



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

Appeal Number: AA119272015

THE IMMIGRATION ACTS

**Heard at Newport (Columbus Decision & Reasons Promulgated House)
On 16 May 2017**

On 12 June 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**A T V G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Williams instructed by Qualified Legal Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Background

2. The appellant is a citizen of Vietnam who was born on [] 1988. She arrived in the United Kingdom clandestinely in August 2005. On 24 March 2015, the appellant claimed asylum. Her application was refused by the Secretary of State on 21 August 2015.
3. The appellant appealed to the First-tier Tribunal. Her appeal was dismissed by Judge O'Rourke on asylum, humanitarian protection and human rights grounds. The judge made an adverse credibility finding and did not accept the appellant's claim to be at risk because of her anti-Vietnamese government activities before leaving Vietnam or on account of her *sur place* activities in the UK. He also dismissed the appeal under Art 8 of the ECHR.
4. The appellant appealed to the Upper Tribunal on two grounds. First, the judge had erred in law in finding that she was not at risk on account of her *sur place* activities. Secondly, the judge had failed to consider the appellant's claim under Art 3 of the ECHR based on the fact that she would be destitute on return to Vietnam.
5. On 28 November 2016, the First-tier Tribunal (Judge Shimmin) refused the appellant permission to appeal on ground 1 but granted permission to appeal on ground 2. The appellant did not renew her application for permission on ground 1 to the Upper Tribunal.
6. On 19 December 2016, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision.
7. Thus, the appeal came before me.

Error of Law

8. Ms Williams, who represented the appellant submitted that the appellant's (then) Counsel had relied upon Art 3 and the risk to the appellant of becoming destitute as a result of her loss of permanent residency (or Ho Khau status). She submitted that Judge O'Rourke had misunderstood the submissions on behalf of the appellant when he had stated at para 3:

"While she also considers that her lack of national registration/ID documentation will lead also to persecution, that issue, I was informed by her Counsel, is the subject of a separate application/appeal and I do not therefore consider it further."

9. Ms Williams referred me to the appellant's witness statement at para 17 where the appellant states that she would be destitute and vulnerable because she would lack a Ho Khau booklet on return and so could not access public services etc. in Vietnam. Ms Williams also referred me to the expert report of Dr Anh, in particular Part V at paras 16-23 which dealt

with the 'Ho Khau' issue. Further, she referred me to a number of documents from the Immigration and Refugee Board of Canada (at pages 168-173) similarly dealing with the 'Ho Khau' issue. Ms Williams informed me that there was no separate application made by the appellant in respect of Art 3 and the judge, in misunderstanding Counsel's submission, had materially erred in law by failing to consider the distinct claim under Art 3 made by the appellant based upon the risk to her of being destitute.

- 10.** Mr Mills accepted that there appeared to be a misunderstanding by the judge. During the course of his submissions I drew to the representatives attention a line in the judge's Record of Proceedings which, recording the appellant's (then) Counsel's submissions, stated "resident status - breaches Art 3 (Part 5) P112". The latter is clearly a reference to the section in Dr Anh's report dealing with the 'Ho Khau' issue and that the appellant's Counsel relied upon Art 3 in relation to it.
- 11.** Although there do not appear to have been detailed submissions, it is clear that the basis upon which Ms Williams now relies was relied upon by the appellant's (then) Counsel and the judge erred in law in failing to consider whether the appellant's removal would breach Art 3 on the basis of her becoming destitute because she would lack a Ho Khau residency booklet.
- 12.** Although Mr Mills raised the issue of whether the judge's error was material, he accepted that in substance that was the same issue as whether the appellant could establish a breach of Art 3 which would arise if the Tribunal were to remake the decision.
- 13.** In those circumstances, I set aside the judge's decision to the extent that the Tribunal must remake the decision in respect of Art 3 on the basis put forward by Ms Williams which was unfortunately overlooked by the judge.

Re-making the Decision

1. Article 3

- 14.** The claimant relies upon Art 3 of the ECHR which provides:

"No one shall be subjected to torture or inhuman or degrading treatment or punishment."

- 15.** The burden is upon the Appellant to establish that there are substantial grounds for believing that, on her return to Vietnam, there is a real risk of a breach of Art 3 (see e.g. Saadi v Italy (2008) 24 BHRC 123).

