



**Upper Tribunal
(Immigration And Asylum Chamber)
AA/08316/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Field House
On 25 August 2015**

Promulgated

**Decision & Reasons
On 2 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MR PHUC HUU LE

(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr Henry Ti, solicitor, Kesar and Co
For the Respondent: Ms E Savage, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Vietnam, born on 17 July 1994. His appeal against the decision of the respondent to refuse his claim for asylum in the UK was dismissed by First-tier Tribunal Judge Mackenzie in a decision promulgated on 5 June 2015.
2. The appellant appeals with leave from First-tier Tribunal Judge Reid. She found that it was arguable that the Judge's conclusions on credibility are lacking in reasoning, notwithstanding her reference to the appellant's age and further, they are arguably based on hypothesis and speculation.

The background to the appeal

3. The appellant claimed to have been brought to the UK in May 2011. At the beginning of July 2011 he escaped from a house where he was being kept against his will. He claimed asylum on 15 August 2011. That was refused on

13 October 2011 but he was granted discretionary leave as an unaccompanied minor.

4. In January 2012 he submitted an HPDL in which he relied on the information provided as part of his original asylum claim. That included a screening interview that took place on 22 August 2011. A detailed witness statement was produced on 12 September 2011. He was interviewed on 3 October 2011.
5. Judge Mackenzie rejected the appellant's account that he had been kidnapped in Vietnam and trafficked to the UK [45]. She nevertheless considered his claim at its highest, namely whether, if returned to Vietnam, he is likely to be the subject of adverse interest from loan sharks, entitling him to relief under the Refugee Convention or under the Human Rights Convention[45].
6. She found that there was no reasonable degree of likelihood that he would be unable to reapply for permanent residence when returned to Vietnam, or that he would be unable to relocate internally. [51]
7. She did not find that the appellant would be unable to obtain protection in Vietnam were he to be traced by the loan sharks. She had regard to the country of information report dated 9 August 2013 which noted that police organisations exist at provincial, district and local levels and are subject to the authority of the peoples' committees at each level. At the commune level, it is common for guard forces composed of residents to assist the police [52].
8. She also dismissed his Article 8 claim.
9. At the error of law hearing on 25 August 2015 Mr Ti adopted and relied on his skeleton argument which sets out 13 grounds relating to credibility and the remaining six to risk on return.
10. Mr Ti submitted with reference to paragraph 1(a) of the grounds that the Judge's finding that there was an inconsistency between the appellant's answer in the screening interview and his subsequent statement was legally flawed, as there had been no responsible adult present. She therefore did not give any indication that she had exercised any degree of caution before relying on his answer form that interview.
11. However, when Ms Savage responded to the application, she pointed out that at paragraph 4.2 of the screening interview it is recorded that the appellant in fact had his legal representative present. Mr Ti accepted that he had failed to notice that. When asked whether he wished to make any further submissions relating to his contention in paragraph 1(a) of his skeleton argument, he stated that he had nothing further to add.
12. Mr Ti has contended in several of the grounds that the Judge placed unreasonably high expectations on the child; furthermore, no opportunity was given to the representative or the appellant to deal with any matter

affecting the appellant's credibility that was relied on by the Judge in her determination. Moreover, the Judge did not apply anxious scrutiny, bearing in mind the appellant's age, his background, lack of sophistication and lack of education.

