



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/12917/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 21 July 2016**

**Decision & Reasons
Promulgated
On 27 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**K N
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Blundell, Counsel instructed by Malik & Malik
Solicitors

For the Respondent: Ms Z. Ahmed, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals on procedural fairness grounds from the decision of the First-tier Tribunal (Judge Row sitting at Birmingham on 24 May 2016) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international or human rights protection.

The Reasons for the Grant of Permission to Appeal

2. First-tier Tribunal Judge Pedro considered that there was no merit in grounds (2) to (5) but granted the appellant permission to appeal on ground (1). It was arguable that it was procedurally unfair for the judge to have regard to background information published after the hearing without giving an opportunity to the parties to make submissions thereon.

Discussion

3. There is no dispute about the facts. The appeal hearing took place in the morning. At 1.04pm on 24 May 2016 the Home Office's Country Information and Guidance on trafficking from Vietnam was uploaded to the relevant UK government website and thus became publicly accessible.
4. In his decision promulgated on 27 May 2016 Judge Row referred to this guidance at paragraph [23] in the course of giving reasons as to why the appellant, who he accepted had been trafficked to France, would not be at risk of persecution or serious harm on return to Vietnam.
5. He cited paragraphs 3.1.12 and 3.1.8 as indicating that whilst protection is not perfect, the Vietnamese government has made efforts in recent years to fight human trafficking. It has comprehensive anti-trafficking legislation and prosecutes those involved in trafficking. It has agreements with police forces in other countries to combat trafficking. Support and protection from governmental and non-governmental sources is generally available to victims of trafficking.
6. Neither representative relied on the guidance in submissions. So prima facie the judge erred in conducting post-hearing internet research: see **EG (post-hearing internet research) Nigeria [2008] UKAIT 15**.
7. It is strongly arguable that the judge's error was not material. For example, his citation from the earlier 2013 COI Report at the beginning of paragraph [23] suggests that the latest guidance does not mark a significant change in the landscape, and that the judge could have founded his rejection of the appellant's case on risk on return solely on the country guidance material that was in play at the hearing.
8. However, Mr Blundell submits that there has been material unfairness because the judge has only selected passages in the report which supported the Secretary of State's case and has overlooked other passages in the report which assisted the appellant's case. As a result, he submits, the conclusions which the judge drew from the report were inaccurate, and the judge did not acknowledge that aspects of the report

supported those parts of the appellant's case which the judge elsewhere rejected as "fanciful".

9. In **IA (Somalia) v SSHD [2007] EWCA Civ 323**, giving the leading judgment of the Court, Keene LJ at [15] rejected the proposition that it was for the party complaining of unfairness to prove that, if the error had not occurred, the judge would have come to a different conclusion:

I cannot accept that: in public law cases, an error of law will be regarded as material unless the decision-maker must have reached the same conclusion without the error.

10. As I ruled at the hearing, I am not satisfied that the Judge would have been bound to reach the same conclusion if either he had not considered the new evidence at all or if he had considered the new evidence after the parties had been given the opportunity to comment upon it.
11. Accordingly, I find that the error of law challenge on ground (1) is made out, and it is not necessary for me to address Mr Blundell's application for permission to appeal to the Upper Tribunal out of time in respect of grounds (2) to (5).
12. As the decision of the First-tier Tribunal is vitiated by procedural unfairness, the appropriate forum for the remaking of the decision is the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside.

Directions

This appeal is remitted to the First-tier Tribunal at Birmingham for a de novo hearing before any judge apart from Judge Row.

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

Date **27 July 2016**

Deputy Upper Tribunal Judge Monson