2. The Submissions

- 16.** Ms Williams submitted that there was a real risk of a breach of Art 3 because the appellant would be destitute on return without a Ho Khau permanent registration record. Ms Williams relied upon the expert report of Dr Tran Thi Lan Anh (at pages 100-127 of the bundle in particular Part V at paras 16-23. She submitted that the appellant would, as a result of her

absence from Vietnam, return in circumstances where her Ho Khau registration had been revoked (see also the Immigration and Refugee Board of Canada document dated 24 February 2009 at pages 168-169 of the bundle). Relying on Dr Anh's report, Ms Williams submitted that it would take up to three years to obtain re-registration. During that period there would be a breach of Art 3 as the appellant, returning as a 25 year old with a young child, would be deprived of essential services such as housing, employment, schooling for her child and state benefits.

17. Ms Williams relied upon the decision of the House of Lords in R (Limbuela) v SSHD [2005] UKHL 68 at [8] *per* Lord Bingham and [78] *per* Baroness Hale that she would be destitute as she would face a prospect of "serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life". Ms Williams submitted that, judged "by the standards of our own society in the modern world", the appellant would be destitute and her circumstances would reach the minimum degree of severity required under Art 3.

18. Ms Williams placed reliance upon Pretty v UK (2002) 12 BHRC 149 at [52] where it was stated that:

"Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral or physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3".

19. Ms Williams also placed reliance upon the respondent's *Country of Origin Information Request* dated 26 March 2015 which, although no longer available on the internet, was referred to in an anonymised decision letter at para 47. In particular, she relied upon the conclusion that:

"Therefore spontaneous migrants who do not have ho khau in places where they live and work are exposed to multiple institutionalised vulnerabilities and risks."

20. Mr Mills submitted that it had not been established that the appellant would be destitute so as to breach Art 3 on return. He submitted that the threshold was a "high threshold" as the present case did not involve the deliberate act by a state or non-state actor. He submitted that what was said in Limbuela, in particular about UK standards, was said in the context of a domestic case rather than, as in the present case, a foreign case.

21. Mr Mills submitted that the appellant's claim had to be seen in the light of the underlying findings of fact by the judge which had not been challenged. He did not accept that she had any problems arising from politics which had led to her father's death. She would be returning with her partner and not as a lone woman and it had not been shown that she would not have family and friends in Vietnam from whom she could seek support. Mr Mills submitted that Dr Anh's report dealing with the implications for the appellant if she lacked a Ho Khau did not take into account those underlying facts.

- 22.** Mr Mills submitted that it had not been established that the appellant (or her partner) would be unable to obtain employment. Mr Mills placed reliance upon a January 2011 report from the Centre for Social Protection in Vietnam entitled “Social protection for rural-urban migrants in Vietnam: current situation, challenges and opportunities”. He submitted that this report, which was quoted in the *COI* Request, focused on the barriers to employment in the public sector. He submitted, relying upon passages in the report, that employment could be available in the informal sector and large numbers (he mentioned “millions”) in Vietnam migrate to cities without having permanent registration and live there. He submitted that it was not clear why the expert took the view that it would be up to three years before the applicant could obtain Ho Khau. He referred me to another document from the Immigration and Refugee Board of Canada dated 26 February 2009 (at page 172-3 of the appellant’s bundle) that referred to the processing of “household registration” that was “within less than ten working days for cities [and] towns and less than fifteen days for other areas from the dates of the dossier submission”.
- 23.** Mr Mills submitted that on the evidence, in any event, the appellant had not established she did not have family and friends to whom she could return whilst the registration process continued. Mr Mills submitted that there was no barrier to the appellant’s return and she would return with documents necessary to re-register, in particular a “Vietnamese passport or transport document which has a stamp verifying entry ... at the border gate” (see page 172 of the bundle).

