



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/01964/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
Reasons Promulgated
on 21st November 2018
November 2018**

**Decision &
on 11th**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**T N
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms X Vengoechea, Advocate, instructed by Neil Barnes, Solicitor
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Kempton dismissing an appeal on protection and human rights grounds.

2. The appellant is a national of Vietnam. She claims to fear serious harm from her violent and abusive husband, and from people to whom he owes money to pay for his gambling and drinking. She also claims to have experienced discrimination in Vietnam because her father was a supporter of the French colonial authorities. While in the UK the appellant has been diagnosed with depression and she has suicidal ideation.
3. The respondent accepted that the appellant had been abused by her husband. The Judge of the First-tier Tribunal found that any discrimination by the authorities the appellant might have experienced did not prevent her from earning a living. The authorities did not prevent the appellant, who is a Catholic, from attending church services, although her husband attempted to do so.
4. The question the judge was accordingly required to address was whether the appellant would be able to relocate within Vietnam to avoid harm from her husband or his creditors. In this regard one obstacle raised by the appellant was that her husband has her family registration book. Without this she claimed she would not be able to find work or accommodation and would not be able to access government services. The judge found, however, that the appellant could relocate to another area and obtain temporary residence. The judge further stated, at paragraph 44, that “the UK authorities require to obtain suitable assurances from the Vietnamese authorities that the appellant can have a residence permit, whether it is temporary or otherwise, as well as suitable accommodation, which will offer her suitable protection from any potential attacks from her husband or loan sharks.”
5. The grant of permission to appeal notes that it was accepted that the appellant was a victim of domestic violence. The Judge of the First-tier Tribunal arguably erred on two grounds. The first of these was that the judge failed to make clear findings on the reasonableness of internal relocation, including findings on whether the appellant’s husband was able to find her when she had attempted to relocate in the past and was violent towards her in forcing her to return. The second ground concerned the judge’s finding seemingly made at paragraph 44, quoted above, that unless assurances were received from the Vietnamese authorities the appellant could not be safely returned.
6. At the hearing before me Ms Vengoechea relied on the application for permission to appeal and asked that the appeal be remitted to the First-tier Tribunal. For the respondent, Mr Govan referred to some of the background to the appeal. There had been an earlier appeal, now withdrawn, relying primarily on the political and religious aspects of the appellant’s claim. When the appellant gave evidence in the earlier appeal the issues of domestic violence and psychological

wellbeing became prominent. There was an adjournment for medical evidence. Subsequently a new decision letter was issued by the respondent to take account of internal relocation in response to the appellant's claim that she had twice left her husband and been traced by him and forced to return.

7. Mr Govan referred to paragraph 26 of the judge's decision, where the judge noted the appellant's claim that she had twice been traced by her husband but that the respondent did not believe this. The judge did not make a finding on this issue and did not take it into account when considering relocation. Mr Govan conceded that on this point there was force in the grounds of appeal.
8. I accept that the Judge of the First-tier Tribunal erred in law by failing to make a finding on whether the appellant was traced by her husband and forced to return on two occasions when she attempted to leave him. A finding on this issue was required for the judge to make a properly reasoned decision on the viability of internal relocation. The judge further erred by not taking any finding on this into account when considering internal relocation. As a result the judge's decision is flawed and should be set aside. Because the error relates directly to the failure to make a necessary finding on credibility the appeal should be remitted to the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statement. The appeal should be reheard before a differently constituted tribunal with no findings preserved.
9. Although it is not necessary for me to decide the point, I am also concerned by the judge's statement at paragraph 44 that the respondent should seek assurances from the Vietnamese authorities in relation to certain practical aspects of internal relocation. It was for the Judge of the First-tier Tribunal to decide on the basis of the available evidence whether internal relocation was a viable and reasonable alternative to international protection. It was not appropriate for the judge in her decision to seek to delegate aspects of this inquiry to others.

Conclusions

10. The making of the decision of the First-tier Tribunal involved the making of an error of law.
11. The decision is set aside.
12. The appeal is remitted to the First-tier Tribunal for hearing before a differently constituted tribunal with no findings made by the previous tribunal preserved.

Anonymity

The Judge of the First-tier Tribunal made a direction for anonymity. In order to preserve the positions of the parties until the appeal is decided this direction will remain in place.

M E Deans
December 2018
Deputy Upper Tribunal Judge

6th