Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05309/2020
UI-2021-000782

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 April 2022	**On 13 July 2022**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C. Talacchi, Counsel, instructed by David Wyld & Co. Solicitors
For the Respondent: Ms E. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 7 September 2021, First-tier Tribunal Judge C Scott ("the judge") dismissed an appeal brought by the appellant against a decision of the Secretary of State dated 3 April 2020 to refuse her human rights claim. The appellant now appeals against that decision to this tribunal, with the permission of First-tier Tribunal Judge Grant.

2. The judge made an order for the appellant's anonymity on the basis that part of her human rights claim contended that her parents were at risk of harm in Vietnam and that, by extension, if returned she would be, too. I consider that it is appropriate that order to be maintained.

Factual background

3. The appellant is a citizen of Vietnam in December 1994. She arrived in this country with leave as a student on 10 June 2014 and held leave in that capacity until 17 September 2016. She made an in-time application for leave outside the rules on health grounds on 16 September 2016, which was granted on 7 August 2017 until 7 February 2020. On 4 February 2020, she made a human rights claim for further leave to remain on human rights grounds; that application was refused, and it was the refusal of that decision that was under appeal before the judge below.

4. I gratefully adopt the judge's summary of the appellant's health conditions, at [25] of his decision:

> "The appellant was diagnosed with leukaemia in July 2016, and was treated with intensive chemotherapy and radiotherapy, followed by a stem cell transplant in March 2017. Following this treatment, she had a number of complications, including graft-versus-host disease, where the new donor immune system recognising the patient's body as foreign and mounts a response against it result[ing] in skin and eye issues. She also required steroids during her treatment, which led to her developing osteoarthritis and vascular necrosis. Furthermore, she developed tuberculosis after her transplant and required treatment for this."

5. The appellant claimed that her life would be at risk upon return to Vietnam as the only adequate treatment available to her there would be prohibitively expensive. She claimed that she would face very significant obstacles to her integration in Vietnam on account of her health, and her parents' indebtedness to loan sharks in the country. Her health would prevent her from working. She would experience discrimination on account of the infertility caused by the invasive medical treatment she has experienced. The Secretary of State refused the application; the appellant's health conditions did not meet the very high threshold under Article 3 of the European Convention on Human Rights ("the ECHR"), and Vietnam had a functioning healthcare system, pursuant to which adequate treatment would be available in any event. The appellant had been able to make return journeys to Vietnam, and had travelled to Sweden, thereby demonstrating that she was now able to travel internationally; her inability to do so had been one of the reasons the Secretary of State had initially granted leave outside the rules to her (see the Secretary of State's letter dated 7 August 2017).

6. The judge heard the case remotely on 10 August 2021.

7. In her decision, the judge accepted that the appellant had been diagnosed with acute lymphoblastic leukaemia in July 2016, and that she received radiotherapy, chemotherapy and stem cell replacement: [41]. The judge also accepted that the appellant continues to be monitored by means of periodic blood tests and that she has sought treatment from the assisted conception unit at a major London hospital: [42].

8. The judge did not accept as credible the appellant's claim to require the same level of medical treatment that had necessitated the earlier grant of leave outside the rules. At [43] and [44], the judge quoted letters from the appellant's medical team which attribute to the appellant an intention to avoid having a hip replacement, if it could be avoided. There was a suggestion in a letter dated 19

September 2019 that the appellant had no symptoms at that point. The judge said that there was no evidence that the appellant attended a planned follow-up appointment on 17 March 2020, and she had not obtained any further medical evidence: [45]. It was implausible that the appellant had not sought medical assistance for the claimed lumps on her skin, and there was no medical diagnosis or evidence in relation to them in any event: [46]. The medical attention she was receiving at the time was to monitor her current blood levels, as opposed to being ongoing treatment for leukaemia. The evidence did not support a "firm medical conclusion" that the appellant must remain in the UK on health grounds: [49] – [50]. That was in contrast to the former position, at the time of the appellant's earlier grant of leave outside the rules, where the evidence was more acute. Overall, the medical evidence was insufficient and lacking: see the analysis up to and including [53].

9. The appellant had relied on the country evidence of Dr Bluth who, in a report dated 17 March 2021 ("the Bluth report"), had addressed the appellant's claim not to be able to access medical treatment and Vietnam, and had also provided background evidence concerning the appellant's claimed fear of loan sharks and other issues going to her prospective integration in the country. The judge found that the Bluth report was based on the appellant's account of her medical conditions, which were at odds with his own findings. Accordingly, whereas Dr Bluth had opined that the appellant would be unable to access the care, medication and long-term treatment she would require in Vietnam, on the basis of the judge's findings, the appellant would not need that level of medical support and treatment. She would be able to pay for the limited treatment that she would be required to obtain: [56].

