



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07306/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 29th July 2019
And at Field House
On 16th September 2019

Decision & Reasons Promulgated
On 4th November 2019

Before

UPPER TRIBUNAL JUDGE COKER

Between

BT
(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Qudia (on 29th July 2019), Ms E Fitzsimmons on 16th September 2019, instructed by Duncan Lewis
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. 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 respondent in this determination identified as BT. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The First-tier Tribunal decision by Judge C O'Garro was promulgated on 21st May 2019. She allowed the appeal "on asylum grounds' and on "human rights grounds (Article 3)".
2. The SSHD sought permission to appeal and was granted permission, by First-tier Tribunal judge Kelly, on 10th June 2019, in the following terms:

Permission to appeal is refused on the grounds set out in paragraphs 2, 3, 4 and 7 of the application.

Permission to appeal is granted on the grounds set out in paragraphs 5, 8, and 9 to 14 of the application.

REASONS FOR DECISION.....

1.The [SSHD] seeks permission to appeal in time against a decision of First-tier Tribunal Judge O'Garro, promulgated on the 21st May [2019], to allow the appeal against refusal of his protection claim.

2. It was open to the tribunal to find.... That the appellant had been trafficked in the United Kingdom. It is accordingly not arguable that the tribunal was bound by the finding of the competent authority (made on the balance of probabilities) that he had only been trafficked in Russia. It is moreover not arguable that the tribunal gave insufficient reasons for its conclusion that the appellant was at risk of harm in his home area of Vietnam. Indeed, the decision maker appears to have accepted the existence of such risk, albeit that the risk was said to be "limited" [see paragraph 7 of the application]. Permission to appeal on the grounds set out in paragraphs 2, 3, 4 and 7 of the application is therefore refused.

3. It is however arguable that the tribunal failed to give adequate reasons as to why (a) the appellant would be unable to relocate within Vietnam and/ or benefit from the facilities and protection afforded to victims of trafficking by the Vietnamese state, and (b) his mental health problems reached the high threshold necessary for engagement of article 3 of the human rights convention. To that limited extent permission to appeal is granted on the grounds set out in paragraphs 5, 8 and 9 to 14 of the application.

On 29th July 2019 the appeal came before me and I made the following decision:

.....

Error of law

3. The First-tier Tribunal did not, when sending out the notice of grant of permission, notify the SSHD that the grant had been in partial terms and inform the SSHD of the mechanism and time limits for seeking renewal. It was not until Mr Melvin received the papers on Friday 26th July 2019 that an application was made to renew the application for permission to appeal, such application to be considered at the hearing on 29th July. The application for renewal did not expand on or seek to amend the basis upon which permission had been sought before the First-tier Tribunal. Save to summarise the permission to appeal as being sought on "on the trafficking decision and risk in home area".
4. Ms Qudia opposed the application on the grounds that it was out of time, the SSHD ought to have and could be expected to have procedures in place that would enable partial grants of permission to be identified and thus application to be made to renew, even if the First-tier Tribunal had failed to serve the correct notices as regards a partial grant.
5. Whilst I would expect the SSHD to have in place procedures for identification of partial grants of permission, it is also reasonable for those procedures to be such

as to identify such partial grants because they are sent with the relevant notices, as required by [34(4) & (5)] The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. It was not apparent to me that the SSHD had been served in accordance with the Procedure Rules and although, as Ms Qudia pointed out, the Notice of Grant was headed very clearly on what basis permission had been granted and refused, that is not sufficient. As *Ferrer* [2012] UKUT 00304 (IAC) makes clear, the grant of permission on partial grounds is a process comprised of two elements – not only must the decision be clear on the face of the grant/refusal but also there must be notice of the right to renew the application to the Upper Tribunal.

6. I granted the SSHD an extension of time to renew the grounds seeking permission to appeal. I refused to hear oral submissions on the application and put the case back; I then gave my decision on the renewed grounds of application.
7. The renewed grounds of appeal sought to rely on the following paragraphs in the application made to the Tribunal:

Risk in relation to criminal gang

3. The appellant claims that in 2005 - 2006 (AIR q93), that he discovered a quantity of drugs on his lorry that he destroyed by throwing into a river and fears recrimination from that gang, a non state actor.
4. Apart from the passage of time, and when considered that the fear is from a non state actor the appellant has failed to the Horvath standard to demonstrate that he is at risk. The appellant has never reported the claimed incident to the authorities (AIR q110-111), and there is no evidence that the alleged gang has any influence with the authorities, whilst it is also of note that the appellant was able to visit Vietnam from Cambodia (AIR q97-99).
5. (permission already granted on this ground)
6. Therefore, it is respectfully submitted that the FTTJ has failed to give any clear reasons as to why the appellant would be entitled to international protection (Convention reason) in respect of this non state actor (criminal gang).

Risk of being trafficked

7. Although it has been accepted that the appellant was trafficked from Cambodia to Russia, but again as confirmed in decision letter of 21/ 10/17 "*You have no debt to Dao,*" the trafficker from Cambodia. As such there would be limited risk of being re trafficked or serious harm in the form of reprisals from the original traffickers. With reliance also placed in the decision letter of 21/07/17 in the unreported case of **Nguyen (Anti -Trafficking Convention: respondent's duties) 2015 UKUT 170 (IAC)**, the Upper Tribunal held that '*The person is more likely to be at risk of serious harm if they still have an outstanding debt to the traffickers*'.

8. As I commented, the grounds relied upon by the SSHD (not drafted by Mr Melvin) were unclear and consisted of a mixture of statement and submissions.
9. Although Mr Melvin did not seek to renew the ground seeking permission to appeal the decision by the First-tier Tribunal judge that the appellant had rebutted the presumption under s72 Nationality, Immigration and Asylum Act 2002 I nevertheless considered the First-tier Tribunal decision and concluded, as I informed the parties, that the First-tier Tribunal judge had reached a properly reasoned and sustainable conclusion that BT had rebutted the presumption that he had committed a serious crime and that his continuous presence in the UK constituted a danger to the community. I did not grant permission to pursue an argument that the rebuttal of the presumption had not been adequately reasoned.
10. In so far as the ground of appeal headed 'Risk in relation to criminal gang', is concerned, paragraphs 3 and 4 of the request for permission to appeal, these amount to a statement of BT's claim [3] and a submission [4]; they do not identify an arguable error of law which is what is identified in [5]¹ and upon which permission was granted by the First-tier Tribunal.

¹ Even if [BT] was at risk from non state actors in his home area the FTTJ has failed to correctly consider the option of Internal relocation...

