



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03657/2015

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 27 November 2019

Decisions & Reasons Promulgated
On 20 December 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

M A N (VIETNAM)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr James Collins, Counsel instructed by Sentinel Solicitors
For the respondent: Mr Christopher Bates, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of M A N who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the appellant or of any member of her family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The appellant is a citizen of the Socialist Republic of Vietnam born in 1985, now aged 34, who appeals against the decision of the respondent to refuse her international protection, humanitarian protection, or leave to remain on human rights grounds. The

Upper Tribunal remakes the decision having set aside the decision of the First-tier Tribunal dismissing her appeal. If returned to Vietnam with her daughter, born in the United Kingdom outside her undissolved marriage, the appellant fears retribution from or on behalf of the traffickers, harm from her husband, stigma and disapproval from society, rejection by her parents, and re-trafficking.

2. On 29 November 2015, to the lower standard of proof applicable in international protection decisions, the respondent accepted that the appellant was both a former victim of human trafficking (VOT) and former victim of modern slavery (VOM), both of which she accepted were particular social groups in the context of Article 1A of the Refugee Convention and of Article 2(c) of the Refugee Qualification Directive 2004/83/EC of 29 April 2004.
3. The respondent accepted that the appellant had given a cogent and coherent account of her history, but rejected two aspects of her account, the first that she had suffered domestic violence in her marriage before leaving Vietnam, which was the reason the appellant gave for her father having sold the family home and arranged with a man from Hanoi to get her out of the country. The respondent also rejected the appellant's worry that in selling their home to pay the Hanoi trafficker, her parents might not have discharged the very large sum required to bring her out of Vietnam. The appellant has never said that she was sure that the family owed the Hanoi trafficker money, just that she thought it probable. The respondent rejected that as speculative and considered that, taken with the delay in claiming asylum, it meant that the appellant's otherwise credible account should be rejected on the domestic violence aspect and the debt to the trafficker.
4. The appellant benefits from a positive Conclusive Grounds decision made on 23 December 2016 by the respondent as Competent Authority under the National Referral Mechanism. The respondent as Competent Authority accepted, to the higher standard of balance of probabilities, that the appellant was a victim of trafficking and modern slavery and that she had provided a credible and coherent account of the circumstances of her leaving Vietnam and the several times she was trafficked en route, mainly for forced labour but for a time, in Russia and Poland, for prostitution.
5. In the light of that acceptance, and having heard the appellant give evidence, I find her account to be entirely credible and I approach this decision on that basis.
6. The appellant had the good fortune to be educated in Vietnam up to the age of 18 and worked when there, sharing the care of her children between her husband and her parents, who lived just half an hour apart by motorbike. She worked in hairdressers and in bread shops, but her husband, who had a drug habit, took the money and used it for his own needs.
7. The appellant herself has not contacted her parents since leaving Vietnam: she was supposed to have been coming to a better job in the west and to be able to send them money to pay the trafficker and to repay them for the enormous gesture they made in selling their home to get her away from her violent husband. She fears that her subsequent trafficking into prostitution, and her inability to pay any money at all since leaving Vietnam because she herself received no money from her traffickers, would

have so disappointed her parents that they would reject her on her return. She thinks that the traffickers will have told everyone that she was a prostitute, but that is subjective: she cannot be certain, nor can she contact her family to find out if they would reject her.

8. The appellant's consistent evidence was that in the United Kingdom she had met a woman who came from her home area and was going back there. At the appellant's request, the woman went to her home village to find out her parents' forwarding address. They were not there: the only information the appellant received was that her parents and the two children of her marriage were no longer in the village and that nobody knew where they had gone. She has not approached the Red Cross but on those facts, it is difficult to see what they could find out.
9. The appellant's circumstances on return will be complicated by the fact that, as far as she knows, she is still married to her abusive husband, that he will have custody of her children and retain the Family Register Booklets (*hộ khẩu*), and that she has a child born to her in the United Kingdom, now of school age, and requiring health and social care, who is not her husband's child.
10. The respondent's case is that the appellant could relocate to Ho Chi Minh City and make a new life there.

