



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00631/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Newport (Columbus
House)
On 2nd May 2017**

**Decision & Reasons
Promulgated
On 25th May 2017**

Before

**UPPER TRIBUNAL JUDGE A GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

Between

**H T T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharif (Solicitor)

For the Respondent: Mr S Kotas (Senior Home Office Presenting Officer)

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

Anonymity having previously been ordered in the First-tier Tribunal and there being no application to remove the order, I see no reason to do so and the order remains in place. Unless and until a Tribunal or a 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.

DECISION AND REASONS

Introduction

1. The following circumstances appear uncontroversial.
2. The Appellant is a citizen of Vietnam. She was born on 2nd January 1982. Dependant on the outcome of her appeal is the position of her son "A1" born in the UK on 6th August 2015. The Appellant has an older child, a son born in Vietnam in 2005, whom she last saw about five years ago, and who has remained in Vietnam living with relatives, an aunt in Phugu District, Hung Yen Province.
3. The Appellant moved to Hanoi City when she was 12 years old to support herself.
4. In 2010, aged 28, and having had her eldest child, she accepted what she thought was a genuine offer of employment selling clothes to China, and arranged for her son to go to relatives so she could take up the offer. In the event, she was forced to work as a prostitute in China.
5. In 2013 she escaped and, with the assistance of a man she met in China, she travelled, over a period of months, to the United Kingdom arriving on 10th August 2014.
6. On 5th May 2015, the Appellant, pregnant and having become separated from the Vietnamese people with whom she was living, claimed asylum asserting that she was frightened to go home because she owed money to her traffickers.
7. She was referred to the National Referral Mechanism who concluded that the Appellant had been the victim of trafficking in 2010, when she was forced to go to work as a prostitute in China for three years.
8. On 5th January 2016, the Respondent refused the Appellant's claim for asylum, on the basis that she would not be at risk from her traffickers, there was in any event a sufficiency of protection and, finding no significant obstacles to her return and integration, concluded she did not qualify to remain under the Immigration Rules at paragraph 276ADE (HC 395 as amended) (private life Rules) and that her removal along with her baby, under Section 10 of the Immigration and Asylum Act 1999, would not breach Article 8 ECHR.

The Appeal to the First-tier Tribunal

9. The Appellant appealed. The Appellant asserted that the brothel owners in China would seek her out in Vietnam and try to kill her. Further she had no family to rely on. Her father is dead. Her mother left Vietnam taking two of her siblings with her years ago, and she has had no contact with her since. She believes, having read about gangs of traffickers on the internet, that her traffickers have a reach that can extend anywhere, including to finding her on return to Vietnam, and they would do so because of the money that she owes. Her own experience of paying off the police when she has been stopped for not wearing a helmet on a motorbike, shows a degree of corruption in the police force which means that there would be no sufficiency of protection by the state against her old traffickers because they would pay for protection. She would be unable to escape her traffickers by going to the area that her family came from because she had told her traffickers that she came from that area, so they would be able to locate her whether she was in Hanoi, from where she had been trafficked, or in her family home area. Her mother's sister is still alive but gave her no help when she was young and had to leave and go to Hanoi, and would not help her now. She had spoken to her aunt about the possibility of returning to live with them and her aunt had raised concerns about her presence affecting their standard of living and creating a risk to the family from the traffickers.
10. Judge Fowell found that the Appellant had been trafficked but, applying the case of Nguyen v SSHD [2015] UKUT 00170 (IAC), concluded that risk from her traffickers would be minimal given that she has had no contact with them for years, and would be returning to a rural location away from Hanoi from where she was trafficked. The case provided guidance that it was rare for a victim to encounter her traffickers on return, but that in any event, there was a sufficiency of protection from traffickers in Vietnam. The judge found that although the Appellant's aunt had raised concerns about the cost of having the Appellant live with her, and concerns about a risk from her traffickers, a risk which he concluded did not exist, the aunt had not refused to help the Appellant on return to Vietnam, nor was there evidence that the Appellant would not be able to care for herself and her son living in her home rural area. The judge noted that the case of LB [2004] UKIAT 00331 (IAC) concluded that it would not be unduly harsh to expect a single mother with a baby and two other children to relocate to a safe area where she had no family, to get away from gangs demanding the repayment of loans.
11. The judge noted that the country information including the Respondent's Country of Origin Information Report of May 2016 and the sources relied upon therein made it clear that, in the Appellant's circumstances, there was no basis to conclude that she would be at risk of persecution or serious harm on return, but that in any event any such risk was met by a sufficiency of protection. In respect of Article 8 the judge noted that the Appellant could not meet the Immigration Rules on the facts as he had found them to be, and that her and the child's circumstances did not otherwise warrant a grant of leave under Article 8 ECHR.