11. In so far as the grounds of appeal headed 'Risk of being trafficked', paragraph 7 of the renewed grounds is in essence a submission that relates to paragraph 8 of the grounds² upon which permission was granted by the First-tier Tribunal.
12. In summary the First-tier Tribunal has already granted permission with regard to the issue of whether there is an arguable error of law by the First-tier Tribunal judge that BT is at real risk of being trafficked from Vietnam and whether BT is at risk of Article 3 mistreatment on health grounds.
13. It follows that it is not possible to identify with any clarity, as seemed to be accepted by Mr Melvin, what grounds exactly the SSHD is seeking to renew. As clarified with Ms Qudia, BT has not been disadvantaged by not having received the application to renew grounds seeking permission to appeal prior to the service of the Rule 24 response; the additional paragraphs relied upon by the SSHD do not identify any additional grounds of alleged arguable error of law but are submissions of which BT was aware when the Rule 24 was prepared.

Background and findings by First-tier Tribunal Judge O'Garro

14. BT is a citizen of Vietnam born February 1975. An automatic deportation order was signed against BT on 9 May 2017 following his imprisonment for 3 years at Bolton Crown Court on 22nd April 2016 on a charge of cultivation of cannabis. He was convicted after a trial at which he had pleaded not guilty.
15. BT's international protection and human rights claims were refused by the SSHD for reasons set out in a decision dated 9th May 2017. BT appealed against that decision. His appeal was first heard by First-tier Tribunal judge Chana who, in a decision promulgated on 29th November 2017, dismissed his appeal. That decision was set aside by the Upper Tribunal on 6th March 2018 and remitted to the First-tier Tribunal to be heard again, no findings preserved. The appeal thus came before First-tier Tribunal Judge O'Garro who allowed the appeal.
16. The First-tier Tribunal judge expressed the appeal as being an appeal against deportation; it is of course an appeal against the decision by the SSHD to refuse his international protection and human rights claim. Nothing turns on that error of description by the judge. Those claims were refused by the SSHD for the reasons set out in a decision dated the same date as the deportation order.
17. BT left Vietnam in 2006, claiming to be in fear of his life. He travelled to Cambodia where he spent 2 years, then to Thailand, then to Russia and then to the UK, arriving illegally in October 2014. There is some inconsistency as to his travels and the time spent in each country, none of which are specifically addressed by the First-tier Tribunal judge and she makes no findings on his travels.
18. BT claims that whilst in Vietnam he worked as a delivery driver (AIR q50, witness statement [15]) . He discovered he was delivering drugs and threw them in the river. When this was discovered he was called in and so, fearing for his life, he fled to Cambodia. During the time he was in Cambodia (1-2 years) he returned to Vietnam to visit his family, and although he did not have any problems whilst there, he claimed that his parents told him people were looking for him. He claims that he cannot return to Vietnam because he will be forced to carry drugs by the 'gang' he had previously worked for; that it is a mafia gang linked to the government and they would be able to find him and kill him. He also claimed to fear that he would be re-trafficked if returned to Vietnam.
19. The judge made no specific findings as regards

² ...at paragraph 52 (of *Nguyen*) the Upper Tribunal endorsed the view that there is in general a sufficiency of protection provided by the authorities in Vietnam regarding the risk of being trafficked,, therefore it is respectfully submitted that the FTTJ has failed to give clear reasons as to why the appellants would be at risk of being trafficked from Vietnam given the absence of debt.

- (a) Whether his account that he had been forced to carry drugs by a gang whilst in Vietnam was credible; and
- (b) Whether his claim that he had thrown the drugs in the river was credible;

But she found

39. ...Having considered the evidence referred to in Ms Fitzsimmons's skeleton argument, I am satisfied, on the low standard that [BT] was trafficked for criminality.

...

49. [BT] was found to be credible. It is accepted that he is a victim of trafficking. I find that if the appellant is returned to his home area, it can't be ruled out that the mafia drug gang he fears may try to harm him and based on the [SSHD's] **Country Policy Information note: Vietnam: fear of illegal moneylenders** – at 5.1.2, it states that although the Vietnam police weren't generally effective at maintaining public order, they were very limited in other police capabilities, especially investigative, which means [BT] can expect no protection from the authorities, if he made a complaint about the Mafia gang he fears."

- 20. The First-tier Tribunal Judge found, on the basis of the report prepared by Ms Pagella, a psychotherapist and a more recent report by Ms Westinghouse (BT's support worker) that he is vulnerable, uneducated and in [55 and 56]

55. [BT] has a genuine fear that he will be at risk if he is returned to Vietnam and I find that... taking account of his particular circumstances [he] will not be protected by the Vietnamese authorities, if he is returned to Vietnam.

56. If I am wrong in finding that [BT's] claim falls under the 1951 Convention, I nevertheless find that the appellant is likely to suffer treatment contrary to Article 3 of the ECHR, if he was returned to Vietnam, in the light of the lack of available support on return for a person in [BT's] particular circumstances.

- 21. On 12th August 2016 BT was referred to the National Referral Mechanism (NRM) and on 17th August 2016 they made a 'reasonable grounds decision' that he was a victim of trafficking. On 3rd October 2016 a conclusive grounds decision was made, on the balance of probabilities, and it was accepted, by the SSHD, that he was a victim of human trafficking.

- 22. The conclusive grounds decision includes the following:

"..claimed in the screening interview that he was forced to grow cannabis plants in the UK. However in the Judges Sentencing Remarks the Judge stated that [BT] was a gardener of a cannabis farm on behalf of others. The Judge went on to state that [BT] gained some advantage from doing this in terms of food and accommodation and also in money while admitting that [BT] was vulnerable. When [BT] was interviewed in relation to trafficking, he did not mention the above claim to be trafficked within the UK.

It is clear from the above that [BT's] Account concerning cannabis cultivation in the UK is not consistent with the facts as stated by the Judge. [BT] also did not raise this issue in their trafficking interview.

Therefore, while there is external evidence as cited above of Vietnamese being forced to cultivate cannabis in the UK, the lack of consistency in [BT's] accounts it demonstrates that they do not meet the criteria for forced criminality in the UK.

However the information provided by [BT] supports the account of trafficking in terms of what he claims happened to him while in Russia. Following the Guidance for Competent Authorities ... the decisionmaker does not have to be certain that trafficking did occur, the correct test is that it is more likely than not to have taken place. In the absence of any evidence which undermines [BT's] account, it is accepted conclusively that he was trafficked to the UK and was forced to work in Russia.

...

It has, therefore been decided that "on the balance of probabilities" [BT] is a victim of human trafficking from Vietnam to the United Kingdom and while in Russia for the purpose of forced labour."

