



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12895/2017

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 3 April 2018

Decision & Reasons Promulgated
On 1 May 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

ML
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

Representation:

For the Appellant: No appearance
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the 17th January 2018 decision of the First-tier Tribunal (Judge Kainth) to dismiss his protection appeal.
2. The Appellant did not attend the hearing and nor was he represented. I was informed by the clerk that Duncan Lewis Solicitors, who had previously been instructed, had come off the record. I noted that the Notice of Hearing had been sent to the Appellant's last known address, the same address held on the Home Office file. I put the matter to the end of the list and asked that enquiries be made. The clerk was unable to get hold of the Appellant and confirmed that he had not contacted the Tribunal. By 12.30 I was satisfied that the Appellant was not going to attend the hearing, and there being no reason advanced for his non-attendance decided to proceed in his absence.

Anonymity Order

3. This appeal concerns a claim for international protection. 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

4. The Appellant claims to have been in the United Kingdom since April 2012 when he entered the country in a lorry. He was encountered by police officers on the 20th March 2016 but absconded. He claimed asylum on the 1st September 2017 after being apprehended by Immigration Officers.
5. The basis of the Appellant’s claim for protection is a fear of criminal gangs in Vietnam. He told officers that he is from a fishing family in Nghe An. He was working as a shoe shine on the streets of the regional capital, Vinh, when he met a man named T. T suggested to him that he could make more money working in restaurants in the UK and offered to arrange this. T said that he would pay for the Appellant’s journey, and that the Appellant would pay him back from his earnings once in this country. T later informed the Appellant that the total cost would be £24,000, plus £3000 interest. Once the Appellant arrived in the UK he was put to work in a basement of a warehouse, kept in captivity and threatened with death if he challenged this arrangement. He was able to escape in May/June 2013. He has no means of ‘repaying’ the Triad gang whom he now understands T to have represented, and fears that they will kill him/otherwise do him serious harm if he were to be returned to Vietnam.
6. In her letter of the 24th November 2017 the Respondent rejected the account, having identified a number of inconsistencies in the Appellant’s evidence. She further found that there would be a sufficiency of protection afforded by the Vietnamese authorities to whom the Appellant could turn if he had a fear of crime. If the Appellant did not wish to remain in Vinh for fear of discovery he could relocate to one of the many other large cities in the country. The only person in the gang that he ever met, by his own account, was T. The Respondent did not accept that T would be able to find and identify the Appellant anywhere in Vietnam. This decision followed from that of the Competent Authority (CA), dated 24th October 2017, which had concluded that

there were not 'reasonable grounds' to suppose that the Appellant had been trafficked.

The Decision of the First-tier Tribunal

7. Judge Kainth heard live evidence from the Appellant and his partner. He had before him the Appellant's interview record and witness statements prepared by the Appellant's solicitors. In its assessment of the Appellant's credibility the Tribunal found the following matters to weigh against him:
 - i) His poor immigration history. The Appellant escaped from the police, evaded immigration control, failed to report when required to do so and there was a delay of five years before he claimed protection. He had given varied and inconsistent evidence about why and how he had arrived in the UK;
 - ii) He had said that he had been unaware of the process of claiming asylum but the Tribunal rejected that, given that he had spent time in the Jungle where it was "inconceivable" that he had would not have learned about claiming asylum in the UK. Further his partner had claimed asylum in Germany and then in the UK;
 - iii) The Appellant was unable to give any details as to the arrangements that the alleged traffickers had enforced upon him in respect of the 'travel debt' and had given inconsistent evidence about how and when he was informed that the debt had arisen.

8. The Tribunal further found that there was, objectively, no risk to the Appellant upon return to Vietnam. On his own account he had been 'recruited' for trafficking by one man, T, who had met him on the streets of Vinh and made all the necessary arrangements. The Appellant had failed to show that there was a reasonable likelihood of him coming into contact with this one man again. If he was concerned about doing so it remained open to him to relocate to one of the large cities in Vietnam. There was no credible evidence that T or his friends would be able to find the Appellant anywhere in that large country. The Vietnamese authorities do in general provide a sufficient level of protection. The appeal was therefore dismissed.