The appellant's mental health

11. The appellant had some mental health issues when she first made her asylum claim. She was cared for by Pennine Care NHS (Healthy Minds). There is no evidence later than 2016 of her mental state but her case worker, Ms Martins, noted that she presented with anxiety and depression and could be supported by a partner organisation, from City Hearts, which specialised in supporting asylum claimants with her issues. A letter from City Hearts on 26 July 2016 recorded that between September 2015 and July 2016, the appellant received weekly face-to-face support thereafter, following a meeting in October 2015 to finalise the outreach package. The appellant presented as lonely, very sad, suffering nightmares, having trouble sleeping and flashbacks.
12. Her initial needs were to register with and access local medical services and counselling, to obtain a health visitor, and to access Children Centre support, English language development, and material assistance, all of which had been provided. The appellant now had a conditional offer for a Beauty Course at Bury College. Further support was available if required and when the appellant ended her initial period of support, she would retain access to City Hearts' drop-in service.
13. That remains the position. The appellant's evidence was that she received (but not initiated) a fortnightly call from City Hearts to see how she and her daughter were doing. She had taken her daughter out of nursery, wanting to keep her closer, but was otherwise making no use of the support offered save for occasional practical issues.
14. There is no further medical evidence about the appellant's mental health. It appears that she is functioning reasonably well without much medical intervention, although her decision to keep her daughter home rather than send her to nursery will become

challenging, once her daughter reaches school age. Absent any up-to-date medical evidence, I do not treat the appellant's mental health issues as likely to make it difficult for her to reintegrate in Vietnam nor are they at a level where there is a risk of an Article 3 ECHR breach, were she to be returned.

Section 55 best interests

15. The refusal letter, having been written six months after the child's birth, makes no detailed section 55 assessment and no additional information is before me, save the appellant's evidence that her daughter stays home and does not attend nursery. There is no evidence of local friends outside the home.
16. The appellant's United Kingdom-born daughter is a Vietnamese citizen and is only just of school age. She is still at an age where what is best for her mother is best for her, particularly as she has stayed home and not attended nursery for quite some time now. This case does not turn on the best interests of the child and there is no evidence at all about the two children in Vietnam, who have disappeared, along with their grandparents.

The issue in this appeal

17. In this decision, I remake afresh the decision of the First-tier Tribunal which dismissed the appellant's appeal. I have heard oral evidence from the appellant, and I have her witness statement, asylum interview, and the Conclusive Grounds decision and refusal letter. There is no need to set out in detail what those say as I have summarised the account above, so far as relevant. I am satisfied, to the lower standard, that there is a real risk of persecution or serious harm to the appellant in the home area, which I take to mean both her husband's home and that of her parents, since she lived between the two and they are only half an hour apart.
18. The appellant also fears going to Hanoi, because the original trafficker was from there. It is accepted by the respondent that the appellant does have a subjective fear on return, both of the traffickers and of her husband: the respondent in effect relied on the possibility of relocation to Ho Chi Minh City. The crucial question for the Upper Tribunal is whether such relocation is a reasonable option for her as a vulnerable single head of household with an illegitimate daughter. This case therefore turns on the effectiveness and reasonableness of internal relocation to Ho Chi Minh City, and also on the *hộ khẩu* system in Vietnam.

Respondent's country evidence

CPIN 2018

19. In September 2018, the respondent issued a CPIN *Vietnam: Victims of Trafficking*. At 5.1, profiling VOTs, the United Nations Action for Cooperation against Trafficking in Persons (UN-ACT) is recorded as stating that 'Vietnamese women...subjected to forced prostitution throughout Asia are often misled by fraudulent labour opportunities and sold to brothels on the borders of Cambodia, China, and Lao PDR, with some victims transported to third destination countries, including Thailand and Malaysia'.

20. A July 2017 report published on Gov.UK by the British Embassy in Hanoi recorded the risk to young women and girls who were poor and had limited access to information. They would be kidnapped or tricked into crossing neighbouring borders then sold into forced sex work or labour exploitation. Traffickers 'stand to gain huge profits from the suffering of their victims'. At 5.1.6, the report records the finding of the Independent Anti-Slavery Commission that labour exploitation was the most common form of trafficking referred into the NRM, with 2/3 of those referred being men.
21. At section 6, the report records that the National Plan of Action (NPA) in Vietnam did not recognise a link between trafficking and labour migration. The focus was on those forced or kidnapped for sexual trafficking, not on those who were lured by the promise of good jobs and went willingly on that basis, only to be sold as VOMs or VOTs.
22. The CPIN report records in detail the significant efforts by the Vietnamese government, with international support, to deal with trafficking at source by better information, as it was difficult to contain at a practical level. However, the US State Department Trafficking in Persons report is quoted as stating that:

"For the sixth consecutive year, the government did not prosecute any suspected traffickers under labor trafficking provisions of the 2012 anti-trafficking law. Authorities continued to develop a national database on trafficking statistics for the fourth year, but did not make demonstrable progress on bringing it closer to integration with law enforcement efforts or judicial proceedings. Disparate government bodies continued to report discrepant, overlapping, or incomplete data on anti-trafficking law enforcement and victim identification, and authorities often did not disaggregate trafficking offenses from possible migrant smuggling cases. According to MFA, the Ministry of Public Security (MPS), Vietnam Border Guards (under Ministry of Defense), and Vietnamese diplomatic Missions—often in cooperation with foreign partners—identified 350 trafficking cases involving more than 500 alleged offenders (234 and 308, respectively, in 2016). The procuracies reported initiating the prosecution of 245 defendants for trafficking offenses (295 in 2016) and the court system secured 244 convictions (275 in 2016); sentences ranged from less than three years to 30 years imprisonment.'...

