Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03668/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 October 2019	**On 28 October 2019**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

G N D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. R Parkin, Counsel, instructed by David Wyld & Co Solicitors
For the Respondent: Mr. I Jarvis, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Freer ('the Judge') issued on 10 June 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant him international protection was dismissed.

2. Judge of the First-tier Tribunal Andrew granted permission to appeal. In her decision she reasoned that only one of the grounds advanced was arguable, namely the

ground detailed at [4], but she failed to incorporate her intention to grant permission on limited grounds within the decision section of the standard document, where she simply stated, 'permission to appeal is granted'. There were no words of limitation and therefore the appellant has permission to argue all grounds: *Safi & Ors (permission to appeal decisions)* [2018] UKUT 00388 (IAC), [2019] Imm AR 437.

Anonymity

3. The Judge issued an anonymity direction. There was no request from the representatives to set this direction aside and so I confirm:

> Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim being made public.

Background

4. The appellant is a national of Vietnam and is presently aged 25. He arrived in this country in 2010 as a 16-year old. Following referral to the National Referral Mechanism a positive conclusive grounds decision was issued on 3 March 2019 confirming the appellant to be a victim of human trafficking or slavery, servitude, or forced/ compulsory labour. The respondent accepts that the appellant was trafficked to this country and forced to grow cannabis so as to pay off a loan with interest.

5. The appellant asserts that his parents died when he was aged 3 and he was supported by a paternal grandmother until the age of 11. He commenced working at this age, initially in a restaurant and then on a building site from the ages of 12 to 14. He then worked at a roadside café in Hanoi. Whilst working at the café he was approached and asked if he wanted to work abroad. He was informed that he would be aided in securing money for the trip and could repay the loan later. He agreed to a loan of $25,000 to be repaid within a year, otherwise interest would have to be paid. He also agreed to pay 20% interest a month if he failed to work two shifts a day. Having arrived in this country in or around April 2010, he was taught how to grow cannabis and did so at several houses before escaping. He resided with a Vietnamese friend called Michael until 2016 and commenced a relationship with his partner later that year. He claimed asylum in April 2017.

Hearing before the FtT

6. The appeal came before the Judge sitting at Taylor House on 16 May 2019. The applicant contended that he possessed a well-founded fear of persecution from traffickers in Vietnam and that he was fearful of being killed, suffering serious harm and/or being re-trafficked on his return to his home country. The respondent's position in the decision letter of 3 April 2019 is that the appellant does not know the level of influence held by his traffickers and so the chance of them coming across him in Vietnam is slight: *Nguyen (Anti-Trafficking Convention: respondent's duties)* [2015] UKUT 170 (IAC). Alternatively, it is asserted that there is a sufficiency of protection existing in Vietnam and, further, the appellant can reasonably relocate to Ho Chi Minh City. At the hearing the respondent further asserted that the appellant had long paid off the debt to his traffickers and had been willingly released by them. Consequently, no well-founded subjective fear of persecution exists.

7. The Judge dismissed the appellant's appeal observing, *inter alia*, at [52], [54] - [56]:

> 'Bearing in mind these very particular findings, I am not persuaded that the expert report assists the Appellant. He has left debt bondage and has spent almost six years freely visiting his friends in Nail Bars according to his account. I do not find it shown there is any risk of being trafficked by any original traffickers. There is little risk that he will run into them or be recognised if he goes to a different region or to Ho Chi Minh City.'
>
> …
>
> 'The only slight risk appears to be trafficking by a new gang. The Appellant can move around from city to city in a country of 90 million people. It is not clear how the old gang in the old city will look for him when he registers in a new city.
>
> The risk from new gangs appears to be mitigated by his diverse work experience. The expert has been told the Appellant worked in Vietnam in his teens as a restaurant worker and also on a building site. I suspect he has done similar work to sustain himself in the UK. Something has sustained him, and we have no evidence from the friends who are supposed to have done so. I can reasonably suspect that his income source is other than he described.
>
> I find that the Appellant will find his way into restaurant work or building work in Vietnam. He will be able to support himself. He is fit and in his mid-twenties.'

Grounds of Appeal

8. The appellant relies upon unnumbered grounds of appeal drafted by his solicitors. In granting permission to appeal JFtT Andrew reasoned, at [3] - [4]:

> 'Paragraphs 2 and 3 of the Grounds: I find they disclose no arguable error of law. It is apparent that there was a conclusive grounds decision in favour of the Appellant and that following this there is no obligation on the Respondent, in accordance with his Policy, to grant discretionary leave as the Grounds suggest.
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> However, I do find that there is an arguable error of law in the decision in that the Judge merely adopted the arguments of the Respondent's representative without analysing the evidence that was before him and thus giving cogent reasons for the findings in relation to credibility.'

9. No Rule 24 response was filed by the respondent.

The Hearing

10. Following initial discussion with the representatives, Mr Jarvis confirmed that the respondent accepted the Judge's decision to be flawed by legal error such that it should be set aside. He accepted that whilst the contents of [42] alone are not sufficient to automatically undermine the lawfulness of the decision, there was a failure to clearly engage with the appellant's evidence in cross-examination as to the circumstances arising in this country and that included both his escape from the traffickers and his time spent living with his friend 'Michael'.