- 13.** Thus, at paragraph 1b, Mr Ti submitted that the Judge placed an unreasonably high expectation on a child from a rural area with only five years' education to be precise in language - where he said "I" or "we" borrowed the money - in answer to a question.
- 14.** It is also contended that the Judge wrongly stated that it was not credible that the appellant was not given the opportunity to disclose to a representative or to a Court what had happened to him. That was an error, as the appellant had in fact disclosed to a court what had happened to him. He stated that in response to question 109 of the asylum interview.
- 15.** Ms Savage accepted that although there had been an error by the Judge in that respect, this did not constitute a material error in the circumstances.
- 16.** Mr Ti also criticised the Judge's credibility finding at [33] that it was not credible that after the appellant was released from court he was briefly taken back to the detention centre and then released. Nor did she find it credible that he was not given any documentation prior to release and that no conditions were placed on his release. The French authorities would have had no doubt that this was human trafficking and she rejected the appellant's account that he was simply released onto the streets.
- 17.** Mr Ti submitted that those findings are flawed as the Judge did not state the basis for her understanding or expectation of the French immigration procedures. It was therefore baseless and irrational. She failed to give adequate explanations as to how she arrived at that finding.
- 18.** She also failed to note the description of events by the appellant, which she found not to be credible, was consistent with the information described in the Human Rights Watch report "Lost in Transit". The Judge therefore failed to take into consideration the relevant material. Alternatively, her finding is unreasonable in the light of the evidence.
- 19.** Mr Ti also attacked the Judge's finding at [34] that the appellant was picked up by a car on release and brought to a house where he was again held captive. She failed to give any explanation or reasons for that finding as required in MK (Duty to Give Reasons) Pakistan [2013] UKUT 641.
- 20.** He submitted that the Judge's finding at paragraph 34 that there was a contradiction between what the appellant said in his 2011 statement as opposed to what he said in his 2015 statement was flawed as the Judge failed to give the appellant or his representative an opportunity to redress the apparent inconsistency. That constituted procedural unfairness.
- 21.** Nor did the Judge apply anxious scrutiny, having regard to the context of the appellant's experience. Nor was there any inconsistency between

“agent” and “a man I thought was linked to the people who kidnapped me” [34]. Even if there was, the distinction is minor and understandable given the appellant's background. The Judge's finding is unreasonable as it places too high an expectation on the precision of language on a 17 year old boy with only five years' education.

22. Furthermore, the finding at [34] that it did not make sense that the appellant would get into the car with that man without trying to escape was flawed. No opportunity was given to address the apparent implausibility.
23. Mr Ti also joined issue with the Judge's finding in this respect on the basis that it was plausible that a 16 year old from a rural area with a limited education who finds himself in a strange land where he does not speak the language or know how to read road signs having been told of serious consequences to himself or his mother of any escape attempt, *would* be compliant even with his captors. The Judge did not apply anxious scrutiny.
24. Paragraphs 7 of his skeleton contend that there was insufficient anxious scrutiny given by the Judge, who also made a material error of fact as to the location of the appellant's contact with the French authorities and that she failed to give any weight to the relevant evidence contained in the HRW report. He also attacked the findings at [39] where the Judge found that it was not credible that upon escape from the house, the appellant did not immediately find someone who could help him such as by knocking on doors in the middle of the night to try to get such help the following day.
25. He again contended as part of his grounds that the Judge failed to give the legal representative an opportunity to address that apparent implausibility. He submitted in the alternative that in fact the appellant's conduct was plausible as he believed it was unlikely that anyone would open the door to him at that hour; that waiting for someone to get out of bed would have allowed his pursuers to catch up with him; that he did not speak any English and would not have been able to explain the situation to anyone if they did answer the door, and that he feared contact with the UK police, which would have been the most likely outcome.
26. Accordingly the Judge failed to apply anxious scrutiny when considering whether there might have been plausible explanations for his actions and the finding is unreasonable.
27. The Judge also rejected the evidence given by the appellant and the Vietnamese couple regarding the circumstances in which they met. Mr Ti submitted that the rejection was based on flawed reasoning. Further, the appellant and his representative were not given an opportunity to address the apparent implausibility. The Judge herself “admitted” that she did not know what persons from Vietnam would consider acceptable in terms of offering help to people in difficulty. She failed to take into account that in many diaspora communities, people are willing to take in and assist others from their own community or origin. The Judge thus failed to consider material information or failed to explain why she dismissed the couple's explanation in their letter dated April 2015.