6.5.1 The USSD TiP Report 2018, noted:

'A lack of coordination across provincial-level agencies, persistent budgetary constraints, poor understanding of the relevant legislation among local officials, and confusion about individual provinces' roles and responsibilities in the context of the national action plan continued to hamper effective law enforcement efforts. Observers noted the authorities often prosecuted domestic trafficking under statutes pertaining to operation of an illegal business, kidnapping, or illegal detention, all of which carried lesser penalties. Provincial authorities often did not replicate central government coordination mechanisms and activities in accordance with the national action plan, and there was no mechanism for the MPS—which led interagency anti-trafficking efforts—to

transfer necessary funds to other government bodies for anti-trafficking activities.”

23. At 7.1, the report noted that MOLISA operated about 400 social protection shelters providing assistance to members of vulnerable groups including VOTs. The shelters were run by local authorities and the level of training and skill level was variable. There was one NGO shelter in Hanoi for female trafficking victims. All government-run shelters supported a broad range of vulnerable individuals, though a MOLISA shelter in Ho Chi Minh City had two rooms where trafficking victims transiting the City could stay for up to two months. Other assistance was available, including government-sponsored vocational training, employment opportunities and lines of credit at a reduced interest rate.

24. At section 8, the CPIN report deals with the difficulties of reintegration for former VOTs:

“8.1.1 The joint VCHR and FIDH report of 2015, noted ‘Victims of trafficking who escape and return to Vietnam have no legal protection. Many rural women find that their land has been confiscated during their absence. *If they have children born overseas, the children are not entitled to the obligatory residence permit, or “hộ khẩu”, and become illegal citizens, deprived of the right to education and health care.*’” [Emphasis added]

A link in the September 2018 CPIN to the Socialist Republic of Vietnam’s Ministry of Justice page for citizenship rights of children born to Vietnamese nationals outside Vietnam no longer lands in the right place and no detail is provided in the CPIN.

25. DFAT was aware of some assistance given to victims of sex trafficking in the form of a one-off cash payment of up to VND 1.5 million (about £33), healthcare, training, legal aid and counselling, but provision was variable.

26. At paragraph 8.3.1, the CPIN sets out evidence about women living alone, having children without husbands. The report stated that single mothers in the country still faced hardship, discrimination and shame, but an article in Tuoi Tre News from September 2014 reported that there were mutual support groups in Ho Chi Minh City and in April 2017, Xinhua reported that ‘free, independent and open minded’ single women were living alone and childfree in cities. Since 2003, the Vietnamese government had recognised their right to sperm donations and IVF, without the need for a partner or husband, but in 2018, Freedom House’s *Freedom in the World* report noted that women continued to face discrimination in wages and promotion.

27. At 8.4 the risk of re-trafficking is considered. Low skilled women who cannot obtain gainful employment remain vulnerable to re-trafficking, as do children. At 8.4.1, the report says this:

“8.4.1 ...because many trafficking victims actually know their traffickers, the need for communities to reach out to their members is critical. [...] Because of official condemnation of illegal prostitution as well as a prohibition on emigrating without notifying authorities, many survivors of trafficking are left

with few avenues to receive assistance. Often, they are reluctant to seek help for fear of further abuse by traffickers, debt bondage, punishment from government authorities for illegal border crossing, or stigma from being labelled a prostitute. This isolation and fear leaves them vulnerable to re-trafficking.’ ...

8.4.4 The USSD TiP Report 2018 noted that ‘Endemic social stigma associated with victimhood and concerns over retribution in their local communities likely further discouraged many victims from seeking or benefiting from protection services.’

