



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11409/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Glasgow
On 13th September 2019**

**Decision & Reasons Promulgated
On 1st October 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**M N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J Todd, Latta & Co, Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is brought against a decision by Judge of the First-tier Tribunal J G Macdonald dismissing an appeal on protection and human rights grounds. Following an earlier hearing before the Upper Tribunal on 20th June 2019 I found an error of law in the decision of the First-tier Tribunal. My decision on the error of law, reproduced at paragraphs 2-12 below, was dated 10th July 2019. The appeal was re-listed before me for the purpose of re-making the decision.
2. The appellant is a national of Vietnam. She was trafficked from Vietnam to Europe. She managed to escape from the traffickers and make a claim for asylum in the UK. She fears that if she returns

to Vietnam she will be at risk from traffickers and from loan sharks, who have been targeting her family in Vietnam. She is receiving treatment for her mental health and has suicidal thoughts.

3. The Judge of the First-tier Tribunal had regard to the decision in Nguyen [2015] UKUT 00170, in which it was said that Vietnam was a large country and there was no more than a slight risk of a victim of trafficking encountering traffickers upon return there. The judge referred also to an expert report prepared for the appellant by Dr Tran. The judge accepted that the appellant owes money to loan sharks and faces a risk from them. Because of this, and in accordance with the expert report, the Judge of the First-tier Tribunal concluded there would not be a sufficiency of protection for the appellant in her home area. The judge further found that the appellant would be able to relocate to one of the major cities in Vietnam. Her partner would be able to accompany her and together they would face neither a real risk of serious harm nor of destitution.
4. Permission to appeal was granted primarily on the basis that when considering internal relocation the judge arguably failed to take into account evidence in the expert report to the effect that the appellant would require to return to her home area to re-register her *ho khau*. It was contended that the appellant would require to do this in order reasonably to relocate to a city. Without a *ho khau* it was said that the appellant would be unable to access essential services for herself and her daughter.
5. Following the grant of permission to appeal the appeal was listed for a hearing before Upper Tribunal Judge Macleman on 28th February 2019. At this hearing Mr Govan acknowledged that the Judge of the First-tier Tribunal erred by not addressing the evidence on registration but submitted that the error was not material. Miss Todd submitted that the Judge of the First-tier Tribunal had not made a finding as to whether the appellant had any current registration or identification documents. It would take up to two years for the appellant to re-register her *ho khau* and it was contended that while she was doing this in her home area she would be vulnerable.
6. Judge Macleman directed that there should be a further hearing to consider, in particular, whether the First-tier Tribunal erred in law in its treatment of the evidence about identification and registration. Further submissions were, however, not restricted to this issue.
7. Accordingly the appeal was listed before me to decide whether an error of law was made on the basis of which the decision of the First-tier Tribunal should be set aside.

Submissions

8. At the hearing on 20th June 2019 Miss Todd addressed me on the grounds of the application, all of which, she submitted, related to the issue of internal relocation.
9. Mr Govan informed me that there was further evidence for the respondent on the issue of registration. He agreed that the issue was internal relocation. It was speculative for the expert report to say that traffickers would have access to records relating to registration, from which the appellant could be traced. The expert witness was unaware that the appellant now has a partner. The appellant and her partner could return to Vietnam as a couple and reside in the appellant's partner's home area. The expert report concentrated on obtaining a permanent *ho khau*, or household registration document, but there was a possibility of obtaining a temporary *ho khau*.
10. Miss Todd indicated that in response to the further evidence from the respondent and the issues arising therefrom she would seek to obtain a supplementary report from the expert witness for the appellant. She had already obtained legal aid for this purpose.

Discussion

11. I was satisfied that in the course of what is otherwise a clear and well—structured decision the Judge of the First-tier Tribunal erred in law by omitting to take into account in his assessment of internal relocation the evidence in the expert report to the effect that the appellant would have to return to her home area for up to two years to re-register for a *ho khau*. This was relevant both to the issue of risk on return and the question of whether internal flight without a *ho khau* would be unduly harsh. It was argued for the respondent that any omission by the judge in this regard was not material but to a significant extent this submission relies upon further evidence which was not before the First-tier Tribunal. In any event, it is difficult to be satisfied that the omission would not have affected the outcome of the appeal because the judge does not appear to have directed his mind towards the issue and has not expressed any reasoning on it.
12. Now that the issue had been high-lighted, each party sought to rely upon further evidence. The additional evidence for the appellant, in the form of a supplementary expert report, was not yet available. Accordingly, in the interests of fairness I adjourned for a further hearing before the Upper Tribunal at which the further evidence might be considered along with submissions by each party.