3. Scope of Article 3

- 24.** It was only, as a result of my raising the matter during submissions, that either representative addressed the issue of how Art 3 should be applied where an individual claims that his or her removal or expulsion from the UK would result in them facing impoverished conditions of living.
- 25.** It is at least arguable that such a claim falls outside of the “paradigm” protected by Art 3 and, like the ‘health cases’, a higher test recognised by the Strasbourg Court in those cases apply (see GS (India) and others v SSHD [2015] EWCA Civ 40). That was, at least, the tentative view expressed by Burnett LJ (with whom Christopher Clarke and Sharp LJ agreed) in SSHD v Said [2016] EWCA Civ 442 at [31]. Whilst the so-called N test threshold has somewhat been lessened by the Strasbourg Court in Paposhvili v Belgium (application no 41738/10) (13 December 2016), it remains more onerous.
- 26.** However, by contrast in cases concerning the Dublin Regulations and the removal of asylum seekers or recognised refugees to other EU countries, the Strasbourg Court has, in assessing the application of Art 3 to living and social conditions in those countries, applied the ‘ordinary’ standard under Art 3 albeit recognising that it, itself, imposes a minimum level of severity (see, e.g. MSS v Belgium and Greece (2011) 53 EHRR 2; Tarakhel v Switzerland (2015) 60 EHRR 28; and Saadi).

- 27.** As I have said, neither representative dealt initially with this issue and neither referred me to the relevant case law.
- 28.** In the line of cases beginning with MSS v Belgium and Greece, the Strasbourg Court was, in part, influenced by the vulnerability of asylum seekers on being returned to an EU country where it was argued the reception, living and social conditions were potentially a breach of Art 3. Of course, those cases involved claimed failures by the relevant state to which the individuals were to be returned in providing an environment to live as asylum seekers or recognised refugees. The cases had, therefore, as Laws LJ recognised in GS and others, features which were considered to align it close to the paradigm (see [57]-[62]). The point is, perhaps, analogous to that made by Burnett LJ in Said at [31] where he noted that if the impoverished condition were “the direct result of violent activities” then a claim would be analogous to where the risk suggested rose from “direct violence itself”, i.e. the paradigm.
- 29.** For the purposes of this appeal, I am content to apply the approach set out in the paradigm cases as I accept that, to the extent it can be established, the appellant’s ‘impoverished’ circumstances in Vietnam will arise as a result of the legal provisions of the state. Although not falling within categories of asylum-seeker or refugee as in the Dublin cases, I am content to apply the approach of the Strasbourg Court to Art 3 in the line of cases dealing with removals to EU countries where a claim is made that Art 3 will be breached on return (see also the approach of the Supreme Court in EM (Eritrea) and others v SSHD [2014] UKSC 12).
- 30.** That test, however, recognises that a “minimum level of severity” must be reached before Art 3 is engaged. I accept that, if the appellant would be destitute in the sense used in Limbuela at [8] and [78] such that she would be denied “the most basic necessities of life” and that would breach Art 3 of the ECHR.

4. Discussion

- 31.** The background to Vietnam’s Ho Khau policy of residential registration is set out in the report of Dr Anh at paras 16-20 as follows:
- “16. ‘Ho Khau’ is Vietnam’s policy of residential registration in which a person is registered in the area in which he or she was born. A household registration record officially identifies a person as a resident of an area and includes identifying information such as name, parents, spouse, children, address and date of birth. This registration system entitles citizens to receive social services like healthcare and public education in their specific registered area. The ‘Ho Khau’ registration for children is done by the parent just after the baby was born. This procedure has to be done just after the birth registration procedure.
17. This registration is made under the form of small notebook, similar as a passport, named ‘So Ho Khau - Registration Booklet’. Citizens need to present their Registration Booklet in most of their principle daily life activities. There are around 20 official procedures in Vietnam which require the Ho Khau registration, these include: Renting/buying a house;

Buying a vehicle; School enrolment application; health care insurance registration; Open bank account, Job application, National ID card application; National insurance application; Birth registration/death registration; Marriage registration; Marriage Status certificate; CV form and personal profile approval from local authority; Child adoption application; Mortgage contract; Money borrow contract; application for the state benefit; Phone/Fax contract; Business Registration; Electric/Gas/Water contracts with suppliers; Driving licence application; scholarship application and many other daily activities