28. At 9.2, the September 2018 CPIN deals with the importance of the *hộ khẩu* registration. The respondent does not dispute its importance:

“9.2.1 The 2017 DFAT Report stated that:

‘Ho Khẩu registration is initially obtained through the registration of a person’s birth with the village or provincial administrators. Officials use the registration system to determine the levels of services provided to villages and provinces, linking a person’s right to access government healthcare, education and other services to their place of residence. Ho Khẩu registration is also essential for obtaining employment with the government or in state-owned enterprises. *Although health care facilities can be accessed anywhere in Vietnam in emergency cases, public facilities may turn away non-life-threatening cases where the person is not properly registered. Access to schools is determined by Ho Khẩu registration and administration fees may apply to children not registered in an area zoned for a particular school. ...*” [Emphasis added]

29. At 9.2.2, the respondent relies on a report in the Vietnam Law and Legal Reform Magazine that the *hộ khẩu* is to be scrapped in 2020 and Vietnamese citizens managed through identification numbers on a new online national database:

“Under Government Resolution No. 112/NQ-CP issued on October 30 [2017], Vietnamese citizens will be managed solely through their identification numbers on a new online national database. Personal transactions will be performed only through the national identification (NI) number and all changes of personal information will be updated on the national database and recorded in each person’s NI number.

‘With the abolishment of the household registration book, many time-consuming administrative procedures will be scrapped, including formalities to change persons named in the book, obtain a new book when moving houses, deregister permanent residence or extend temporary residence. The procedures to declare temporary residence to the commune-level police will also be abolished. Papers proving family relationship or birth certificates to register permanent residence for children will not be needed either.’

'To prepare for this, the Ministry of Public Security is striving to complete gathering personal information of all citizens by early 2019, and by 2020, every citizen is expected to have a new ID card with NI number.'

[Emphasis added]

Fact-Finding Mission report

30. In September 2019, the respondent reported on a Fact-Finding Mission carried out in Vietnam between 23 February and 1 March 2019, intended to gather 'accurate and up-to-date information from a range of sources about trafficking of men, women and children, organised crime, state protection and the Buddhist Hoa Hao' in Vietnam. The information contained in that report is expressed to be complementary to the respondent's 2018 CPIN and other information in the public domain, and was carried out with reference to the November 2010 European Union Common Guidelines on Joint Fact-Finding Missions and the respondent's own internal Fact-Finding Mission guidelines.
31. The Fact-Finding Team conducted 18 face to face interviews with a total of 44 sources, all of whom were given the opportunity to correct or improve the notes taken by the Team. The information in the Fact-Finding Mission report came from undisclosed diplomatic, non-governmental and academic sources, one completely anonymised source, Hoa Hao Buddhism Managers, the IOM, Hagar International in Vietnam, the Institute of Migration, the Alliance Anti Traffic (AAT) in Ho Chi Minh City, UN-ACT (the Secretariat for the COMMIT process in Cambodia, China, Laos, Myanmar, Vietnam and Thailand), and the Vietnamese Ministry of Labour and Social Affairs (MOLISA), the Ministry of Public Security. Detailed interviews are set out at annex D to the report.
32. All of the sources consulted agreed that there was a growing trafficking problem in Vietnam, despite the new statutory regime. The Fact-Finding Team accepted that in Vietnam, trafficking was a big issue, mainly involving young women and girls trafficked across the border to China for forced marriage and/or prostitution. Hagar and UN-ACT confirmed that the victims were mainly from ethnic minorities in North Vietnam and 90% were women. About 75% of the victims recognised by Vietnam had been trafficked to China.
33. IOM told the Fact-Finding Mission that victims of trafficking tended to have borrowed money from friends and family and/or mortgaged property to raise the cost of migration. Families were therefore aware that a relative was travelling to the United Kingdom to access illegal work but 'they view the migration as an investment opportunity as the migrant will be paying off any debt owed and returning remittances in the following years'. IOM stated that some families did not realise that the illegal migrant could then end up in an exploitative situation'. Those trafficked to the United Kingdom were mainly men, and mainly for work. They were seen as economic migrants, because they were sending remittances back to Vietnam. The evidence indicated a growing trend to traffic better educated women, luring them into trafficking through social media.

34. Government sources were optimistic, setting out the new statutory regime but saying little about how it worked in practice. MOLISA referred to Article 150 of the 2015 Penal Code of Vietnam which came into force in January 2018, and which reflects the international definitions of trafficking:

“1. Any person who uses violence, threatens to use violence, deceives, or employs other tricks to commit any of the following acts shall face a penalty of 05 - 10 years' imprisonment:

- a) Transferring or receiving human people for transfer for money, property, or other financial interests;
- b) Transferring or receiving human people for sexual slavery, coercive labour, taking body parts, or for other inhuman purposes;
- c) Recruiting, transporting, harbouring other people for the commission of any of the acts specified in Point a or Point b of this Clause.”

Article 151 exempts minors from proof of compulsion.

35. An undisclosed NGO said that most Vietnamese prosecutions under Article 150 related to persons trafficked to China: the number of prosecutions relating to trafficking to the United Kingdom was low, because the Article 150 definition was interpreted in Vietnam as requiring a victim to prove that they had been forced, threatened or lured to go with the trafficker. Persons like the appellant, who had left willingly but been misled by the traffickers as to where they were going, were not likely to be protected under Article 150. If people had lost their ID card when trafficked, they could be supported to get a new card and loans made available to enable them to start a business.