Decision on Error of Law

11. I first consider [4] of the appellant's grounds of appeal.

> 'The approach taken by the First Tier Tribunal in resolving issues of credibility and disputes of fact is materially wrong. At paragraph 42 of the determination the First Tier Tribunal made a finding that: 'I found that the arguments put by Ms John ('the Home Office Presenting Officer') were accurate and cogent as a whole. I do not find any likely flaws. I am inclined to adopt her submissions as my own for that reason to save space.' It is submitted that the First Tier Tribunal has not developed its own findings on material issues.'

12. The paragraph complained of is [42] of the decision, which states in its entirety:

> 'I found that the arguments put by Ms John were accurate and cogent as a whole. I do not find any likely flaws. I am inclined to adopt her submissions as my own for that reason, to save space.'

13. The submissions that the Judge was 'inclined' to adopt are detailed at [33] to [37]:

> 'Ms John for the Home Office asked me to accept the refusal letter issued last month in its entirety. This is an Appellant who arrived in 2010 but claimed [asylum] in 2017.
>
> The man was trafficked but there was a point where he paid off the debt. It could have been in one year but if that is not accepted, she put 2013 as the fall back date. This explains why the Appellant was able to leave the cannabis farm. It was

> not an escape and she questioned his truthfulness after that part of his account. The housemate once gave him £60. He made his way to Michael who runs a Nail Bar. He was encountered at a Nail Bar. He was not paying off debt there but had already freed himself from debt. That explains why nobody else has come forward to give evidence on his behalf.
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> She has tried to understand better his living arrangements after the cannabis farm but parts of it do not ring true. It is not the case he still has debts so he can go back to Vietnam. He just does not want to go back there. Michael treats him well, so why would he leave?
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> The RFRL lists differences in his accounts producing discrepancies. This goes to his credibility. He is not being truthful and what the Secretary of State has highlighted is valid.
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> The respondent has said he can move to a different city in Vietnam. The example of debt of £17,000 at Professor Bluth's report 5.2.7 was paid off within two years in a cannabis factory. In three years at the most, the Appellant's debt must have been paid, using his own expert evidence. At 6.1 the expert says they are kept in bondage until deemed to have paid off the debt. This event basically depends on the greed of the traffickers. He says it can take years, but this Appellant had signed up for a one-year contract and was working for years, so he meets the criteria for clearing the subjective debt.'

14. It is important to observe that the submissions made on behalf of the respondent address an issue that assumed importance for the first time at the hearing, namely as to whether the appellant paid off his debt and was permitted by the gang to leave their control. This is denied by the appellant. The Judge does not weigh the appellant's evidence or his Counsel's submissions on this issue in his assessments either at [42] or in the subsequent paragraphs. The Judge boldly asserts without more at [46], 'this appellant was a grown-up when his work for the traffickers ended.' Therefore [42] is the sole reasoning on this central issue and it is wholly inadequate.

15. It is a long-established principle that proper adequate reasons must be given that deal with the substantial points that have been raised in an appeal and whilst it is unnecessary for a Judge to set out the evidence and arguments before it or the facts found by it in detail, the reasons must be proper, adequate and intelligible and enable the person affected to know why they have been successful or unsuccessful. In this matter, the Judge has provided no adequate reasons as to why the appellant's evidence on this issue is not accepted, being mindful of the lower standard of proof applicable in asylum appeals.

16. I observe that the appellant has been accepted by the respondent as being credible with regard to his history of having been trafficked and this ought properly to form part of the holistic exercise when assessing his credibility as to events in this country. In such circumstances, the Judge materially erred as to his assessment of credibility and the only appropriate course available is for this decision to be set aside. I am therefore not required to consider the other grounds raised in this appeal.

Remittal

17. As to remaking the decision, given the fundamental nature of the error of law that has been identified, I note the submissions made by both Mr Parkin and Mr Jarvis that sustainable findings of fact have yet to be made in this matter and to date the appellant has not enjoyed a fair hearing. Both representatives submitted that the appeal should be remitted to the First-tier Tribunal. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. That reads as follows at [7.2]:

> 'The Upper Tribunal is likely on each such occasion to proceed to remake the decision instead of remitting the case to the First-tier Tribunal unless the Upper Tribunal is satisfied that
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> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
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> (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.'

18. I have reached the conclusion that it is appropriate to remit this matter to the First-tier Tribunal for a fresh decision on all matters. The appellant has not yet enjoyed an adequate consideration of his asylum claim to date and has not had a fair hearing.

Notice of Decision

19. The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 10 June 2019 pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

20. This matter is remitted to the First-tier Tribunal for a fresh hearing before any Judge of the First-tier Tribunal other than Judge Freer. No findings of fact are preserved.

21. An anonymity direction is confirmed.

Signed: D. O'Callaghan

Upper Tribunal Judge O'Callaghan

Date: 24 October 2019