to be under the control of traffickers and could have therefore claimed asylum at the time. It was found that the Appellant had not given any reasonable explanation for the use of a false name and date of birth when first encountered either. The Appellant's evidence as to when he was physically beaten in Vietnam was considered to be inconsistent on the dates between his asylum interview and that recorded in the medical report relied upon, which contained far greater detail than the original vague account given at interview. These inconsistencies, taken together, were found to undermine significantly a core element of the Appellant's account.
8. Further, the First-tier Tribunal found that fact that the Appellant had signed a disclaimer form for voluntary return to Vietnam on 5 January 2018 was inconsistent with his claimed fear on return and the Appellant's explanation that he did not understand the contents was not accepted given that he had signed it and it was also signed by the interpreter who confirmed it had been read to the Appellant in Vietnamese and he had understood.
9. Overall, the First-tier Tribunal found that the Appellant's actions since arriving in the United Kingdom have at times been dishonest and misleading to the police and immigration authorities and his account of his experiences in Vietnam in relation to an important aspect of his claim has at times been vague and at other times inconsistent. Additionally, reliance was placed on section 8 of the Asylum (Treatment of Claimants etc) Act 2004 to damage the Appellant's credibility.
10. I find that the First-tier Tribunal has erred in law for the reasons set out in the grounds of application for permission to appeal, primarily on the basis that there is a lack of adequate findings as to the core of the Appellant's protection claim with adverse credibility findings being made essentially on one relatively small inconsistency as to the date of an attack in Vietnam, delay in making the asylum claim and the signing of a disclaimer. On the latter, the First-tier Tribunal was well aware that the Appellant is deaf in one ear and there had previously been interpretation difficulties as a result in the course of the appeal, such that the Appellant's explanation was at least plausible, albeit this factor was not considered or rejected when assessing the Appellant's explanation. There are no findings whatsoever about the Appellant's claim to have borrowed money from loan sharks, whether in fact he had been physically beaten on one or two occasions in Vietnam and whether in any event he would be at risk on

return, there is only a global rejection of the claim on the basis of adverse credibility findings. In the context of a claim found to be consistent with background country information, expert evidence and a medical report, the findings are insufficient and amount to an error of law.

11. In all of the circumstances, there are no findings of fact which can be preserved from the decision of the First-tier Tribunal, the error of law infects the whole decision and as such it is necessary to set it aside. It is appropriate to remit the appeal to the First-tier Tribunal for a de novo hearing given the significant extent of fact-finding required to determine the appeal afresh.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal for a de novo hearing before any judge except Judge Widdup.

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 due to the nature of this asylum claim, which includes a claim that the Appellant is a victim of trafficking. 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 18th February

Upper Tribunal Judge Jackson