36. There were now 400 government-run shelters and 3 NGO-operated shelters in Lao Cai, An Giang, and Vinh City. Local police could issue a certificate to returning VOTs, enabling them to access support, subject to the Article 150 definition of VOT. In 2018, 500 people received support. Facilities support was provided by the British Embassy, with finance through an unspecified Pacific NGO.

37. MOLISA could not say how many traffickers had been prosecuted, and referred the Fact-Finding Team to the courts for that information, which is not included in the report. MOLISA confirmed that there had been no successful prosecutions of persons who had induced VOTs or VOMs to go willingly to the United Kingdom, unless they were aged between 16 and 18 and the Article 151 exemption for minors was applicable.

38. Diplomatic and NGO sources were less optimistic. Diplomatic sources said this:

“Sufficiency of protection for VOT

[Vietnam] has made some improvements and addressed some concerns but there remains significant concern about the pace of progress. There have been advancements at provincial level, but central government is not as organised, central government and local does not always align. At provincial level, more assistance is being requested. They try in terms of protection, but victims do not tend to want to be identified due to social stigma. ...

Vietnamese view of VOT from the United Kingdom

The Vietnamese see many of those Vietnamese nationals that go to the United Kingdom and remain there illegally as being economic migrants. They are sending remittances back to Vietnam and fuelling the economy. There is a special website in the United Kingdom for Vietnamese to find jobs. Why is the United Kingdom so desirable? There is a big diaspora in United Kingdom, they know United Kingdom authorities treat them nicely, they know the United Kingdom doesn't detain minors, and it will be easy to get a job. In some of the provinces it appears that travelling to United Kingdom and abroad is similar to a rite of passage. In many cases where Vietnamese are encountered by authorities and believed to be potential VOTs they will have entered the United Kingdom clandestinely."

39. At 5.2.1, the Fact-Finding Mission says this:

"5.2.1 Hagar told the FFT that the information about traffickers mainly comes from the victims themselves and that it tends to involve a spurious relationship or the promise of an education or a job. In the majority of cases they travel to another country for a job and are then mistreated. The government do not recognise them as victims of trafficking as they went of their own accord.

5.2.2 In relation to the VOTs who end up in the United Kingdom, IOM confirmed that people smugglers provide a service for a fee to facilitate the irregular migration of persons to Europe and the United Kingdom. AAT confirmed that, typically, traffickers/smugglers are paid £30,00 to facilitate someone's passage into Europe. The victim tends to fly to Moscow, where they are then transferred to Europe, this was also confirmed by IOM who stated that there are multiple routes for migration, but the most common involves legal travel to Russia, after which the smuggling network facilitates their illegal migration across Europe."

40. MOLISA's statement that there are 300-400 cases of human trafficking each year was an understatement as it took no account of those (like the present appellant) who would not receive a police victim certificate on return because they were not considered to have been trafficked out of Vietnam.

41. Protection programmes recognised the difficulty of addressing trafficking where it occurred. The authorities had focused on prevention, highlighting the risks and methods used by traffickers in television documentaries and in a prevention programme in schools. Government shelters provided 60 days' support in 400 mixed sex shelters for all types of vulnerable people, during which time they received free health support, legal support, accommodation, food, and help to find jobs, all of which were free. Most VOTs did not stay long in the shelters as they wanted to go home to their families. Hagar considered that there were not many shelters, not enough qualified counsellors, and that the support received was bureaucratic, requiring disclosure of confidential information by the victims, and resulting in a support package of US \$50 for each woman.

42. There was some evidence about the difficulties of reintegration from IOM, from AAT (who said 99.9% of victims did not want to use the shelters), and from MOLISA, which spoke of ongoing assistance for VOTs leaving shelters. Hagar could provide vocational training and small business loans: they supported 60 people at any one time, not all VOTs and dependants, but also victims of domestic violence and sexual abuse within Vietnam. Hagar said that social stigma for former VOTs was significant: Vietnam had a victim blaming culture both for VOTs and victims of domestic violence. Hagar dealt with about 5 returnees from the United Kingdom each year, referred by the Medaille Trust, their United Kingdom partner. Mainly, their assistance was limited to providing counselling over Skype after return. Hagar did not deal with repatriation. AAT received lists of those being returned and were able to organise training courses and check on the current situation of a number of victims returned from the United Kingdom. None of those consultees were aware of any re-trafficking.
43. As regards loans, MPS said that late payment of loans could result in the lender hiring gangs to carry out debt collection, using threats, destroying property, injury or humiliation, trouble at home or at the work place, or psychological terrorisation such as throwing dirt, sending funeral wreaths or coffins. People so treated were too afraid to involve the police, but caused anxiety and insecurity for those who owed money.
44. A loan, once taken, was the debt of the whole family, and diplomatic sources said that 'where the loan is used to fund migration to the United Kingdom, the family in Vietnam sometimes get harassed if no repayment is made'. If a person relocated to avoid the gangs, the police would be able to trace them, and a criminal might be able to get the information from the police.