- 23. My attention was drawn, in considering whether there were errors of law in the decision by the First-tier Tribunal judge such that the decision is to be set aside to be remade, to
 - the skeleton filed on behalf of BT to the First-tier Tribunal Judge dated 8 April 2019;

- the grounds seeking permission to appeal filed by the SSHD;
 - the SSHD's written submissions and application under Rule 15(2A) Upper Tribunal Procedure Rules 2008;
 - The Rule 24 Notice filed on behalf of BT dated 19th July 2019.
24. Ms Qudia confirmed that the submissions made to the First-tier Tribunal regarding Article 3 were not based on BT's health. I note that paragraph 84 of the skeleton filed with the First-tier Tribunal refers to trafficking being inhuman treatment within the meaning of Article 3; there is no reference to BT's health difficulties reaching the high threshold required of Article 3. This is reinforced in paragraphs 26 to 30 of the Rule 24 response where it is made clear that there was and is no submission made on behalf of BT that he meets the threshold of Article 3 for medical reasons; the Article 3 claim was, and it was submitted was allowed accordingly, on the basis that if he did not meet the Refugee Convention reason then he would succeed under Article 3 - the basis of claim was the same and issues of serious harm, internal relocation and sufficiency of protection were the same.
25. I agree with Ms Qudia and counsel who drafted the skeleton to the First-tier Tribunal and the Rule 24 response: The First-tier Tribunal judge allowed the claim on an Article 3 basis on the same findings as she allowed the appeal on the grounds that BT was a refugee. If the claim fails to meet the criteria as a refugee because he is not at real risk of serious harm or internal relocation is available or there is sufficiency of protection, the claim fails under Article 3 as well.
26. There is no finding by the First-tier Tribunal Judge that removal of BT to Vietnam would result in a breach of Article 3 because of his health problems and thus the Article 3 (health) grounds upon which permission was granted are dismissed.
27. Accordingly, the issues that arise in this appeal are the remaining two grounds upon which the SSHD was granted permission to appeal:
- (a) Has the First-tier Tribunal provided findings/adequately reasoned findings that were open to her as to why BT would be at real risk of being persecuted for a Convention reason in respect of the mafia gang; and
 - (b) Has the First-tier Tribunal provided adequate reasoned findings that were open to her that BT is at real risk of being trafficked?
28. Mr Melvin submitted that the report by Ms Pagella could not be relied upon as an expert report as to BT's health. This was not a submission made to the First-tier Tribunal judge. The report by Ms Pagella and Ms Westinghouse set out their conclusions that BT was a vulnerable person with mental health problems and that he needed support. The First-tier Tribunal judge agreed with those conclusions, also drawing from the reports that he was "in a good place now mentally" (paragraph 40 of her decision). In so far as BT's health is relevant it seems, although this was not clear, that Mr Melvin was submitting that the reports relied upon were insufficient to support a contention that BT's ability to relocate would be compromised. I do not accept that he can, now, challenge the expertise of Ms Pagella and Ms Westinghouse and the conclusions drawn by them and accepted by the First-tier Tribunal judge, no such challenge having been made to the Judge and the grounds seeking permission to appeal not raising this as an issue. The finding that BT was vulnerable and that this could impact upon his ability to relocate if he had to stands.
29. Although not specifically stated by the First-tier Tribunal judge, it seems that the First-tier Tribunal judge accepted BT's evidence that on one of his deliveries for the people he described as a mafia gang, there were drugs which he had thrown in the river.
30. The First-tier Tribunal judge confirmed the Competent Authority's conclusion that BT was a victim of trafficking from Vietnam to the United Kingdom. Mr Melvin

sought to distinguish that finding, submitting that BT was not trafficked from Vietnam initially but was trafficked from Thailand to Russia and this should have been considered by the First-tier Tribunal judge when considering the risk of trafficking; the First-tier Tribunal judge had, he submitted, failed to show a link between Vietnam and the traffickers. He submitted it was plain on the facts that BT did not come into contact with the criminals who ran the cannabis farm until he had been in the UK for some months; thus the finding by the First-tier Tribunal judge that he had been trafficked for criminal activity was plainly wrong. He accepted that this was not raised in the grounds seeking permission to appeal but it was an obvious point. The problem Mr Melvin has with that submission is that it was not only not in the grounds seeking permission to appeal but nor was it in his application to renew the application for permission made on 26th July 2019 and nor did he make an application orally before me to amend the grounds; it was a point made by him in his submissions.

31. Mr Melvin also submitted that the First-tier Tribunal judge should not have gone behind the finding of the Competent Authority that BT was not trafficked to the UK for the purpose of criminality in the UK. That submission is also difficult to reconcile with his earlier submission that the First-tier Tribunal Judge should have distinguished the finding of the Competent Authority that BT was trafficked from Vietnam to the UK. But in any event, this was not an alleged error of law raised in the grounds seeking permission to appeal or in the renewed grounds or in an oral application at the hearing before me. It is insufficient to raise it during submissions as an 'obvious point'.
32. Nevertheless, even if it were an obvious point, the standard of proof in an asylum claim is lower than that in a trafficking claim. The Competent Authority reached its decision that BT had not been trafficked for the purpose of criminality to the UK on a balance of probabilities. The First-tier Tribunal judge heard and considered evidence, including taking account of the Competent Authority conclusion and found that BT had been trafficked to the UK for the purpose of criminality. A finding that was open to her and has not, on its facts been challenged.
33. The Competent Authority decision refers to and finds that BT was trafficked to Russia for the purposes of forced labour. There is no claimed or purported link between those who trafficked BT to Russia or from Russia to the UK, whether via other countries or not, other than an assertion to that effect in BT's witness statement. That he was a victim of trafficking at each stage does not, absent a specific finding to that effect mean that the same individuals or gangs trafficked him. The First-tier Tribunal judge has adopted the findings of the Competent Authority that BT was trafficked. She has not gone on to make any further findings other than that relating to the criminal activity in the UK being trafficking related.
34. The First-tier Tribunal judge does not make a finding that BT is at risk from the UK criminals who required him to work in the cannabis farm in the UK. Nor is there a finding that the mafia gang in Vietnam is the same gang as that which was involved in the trafficking that ended up in the UK. Nor is there a finding that the mafia gang was involved in trafficking him. The First-tier Tribunal judge refers to the skeleton argument relied upon by BT in reaching her conclusions as to trafficking. That skeleton argument does not seek to argue that the traffickers from Vietnam through to Russia and beyond to the UK are one and the same. The skeleton argument does not seek to argue that on arrival in the UK, BT was under the control of the same traffickers but rather refers to BT meeting an individual in the UK, which is what led him into criminality, as he says in his witness statement.
35. The First-tier Tribunal judge, adopting the Competent Authority decision and considering the evidence referred to in the skeleton argument, found BT had been trafficked for the purpose of criminality. She does not however make a finding that the criminals in the UK were those behind the trafficking from Vietnam. She does

not make any finding regarding risks from those criminals but rather refers to risks from the mafia drug gang in Vietnam.

