



IAC-FH-NL-V1

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

Appeal Number: AA/10071/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 February 2016**

**Decision & Reasons
Promulgated
On 13 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**M V V
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Head, Counsel

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Master M V V, a minor, born in Vietnam on [] 1999. He arrived in the United Kingdom unlawfully, on a lorry, on 27 October 2014. He thereafter claimed asylum, on the basis that in November 2013 he was living with his father in Hanoi when a group of five men came to

the house and threatened his father saying that they would kill his family if he betrayed them. Two weeks later the same five men also visited the house. They did not see him and he saw them leaving the house as he returned home. The Appellant and his father then moved to Hanoi where they stayed for two months before leaving Vietnam together and then stayed for another two months in an unknown country before entering the UK on a lorry during which time the Appellant and his father were separated.

2. The Appellant's asylum application was refused by the Respondent and reasons given in a letter dated 22 June 2015. The Appellant appealed against this decision and his appeal came before First-tier Tribunal Judge M A Khan on 13 November 2015. In a Decision and Reasons promulgated on 8 December 2015 the judge dismissed the appeal on the basis that he did not accept the credibility of the Appellant's case, holding at 42:

"I find that the Appellant had made up the whole evidence in support of his asylum case". The Appellant's oral evidence before me was wholly vague and evasive. I find that the Appellant has totally made up the whole of his asylum claim and he has invented various versions which are inconsistent with his claim."

He further found at [45] that the Appellant's asylum claim did not engage the Refugee Convention and at [48] there was no real risk that he would suffer a breach of his rights contrary to Articles 2 and 3 of the European Convention on Human Rights.

3. An application for permission to appeal was made on the Appellant's behalf and detailed grounds were submitted on 23 December 2015. The grounds of appeal essentially asserted that the judge had failed to competently consider the evidence before the court and specifically concessions made by the Respondent when refusing his asylum application; that the judge had failed to give cogent or sustainable reasons for finding that the Appellant would not be at risk on return to Vietnam as a minor and had failed entirely to consider the compelling background material before the court as to the treatment of minors and in particular unaccompanied minors in Vietnam.
4. Permission to appeal was granted on 18 January 2016 by Judge of the First-tier Tribunal Landes on the basis that it was arguable that the judge erred materially in law. He did not engage at all with the risk to the Appellant returning as a minor, he did not appear to recognise that the Appellant's claim as a minor engaged the Convention and did not adequately consider Section 55. In addition it is arguable the judge should not have departed from the Respondent's acceptance of the facts underlying part of the Appellant's claim, without at least indicating at the hearing he might do so.

5. At the hearing before me the Appellant was represented by Ms R Head and the Respondent by Mr T Wilding. The Appellant attended along with his foster father and another child being fostered within that family unit.
6. I heard submissions from Ms Head and Mr Wilding and I found at the hearing that the First-tier Tribunal Judge erred materially in law, in particular in the manner in which he addressed the Appellant's credibility and in relation to Section 55. I now give detailed reasons for why I reach that conclusion.
7. It is the case that in the refusal letter the Respondent accepted some aspects of the Appellant's appeal not only at [14]-[17] that the Appellant is Vietnamese but at [39] and [41] that a group of men visited his home in November 2013, threatened his father and that the same group of men visited his home two weeks later. That is not reflected in the decision by First-tier Tribunal Judge Khan who at [43] said:

"I find that the Appellant has made up his whole evidence about his father being threatened and the evidence with regards to his claim. This is contrary to the acceptance by the Respondent in the refusal letter that this part of the Appellant's claim was true."

In addition, at [40] of his decision the judge rejected the submission that the Respondent had failed to consider Section 55 of the 2009 Act, on the basis that the Appellant had been granted discretionary leave to remain as a result of the Respondent's consideration of the child's best interests. The judge further found at [40] that whilst he had to consider the circumstances at the date of the hearing, for all practical purposes the Appellant would not be removed from the United Kingdom until he is an adult.

8. It was submitted to me and I find that the judge erred materially in law in that it was incumbent upon him to consider the risk to the Appellant on return to Vietnam as a minor. Part of that consideration was the fact he was being returned as a minor child and the judge simply does not consider that aspect of the case through the prism of Section 55 as he is required to do.
9. In light of my finding that the judge erred in respect of his assessment of the Appellant's credibility and in his assessment of the application of Section 55 of the Borders, Immigration and Asylum Act 2009, I find the judge further erred in failing to engage with the Convention reason put forward on the Appellant's behalf i.e. the risk on return as a minor or an unaccompanied minor to Vietnam. This of course ties in with the Section 55 ground of appeal.
10. For these reasons I find that the decision of First-tier Tribunal Judge Khan cannot stand and I allow the appeal to the extent that it is remitted back to the First-tier Tribunal to be heard by a different judge other than First-tier Tribunal Judge M A Khan.

Notice of Decision

The appeal is allowed to the extent that it is remitted back to the First tier Tribunal for a re-hearing *de novo*.

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 Rebecca Chapman

Date 12 May 2016

Deputy Upper Tribunal Judge Chapman