10. Having found that many of the appellant's claims relating to her health lacked credibility, the judge found the appellant to lack credibility generally. While she had claimed to have lost touch with her family, the judge rejected that evidence. The appellant would not be returning to Vietnam as a single woman without a support network: [61]. She would be able to pay for any medical treatment she would require: [65]. She would not face very significant obstacles to her integration: [65]. Pursuant to a "balance sheet analysis", the judge found that the appellant's removal would not be disproportionate: [74] to [81].

Grounds of appeal

11. There are found grounds of appeal, which broadly speaking divide into two headings. Grounds 1 and 2 challenge the judge's analysis of the medical evidence; the judge had misunderstood the evidence, and made contradictory findings. Grounds 3 to 5 contend that the judge's corresponding analysis of the appellant's personal credibility was flawed, as it was parasitic upon his erroneous analysis of the medical evidence.

Submissions

12. Mr Talacchi relied on the grounds of appeal. He submitted that the judge failed to have regard to the totality of the medical evidence, reaching findings that were not justified on the evidence before him. There were numerous pieces of medical evidence before the judge of precisely the sort she held against the appellant for not relying upon, meaning that it was not rationally open to her to impugn the appellant's credibility on the basis that she did. Elsewhere, the analysis was inconsistent and contradictory.

13. The respondent submitted a rule 24 notice on 29 November 2021, which stated, where relevant:

> "The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing or remit the appeal to the FTT to consider the evidence relating to the appellant's medical claim and whether her removal would reach the high threshold of severity to breach Art 3.
>
> Yours faithfully,
>
> Hilary Aboni
>
> Specialist Appeals Team"

14. At the hearing, after some initial ambivalence (to use her terminology) Ms Everett adopted the polar opposite approach to that taken by the rule 24 notice, and opposed the appeal. She said that her position had shifted and she now contended that there was no error of law in the judge's decision. The submission that the judge had failed properly to consider the entirety of the evidence was vague. The basis for the earlier grant of leave to remain, namely that the appellant could not travel, had fallen away, as the appellant's travel record confirmed. There was no concrete evidence of the treatment required. There had been no medical evidence that had been overlooked. The appellant was not prejudiced by the Secretary of State's change in position, submitted Ms Everett, as Mr Talacchi had been given the opportunity to hear her full oral submissions, and to respond at the hearing.

Discussion

15. I approach the issues for discussion pursuant to the following structure. First, I will consider the procedural implications of the respondent's approach to the rule 24 notice and her subsequent attempt to resile from it. Secondly, I will summarise the applicable principles that govern appeals against findings of fact. Thirdly, I will apply those principles to the decision of the judge.

Rule 24 notice

16. The contents of the rule 24 notice are clearly significant; they amount to a wholesale concession that the grounds of appeal are made out, that the Secretary of State does not oppose the appeal, and that her position would be that the appeal should either be remade in the Upper Tribunal, or remitted to the First-tier Tribunal for a full rehearing.

17. It appears that the rule 24 notice was not served on the tribunal by the Secretary of State, or, if it was, that the tribunal staff had not uploaded it to 'CE File'. Had it been available at the time judicial listing directions were given upon receipt of this appeal from the First-tier Tribunal, it may well have resulted in the Liaison Judge issuing directions with a view to disposing of the appeal without a hearing. Absent good reason, a hearing would not normally be required when it is common ground that the decision of the First-tier Tribunal involved the making of an error of law.

18. At the beginning of the hearing on 13 April 2022, I was informed by the parties that I had all relevant documents; neither party referred me to the rule 24 notice dated 29 November 2021, and, when I listed the documents which had been

drawn to my attention, neither party informed me of the omission of the rule 24 notice. Ms Everett confirmed at the outset of the hearing that she opposed the appeal. I was alerted to the rule 24 notice's existence for the first time at the end of the hearing by Mr Talacchi in his response to Ms Everett's submissions, in which he highlighted the contrast between her submissions, and the approach adopted by the rule 24 notice. The first record of the notice on 'CE File' is the day after hearing, 14 April 2022, when it was uploaded by the tribunal staff, in response to Ms Everett's email to the tribunal, for my urgent attention, enclosing the notice. The email was not forwarded to me and I only became aware of the fact Ms Everett had served the notice on the tribunal upon manually checking CE File out of an abundance of caution.

19. By defending the decision in the terms she did, Ms Everett sought to withdraw a significant concession that would otherwise have disposed of the proceedings in favour of the appellant, resulting in the decision either being remade in the Upper Tribunal, or remitted to the First-tier Tribunal to be heard afresh by a different judge. It is necessary, therefore, to determine whether to permit the Secretary of State to withdraw the rule 24 notice concession, before proceeding to engage with the substance of Ms Everett's submissions.