36. It cannot be disputed but that the First-tier Tribunal decision is not particularly clear and detailed. Nevertheless, what does appear reasonably clear from her findings, broken down into their constituent parts, is
- BT is a victim of trafficking from Vietnam to the UK;
 - The purpose of the trafficking in the UK was for criminality;
 - There is no asserted or claimed link between the mafia gang, the trafficking to Russia for forced labour and the trafficking in the UK for criminality;
 - BT was a delivery driver for a mafia linked gang in Vietnam;
 - BT threw drugs that he was supposed to be delivering into a river.
37. The SSHD was granted permission with reference to paragraph 5 of the grounds of appeal. This paragraph commences with the words “even if”. The grant of permission cannot be read as being solely related to a challenge to the decision by the First-tier Tribunal judge on internal relocation, as is apparent in the next paragraph of the grounds and the submission (which was treated as a ground of appeal when permission was first considered) in paragraph 4 of the grounds. The Rule 24 response and the submissions before me were directed towards the question of internal relocation and sufficiency of protection predicated upon BT being at real risk from the mafia gang.
38. The judge’s finding in [49] refers to “it can’t be ruled out”. That is not a finding that BT will, to the lower standard of proof, be at real risk of being persecuted from the mafia gang. The judge states in the same paragraph that BT “can expect no protection from the authorities if he made a complaint against the mafia gang he fears”. It does not appear to have been in evidence that BT would, on return to Vietnam make a complaint against the mafia gang – if they are still in existence in his home area after such a lengthy period of absence. Of course, it may be said that where there has been criminality then a person should report it to the authorities, but again there does not appear to have been evidence to that effect before the First-tier Tribunal. The issue is therefore one -step back – is BT at real risk of being persecuted by the mafia gang on his return to his home area and then the issue of internal relocation/sufficiency of protection would need to be examined. This is identified in the submissions of the SSHD in the grounds of which BT was aware at the date the Rule 24 was prepared.
39. BT’s evidence was that he had returned to Vietnam from Cambodia to visit his family and had not had problems because he had only visited for short periods of time and been very careful before he entered his parents’ house. He claimed that he had been told that people were looking for him. There are a number of matters in the evidence before the First-tier Tribunal upon which the First-tier Tribunal judge failed to make any findings. In particular:
- a. Would the fact that given his evidence that he had worked in various parts of Vietnam – Hue, Hanoi, Ho Chi Minh City – for periods of time ranging from a few weeks to a few months mean that he would be able to relocate even though the trafficking report refers to the requirement for registration to be notified or has he registered elsewhere in any event;
 - b. If he did have to register and given that the trafficking report states that individuals can be traced through the official registration scheme whether that meant that, given BT’s particular circumstances, the drugs gang would be reasonably likely to trace him bearing in mind the time that has elapsed and his lengthy absence from Vietnam;
 - c. Whether it was reasonably likely that he would, on return to Vietnam come to the attention of the drugs gang;
 - d. Whether it was accepted that he had a legal wife who had been kidnapped and a partner and child whose whereabouts were unknown given the contradiction

- in his evidence as set out in the AIR and his witness statement as to whether he was married and the children he had;
- e. Whether it was accepted that his parents had been threatened, beaten up and threatened with death and if so when and the consequences if any to him if he returned to Vietnam;
 - f. Whether it was accepted that he had travelled back to Vietnam twice for very short periods of time (it seems for less than a day although that is not clear) given the time the journey takes from Cambodia to where his parents lived;
 - g. Whether his account of only visiting his parents for about 30 to 40 minutes on each visit was accepted;
 - h. Whether it was accepted, and if so on what evidence, that there was a link between the person who trafficked him to Russia from Thailand and the person who arranged for him to work in the cannabis farm in the UK some months after he had arrived in the UK;
 - i. Whether, given his evidence was that he had not paid either of the individuals who had been involved in his trafficking (to Russia and finding work on the cannabis farm in the UK), that he had not been asked for any money, that he had not been told he owed any money and, in the UK, that he had been given money, there was a debt owed to any of the traffickers and if so which.
 - j. Whether those who had arranged for him to travel to Cambodia when he first fled Vietnam, retained an interest in finding him and if so what the evidence for that was.
 - k. Whether if he lived elsewhere than in his city of origin, he would be able to obtain support from his family or if not why not or in what way it would be limited;
 - l. Whether the medical evidence of previous mental health problems together with the current medical evidence was such that internal relocation would be unduly harsh and if so why.
40. The First-tier Tribunal judge has made generalised findings that do not address the evidence, or rather lack of evidence, that was before her. Examples of this are given in the above paragraphs. The reports relied upon are in general terms and although reference is made to BT's claim, given the areas of his claim where findings have to be made, the reliance by the judge on the content of those reports to find that BT could not relocate is unsustainable.
 41. Sufficiency of protection is considered by the First-tier Tribunal judge very briefly and without having made findings of fact that are directed to the underlying claim. Without proper findings of fact both as to the possibility of being traced and by whom and why traffickers would seek him, the question of sufficiency of protection has been improperly addressed.
 42. I am satisfied that the First-tier Tribunal judge erred in law in failing to make findings on the underlying claim other than that BT had been a delivery driver for a drugs gang and had thrown away the drugs – and that finding only impliedly.
 43. I am satisfied that the errors of law are such that the decision is set aside to be remade.
 44. In the light of my conclusion as to the lack of findings made by the First-tier Tribunal Judge I set aside all the findings save for the conclusion that BT has rebutted the s72 presumption. I retain the resumed hearing in the Upper Tribunal.
3. I set aside the decision of First-tier Tribunal judge to be remade in the Upper Tribunal at a resumed hearing, submissions only, BT not having given evidence before the First-tier Tribunal because of his vulnerability.

Resumed hearing

4. At the resumed hearing it was brought to my attention that I had erred in paragraph 39j of my error of law decision: it was agreed between the parties that the appellant's evidence had been that he left Vietnam to Cambodia "under his own steam"; he had not been trafficked to Cambodia and thus the question whether those who had arranged for him to travel to Cambodia would seek him did not arise. Ms Fitzsimmons stated that the trafficking did not commence until Thailand and Russia. To the extent that this issue was raised with the experts, their comments were not relevant.
5. Mr Melvin made an application to rely on two unreported decisions of the Upper Tribunal. He had not made an application in writing to admit these decisions and nor was he able to confirm that he had undertaken a search on the point he wished to rely upon namely that temporary residence elsewhere than the home registration area is available and that such temporary residence enables permanent residence after a period of about 2 years. He had searched against the expert's name, not the proposition put forward. I refused to admit or place reliance upon the two unreported decisions.
6. The source of the conclusion in the two unreported decisions was a World Bank report. Mr Melvin did not have the World Bank Report and had been unable to access it because the World Bank site was down. The parties agreed that when I came to write up my decision, I could attempt to access the site and, if I was able to and there were matters of relevance, I would direct submissions from both parties. I did access the World Bank site but, after some 45 minutes searching, I was unable to find a document or documents that provided information about registration. I therefore did not seek written submissions for the parties in connection with registration.
7. I heard submissions from both representatives. I had the following documents before me:
 - The appellant's appeal bundle lodged for the hearing on 9th April 2019 (which included the respondent's bundle) (the report by Bernard Gravett was not in the bundle but I have read the separate report that was in the Tribunal file);
 - The appellant's supplementary appeal bundle lodged under cover of a letter dated 10th September 2019;
 - The respondent's skeleton argument dated 13th September 2019;
 - The respondent additional written submissions dated 15th September 2019;
 - Extract from the Fact-Finding Mission September 2019: 3.1.4 to 5.2.1;
 - Appellant's skeleton argument dated 15th September 2019.
8. There is no challenge to the authority and expertise of Dr Tran and Mr Gravett whose reports were provided to me.
9. There are a number of core findings which underpin this appeal.
 - (1) Firstly, on one of the deliveries the appellant undertook in Vietnam he discovered he was delivering drugs and threw them in the river.