- 28.** Mr Ti submitted that the Judge's finding that it was not credible that the Vietnamese couple were too busy to access support for the appellant for a period of weeks, was not supportable and was based on an error of facts. That is because they have stated in their letter that they were so busy they could not help him claim straight away. There was a gradual process of gaining his trust and getting him to agree to see a solicitor. He had an appointment within two weeks of staying with them. They had to trust each other.
- 29.** Mr Ti submitted that the Judge's findings at [43] that the appellant's statement that he believes that if he is in the UK his mother would better, cannot be reconciled with his concerns regarding his mother's health. It is not clear why they are irreconcilable and are prima facie consistent. The findings are moreover irrational.
- 30.** Mr Ti submits that the finding, in paragraph 44 where the Judge found it difficult to accept that the appellant did not make more of 'pressing efforts' to contact his mother other than write two letters, is flawed. Again, this was not a matter put to the appellant or his representative. Nor did the Judge have information on when the appellant's solicitor gave him the contact details of the organisation. It was irrational to conclude that he had not acted on that information fast enough. Moreover, just over two months passed since the interview and it was not unreasonable during that period that the appellant needed some time to recover from his traumatic experience. He then wrote a letter and waited a period to receive a reply and, not having received one, wrote a second letter before deciding whether further action needed to be taken. The Judge's findings are accordingly "unreasonable".
- 31.** It is also submitted that the Judge took into account his age and the difficulties he might have when asked to discuss distressing experiences in the past, but failed to take into account aspects of the appellant's background relevant to the assessment of credibility, namely his limited education and that he is from a rural area, and is less assertive, sophisticated or streetwise than urban youth.
- 32.** With regard to the risk of return, Mr Ti submitted that the rejection by the Judge at paragraph [46] that the appellant would not be trafficked as five years had passed and the kidnappers did not know the appellant's name and the information of his escape from his captors was unlikely to have reached the loan sharks was made without applying anxious scrutiny '.....and consider that he would be recognised by the loan sharks by his appearance and his return to live in his mother's house in their village'. Further, punishing people who escape acts as a deterrent in the business of a loan shark and human trafficker. The Judge's findings are accordingly irrational and it is unsafe to 'assume' that there would be no adverse consequences on his return.
- 33.** He submitted that the Judge's findings at [47] and [48] that the appellant would not be at risk of persecution because there is sufficient protection in Vietnam is flawed. The Judge failed to apply anxious scrutiny in considering

this evidence. Vietnam is a Tier 2 status in the US TiP report as a country which does not fully comply with minimum standards set, but are making efforts to bring themselves into compliance. Accordingly Vietnam has not achieved the minimum standards of protection.

- 34.** The Judge's reliance on a UKVI's conclusion that support and protection from governmental and non governmental sources are generally available and that internal relocation is often a viable option failed to apply anxious scrutiny without considering 'how it was arrived at or whether it is applicable to the appellant'. He submitted that the conclusion relates to victims of sex trafficking and not to the appellant. The Judge failed to take into consideration relevant material at paragraph 3.11.8-13. In the alternative, he submitted that the Judge's finding that there was sufficient protection is perverse and against the weight of the evidence.
- 35.** He also criticised the Judge's "statement" that she did not find that there is a reasonable degree of likelihood that the appellant would be unable to reapply for permanent residence in his home area or that he would be unable to internally relocate within the country. He argued that the appellant cannot return to his home area as he will be recognised by the loan sharks whom he fears. "Objective evidence" was submitted as to serious difficulties that a person would have in registering with their local authorities in a new area of relocation and of the hardship that would result as a consequence of failure to register. She has failed to give good reasons for her belief.
- 36.** He referred to various passages from a Centre for Social Protection report dated January 2011 in respect of social protection for rural urban migrants in Vietnam. The Judge did not consider the evidence as to the problems for such migrants.
- 37.** The finding that there would be a sufficiency of protection did not go on to consider whether the police force has the ability and readiness to operate that machinery. Nor did the Judge consider whether the police infrastructure offered any protection to victims of trafficking; accordingly no anxious scrutiny was applied, resulting in an unreasonable conclusion in the light of the evidence.
- 38.** In reply, Ms Savage relied on the Rule 24 response. She submitted that the Judge had applied the correct burden and standard of proof [4] and [7-8]. The Judge had noted the appellant's age and the passage of time that had elapsed. He would have been over 17 years when he claimed asylum, a number of months after entering the UK.
- 39.** Apart from the written response she submitted generally that the Judge had made findings and conclusions relating to the appellant's credibility which were open to her. On a proper assessment of the decision, the Judge did not have unreasonably high expectations of the appellant. She did provide proper reasons at [33] for rejecting the account given by the appellant concerning the interception of the lorry and that he was simply released

onto the street after his court appearance even though the authorities must have been in no doubt that this was human trafficking.