Respondent's case

45. Mr Bates for the respondent relied on paragraph 2.2.1 of the September 2018 CPIN: he argued that there was sufficiency of protection for VOTs in Vietnam and disputed the opinion of Dr Tran to the contrary effect. Mr Bates acknowledged that the September 2019 Fact-Finding Mission report, while helpful, was an addendum and its sources were largely anonymous and anecdotal, with little or no reference or cross reference to background material.
46. Mr Bates recognised that the country evidence overall indicated that the following factors were likely to lead to an increased risk of re-trafficking for women and girls from rural areas (see CPIN September 2018 at 2.4.1):
- (a) An outstanding financial debt to the traffickers;
 - (b) Absence of a supportive family willing to take the appellant back into the family unit;
 - (c) The person having no other support network, no or little education or vocational skills, mental health conditions (which may have been caused by experiences of abuse when originally trafficked) and/or material and financial deprivation meaning that they would be living in poverty or conditions of destitution.

47. As regards the continuing risk to the appellant from her husband, a long-term drug user whose current whereabouts were not known, Mr Bates argued that the burden was on her to show evidence of continuing interest by him or risk from him. Mr Bates argued that there was no ongoing risk from the original traffickers and that the risk envisaged by the expert, Dr Tran, was of re-trafficking from a different group of traffickers on return. There was a functioning police force in the larger cities in Vietnam such as Ho Chi Minh City.
48. The September 2019 Fact-Finding Mission recorded that in Vietnam there were about 400 shelters for vulnerable people, which must therefore be widely dispersed, although there was no mention of a shelter in the appellant's home area. Mr Bates accepted that the absence of any family support would be an additional adverse factor, material to the reasonableness of internal relocation: the appellant had cut off all contact with her family and it was not clear whether if contacted, they would be supportive of her on return, nor whether the former traffickers remained in contact with her family.
49. The CPIN had identified family support as a factor in lowering the risk of re-trafficking. As to social stigma and the risk of re-trafficking, the respondent relied upon sub-paragraphs 4.1.1 and 4.3.3 of the September 2018 CPIN, and paragraphs 5.11, 5.3-5.7, and 5.8-5.10 of the September 2019 Fact-Finding Mission report.
50. In relation to the *hộ khẩu* booklet the respondent's September 2018 CPIN at 8.1.1 indicated that children born overseas had no right to the obligatory residence permit and became 'illegal citizens, deprived of the right to education and health care'. It remained unclear whether her husband's consent would be needed to re-register in a different place and to register the child (see Annex D of the Fact-Finding Mission at pages 57-58): Mr Bates did not accept that such was the case.
51. Mr Bates sought to rely on paragraph 9.2 of the CPIN which stated that the *hộ khẩu* Family Register Booklets were due to be scrapped in 2020 and replaced with a system of national identification numbers on a new national database, following completion of a national census. The September 2019 Fact-Finding Mission had further information at section 4.1.1-4.1.4.
52. Mr Bates contended that on the evidence, it was not reasonably likely that the appellant would be at risk on return from her husband, or from her previous traffickers, and there being no risk in the home area, the question of internal relocation did not arise. There was no detailed or current evidence of her mental health needs nor that family support was not available to her in Vietnam.
53. The respondent relied on the Marriage and Family Law 1986, by which single mothers became legally legitimate, and the country evidence that their children born abroad could be registered as Vietnamese citizens. Many single mothers, including those who had experienced domestic violence, lived and worked independently in Vietnam.
54. The respondent asked the Upper Tribunal to dismiss the appeal.