- (2) Secondly, the appellant is a victim of trafficking.
- (3) Thirdly, there is no link between the mafia gang for whom he was delivering drugs, the trafficking to Russia and the trafficking to the UK.
- (4) Fourthly, the appellant is vulnerable, and this could impact upon the risk of re-trafficking and on his ability to relocate.
10. The appellant chose not to give evidence before the First-tier Tribunal; the report from Ms Pagella dated 25th October 2017 stated that she thought it “unwise to subject him to give evidence at the forthcoming hearing”. She considered him to be vulnerable, subject to confusion, poor memory and with a tendency to fitting. There was no up to date psychological report from her. Two March 2019 reports from City Hearts and the Medaille Trust which provide support to those who are victims of trafficking, confirm that the appellant has received some crisis counselling but that the recommended course had not been completed due to funding issues. He has been accepted on to the NHS waiting list for Low Intensity Cognitive Behavioural Therapy; although the acceptance letter refers to the appellant being informed of the waiting list time period, that information was not before me. The acceptance letter refers to him being assessed as PHQ9 15 (moderately severe depression warranting treatment for depression, using anti-depressant, psychotherapy and/or a combination of treatment) and GAD7 7 (moderate generalised anxiety). I had stated in my Error of Law decision that the appellant would not be giving oral evidence, him not having given evidence previously. No application was made for him to give oral evidence. He filed a witness statement which he states attempts to answer issues raised in the Error of Law decision. There is no indication that he had difficulty providing the information in his witness statement or that he was unable to answer any questions that he was asked. His witness statements are of course untested in cross examination. The fact that he is vulnerable does not mean that his evidence is to be taken at face value, particularly where issues have not been dealt with but plainly his evidence is to be seen in the context of the evidence as a whole and the findings already made and preserved.
11. There has been no challenge to the appellant’s evidence as to the seriously injurious treatment he received at the hands of those who forced him to work in Russia and Germany. Although Mr Melvin sought to raise again before me the issue of the appellant’s mental health, it is clear that the appellant remains in need of mental health treatment and that this need has arisen not only from his early childhood experiences but from the mistreatment he received during the trafficking process and his anxiety about his family.
12. Of importance is the issue of whether the gang for whom he was delivering drugs would still, a number of years after the incident when he threw the drugs in the river, be seeking him. The appellant’s evidence in relation to this is as follows:
- (a) The appellant submits his parents have been visited by members of the drugs gang and threatened. The last visit was about a year before his First-tier Tribunal witness statement when his parents were asked where he was and if

he was still alive. His father was beaten very badly. That witness statement was prepared for a hearing in the First-tier Tribunal on 9th April 2019. The most recent witness statement prepared for the hearing on 16th September 2019 does not refer to any threats received by his parents.

- (b) The appellant's evidence was that his legal wife and daughter were kidnapped by the people who had arranged for him to work in the cannabis factory in the UK; he had been told this by his parents and his "employers" had told him. In about July 2016 his parents told him his daughter had been released. His wife is still missing.
- (c) The appellant's view was that there was some sort of connection between the person (Sang Dao) who arranged for him to be trafficked from Thailand to Russia and the people he was working for in the cannabis farm in the UK. He did not provide any information why he thought that.
- (d) The appellant had given details of his family members in Vietnam to the person he worked for in the UK; this did not include the name of his "second wife" and their child, only his legal wife and child. He did not provide an explanation why he did not provide such information given that he referred to her as his wife, considered himself to have two wives, they were treated as a married couple from when they started living together and this was acceptable in Vietnam.
- (e) The appellant states he was too frightened of the people in the UK to tell the police or the court of the threats and the kidnapping of his wife.
- (f) In his asylum interview the appellant says he worked away from his home town for periods of a few weeks or a few months.
- (g) In his asylum interview the appellant described travelling to Phnom Penh – leaving in the evening and arriving in the late afternoon. He said he travelled back to his home city a couple of times during the time he was in Cambodia (2006/2007), seeing his parents for only 30-40 minutes. In his first witness statement he says he hid before approaching his parents' house and that they told him the mafia were looking for him and that they (his parents) told him they had been threatened they would be killed if they hid him. He said he had been able to speak to his parents since coming to the UK (October 2014). In his examination with Ms Pagella he describes talking to his parents on the phone, but that it is dangerous because calls are intercepted, but not knowing where his children are.
- (h) In his second witness statement the appellant describes leaving Cambodia at night time, arriving in his home city in the morning, hiding until sunset and then leaving to catch the bus back to Cambodia that evening.

13. The sentencing remarks identify the appellant's vulnerability to exploitation but that his role was on the borderline between 'significant and lesser' and had certainly gained some advantage both in terms of accommodation, money and food.

14. The reports of Dr Tran and Mr Gravett both confirm the account given by the appellant on the land dispute to be accurate. No challenge to that is taken by the respondent.

15. A report by Dr Tran dated 27th October 2019 refers to:

- (a) Mafia and drug gangs are national and transnational; they are highly brutal and kill. The examples she refers to are all within Vietnam. She gives no examples of transnational brutality from drugs gangs.
- (b) The family registration scheme – Ho Khau –officially identifies a person as a resident of an area and provides an entitlement to health care, housing, employment, public education, renting/buying a house or motorbike.
- (c) The appellant would, because of his long absence, have to re-register. His former employer would be able to access such registration by, for example, visiting the registration office and pretending to be a long-lost family member/friend seeking to re-establish contact. Dr Tran refers to trafficking in Vietnam being within a complex organized crime system.
- (d) She states that the person who organised the appellant's 'employment' in the UK might have influence in Vietnam but does not provide any authority or source for that assertion.
- (e) She considers the possibility of relocation in as much as she accepts that a person may move to another area without difficulty and may, after a period of time obtain a transfer of Ho Khau such that official registration is transferred. She makes the point however that this has to be done by reference to the original place of registration and can take as long as two years during which time the individual would not have access to various state benefits including medical treatment.