40. She referred to Y v SSHD [2006] EWCA Civ 1223. She submitted that the Human Rights Watch report was considered, and the Judge was entitled to find at [35] that it did not assist him. She maintained that the finding at [35] is in fact correct.
41. With regard to paragraphs 4-12 of the grounds, she submitted that these make similar points, namely, that the findings were not properly reasoned. She submitted that in any event there is no positive obligation on the Judge to put every point to the appellant or his representative as claimed. Here the Judge considered all the documents before her before arriving at the credibility findings. The findings had accordingly been properly open to her.
42. She referred to and relied on other authorities including MK (Duty to Give Reasons) Pakistan [2013] UKUT 641 (IAC).
43. Moreover, she submitted that the finding that it was highly unlikely that his escape would reach the attention of the loan sharks in Vietnam was available on the evidence and was properly made. The appellant's submissions regarding the findings at [46] amount to a disagreement with the finding of the Judge.
44. With regard to the contentions regarding sufficiency of protection, she submitted that there is a system in place. An appropriate finding was made at [47-48] which was open to her. The reports were all referred to and the conclusions were properly reasoned.
45. She submitted regarding the submission at paragraph 16 relating to internal relocation, that the Judge had given proper consideration to the objective evidence, which included the COI report and there was nothing to show that this had not been taken into account. Nor would conditions be unduly harsh for the appellant. In that respect she referred to paragraph 46 of the reasons for refusal, where there was a reference to Januzi [2006] UKHL 5. The finding at [51] was open to the Judge as well.
46. The Judge has, she submitted, properly considered all the relevant reports and has addressed the issues concerning sufficiency of protection.

Assessment

47. I have had regard to the authorities relied on, including MK, supra. There the Upper Tribunal stated [11] that the depth and extent of the duty to give reasons will inevitably vary from one case to another. The duty is contextually sensitive. Thus, as the Upper Tribunal observed in Shizad [2013] UKUT 35, a Tribunal's reasons need not be extensive if its decision makes sense. There is also reference to the well known authority of R (Iran) v SSHD [2005] EWCA Civ 982.

- 48.** It is axiomatic that a determination must disclose clearly the reasons for a Tribunal's decision. If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not to be believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons. I have also had regard to the Court of Appeal decision in Y v SSHD [2006].
- 49.** I have considered Mr Ti's submissions as to the alleged unreasonably high expectations that the Judge had.
- 50.** She has however expressly stated when assessing credibility, that she has taken into account the fact that the appellant was a minor when the asylum interviews were carried out in 2011. She has also taken into account the difficulties an appellant might have when asked at the interview to discuss distressing experiences in the past. She has considered the relevant UNHCR paragraphs in the handbook containing relevant guidance, as well as paragraphs 339I to 339N of the Immigration Rules [28]. Moreover, she has had regard to the contents of the appellant's witness statement relating to his early life - "when he was very young." [14]. She referred to the fact that he went to school from 2000 to 2005 but had to stop going because his mother could no longer afford the fees. From then on he worked in the market with his mother.
- 51.** Accordingly the Judge has had proper regard to the appellant's limited education.
- 52.** She has considered the letter from an anti-human trafficking project worker with Hesita contained within the appellant's bundle [29]. The worker stated that she had been the appellant's case worker since December 2014 and that she met him every fortnight and provided him with support. Although the letter did not confirm what experience the author had in dealing with victims of trafficking, the Judge stated that she gave careful consideration to what is said and the description of the appellant's presentation.
- 53.** She went on to state that she had to consider all the evidence in the round when reaching her conclusions on the appellant's credibility and in determining the appeal. Having considered his evidence of how he was kidnapped from his home in Vietnam, taken to France and then to the United Kingdom, she concluded that the core of his account lacked credibility [30].
- 54.** I accordingly find the submission that the Judge has not taken into account that she was dealing with a 16 year old from a rural area with limited education was not made out. Nor is the assertion in paragraph 14 of the grounds seeking permission, made out, namely, that at no point did the Judge give any indication that she has taken into account the fact that he has had only five years of education; that he is from a rural area and is accordingly less sophisticated or streetwise.