18. Possession of the Ho Khau then is a significant matter and has many implications for instance a person cannot be employed by a local authority or local public service if they do not have a permanent Ho Khau registration in this area. Indeed, the Ho Khau Booklet is been considered the most important official paper in Vietnam. People have to keep it very carefully. A proverb illustrates this - when a person looks very dishevelled or anxious they might be told: 'you look like you lost the Ho Khau booklet'.
19. The household registration system has a long history in Viet Nam from 1950s. There are four categories of the Ho Khau registration status: The KT1 is the permanent register for the principal area in which a person resides. The KT2, KT3 and KT4 are different kinds of temporary registered residents. Residents holding one of these are limited to receiving health, schooling and other social services within their district of residence. In addition, those with KT4 registration status are registered as individuals without a family and can only hold a three-month extendable residence permit and cannot own land titles.
20. If a citizen does not have a permanent registration it would be very difficult for them to acquire and access many of their principal rights and facilities. They are considered as a 'second citizen' in Vietnam. Due to the compulsory nature of Ho Khau registration in many activities as discussed at paragraph 17 above, the temporary Ho Khau registration citizen have to offer the bribery to local policemen or local authorities due to their Ho Khau status."

32. At para 22 Dr Anh adds this:

"If her name is not in the Registration Record Book, it would be very difficult for her, not only in seeking the support and protection of her local authority, but also in finding a job, accommodation, and registering with a doctor. In addition, [the appellant] will face with significant obstacle in accessing education and health care service for her daughter due to her Ho Khau status."

33. In large measure, that history is reflected in the report from the Centre for Social Protection dated January 2011 where at page 5 there is the following:

"Ho khau as an institutional barrier to social protection for spontaneous migrants

Any discussion about migration, migrants' well-being and social protection in Vietnam should take into account the ho khau, or the household registration system. Imported from China, ho khau system was formally implemented in urban areas in 1955, and extended throughout the countryside in 1960. Under the system, each household is given a household registration booklet

(so ho khau) which records the names, sex, date of birth, marital status, occupation of all household members and their relationship with the household head. In principle, no one can have his or her name listed in more than one household registration booklet. The ho khau of a person is intimately tied to their place of residence. If a person changes their place of residence, his or her ho khau should follow.

During war time and the period when the national economy was centrally planned and managed, ho khau was an effective mechanism that helped the government to mobilise people for national objectives and to ensure relatively efficient distribution of resources and welfare. During this period, people had to depend on the government subsidies and rationing for their daily necessities, especially in urban areas. It was only with household registration booklets that a household or an individual could claim their rights to food provisions and other commodities, as well as access to social services, including education and health care. In other words, the ho khau was used not only as a system of identification but also for controlling access to rights and services.

In addition, the ho khau regime, together with employment policies, played an important role in regional economic planning and for population redistribution. In particular, the government strictly directed migration into two main streams to rural areas and to upland provinces in the North - the so-called new economic zones. This was in order to decrease population density and ease food shortages in more populated areas. The policy, based on the regulations of the household registration, made it very difficult for people from rural and mountainous areas to move to large cities and the plains (unless they were assigned employment by the state or reunited with their family) and therefore limited opportunities and livelihoods choices (Dang 2005; Le 1998; Hardy 2001).

Since the market reforms, often known as doi moi, initiated in the mid-1980s, the function of ho khau in controlling the mobility of people has gradually declined, due largely to the rapid growth of employment opportunities in the non-state sector. Yet, the ho khau of any person remains the prerequisite for his or her access to housing ownership and key public social services. As described by Hardy (2001); 'During the heyday of Vietnam's centrally planned economy, people often joked that there was no fear like the loss of your so gao, a person's individual book of food ration coupons ... That fear no longer exists [with Doi moi] but there are new worries over another kind of book; the so ho khau (a household registration book) that contains rights of a citizen ... To buy a house or land, to get married, to be employed, to register for a training course, to borrow from a bank, to register your child's birth, to get a motorbike license, to go abroad, or to install a phone line if you are Vietnamese, you need a so ho khau.' In the view of the government, as stated in the Decree No. 51/CP issued on 10 May 1997 and the Circular 06/TT/BNV issued in the same year by the Ministry of Internal Affairs, ho khau is considered as 'a measure of administrative management of the State to determine the citizens' place of residence, ensure the existence of their rights and obligations, enhance social management, and maintain political stability, social order and safety.' Therefore spontaneous migrants who do not have ho khau in places where they live and work are exposed to multiple institutionalised vulnerabilities and risks.