16. In her supplementary report dated 9th September 2019, Dr Tran draws the following conclusions in response to questions asked of her:

- (a) To obtain permanent registration in another area, requires travel to the original area of registration. She states that if he returns to his place of origin, he "might still be faced with the risk from the gangs as they might have their associates at the local level, further, if he moved elsewhere, they may be able to trace him through the registration system.
- (b) The appellant's account that his wife was kidnapped was plausible; she refers to one case in mid 2017 where drugs were thrown into a river and the victim's wife in that case was tortured. She concludes that this shows the appellant's claim to be highly consistent. Similarly, she concludes that the appellant's account of his parents being tortured and threatened to be highly consistent with the country information by reference to the same case.
- (c) Travel between Cambodia and Vietnam takes about 8 hours and the appellant's account of travelling to visit his parents for 30-40 minutes is consistent with that.
- (d) In her view the traffickers who transported him from Thailand to Russia then forced him to work in a cannabis farm in the UK "might be the same transnational crime organisation".
- (e) That it is unlikely that his former traffickers would retain an interest in the appellant, but he may face risks from other trafficking gangs due to his vulnerability.

17. The report by Mr Gravett has not been challenged by the respondent. In a detailed analysis he concludes that the journey and work details provided by the appellant are supportive of a finding that the appellant has been trafficked not only between Thailand and Russia but also to and within the UK. This has, he concludes also led to debt bondage, even though the appellant may not

personally be aware of this. The appellant's witness statement about the kidnapping of his wife and child and threats to his parents are, he concludes supportive of the appellant' trafficking account. He gives the firm opinion that the information provided by the appellant is the profile of trafficking by sophisticated criminal groups operating transnationally. He expresses the view that there have been a number of official failures at a number of points of contact with the appellant when inadequate investigation has been carried out in breach of duties under Article 4 ECHR. Mr Gravett expresses the view that the Competent Authority decision is poor with a number of errors, a lack of marking of indicator boxes and a failure to identify salient points. He nevertheless supports the decision of the CA that the appellant has been trafficked from Vietnam through to the UK. Mr Gravett identifies the links between the traffickers to Russia and in the UK. He acknowledges that there were periods of time when the appellant appeared to be 'free' of the traffickers but then, because of his vulnerability is recruited by those who are themselves linked transnationally. He concludes that the appellant was trafficked to the UK with the intention to exploit him, but that immediate intention was disrupted by the intervention of the police and immigration authorities. He is very firmly of the opinion that the appellant's account matches the information known of trafficking mechanisms and routes with the accompanying threats and violence. Mr Gravett does not express an opinion about the drugs gang and the immediate reason for the appellant leaving the UK but rather draws upon this as the nature and extent of the vulnerability of and the vulnerable situation in which the appellant found himself thus rendering him extremely liable to exploitation and trafficking.

18. The extract from the Fact-Finding Mission of 9 September 2019 in essence confirms what Dr Tran says about the Ho Khau. I have looked at the footnoted academic sources which support the proposition that there is a continuing gradual and general decrease in the requirements for registration but that the acquisition of permanent registration can take up to a couple of years and without permanent registration access to services is limited. The report also refers to the levels of corruption and the widespread availability of information if bribes are utilised.
19. The link to poverty is summarised in the Fact-Finding Report with regard to trafficking with the initial travel to another country for promises of a job or anticipation of a job then leading to the brutality of the nature endured by the appellant. Although brief, it is consistent with the more detailed analysis provided by Mr Garrett.
20. There is little mention in the fact-finding report of support services available to victims of trafficking on return to Vietnam save that there is a dearth of such support given the extent of the problem both of those who are returned but also those in dire poverty despite the increased economic wealth of the country.
21. Of relevance to this appellant, the Fact-Finding report refers to the following:
 - The IOM stated that victims of trafficking to the UK are predominantly men with an average age of 35 and tend to have a basic education and suffer some economic difficulty;
 - A record of those identified as victims of trafficking is kept locally;

- In the majority of cases, victims have travelled to another country to obtain a job and are then mistreated. The government do not recognise them as victims because they went of their own accord;
- An NGO told the team that if the Vietnamese legislation is applied to victims of trafficking in the UK it will not cover them because they have often agreed to go with the trafficker;
- Only those who are issued with a victim certificate are able to access state support; victim certificates are issued to those encountered at the border; most victims do not have a victim certificate;
- Where the police are aware, they are able to afford effective protection to victims;
- The Vietnamese authorities seem to concentrate on prevention education;
- According to figures provided to the Fact-Finding Team, more than 80% of victims said that they would not have been victims if they had been informed and educated before;
- There are shelters for vulnerable people with a maximum permitted stay of 60 days;
- Although the law provides for access to safe accommodation and psychological support, there are not enough shelters and not enough qualified counsellors;
- Victims suffer from trauma which affects their ability to function; they find it difficult to find employment especially when they return after many years and also find it difficult to obtain identity papers;
- One source stated they were not aware of any cases of re-trafficking;
- An academic source stated the police could trace someone, local village police are aware who lives in each area; the network of control is very close, and a criminal could find a person's whereabouts by persuading the police to let them have the information;

22. The respondent relies upon *Nguyen* [2015] UKUT 00170 (IAC) for the proposition that there is sufficiency of protection. Although a reported case it was not reported for its consideration of sufficiency of protection in Vietnam but rather for the extent of the respondent's duties under ECAT. The decision considered the issue of Ms Nguyen's return to Vietnam having been a victim of trafficking but did not hear expert evidence on the issue and nor was there a submission that she would be at risk of re-trafficking. Reference was made to the US State Department report of 2010 and the availability of support to her from her brothers and her sister.

Conclusions

23. I did not find Dr Tran's report particularly helpful save in so far as she explained the Ho Khau process and identified the difficulties of registration and access to services. Her views on this were complemented by the other evidence before me including the Fact-Finding Mission report of September 2019. I am satisfied that the appellant will be required to re-register on return to his home area given his long absence from Vietnam. I am satisfied that if he re-locates to another area, he would not be prevented from obtaining employment or accommodation because of lack of an official Ho Kau but that he would have difficulty accessing services such as health care. I am satisfied these difficulties would continue until he was

able to obtain his official Ho Khau in his area of location and that such process could take several months; up to a couple of years.

24. Dr Tran has said, and I accept this to be correct, that it is possible for individuals to impersonate a friend or relative and thus gain access to information through the registration scheme of a person. But such access requires that individual to be actively looking for that person, whether the access is sought in the original Ho Khau area or in the new area.
25. The appellant threw the drugs in the river in 2006; he left Vietnam very shortly after receiving the phone call. There is no evidence other than his witness statement that his parents have been threatened or beaten by the drugs gang. He is in contact with his parents, albeit he is circumspect with the information they discuss, but despite having had solicitors acting for him for a considerable length of time and despite having that contact there is no witness statement from either of his parents and no medical evidence of the beating that he says his father underwent that resulted in him being very seriously injured. The appellant's witness statements do not provide any significant information about how often he speaks with them or what they actually tell him or what he knows about the daughter who escaped the kidnapping.
26. In the 1-2 years after he left Vietnam the appellant says he returned to Dong Hoi a couple of times. The journey from Vietnam (to Phnom Penh) in 2006 took him from the evening to late afternoon – somewhere in the region of 18 or so hours which is how long it takes to get from Dong Hoi to Phnom Penh by bus. His description of the two return journeys is not inconsistent with that journey time, although expressed slightly differently. Dr Tran's assertion of a journey time of 8 hours is not only inconsistent with the appellant's evidence but gives no indication where she is timing the journey from and is therefore of little assistance.
27. The appellant does not say where he was 'hiding' when he travelled back to see his parents or how he managed to hide for a day.
28. He does not give any information about his 'common law wife' with whom he was living prior to leaving Vietnam other than that he doesn't know where she is. Although it seems their relationship was accepted socially, he provides no explanation why his parents have no information about her.
29. He says he did not give any information about his 'common law wife' to the 'employers' in the UK but does not explain why he did not when his evidence seems to be that it was generally accepted that he was married to her, he gave information about his legal wife and he thought the individuals to whom he gave the information were helping him and kind.
30. Although it seems he had no contact with his parents after he left Cambodia until he arrived in the UK (from about 2007 to 2014) he does not give evidence that there have been continuous or frequent visits by drugs gang members since his departure from Vietnam. His evidence is that his father was badly beaten in 2016/2017. The information that his legal wife had been kidnapped came whilst