The Challenge

9. The Appellant submits that the decision of the First-tier Tribunal is flawed for material error of law in the Tribunal's approach to the findings of credibility. The Appellant submits that the Tribunal misapprehended the basis of his claim,

found inconsistency where there was none, and failed to give the Appellant credit for having given a consistent account that was plausible when considered in the context of the country background material.

10. In granting permission to appeal Designated Judge of the First-tier Tribunal Shaerf commented that a number of the concerns expressed by Judge Kainth “arguably go nowhere near the core of the Appellant’s claim” as required by Chiver v Secretary of State for the Home Department (10758).

Discussion and Findings

11. It is striking that the credibility findings made in this case are, primarily, concerned with the Appellant’s poor compliance with immigration control. On the findings of the First-tier Tribunal he lied and obfuscated about when and how he arrived, he absconded from the police and he failed to claim asylum at the earliest possible date. All of those matters were, in accordance with s.8 of the Asylum Immigration (Treatment of Claimants etc) Act 2004, matters that were capable of diminishing the weight to be attached to the Appellant’s claim, and in particular his claim that he had a subjective fear of return to Vietnam. They could not however be determinative. It was still incumbent on the Tribunal to consider whether the actual facts gave rise to a well-founded fear of harm. As far as I can see the only explicit reference to the account given was at paragraph 34 where the Tribunal addresses the question of the ‘travel debt’:

“The appellant was unable to provide a satisfactory answer with respect to when the alleged loan of £24,000 was to be discharged, over what period of time and what percentage rate the interest was. He was unable to explain why £3000 interest had been charged on the £24,000 loan when there was no agreement in place to identify the structure of the repayment...”

12. With respect I am at a loss to understand the reasoning here. The objective evidence does not indicate that traffickers and their victims negotiate agreements as to the ‘structure of repayments’. To the contrary the evidence indicates that victims are not given any information about the ‘debt’ other than the fact that it exists. The total to be repaid is invariably a moving target such that the victim can never reach it, remaining in debt bondage, or slavery, indefinitely.
13. That said this is not a decision that I am able to interfere with. Whatever the deficiencies of the reasoning this was, for the reasons articulated in the refusal letter, and adopted by Judge Kainth, a protection claim that was bound to fail. The Competent Authority had concluded that there were not reasonable grounds to conclude that the Appellant had been trafficked. In their letter of the 24th October 2017 they set out several reasons why, including the fact that when first encountered in March 2016 the Appellant made no mention of having been

trafficked, he had given wildly inconsistent evidence about how long he had been in the UK, he had told officers that he had actually come to the UK for a better standard of living, when encountered for the second time in August 2017 he again failed to make any mention of trafficking, and even after he had claimed asylum made no mention of the alleged exploitation in his screening interview. His account of his journey was inconsistent in each telling and crucially he was unable to provide any details in respect of the actual work he is said to have undertaken: he could not describe the house where he claims to have been held, or say how many hours he was expected to work for. He said that he was doing packing work but could not say what it was he was packing. He gave inconsistent accounts of how he escaped. These were the reasons articulated by the CA in a very detailed reasonable grounds letter and I am unable to find that this was a decision that could be said to be irrational: Secretary of State for the Home Department v MS (Pakistan) [2018] EWCA Civ 594.

14. Furthermore there is nothing in the evidence or grounds to indicate that the overall decision on risk was wrong. Even if the Appellant was recruited by T, and even if – taking the Appellant’s claim at its very highest – T was part of a Triad gang in Vinh, it remains open to the Appellant to go and live somewhere else in Vietnam, a country with many large cities and a population of 97 million. He has not advanced any reason why it would be unduly harsh to expect him to do so.

Decisions

15. The decision of the First-tier Tribunal contains no material error of law and it is upheld.

Upper Tribunal Judge Bruce
26th April 2018