It should be noted that at the highest level of legislation, the Constitution of Vietnam confirms the freedom of all citizens to move with their equal economic, social and political rights secured regardless of their whereabouts (Vietnam Constitution, 1946, 1959, 1980). Nonetheless, at the lower level, different laws, ordinances, decrees, decisions and circulars create strong

barriers to spontaneous migrants accessing critical resource, services and support programmes. A shared feature of social protection policies in Vietnam is their residence-based principle, by which a person is entitled to housing ownership and various economic and social entitlements only when they are permanent residents of the locality.”

34. The document then refers to categories of citizenship KT1, KT2, KT3 and KT4. Categories KT1 and KT2 are those who have “permanent household registration”. KT3 and KT4 are those who do not have permanent, but only temporary, registration respectively for 6-12 months with a possibility of extension or 1-6 months. The former has “access to public facilities and social services” but lack access to “legal housing” and their children may only attend public schools to the extent that there is not full capacity by children falling within the KT1 and KT2 categories. Those falling within category KT4 do not have access to the right to purchase land and access to public services and financial loans.

35. The report continues at page 6 to identify “five critical problems” with those in category KT3, and in particular category KT4:

“As can be seen, spontaneous migrants (categorised as KT3 and particularly KT4 residents) face a number of vulnerabilities and risks. It should be noted that this table does not reflect the deprivation of some important entitlements of these migrants by institutional practices at the local level. Five critical problems severely affecting spontaneous migrants are employment, housing and living conditions, health care, education for migrants’ children, and social participation in the host community. Indeed, without ho khau, some other rights of the migrants are also blocked, such as voting in the local community, registration for a marriage licence, birth certification for their newborns, and military service. In the following section, these five problems and their impact on the livelihood and well-being of the rural-urban migrants are discussed with evidence drawn from the empirical studies conducted under the project.”

36. Although this document was produced at the hearing and I was referred to it, neither representative made submissions as to which category the appellant would fall into on return, in particular whether it was KT3 or KT4.

37. It is clear, however, from reading the report that there are indeed a number of “vulnerabilities and risks” that temporary residents without Ho Khau face. Access to employment may well be restricted. At least, and I accept Mr Mills’ submission on this, access to formal employment in particular in the public sector. The report refers to temporary residence without Ho Khau facing “severe obstacles in obtaining employment in the formal sector in urban areas” (see page 7 of the report). However, equally, it is clear that large numbers of temporary migrants do obtain work, albeit in reduced working condition, not in the public formal sector. I do not accept, as was implicit in Ms Williams’ submissions, that the appellant (and her partner) on return would simply be unable to work without a Ho Khau. Dr Anh in her report (at para 22) does not suggest that employment will be impossible but simply “very difficult for her”.

38. I accept also, on the basis of Dr Anh’s report and the report from the Centre for Social Protection, that there will be disadvantages in obtaining

housing but, as the latter report makes clear (at page 9), spontaneous migrants are not unable to obtain accommodation but encounter difficulties together with higher charges for utility (see page 9 of the report). Likewise, access to healthcare and education may well involve cost or greater cost to the appellant (and her partner).

- 39.** It is, however, important to note what is said in the report from the Centre for Social Protection at page 10 of the report:

“As temporary residents with no ho khau, migrants’ access to local community institutions and activities are severely limited. Their general social exclusion and isolation is evident in several ways: difficulties finding employment, low and unstable income, poor living arrangements, home sickness, poor health, money defraud and labour exploitation (see Table 6). Yet, when asked, half of them took no action to address these problems, and most of the rest relied on the pre-existing social network of kin and friends for some sort of support. Almost no migrants sought help from official sources, even about their safety, which was one of their key concerns (Table 7).”

