



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08122/2017

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 23 August 2018

Decision & Reasons Promulgated  
On 5 September 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HA XUAN TRAN

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Thorntons, Solicitors  
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The respondent refused the appellant's claim for reasons given in a decision dated 4 August 2017.
2. FtT Judge Agnew dismissed the appellant's appeal for reasons given in her decision promulgated on 6 October 2017.
3. UT Judge Gleeson granted permission to appeal to the UT on 17 April 2018.

4. Excising sub-paragraph (i), on which Mr Winter did not rely, these are the grounds:

“The FtT notes at paragraphs 81 – 84 various reports indicating that the appellant is a vulnerable witness. The FtT recognises that the appellant is a vulnerable witness at paragraphs 48 and 66. Notwithstanding this the FtT has erred in law in terms of *AM(Afghanistan) v SSD* [2017] EWCA Civ 1123 (per paragraphs 21 - 22, 30 - 32 and 35) for the following reasons:

...

(ii) By failing to holistically assess the medical information. Although the FtT refers to the appellant being a vulnerable witness at paragraphs 48 and 66, it is not until paragraphs 81 - 84 that the information the appellant’s vulnerability is looked at in detail and which is effectively treated as an add-on;

(iii) Although recognising at paragraphs 48 and 66 that the appellant’s vulnerability may impact on his evidence, the FtT has erred in law as it is not given adequate reasons for finding that his vulnerability does not provide a reasonable explanation for such discrepancies, inconsistencies or the appellant’s behaviour or where such findings are not supported, adequately supported by, the evidence;

(iv) Failing to follow the First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses Practice Direction and the Presidential Guidance Note No 2 of 2010 and where such failing is a material error of law;

(v) In light of the foregoing it is not inevitable [the same decision] would be made in light of the foregoing errors.”

5. Mr Winter’s submissions were along the lines of the grounds:

(i) There were errors similar to those which had been acknowledged in *AM*, under reference to the medical and social work evidence which had been before the judge, particularly items 6, 16 and 17 of the FtT inventories.

(ii) Although the judge had not taken inconsistency with background evidence as decisive, she had failed to assess it in terms of the age and vulnerability of the appellant, which had to be factored in even at the stage of objective plausibility.

(iii) Although the judge reminded herself at paragraph 48 of the possible impact of trauma, and of vulnerability at 66, she turned to letters and reports on mental health issues only at 80 – 81, after having given the main part of the case no credence. Thus, she looked at that evidence in the wrong context, and either did not take it into account when making adverse findings, or gave no explanation of how they had been weighed in that respect.

(iv) Having decided the case on credibility, the judge made no findings on sufficiency of protection or on internal relocation. Those matters were irrelevant to the alleged risk from the authorities, but were relevant, had the appellant been found credible, to the case based on risk from traffickers.

(v) The case should be remitted to be heard again by another judge.

6. Mr Govan submitted as follows:

(i) The decision was a particularly detailed one, which reflected the care taken by the judge in light of guidance and the sensitivity of the case. She took that approach not only from the Presidential Note, but from similar guidance on trafficking cases, and made apt reference in at least 3 passages:

(ii) The conclusions of the judge were justified by clear analysis of the evidence, about which no complaint was made. It was accepted that the medical and social work reports were mentioned only later on, but that did not mean they were left out of account, being relevant to the vulnerabilities noted earlier. The reason they were dealt with from paragraph 80 onwards reflected the presentation of the case to the FtT, where the reports were prayed in aid of a submission about care required in the UK.

(iii) The decision was clear, logical, took account of relevant guidance and disclosed no error of law.

Paragraph 30, *"I bear in mind the guidance regarding vulnerable young people trafficked to the UK and the problems they can have in remembering and answering questions"*.

Paragraph 48, *"It is of course important to bear in mind that the competent authority guidance on victims of modern slavery sets out that victims' early accounts may be affected by the impact of trauma"*.

Paragraph 66, *"Whilst bearing in mind that the appellant is a young vulnerable person who has been found by a competent authority to have been the victim of trafficking ... and the potential impact this could have on his evidence ..."*.

7. I reserved my decision.

8. It may be best practice to cite guidance on assessing evidence from persons who have been trafficked, are young, or are otherwise vulnerable. I do not think it would be an error of law not to do so, so long as an appropriate approach has been followed in practice.

9. In this case relevant guidance is cited at least three times.

10. The objection that medical and social work evidence was "compartmentalised" was well met by the submission that the order of treatment followed the approach taken for the appellant.

11. Decisions are to be read fairly and as a whole. The judge directed herself at paragraph 17 that *"The whole evidence must be looked at in the round bearing in mind the low standard of proof"*. When she reminded herself several times of the reasons for approaching the appellant's evidence with care, it is hardly likely that she did not have in mind reports which showed the need for that approach.

12. The real question will always be not whether guidance is cited, but whether it is applied. The grounds and submissions for the appellant do not show that the FtT here fell

into any errors of the nature which were agreed to have taken place in *AM*, or failed to apply any of the core principles there set out.

13. The decision of the First-tier Tribunal shall stand.
14. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

24 August 2018  
Upper Tribunal Judge Macleman