he was in the UK and subject to criminal proceedings, not in the couple of years he was in Cambodia after he fled Vietnam.

31. I do not find it credible that the appellant's family have continued to be threatened by the drugs gang. I accept, despite the lack of detail, that on the couple of visits to his parents' house from Cambodia he was very circumspect and only stayed a short while. It is reasonable to conclude that having thrown a package of drugs in the river, received a telephone call that carried with it a threat and leaving Vietnam so quickly, he would be very frightened about returning and being discovered. I accept that for the first few months after he left, his parents would have received the threats he describes, and they would not have wanted him around. I accept as credible his evidence that his parents were threatened and that he was at risk from the drugs gang during that couple of years. I do not accept that the threats and the beating of his father that he has described as having occurred in 2016/2017, arose from the drugs gang.
32. The appellant's legal wife and child were kidnapped, according to him, by the people he was working for in the UK. This accords with the report by Dr Garrett and with the evidence that the appellant had provided those 'employers' with details of his wife and child. It also accords with the information he gave to the respondent during his asylum interview (once the mix-ups over names has been accepted). I do not accept that his legal wife and child were kidnapped by the drugs gang. The gang would have been aware of their existence (and the existence of the common law wife – if she exists) at the time he left Vietnam yet there was nothing from the appellant that they had been threatened or captured. I do not accept that his wife and child were kidnapped by the drugs gang.
33. The evidence in relation to the common law wife is flimsy. Although he says he was living with her when he left Vietnam, he does not refer to having travelled back from Cambodia to see her. Although he says he knows he has a son with her he provides no information that he has obtained from his parents about her or that his parents have contacted her parents. There is no suggestion that she was contacted by the drugs gang. There is no explanation from the appellant why he did not disclose her details to the UK 'employers' despite saying that he was to all intents and purposes married to her. I do not accept that she, or the child, exists; if they do, the appellant was not in an established cohabiting relationship with her.
34. Neither expert report directly addresses the possibility of whether the person/gang for whom he drove the lorry in Vietnam would have a continuing interest in the appellant. Neither report considers the makeup of drugs gangs, their continuing evolution/strength as the drugs trade in Vietnam increases or the extent to which the lorry owner would have been perceived, from higher up the chain, to be complicit and punished thus in effect removing the threat from the appellant. The appellant's evidence of threats to his parents during the first couple of years away from Vietnam supports objectively his subjective fear from the drugs gang. But thereafter the threats do not appear to have emanated from the drugs gang but rather from information about his family that he gave to his 'employers' in the UK. The threats from the drugs gang ceased.

35. I am satisfied that the appellant would not be at risk from the drugs gang if he returned to his home area. He has been away from the area for many years and there is no credible evidence that the drugs gang continues to seek him. If he were to return to the area, although his return would be noted generally because of his long absence, I am satisfied that this would not re-ignite interest by the drugs gang. The gang has, to all intents and purposes ceased to exist in terms of interest in the appellant. I am satisfied that no-one from the drugs gang is checking the register to find out whether he has returned and where he is living.
36. The experts do not identify a link between the drugs gang and those who trafficked the appellant. The trafficking came about because of his extreme vulnerability which was brought about by poverty, loss of land, mental health problems and family responsibilities to name but a few of the circumstances that have placed him in such an extreme position over the years. Although he may be at risk from traffickers – as to which see below – I find that such interest would not lead to renewed interest in him by the drugs gang there being no evidence before me to support such a proposition and any finding to the contrary would be speculative.
37. The report by Mr Gravett is explicit, detailed, coherent and comprehensive in its assessment and description of the trafficking of the appellant and the risks he is now at. The transnational nature of trafficking with individuals being passed around, the ensuing debt bondage (albeit not formally notified to the individual concerned) and the clear conclusion that the appellant falls within a classic example of such trade, cannot realistically or reasonably be dismissed.
38. Mr Melvin submits that the appellant was not trafficked in the UK. I do not agree. The CA report refers to trafficking to the UK and whatever the shortcomings of the CA report (which were not the subject of consideration in the Error of Law hearing) the report by Mr Gravett, which has not been challenged, is highly credible. The appellant's evidence in the context of the undoubted expertise of Mr Gravett can only result in a finding that the appellant has been trafficked by organised criminal gangs that are linked transnationally.
39. I am satisfied the appellant gave details of his parents and legal wife and child to the 'employer' in the UK. This information was, I am satisfied, utilised by them as a continuing hold and threat over him during his criminal trial, conviction and sentencing. Although the appellant has provided no further evidence of continuing threats to his family, and his daughter has escaped, I am satisfied that the 'employers' in the UK utilised the information about him and his family to improperly prevent him from disclosing his account at an earlier stage. The timing of the threats and the extent of the threats is corroborative of that in the context of the report by Mr Gravett. I make this finding even though I have doubts as to the existence of his 'common-law wife as described by him.
40. The respondent does not seek to argue that the appellant is not a member of a particular social group; rather she submits that he is not at risk of being persecuted, there is sufficiency of protection and/or, if at risk in his home area, the appellant can internally relocate.