Appellant's case

55. For the appellant, Mr Collins reminded the Tribunal that the respondent in the refusal letter had accepted that the appellant was a member of two particular social groups: former VOTs and former VOMs. Mr Bates had not relied on assertion to the contrary in his skeleton argument. The appellant's account of circumstances in her home area was accepted and the Upper Tribunal should also accept the domestic violence risk to her from her husband. It was not irrelevant that her parents and children were no longer traceable in the home area.
56. The evidence was that after the appellant was spirited out of Vietnam by the Hanoi trafficker, her husband threatened her family members at her parents' home. He threatened then that he would find her, wherever she went: the appellant had been a significant source of income to him and there was no social protection for victims of domestic violence which was regarded as a private matter in Vietnam.
57. The appellant had never asserted that she knew the details of the price her father arranged with the original Hanoi trafficker. Given the high cost of travel to the United Kingdom for Vietnamese people, the appellant's fear that the sale of the family home might still have left the family with a debt to the traffickers which she had been unable to help repay was not irrational. There was a reasonable likelihood that she was right: if she was, the Fact-Finding Mission acknowledged that debts to traffickers carried a risk of harm to family members or to the VOT/VOM themselves.
58. Regarding the *hộ khẩu* issue, Mr Collins asked the Tribunal to prefer the evidence of Dr Tran that the system had not yet changed and that in order to access schooling and health care for her United Kingdom-born child, as well as other Social Services, the appellant would need to try to get her *hộ khẩu* separated from that of her husband and Vietnam-born children. Without it, she and the United Kingdom-born daughter would have significant difficulty in reintegrating in Ho Chi Minh City, despite her having previously been employed and having secondary education.

The legal context

59. I am aware that an appeal against the decision of the Court of Appeal in *Secretary of State for the Home Department v MS (Pakistan)* [2018] EWCA Civ 594 was heard in the Supreme Court on 21 November 2019 but that the Supreme Court's decision has not yet been handed down. The issue before the Supreme Court concerns the weight to be given to a negative Reasonable Grounds or Conclusive Grounds decision, not, as here, a positive finding in the appellant's favour:

"Where the Competent Authority for the purposes of the European Convention on Action against Trafficking in Human Beings (ECAT) has determined that a person is not a victim of trafficking, what effect does this have on the jurisdiction of a tribunal hearing an appeal against a decision to remove that person to decide whether a person is a victim of trafficking?"

60. Since this appellant has been accepted to be a VOT/VOM, the decision in the present appeal can be justly decided without awaiting the Supreme Court decision.

61. I have had regard to the decision of the Upper Tribunal in *DC (trafficking: protection/human rights appeals) Albania* [2019] UKUT 00351 (IAC), handed down on 13 November 2019, which found that the Conclusive Grounds decision is part of the evidence which the Upper Tribunal must assess in reaching its decision in this appeal, bearing in mind that the decision of the Competent Authority is made to the higher standard of balance of probabilities. A decision to that higher standard that the appellant is a VOT/VOM is conclusive of that issue and the respondent has not sought to suggest otherwise.

Analysis

62. I approach the decision of this appeal on the basis that the appellant is a witness of truth and that her evidence can be accepted. I am also satisfied, on the basis of the evidence before me, including the appellant's oral evidence, that she has a genuine subjective fear of return to Vietnam, having regard to her history, in particular her trafficking for prostitution in Russia, the domestic violence she experienced at her husband's hands before she left Vietnam, and the fact that she will be returning with a third child who is not her husband's daughter.

63. I remind myself that pursuant to paragraph 339K of the Immigration Rules HC395 (as amended):

"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

64. In the present case, the appellant was subjected to beatings, as was her father, and to direct and indirect threats of serious harm from her husband, to whom she is still married. Her parents and her children have disappeared. I am not satisfied that I have been shown good reasons to consider that if the appellant returned to the home area, the husband's interest in her earning capacity and her duties as his wife might not revive, to like effect. He may of course have died or remarried, but neither party was able to bring evidence about that, the appellant because she is no longer in contact with her home area, and the respondent because such enquiries cannot be made without creating the very risk which the appellant fears, if he is still alive and her husband.

65. I accept, therefore, that there is a risk in the home area and that no family support is available to the appellant. She is unwilling to live in Hanoi, where the original trafficker lives, to whom she thinks (probably rightly) that her family owes a large amount of additional money. I must consider therefore whether she can reasonably be expected to make a new life for herself in Ho Chi Minh City with her 5-year old daughter. On the plus side, she has worked before coming to the United Kingdom, and in the United Kingdom also, when she could. She has secondary education.

66. I have considered the weight I should give to the digitisation of the *hộ khẩu* system said to be planned for 2020. There are two reasons why this carries no weight in the decision I have to make: the first is that, as always, an international protection decision

is made on an ex nunc basis. I am required to decide the risk to the appellant today, not in the future. The second is that the evidence is that the *hộ khẩu* system will be digitised following a census which has not yet taken place, and that Dr Tran's evidence was that it had already been promised for some years and would probably be no more than an online version of the same system. The observations in the Fact-Finding Mission are to say the least, optimistic as to the amount of novation which might take place in the digital system. I conclude that I need to make this decision on the basis of the *hộ khẩu* system as it is now.