Directions

13. With my decision of 10th July 2019 I issued the following directions, set out at paragraphs 14-20 below.

14. The making of the decision of the First-tier Tribunal involved the making of an error of law.
15. The decision is set aside.
16. The findings of the Judge of the First-tier Tribunal to the effect that the appellant was trafficked to Europe and is at risk in her home area of Vietnam are preserved.
17. There will be a further hearing before the Upper Tribunal to re-make the decision in relation to identification and registration. The re-making of the decision will include assessment of whether the appellant would face the risk of having to return to her home area for a period to re-register for a *ho khau* and whether without re-registering for a *ho khau* internal relocation would be unduly harsh.
18. The respondent's supplementary bundle was re-submitted to the Tribunal on 25th June 2019 with an application under rule 15(2A). I allow the supplementary bundle to be admitted as evidence.
19. In order to allow the appellant time to obtain a supplementary expert report the resumed hearing will not take place until after 31st August 2019. The supplementary report and any accompanying evidence, together with an application under rule 15(2A), should be lodged with the Tribunal and served upon the respondent no later than 14 days prior to the resumed hearing.
20. In order to preserve the positions of the parties until the decision is re-made a direction for anonymity is made in the following terms. Unless or until a court or tribunal directs otherwise, no report of these proceedings shall identify either directly or indirectly the appellant or any member of her family. This direction applies to the appellant and the respondent. Failure to comply with this direction may lead to contempt of court proceedings.

Resumed hearing

21. Prior to the resumed hearing Miss Todd submitted a report, dated 19th August 2019, from the expert witness for the appellant, Dr Tran Thi Lan Anh. She also submitted a supplementary witness statement dated 30th August 2019 by the appellant. At the hearing she produced a further letter, dated 9th September 2019, from Dr Tran in response to a further query Miss Todd had raised. Mr Govan had no objection to the lodging of the further letter and I allowed all the additional evidence to be admitted.
22. The appellant was called as a witness for the purpose of adopting her additional statement. She was cross-examined by Mr Govan about her contact with her family. After hearing the

appellant's evidence I heard submissions, first from Mr Govan and then from Miss Todd.

Submissions

23. Mr Govan submitted that the expert evidence now showed that temporary residence was available in Vietnam. This would allow the appellant to relocate to another province, where she could obtain a temporary *ho khau* for three months.
24. Mr Govan further submitted that there were discrepancies in the appellant's evidence about whether she was in contact with her family in Vietnam. These arose chiefly from the question of whether the appellant used to contact her family by phone from the UK or they used to contact her. Mr Govan maintained that the appellant was not forthcoming or truthful. If the appellant had lost contact with her family, as she maintained, there was no evidence the appellant had taken any steps to trace them. If she was in contact with her family, they would be able to obtain new ID documents for her. It was for the appellant to show that she would not be able to ask her family to obtain ID documents for her and the evidence did not establish this.
25. Miss Todd addressed me on behalf of the appellant. She pointed out that the appellant was cross-examined about something she had said in a witness statement signed more than a year ago. The appellant had established to the lower standard of proof that she had had no contact with her family for 18 months. She would have to return to her home province to obtain identity documents. She would need to obtain an ID card separately from a *ho khau*, though it would be easier to obtain an ID card if her family were able to make a proxy application for a *ho khau* for her. However, the appellant would need to apply in person for an ID card. The letter of 9th September 2019 from the expert witness showed that it was essential to have an ID card, which was needed for travelling, opening a bank account, obtaining property and health insurance, and other day-to-day activities. The appellant would need a *ho khau* to obtain an ID card. Without an ID card it would be unduly harsh for the appellant to relocate with her two young children and her partner.

Discussion

26. I will address first the question of the appellant's contact with her family. In her witness statement of 15th August 2018, and in her more recent statement of 30th August 2019, the appellant said that she last had contact with her family in February 2018, at the time of the Lunar New Year. In cross-examination the appellant said that it was her family who contacted her at that time. The appellant explained that her family had her phone number and they used to call her, each time from different numbers. The appellant confirmed

that her family phoned her and she never contacted them. The last time they contacted her was at the Lunar New Year in February 2018.

27. The appellant was then asked if he had any means of contacting her family apart from when they telephoned her. The appellant replied that her family had changed their telephone number and even though she phoned back she could not contact them. The appellant explained that someone living in the countryside did not have a landline. Her family would buy different sim cards and replace them when they could.
28. Mr Govan pointed out to the appellant that in her statement of 15th August 2018 she had written "I contacted..." when referring to her contact with her family in February 2018 but she was maintaining in cross-examination that her parents always contacted her. The appellant explained that when she said she contacted her parents she meant she had a conversation with them, she did not mean she called them. The appellant re-stated this when questioned again.
29. The appellant was then asked how many times she had tried to contact her family since February 2018. She said she had called about five times at two week intervals but could not get through. It was pointed out to the appellant that in her witness statement she said that contact with her parents upset her too much. She was asked why she had tried to phone them. The appellant explained that the Lunar New Year is when families get together and she missed her family after talking to them in February 2018. This was why she tried to call them five times afterwards but could not get through. After this she was not missing them so much so she waited for them to contact her.
30. The appellant was then asked about her partner. She explained that he is from the same province as her and has an older brother living there. The appellant gave her partner's brother her parents' phone number but he could not contact them.
31. In his submission Mr Govan described the appellant as not forthcoming or truthful. I disagree. Mr Govan sought to found upon a supposed discrepancy as to whether the appellant used to phone her parents or they used to phone her. He referred to the appellant having stated in her statement of 15th August 2018 "I contacted..." meaning that the appellant telephoned her parents, not the other way round.
32. I note that the appellant gave both statements and her evidence at the hearing through an interpreter. It is difficult for me to find that the phrase "I contacted..." if said in Vietnamese is different from "I had contact with..." Expert evidence would be required to establish this distinction. There was no such evidence

and no need to provide it – the difference is a slight one in ordinary conversation even in English. Such a small difference in the use of this verb is too slight to support the adverse inference on credibility on which Mr Govan sought to rely.