- 40.** I accept on the basis of the evidence to which Ms Williams referred me that it is likely that the appellant (and her partner) as a result of their absence from Vietnam will have lost their Ho Khau on return.
- 41.** Further, I accept that there is likely to be a delay in obtaining a new Ho Khau. Mr Mills’ reference to the Immigration and Refugee Board of Canada document at pages 172-173 of the bundle, cites the length of time for “processing” an application as less than ten working days in cities and less than fifteen working days elsewhere. On the other hand, Dr Anh at para 22 of her report states that it is “very unlikely that she would be able to register the Ho Khau within two or three years”. Although on the face of it a contradiction, in my judgment it is not.
- 42.** The requirements for seeking a Ho Khau are helpfully set out in the Centre for Social Protection report at pages 12-13. The Canadian report is clearly referring to the time for “processing” an application. However, to be successful an application will require residence (or employment) for a period of time as the Centre for Social Protection report makes plain at page 12. Whilst that was previously “at least three years”, it has since 2007 been reduced to a shorter period, of “at least one year”. Dr Anh footnotes a “Residence Law Code” dated 11 July 2013 and which, therefore, post-dates the 2011 report from the Centre for Social Protection. The relevant law to which Dr Anh refers is not set out in her report and it clearly, if it has the effect said by Dr Anh in para 22, reverses the trend since 2005 set out in considerable detail in the report of the Centre for Social Protection at page 12. However, the solution may lie in the fact that Dr Anh is, without making specific reference to it, placing the appellant in category KT4. The report from the Centre for Social Protection refers to the reduction in length of residence and/or working as applying “mostly [to] people belonging to the K3 category”. In relation to those in category KT4, the report states that they are still denied permanent household registration unless they have continuously resided for at least three years.

- 43.** Without specific argument on the issue, and without further elaboration by Dr Anh, it is not clear to me whether the appellant (and her partner) would fall within category KT3 or category KT4 on return. I am content to accept, given the low standard of proof, that the appellant (and her partner) would fall in category KT4 and that, therefore, potentially their ability to register for Ho Khau might take “two or three years” as set out in Dr Anh’s report.
- 44.** I accept on the basis of Dr Anh’s report and the background material, in particular the report from the Centre for Social Protection that the appellant and her partner will face a number of difficulties on return for the period it takes in order to obtain a Ho Khau. These difficulties will include, employment, accommodation and access to education and health services. The latter two are likely to only be available on a private basis. Dr Anh’s view at para 23 is that:
- “The private service is very expensive in Vietnam and it is very unlikely that she could afford the cost if she used the private service in healthcare and education for her daughter.”
- 45.** However, Dr Anh’s report in Part V and her conclusion at para 23, makes no reference to the fact that the appellant has a partner, himself a Vietnamese national who could return to Vietnam with her. Employment is obtainable even for temporary residents. The report of the Centre for Social Protection makes plain that large numbers of temporary residents live without Ho Khau and survive in that environment without seeking to address the problems or relying instead on social networks of kin and friends for support.
- 46.** I accept Mr Mills’ submissions that on the basis of the judge’s unchallenged findings (permission to appeal having been refused in relation to them) the appellant has not established that she has no family or friends to whom she could turn to for support on return to Vietnam whether that support would be provided in her home area (where on the judge’s findings she has failed to establish her international protection claim) or on relocation to a city. Her partner can return with her and seek employment even though, as a couple, they will have a young child which logically would have created enhanced difficulties for the appellant if she had returned alone.
- 47.** The whole tenor of the Centre for Social Protection report is that temporary residents are presented with a number of difficulties in the social context in which they live without Ho Khau but that they nevertheless exist in large numbers in Vietnam. I am not satisfied that the return of the appellant and her partner to Vietnam – and I emphasise that he can be expected to return to Vietnam with her – creates a real risk that they would be destitute on return. Any short-term problems, based on lack of financial or accommodation resources, can in my judgment be overcome by support from family of the appellant. I should add that there was no evidence that the appellant’s partner does not have family who could provide support. That cannot, therefore, be excluded as an additional support mechanism. Despite, therefore, the evident difficulties

identified in the expert's report and background material, I am not satisfied that there is a real risk of the appellant (and her partner and son) returning to Vietnam as temporary residents without, for a period of two to three years being without Ho Khu, living in impoverished conditions amounting to destitution such as to reach the minimum level of severity to breach Art 3 of the ECHR.

Decision

- 48.** Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law by failing to consider the appellant's claim under Art 3 of the ECHR.
- 49.** The First-tier Tribunal's decision to dismiss the appellant's appeal on asylum and humanitarian protection grounds stands.
- 50.** I remake the decision also dismissing the appellant's appeal under Art 3 of the ECHR.
- 51.** I note that the appellant did not rely upon Art 8 of the ECHR in the appeal before me.

Signed

A Grubb
Judge of the Upper Tribunal

Dated 9 June 2017