Country conclusions

67. The respondent in the September 2018 CPIN accepted that return to Vietnam would place an appellant at risk of harm, including re-trafficking, in the following circumstances:
- (a) An outstanding financial debt to the traffickers;
 - (b) Absence of a supportive family willing to take the appellant back into the family unit;
 - (c) The person having no other support network, no or little education or vocational skills, mental health conditions (which may have been caused by experiences of abuse when originally trafficked) and/or material and financial deprivation meaning that they would be living in poverty or conditions of destitution.
68. In relation to internal relocation, the Fact-Finding Mission indicates that a woman living in a city who has never been married and has a child born either by IVF or outside any long-term relationship may have social support and legal support from networks of women who are single mothers by choice in Vietnam, although she should expect some level of stigma and discrimination. Women who can work, and who are educated, will be in a better position.
69. Women are secondary citizens and although their rights have been strengthened in statute, enforcement in rural areas remains problematic, with local authorities required to fund support out of local funds, and underreporting occurrences in their areas.
70. The risk is higher for women who have experienced persecution or serious harm in the home area, and in particular domestic violence, which communist Vietnam regards as a private matter. The police and the authorities are unwilling to provide support for domestic violence complaints.
71. Internal relocation is not practical where there remains a risk in the home area from a family member, since a woman's *hộ khẩu* is held by her father or husband, who would be asked to allow her to separate her *hộ khẩu* to the city where she relocates. Any risk in the home area would then be capable of being pursued wherever her internal relocation option was exercised, if the family member in question remained interested in pursuit.

72. A VOT/VOM who left Vietnam willingly, albeit having been tricked into doing so, will not have the benefit of protection under Article 150 of the Vietnamese Penal Code. If a debt to the original trafficker is outstanding, it remains a family debt for which the trafficked woman has shared responsibility, increasing the risk of harm to her or family members, and also making her vulnerable to re-trafficking, although the evidence of re-trafficking is less clear.

Decision on appellant's appeal

73. Looking at the *hộ khẩu* system as it stands, the appellant will need to obtain schooling and healthcare for her daughter born in the United Kingdom. If she wishes to deregister her permanent residence on her husband's *hộ khẩu*, it is reasonably likely that he would have to be made aware that she did so and (perhaps) consent. Given the history of domestic violence which I have found to be credible, there is a real risk that he might choose to pursue her and the child born outside their subsisting marriage.

74. If her husband was not contacted, the appellant would have no *hộ khẩu*, and it seems that she would not be able to re-register her foreign-born child as a Vietnamese citizen. The child would need to be added to someone's *hộ khẩu* to get access to health care, schooling, and a host of social security issues. There are temporary permits available but they provide very limited protection and are on a short term rolling basis.

75. The appellant would not qualify for the financial support available for VOTs, because of the interpretation which Vietnamese law and the police put on Article 150 of the Vietnamese Penal Code, excepting from the definition of trafficked persons anyone who left Vietnam willingly but was tricked into doing so. The support which is available is in any event rather limited: given the huge numbers trafficked, a support of 500 persons per year (just over one person from each of the shelters, for context) and Skype counselling for 65, does not indicate that there is real help for a woman in this appellant's particularly difficult position.

76. The appellant can expect no assistance from her family members in Vietnam. Her parents and her children are no longer in her home village and, although she does not profess to be certain, it is reasonably likely that the sale of the family home did not raise the enormous sum asked by the trafficker and that money remains due from her family to him, which will not have been helped by her escaping the United Kingdom traffickers. At the very least, she faces a fragile existence in a city, either as a temporary resident, or with the risk of her husband finding her, or the traffickers, who would regard her as still in debt to them.

77. Internal relocation is not a reasonable option for this appellant and her daughter, and she cannot be expected to return to her former home area, where she was previously ill treated and there is no good reason to think the risk will not recur. The appellant's asylum claim therefore succeeds. She does not qualify for humanitarian protection, which is available only where asylum is not.

78. There were no section 55 arguments advanced in relation to the appellant's United Kingdom-born daughter and I do not consider that on this factual matrix, the child's best interests can properly be separated from those of her mother.

79. Neither party asked me to consider Article 8 ECHR. For the avoidance of doubt, given the lack of any evidence about the appellant's private life, I would have dismissed the human rights appeal. The appellant's private life in the United Kingdom is very limited, it seems, and all developed while she was here without leave. I am required to give it little weight with regard to section 117B(4) of the Nationality, Immigration and Asylum Act 2002 (as amended).

DECISION

80. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. I remake the decision by allowing the appeal.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 19 December 2019