Appeal to the Upper Tribunal

12. The Appellant sought permission to appeal to the Upper Tribunal. The application was on five grounds:
- (i) The judge failed to consider a risk of re-trafficking by new traffickers given her particular vulnerability as a woman who had been trafficked for sex work, with two illegitimate children, and without family support.
 - (ii) The judge failed to reason why her traffickers would no longer be interested in her because the judge failed to refer to country evidence in support of his contention that passage of time, and absence of contact from the traffickers reduced risk. The conclusion was undermined by the international dimension of the historical trafficking from Vietnam to China. Further the judge's conclusion that the Appellant had family resources was contrary to her evidence that her aunt had refused to help her previously when she was a child.
 - (iii) The question of internal relocation was inadequately considered in the context of LB [2004] UKIAT 00331 because gangs demanding repayment of loans cannot be equated with international traffickers and further the judge had failed to deal with the particular vulnerabilities of the Appellant.
 - (iv) The Rules based assessment was flawed. "Very significant obstacles" as referred to in paragraph 276ADE(vi) of HC 395 was inadequately considered. A finding that the Appellant could return without risk, or that there was a sufficiency of protection to meet any risk, or that there was a viable option of internal relocation, was an insufficient answer to the question of very significant obstacles. Taking account of the Appellant's vulnerability, lack of family support, the stigma attached to single mothers and the lack of a means of supporting herself properly, were sufficient basis upon which to find that there were insurmountable obstacles to her reintegration.
 - (v) In terms of Article 8 outside of the Rules the judge failed to consider whether there was a reasonably arguable case under Article 8 which had not been sufficiently dealt with by consideration of the Rules.
13. Permission to appeal was initially refused by the First-tier Tribunal on 9th September 2016 but granted on renewal to the Upper Tribunal. The grounds were repeated in full with the addition of a response to the First-tier Tribunal's refusal to grant permission to the point that there had been a complete failure to consider a risk from new traffickers, and that the judge's conclusion that the Appellant has family in Vietnam was made on the erroneous view that the family had not refused to assist her, when the Appellant's evidence had been that they would not help her.
14. On 17th October 2016, the Upper Tribunal granted the Appellant permission to appeal, without restriction, but specifically because it was found arguable that there had been inadequate reasoning for rejecting the Appellant's claim to be at real risk of being re-trafficked.