33. There was then the question of whether the appellant ever attempted to phone her parents. The appellant gave an entirely reasonable explanation of why she attempted to do this following the Lunar New Year in 2018. I found nothing in the appellant's evidence to show that she was not forthcoming or not truthful.
34. Indeed, the appellant has been found to be telling the truth both before the First-tier Tribunal and in relation to having been trafficked. There is no reason now to make an adverse credibility finding on the basis of a linguistic point of very little, if any, practical significance.
35. On the basis of the appellant's evidence I find not only that she has lost contact with her family but that she no longer has a Vietnamese ID card. This finding, although not conceded by Mr Govan, was not challenged by him in cross-examination.
36. At the earlier hearing before me the issues raised were both identity and registration but more attention was directed to the household registration document or *ho khau*. In the light of the additional expert evidence greater emphasis is now placed upon the necessity of having an ID card. In her supplementary letter of 9th September 2019 the expert witness, Dr Tran, makes it clear that the ID card is the most important personal document in daily life in Vietnam. It must be carried when travelling within the country and the police or a local officer can ask for it at any time. A citizen who is not carrying an ID card can be fined. The ID card is required to apply for a job and to rent accommodation. An ID card is required to enter a government building and to apply for state health care insurance or state benefits.
37. In her supplementary report of 19th August 2019 Dr Tran explains how an application for an ID card is made. An application must be made in person at the local authority registration office in the applicant's place of permanent *ho khau* registration, i.e. the applicant's place of origin. The person must produce their *ho khau* when applying, as well as their birth certificate and their previous ID document, if it is available. If any of these documents are not available there may be long delays of months or even years in obtaining an ID card. Dr Tran observes that the appellant's parents could apply for the appellant to be relisted on their *ho khau* if they still lived in the appellant's place of origin – this is the proxy application to which Miss Todd referred. This would make it easier for the appellant to obtain an ID card. I have accepted, however, that the appellant has lost contact with her parents and does not know their whereabouts.

38. Dr Tran refers to the issuing of a temporary *ho khau*, to which Mr Govan referred. It is clear though that this is not the same as an ID card. Dr Tran also referred to the proposal in the Home Office report of September 2018 which states that the *ho khau* will be scrapped in 2010 and citizens will be managed by identification numbers on a new online national database. According to Dr Tran this report is incomplete and the proposed change is not fully understood, even within Vietnam. According to the Ministry of Public Security the *ho khau* will not be abolished but the paper document will be replaced by an electronic national identification card containing *ho khau* registration information.
39. The position the appellant will be in if she returns to Vietnam is that she will have neither a *ho khau* nor a registration card. Of these the greater difficulty arises from not having an ID card. The appellant can only obtain an ID card by applying in person in her home area. Without a *ho khau* she faces a difficult and lengthy application process, during which she would be at risk from loan sharks. If the appellant chooses not to return to her home area to apply, she faces very considerable disadvantages in attempting to carry out the normal activities of daily life in another part of Vietnam. I accept Miss Todd's submission that these difficulties, as described by Dr Tran, would be so significant as to render internal relocation unduly harsh, particularly as the appellant has two small children to provide for. The appellant's partner originates from the same province as her, where the appellant is at risk, and there is no suggestion that the appellant would not require an ID card of her own, even if her partner has one.
40. The appellant is therefore a person in need of international protection. It has not been argued before me that the risk to her arises for a reason recognised by the Refugee Convention, for example as a member of a particular social group, such as trafficked women. The risk to the appellant, as found by the First-tier Tribunal, is not of being trafficked again but arises from violence directed towards her family by loan sharks. This gives rise to a real risk of serious harm in her home area. Because of her lack of an ID card and the difficulty of obtaining one, she cannot reasonably be expected to relocate within Vietnam. She is entitled to humanitarian protection under paragraph 339C of the Immigration Rules.

Conclusions

41. The making of the decision of the First-tier Tribunal involved the making of an error of law.
42. The decision is set aside.
43. The decision is re-made by allowing the appeal.

Anonymity

At the previous hearing I made an anonymity direction pending the outcome of the appeal. In view of the appellant's history and family circumstances I continue this direction in the same terms, as follows. Unless or until a court or tribunal directs otherwise, no report of these proceedings shall identify either directly or indirectly the appellant or any member of her family. This direction applies to the appellant and to the respondent. Failure to comply with this direction may lead to contempt of court proceedings.

M E Deans
September 2019
Deputy Upper Tribunal Judge

27th