- 55.** The grounds have repeatedly contended that the Judge failed to give the appellant or his representative an opportunity to address apparent implausibility or inconsistency findings, resulting in procedural unfairness. I do not however find in the circumstances of this case that there was such a far reaching duty on a Judge to give the “opportunity”.
- 56.** If the Judge were subsequently to rely on evidence which had not been before her during the hearing, there would be such procedural unfairness were she to make findings relevant to the appellant's credibility which included reference to such evidence. However, it is not asserted that the Judge relied on any evidence beyond the four corners of the bundles and the oral evidence produced at the hearing.
- 57.** It is also contended that the Judge failed to apply anxious scrutiny in considering whether there might be plausible explanations for the appellant's actions. Alternatively, it is contended that some of the findings relating to implausibility is unreasonable. I have set out the specific contentions in considering Mr Ti's very detailed submissions.
- 58.** However, I accept Ms Savage's submission in respect of grounds 4-12 that the Judge has taken into account those matters relevant to a fair assessment of his credibility including age, the elapse of time, his lack of sophistication and education when making her findings. It is also evident that the Judge has considered the background material placed before her when making those findings.
- 59.** The Judge's findings regarding the appellant's credibility were open to her on the evidence presented and she has provided proper reasons for her conclusions. The grounds in this respect amount to a disagreement with the findings reached by the Judge. However, I do not find that the findings are in any way flawed, perverse or irrational.
- 60.** With regard to the submissions relating to the issue of risk on return, the Judge had earlier rejected the appellant's account that he had been kidnapped in Vietnam and trafficked to the UK. Nevertheless, she considered the claim at its highest, namely whether he is likely to be the subject of adverse interest from loan sharks such as to trigger concerns under the Refugee Convention or the Human Rights Convention.
- 61.** In that respect, the Judge rejected the submission that if returned to his home area, the loan sharks would recognise him as one of their former victims and would target him again or would want to punish him for having escaped them.
- 62.** She has given reasons for that finding, including the fact that it has been over five years since the appellant left Vietnam. It had not been suggested that those who kidnapped him even knew his name. In any event, she had regard to the chronology offered by the appellant in his witness statement that it would appear that different agents were involved in the different stages of the journey to the UK and it would seem highly unlikely that any information that the appellant had escaped from his captors in the UK

would have reached the loan shark or anyone acting on their behalf in Vietnam [46].

- 63.** She found that there would not be a risk of the appellant being persecuted on his return having regard to the Operational Guidance Note on Vietnam dated 15 July 2014. Various extracts were provided in the appellant's bundle. The Judge has also quoted from the USSD Trafficking in Persons Report 2012. She had regard to the conclusion, namely that support and protection from governmental and non-governmental sources in Vietnam are generally available to the victims of trafficking. Internal relocation will often be a viable option for applicants who fear reprisals from traffickers upon return to the country [47-48].
- 64.** She accordingly found that there was some system in place. She has referred to the relevant parts of the Home Office Operational Guidance Note. She has also had regard to the Country of Origin information report dated 9 August 2013 with regard to those who have been absent from their permanent place of residence for more than six months without registering their temporary absence and without plausible reasons will have their names crossed out from the household registration book. They are required to re-apply for registration when they return.
- 65.** In that respect, the Judge stated that she has given careful consideration to the relevant background evidence and found that there was no reasonable degree of likelihood that the appellant would be unable to re-apply for permanent residence when returned or that he would not be able to internally relocate within the country [51].
- 66.** Whilst acknowledging the potential problems that would present themselves to the appellant, she found having regard to the evidence adduced, that he would be able to re-apply for registration.
- 67.** She has also had regard to sufficiency of protection and has considered the sources produced and relied on by both parties [52]. In the circumstances, taking the appellant's claim at its highest, she did not find that he would be unable to obtain protection in Vietnam were he in fact to be traced by the loan sharks. She found that police organisations were shown to exist at provincial, district and local levels and are subject to the authority of the people's committees at each level. At the commune level, it is common for guard forces composed of residents to assist the police [52].
- 68.** In summary the Judge has properly directed herself with regard to the appellant's age, level of sophistication, lack of educational background and the fact that he comes from a rural area. She has shown that she has given anxious scrutiny to his evidence, having taken into account various factors referred to including the report from the Anti-Human Trafficking Project worker as to the appellant's presentation.
- 69.** The relevant findings by the Judge were supported on the evidence and documentation presented and are accordingly sustainable.

- 70.** Finally, the Judge has properly considered whether the appellant faces any risk on return on the basis of being the subject of adverse interest from the loan sharks. She has also taken into account problems relating to re-applying for registration and internal relocation in Vietnam. She has also properly considered the availability of protection to the appellant based on the documentation relied on.

Notice of Decision

The decision of the First-tier Tribunal Judge did not involve the making of any material error on a point of law. It shall accordingly stand.

No anonymity direction is made.

Signed

Dated: 30 September 2015

Deputy Upper Tribunal Judge Mailer