Discussion

15. Before us, Mr R Sharif appeared for the Appellant. He was instructed by Fountain Solicitors, who were themselves instructed in place of Migrant Legal Project who had represented the Appellant before the First-tier Tribunal. Mr Sharif had not had earlier connection with the case. He relied upon the renewed Grounds of Appeal.
16. Mr Sharif, whilst accepting that it had never been suggested at the First-tier Tribunal that the Appellant was at risk from different or new traffickers, submitted the failure to assess such a risk was “Robinson” obviously wrong because it would have been apparent to the judge, from the country information provided in the bundles that such a risk existed. We pressed him to take us to the relevant country information, and he took us to the Country of Origin Information Report “Country Information and Guidance Vietnam: Trafficking” of May 2016 at page 164, but it was apparent there was nothing there to sustain the argument, and the point fell away.
17. During discussion, we pointed out to Mr Sharif that in any event, as the grounds had not challenged the judge’s finding that, even if there was risk to the Appellant of being re-trafficked, there was a sufficiency of protection, any error in assessment of risk was not material. Mr Sharif gamely requested permission to amend his grounds, to challenge the judge’s conclusion on that point. He took a few minutes to consider the country information but was unable to draw together, or particularise, a ground. Taking us again to page 168 of the Respondent’s guidance, as to the matters to be considered and the protection available (paragraph 2.33 through to 2.48) and the Upper Tribunal case of Nguyen, he was unable to point to any strengths in the ground.
18. In respect of Ground 2 Mr Sharif reiterated the ground’s assertion that the fact that there had been no contact with the traffickers for years did not establish that they would not be interested in pursuing her. Further, reasoning that the Appellant would be in a rural area rather than in Hanoi, was predicated on finding that she would go to the rural area because of the support of family there, but the Appellant’s evidence was that her aunt would not help, so the finding was not supported by the evidence.
19. In respect of Ground 3 Mr Sharif argued that when considering internal relocation there had been inadequate reference to the Appellant’s vulnerabilities in terms of her personal circumstances.
20. In respect of Grounds 4 and 5, relating to Article 8, Mr Sharif indicated that he had no submissions to make but relied on the grounds as drafted.
21. Mr Kotas for the Respondent argued that the failure to consider a risk from new traffickers was not erroneous because the Appellant had not relied on such a risk.
22. Mr Kotas submitted that, reading the decision in the round, the reality was that there were two points that the judge found were fatal to her claim.

23. Firstly, as the decision made clear, the Appellant had not been forthright about the family circumstances in Vietnam, only conceding in cross-examination that she had been in contact with the family in Vietnam, and on the one hand saying that the family would not help her now because they had not helped her when she had been forced to support herself by going to work in Hanoi when she was 12 years old, and on the other, that they were looking after her son whom she had sent to the family when she thought that she was going to obtain new work in 2010, but was in fact trafficked. In the context of all the evidence it was open to the judge to find that the aunt had not refused to help.
24. Secondly there was no medical evidence of particular vulnerability, including medical or psychological factors having an impact on the Appellant, as the judge noted at paragraph 32 of the decision. To the point that the judge was entitled to find in the alternative, and contrary to his primary conclusions, that, in the event the Appellant faced a risk in Hanoi and there was insufficient protection available, the risk could be avoided by going to the safe haven of the home area, and that was not unduly harsh for her to relocate from Hanoi to the family's rural home area.
25. Mr Kotas submitted that those points were sufficient to deal with the remainder of the grounds. In the context of the Immigration Rules, paragraph 276 ADE and the issue of very significant obstacles to integration, nothing additional had been relied upon, as identified by the judge at paragraph 34 of the decision. Regarding Article 8 ECHR, whilst the judge might have said more, the facts as found were incapable of giving rise to a different result. The Appellant had only been in the United Kingdom since 2014, and the judge had concluded that she could safely return to Vietnam, and can look after herself and her child.
26. Mr Sharif indicated he did not wish to reply.
27. We begin by considering the ground relying upon the judge's failure to consider a risk from new traffickers. The Appellant had not expressed a subjective fear of being re-trafficked by new traffickers, the risk was not relied upon in the Grounds of Appeal before the First-tier Tribunal Judge, so far as we can tell, as part of the submissions made by the Appellant's legal representative. The findings in respect of the lack of any real risk to the Appellant in the context of her own circumstances, as they were evidenced to the judge, including her age, absence of health problems, ability to call on family support and to earn a living legitimately, were all findings open to the judge on the evidence, as we explain below, and clearly pointed away from vulnerability to being re-trafficked by new traffickers. It is not an error of law for the judge to fail to deal with an argument which was not raised, and where clearly, as on the facts found here, the judge would in any event have concluded that the Appellant had not established, even to the low standard, that there was such a risk.

