



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06313/2016

THE IMMIGRATION ACTS

Heard at: Manchester
On: 6th December 2017

Decision & Reasons Promulgated
On: 8th December 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

TAN
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant:

Mr Salam, Salam & Co Solicitors Ltd

For the Respondent:

Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Vietnam, born in 1999. He appeals with permission¹ against the decision of the First-tier Tribunal (Judge McGinty) to dismiss his appeal on protection grounds.

¹ Permission was granted on the 5th July 2017 by Upper Tribunal Judge Finch

Anonymity

2. This case concerns a young person who was a minor when he claimed asylum. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. The Appellant’s claim was that he had been trafficked for the purpose of domestic servitude, having been imprisoned and ill-treated in Vietnam, France and then the United Kingdom. He had claimed to have a well-founded fear of serious harm by the people who had trafficked him or alternatively that as a minor without parental support in Vietnam he would be vulnerable to re-trafficking by others.
 4. In her letter of the 9th June 2016 the Respondent accepted that as an unaccompanied minor without adequate reception facilities in his home country the Appellant qualified for a grant of leave under paragraphs 352ZC to 352ZF of the Rules. She did not however accept that he was a refugee or otherwise entitled to international protection. The crux of the decision was that the Appellant’s evidence was not worthy of belief and he had failed to establish that he had been trafficked in the circumstances claimed. As the claim had raised issues as to trafficking a referral had been made under the ‘National Referral Mechanism’ to the Competent Authority. On the 25th November 2015 the Competent Authority had found no reasonable grounds to believe that the Appellant had in fact been trafficked. That decision has never been challenged.
 5. When the matter came before the First-tier Tribunal the Appellant gave oral evidence in support of his appeal. In a determination dated the 22nd December 2016 the Tribunal gave several reasons why that evidence was rejected: in summary the account was found to be inconsistent, implausible and lacking in detail. The Judge was not satisfied that the Appellant had been trafficked, that his father had died or that his mother had come to work in the UK when he was a young child. It found it to be “far more likely that he came simply to the UK
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and was sent by his parents, who in my judgement are still alive, to the UK to meet his relative here”.

6. The Appellant appealed on several grounds, which I address below. I note that in granting permission Judge Finch only referred to one matter, which was to form the centrepiece of Mr Salam’s submissions: that was that the First-tier Tribunal Judge “failed to consider in any detail whether the Appellant met the profile of a child who had been trafficked from Vietnam in order to be exploited here”.
7. The appeal was opposed on all grounds by Mrs Aboni.

Findings and Discussion

8. The First-tier Tribunal unarguably gave careful consideration to the claim advanced by the Appellant, and rejected the truth of that account for several good reasons. The Appellant had given significantly inconsistent evidence about material matters, namely how he escaped from his captors in Vietnam, how he escaped when in France, the circumstances of his transportation to the UK and whether he believed his mother to be in this country. His account of captivity and domestic servitude in Vietnam was found not credible for a lack of detail: he had been unable to give the first name of the woman he claims to have lived with for some 4-5 years. It was also found to be implausible that he had met, quite by chance, a random relative walking around the streets of Oldham. I find that the Tribunal was entitled to reject the claim advanced for the reasons given.
9. Judge Finch was nevertheless concerned that the First-tier Tribunal had failed to consider whether the Appellant “met the profile” of a child who had been trafficked from Vietnam. Before me Mr Salam suggested that there were three matters that, taken together, could have justified such a finding. First there was the fact that he arrived in this country as an unaccompanied asylum-seeking child. Second was the manner of his arrival, in a lorry with approximately 11 other young Vietnamese people (I should add to this the evidence recorded in the determination at paragraph 34 that the Appellant very quickly absconded from social services care provision). These matters had to be read together with the uncontested country background material, set out at paragraph 25 of the determination, that Vietnam is a source country for the trafficking of children for the purpose of forced labour. These factors, submitted Mr Salam, were sufficient to found a finding that whatever the truth of the account advanced by the Appellant, he was nevertheless reasonably likely to have been trafficked to this country.
10. I am prepared to put to one side the obvious difficulties in Mr Salam’s case, namely the positive finding of fact by the First-tier Tribunal that the Appellant

has been sent by his parents to live with a relative in this country, and the fact that the Competent Authority could not even find reasonable grounds to suppose that he had been trafficked. Taking the claim now advanced before me at its highest, I am unable to find that the alleged omission on the part of Judge McGinty is material. Even if he should have found that the Appellant has the profile of someone who was trafficked as a child, that is no longer the case. The Appellant is no longer a child. He is a healthy adult who, by his own evidence, has been working since he arrived in this country. He absconded from the care of social services and is supporting himself, albeit with the assistance of his relative in Oldham. In those circumstances I find it difficult to see why he would be at risk of serious harm if returned to Vietnam. The only potential harm that he might face would be re-trafficking, but in the absence of any particular vulnerability – I reiterate that he is a healthy adult male – I can see no reason why he cannot get a job and support himself in Vietnam, just as he has done here. The country background evidence indicates that victims of trafficking are lured abroad by offers of lucrative jobs. If the Appellant has already been trafficked in those circumstances he can avoid re-trafficking by not seeking work abroad, but instead taking a job in Vietnam. I note that the unemployment rate in Vietnam has averaged about 2% over the past year, markedly lower than it is here.

11. As for the remaining ground I deal with it only briefly since I was not addressed on it. Complaint is made about the fact that the Tribunal took account of s8 of the Asylum, Immigration (Treatment of Claimants etc) Act 2004. There can be no realistic complaint about that. The Appellant plainly did fail to claim asylum on his way to the UK, that being one of the examples given in the Act of the kind of matter that should diminish the weight to be attached to claim to hold a subjective fear of harm. The matters listed in the Act are not an exhaustive list; they are examples. The Tribunal was plainly entitled to treat absconding from social services care in the same way.
12. Accordingly I am not satisfied that there is an error of law in the decision of the First-tier Tribunal such that its decision should be set aside.

Decisions

- 14 There is no error of law and the decision is upheld.
- 15 There is an order for anonymity.

Upper Tribunal Judge Bruce
6th December 2017