41. The starting point for assessing whether the appellant is at risk of being persecuted as a former victim of trafficking and at risk of being re-trafficked has to be the extent of his current vulnerability of being identified as a prospective victim. He made his way voluntarily to Cambodia because of the circumstances in which he found himself. His experiences since leaving Vietnam have clearly resulted in considerable exacerbation of his underlying mental health problems. There is nothing in the documents before me that would indicate that he has overcome his naivety and his willingness to place his trust in those who exploit him for unlawful means. His ability to obtain employment is severely reduced because of his mental health problems. His experiences over the last 10 years have left an indelible mark upon him and that he is extremely vulnerable to exploitation is self-evident.
42. Mr Gravett's report, which has not been challenged, concludes that although an individual may not have paid personally for transport in the hope of employment, he remains in debt to those who have trafficked him; they have obtained passports, transport, accommodation and food. Mr Gravett's opinion is that although there is no direct cost placed upon the victim that is not uncommon. The description by the appellant of the conditions in which he was forced to work in Russia and Germany resonates with the usual accounts of Vietnamese trafficking victims. Mr Gravett describes the cooperation of various crime groups in the trafficking across national boundaries and the increasing costs incurred. He describes vulnerable individuals being re-joined by their traffickers or recruited by new groups because of their vulnerability.
43. In the latter part of his report, Mr Gravett quotes from the respondent's CIG report on Vietnam. Reference is made that the risks of reprisal or being re-trafficked will depend on individual circumstances and the capability and degree of interest the persecutor has in pursuing the individual.
44. In this appellant's case, there has been a sequence of traffickers. In July/August 2015 the appellant met Mr Linh who recruited him as a cannabis 'gardener'; he gave details of his family to Mr Linh. He was told by these 'employers' that his wife and child had been kidnapped. The appellant was arrested on 6th November 2015³. He was sentenced to 3 years imprisonment on 22nd April 2016 following trial, remaining in prison for 18 months – released from detention late 2017. He claimed asylum on 24th May 2016 and was screened on 4th July 2016. By 4th July 2016, he says his parents had told him his daughter had escaped and it was at this interview that he disclosed the trafficking history. A deportation order was signed on 9th May 2017; his asylum and human rights claims were refused the same day. He says his father was beaten about April 2018 and that people had come to his parents' home asking where he was. There is no evidence of any further visits.
45. Neither expert report dissents significantly from the Fact-Finding team report. A significant difficulty for this appellant is that he is unlikely to be recognised as a victim of trafficking by the Vietnamese authorities and thus will not be able to access the various protective measures available; nor will he be given access to the safe shelters, even though those are only available for only a relatively short

³ Mr Gravett's report incorrectly notes the date of his arrest as 7th November 2014.

period of time. Because he will not be recognised as a victim of trafficking, police protection will not be present; nor will he have access to any educational or training measures.

46. I note the reference in the Fact-Finding report that there was no evidence of re-trafficking but given the lack of recognition of previously trafficked victims it is not clear how reliable that is. Furthermore, the indicators for trafficking are the individual's poverty and vulnerability. This appellant is very naive and could not be said to come within the 80% who, in response to questions asked, said they would not have been trafficked if they had known what they were subsequently taught. This appellant's vulnerability and naivety led to the trafficking in the UK despite his previous experiences, notably the assistance he received in Thailand from a fellow Vietnamese.
47. I am satisfied that the appellant's parents were questioned as to his whereabouts and that, despite the lack of medical evidence, his father was beaten. The timing of those assaults together with the timing of the kidnapping of his wife and child are consistent with the chronology of events and his failure to disclose information until after his daughter had escaped. These incidents are consistent with the report by Mr Gravett of the threats and violence meted out as a means of control.
48. I am satisfied that although the appellant has no personal knowledge of a debt owed to the traffickers in any of the countries he was trafficked through and within, there is a debt which, given the short period of time that the appellant was actually working in the cannabis house before he was arrested, is likely to remain due. That someone has attempted to establish his whereabouts after his release from prison is indicative of this and that he remains, at the least, a person of interest. If he returned to his home area, first of all his re-appearance in the neighbourhood would be noted and commented upon and I am satisfied that his presence would become known to those who have visited his parents seeking him. I am satisfied that he would be sought. Although the fact-finding team does not provide evidence of re-trafficking, the expert's report, this appellant's experiences and his evidence are indicative that he would be at risk of being found. That could lead to re-trafficking or violence. I am also satisfied that his parents would not want him to return to live with them so he would remain at large in the neighbourhood. There is no evidence the appellant is in contact with his siblings or that they would be able to provide him with any support or assistance. I am satisfied, given in particular that the appellant has been forthcoming about the contact he has with his parents, that if there was contact with his siblings there would have been evidence to that effect from him.
49. I am satisfied that the appellant is at real risk of being persecuted if he returns to his home area.
50. I am satisfied that the police would not be able to provide sufficiency of protection. He would not be able to obtain a certificate as a victim of trafficking; he would not be able to call upon the police to protect him any more than any ordinary vulnerable person. Because of his naivety, mental health problems and overall vulnerability, the lack of access to the accommodation, employment and health care that he would require would in itself render him at real risk of being targeted

as a potential victim, even if those who went to his parents did not re-appear as a threat.

51. The respondent took issue with the evidence relied upon by the appellant in connection with the acquisition of a Ho Khau in a different part of Vietnam. Reliance was placed upon his previous ability to work elsewhere and that although it might take time, official registration elsewhere was more than a mere possibility. I accept that registration in a different area is possible and that many Vietnamese undertake such a task. I am also satisfied that many Vietnamese do not undertake the task of transferring their Ho Khau because of the administrative time involved but that it does not result in serious difficulties for them. But for this appellant, the lack of a Ho Khau means that he cannot access the required healthcare and other official services. These requirements have developed because of the mistreatment he has received over the years and the extent of the trauma he has undergone. He would be living somewhere where he has no contacts, no access to health care, no accommodation, no employment and his particular vulnerability renders him at risk of serious exploitation. I am satisfied that it would not only be unduly harsh for him to internally relocate in Vietnam but that he would be at real risk of being targeted as a potential trafficking victim.

Summary of findings

52. I am satisfied that the appellant will be required to re-register on return to his home area given his long absence from Vietnam. I am satisfied that if he relocates to another area, he would not be prevented from obtaining employment of accommodation because of lack of an official Ho Kau but that he would have difficulty accessing services such as health care. I am satisfied these difficulties would continue until he was able to obtain his official Ho Khau in his area of location and that such process could take several months; up to a couple of years.

53. I accept, despite the lack of detail, that on the couple of visits to his parents' house from Cambodia he was very circumspect and only stayed a short while.

54. I do not accept that the threats and the beating of his father that he has described, if it occurred, as having occurred in 2017 arose from the drugs gang.

55. I do not accept that his wife and child were kidnapped by the drugs gang.

56. I do not accept that his 'common-law wife, or the child, exists. If she does, they were not in an established cohabiting relationship.

57. I am satisfied that the appellant would not be at risk from the drugs gang if returned to his home area. The experts do not identify a link between the drugs gang and those who trafficked the appellant.

58. I am satisfied the appellant gave details of his parents and legal wife and child to the 'employer' in the UK. This information was utilised by them as a continuing hold and threat over him during his criminal trial, conviction and sentencing.

59. The appellant is at real risk of being re-trafficked or identified as vulnerable such that he would be trafficked if he returns to his home area.

60. The police and authorities are unable to provide sufficiency of protection; his family are unable to protect him.

61. It would be unduly harsh for him to relocate.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

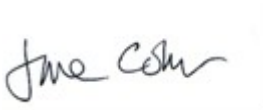
I re-make the decision in the asylum and human rights appeal by allowing it.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 23rd September 2019



Upper Tribunal Judge Coker