28. The grounds arguing error in the judge's reasoning concerning the support available to the Appellant from family are without merit. In the Appellant's unusually short witness statement she states, at paragraph 5:
- (a) "my aunt, my father's sister is still alive. I could not stay with her. She didn't help me when I was young and had to go and work, so I do not think she would help me now ..."
29. As Mr Kotas pointed out the piecemeal way in which the evidence came out was unsatisfactory. Only when pressed in cross-examination did the Appellant admit that she had had contact with her aunt, and that she still lives in Hung Yen, about two hours from Hanoi, where the Appellant was born and lived until she was 12. It was only in re-examination that she went on to say that she had spoken to her aunt about the possibility of returning to the family in Vietnam, and the aunt had been concerned that it would affect the family's standard of living, and that they were worried about the traffickers. Evidence that her son lived with her aunt only came out following clarification by the judge. In those circumstances, it was open to the judge to conclude that the aunt had not actually refused to help her, albeit that she had concerns. The judge was entitled to make his finding that the concern about risk from the traffickers was unfounded and that there was no evidence to show that the Appellant would be unable to care for herself and her son. Mr Sharif argued that the circumstances of the Appellant in the context of her age, gender, health, skills and family ties required greater exploration, but brought forward nothing that the judge has not considered.
30. In asserting that the judge needed to bring forward evidence to support his "contention" that the Appellant's removal to a rural location and the passage of years without contact from her traffickers reduced the risk of being re-trafficked the argument is flawed. Firstly, the burden is on the Appellant to establish her case, and it was open to the judge to find that it has not been established. Secondly those conclusions are in-line with the reported cases concerning risk and sufficiency of protection of Nguyen and LB. The grounds fail to identify any evidence going to show that the Appellant's traffickers would still be interested in her. Mr Sharif could take us to nothing in the country information revealing the judge's conclusions to be perverse, and his suggestion that the fact that the traffickers took her across an international border from Vietnam into China does not of itself suggest either a reach or current interest, making the judge's conclusion unsustainable.
31. Mr Sharif's argument that the consideration of internal relocation was insufficiently individualised fails, for the reasons at [28]-[29] above.
32. All the grounds challenging the judge's findings in respect of the judge's assessment of risk, none of which are made out for the reasons above, are in any event fatally flawed by the failure to challenge the sufficiency of protection finding. We have set out our reasoning above as to why Mr Sharif's late appreciation of that difficulty mid-way through his submissions, and consequent request to amend the grounds, could not

meet with success (see [17] above). In short, as per Nguyen, the historical nature of the trafficking was relevant, the country is large with some 90 million people and the chance of the Appellant coming across her traffickers is “very slight”. In Nguyen, a single mother with three very small children returning alone to Vietnam, even in the context of having previously been trafficked, was found not to be at real risk of harm on that account. At paragraph 52 the Tribunal stated “It is speculative and no more to suggest that she would face a real risk of coming across her previous traffickers or that, as a woman in the circumstances in which she would return, she faced a real risk of being trafficked by someone else.” Additionally, Nguyen guides: “there is evidence, in the US State Department report of 2010, referred to in paragraph 50 above, to support the Respondent’s conclusion in the decision letter that there is a sufficiency of protection provided by the authorities in Vietnam.”

33. For all the reasons above the judge was entitled to conclude that the Appellant had failed to establish her case, to the relevant standard, on international protection grounds.
34. We turn briefly to the remaining family and private life grounds of challenge. Although permission was not refused on these grounds there was no express recognition of any merit in the grant of permission, and Mr Sharif did not seek to elaborate upon the grounds or make submissions. The challenge is to form not substance. We can deal with the matter shortly. Having found that the claimed risks associated with return were not made out, and having considered all the personal attributes and circumstances of the Appellant and her sons as described in the evidence, it was inevitable that the judge concluded on the facts, that the Immigration Rules were not met and that the circumstances of this family otherwise did not require a grant of leave on Article 8 ECHR grounds.
35. For all the reasons set out above the decision of the First-tier Tribunal Judge does not reveal any error of law and it stands. The Appellant’s appeal is dismissed.

Signed

E. Davidge

Date 17 May 2017

Deputy Upper Tribunal Judge Davidge