20. In *Secretary of State for the Home Department v. Davoodipanah* [2004] EWCA Civ 106, Kennedy LJ said, at [22]:

> "It is clear from the authorities that where a concession has been made before an adjudicator by either party the Immigration Appeal Tribunal can allow the concession to be withdrawn if it considers that there is good reason in all the circumstances to take that course. (See, for example, *Ivanauskieine v Secretary of State for the Home Department* [2001] EWCA Civ 1271, and *Carrabuk v Secretary of State for the Home Department* (a decision of the Immigration Appeal Tribunal presided over by Mr Justice Collins on 18 May 2000)). **Obviously if there will be prejudice to one of the parties if the withdrawal is allowed that will be relevant and matters such as the nature of the concession and the timing may also be relevant, but it is not essential to demonstrate prejudice before an application to withdraw a concession can be refused. What the tribunal must do is to try to obtain a fair and just result.** In the absence of prejudice, if a Presenting Officer has made a concession which appears in retrospect to be a concession which he or she should not have made, then probably justice will require that the Secretary of State be allowed to withdraw that concession before the Immigration Appeal Tribunal. But, as I have said, everything depends on the circumstances, and each case must be considered on its own merits." (Emphasis added)

21. The authorities are replete with the principle being applied in myriad different contexts; for example, see *Secretary of State for the Home Department v JS (Uganda)* [2019] EWCA Civ 1670 at [86] to [92], *In re Bilal Ali* [2022] EWCA Civ 481 at [27] to [31], and the general discussion in *FII Group v HMRC* [2020] UKSC 47 at [85] to [90]. The approach to a concession of fact in the predecessor jurisdiction to the Upper Tribunal was discussed in *NR (Jamaica) v Secretary of State for the Home Department* [2009] EWCA Civ 856 at [9ff].

22. In *FII Group v HMRC* at [86], the Supreme Court summarised the principles applied by Nourse LJ in *Pittalis v Grant* [1989] QB 605 at 611C-F in relation to withdrawing a concession concerning a question of law in these terms:

> "Nourse LJ stated that… the normal practice was to allow the legal point to be taken where the court could be confident that the other party (i) had had an opportunity of meeting it, (ii) had not acted to his detriment by reason of the earlier omission to take the point and (iii) could be adequately compensated in costs…"

23. I consider that it is appropriate to allow the Secretary of State to resile from the concession of law made in these proceedings for the following reasons. First, the concession had not been the subject of any judicial consideration, nor consequential case management directions, still less had the appeal been resolved on the basis of the concession. Secondly, there was no prejudice to the appellant arising from Ms Everett's change of position. Mr Talacchi's submissions were structured around the grounds of appeal. Neither he, nor the appellant's solicitors, nor the appellant, placed any reliance on the Secretary of State's concession in advancing their primary case to the Upper Tribunal. For example, they had not written to the tribunal (as is often the case where the respondent concedes an appeal in a rule 24 notice) inviting the matter to be disposed of on the papers. Mr Talacchi's extensive opening submissions did not make any reference to it. It was only in response to Ms Everett's submissions, towards the end of the hearing, that Mr Talacchi sought to highlight the inconsistency between those submissions and the rule 24 notice. Thirdly, Mr Talacchi had the opportunity to address me on the inconsistencies between the rule 24 notice and Ms Everett's submissions. The appellant had not acted to her detriment by relying on the rule 24 notice, and had the opportunity to meet Ms Everett's submissions through making oral submissions in response.

24. I therefore permit the Secretary of State to withdraw the concession in the rule 24 notice, and will engage with the substantive submissions of the parties.

Appeals challenging findings of fact

25. There are many authorities on the approach of an appellate tribunal or court to reviewing a first instance judge's findings of fact. They were recently (re)summarised by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 in these terms:

> "2. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
>
> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

3. If authority for all these propositions is needed, it may be found in *Piglowska v Piglowski* [1999] 1 WLR 1360; *McGraddie v McGraddie* [2013] UKSC 58, [2013] 1 WLR 2477; *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29; *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600; *Elliston v Glencore Services (UK) Ltd* [2016] EWCA Civ 407; *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176, [2019] BCC 96; *Staechelin v ACLBDD Holdings Ltd* [2019] EWCA Civ 817, [2019] 3 All ER 429 and *Perry v Raleys Solicitors* [2019] UKSC 5, [2020] AC 352.

4. Similar caution applies to appeals against a trial judge's evaluation of expert evidence: *Byers v Saudi National Bank* [2022] EWCA Civ 43, [2022] 4 WLR 22…"

26. See also *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [9] for a summary of the principles contextualised for their application in this jurisdiction:

"i) Making perverse or irrational findings on a matter or matters that were material to the outcome ("material matters");

ii) Failing to give reasons or any adequate reasons for findings on material matters;

iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters;

iv) Giving weight to immaterial matters;

v) Making a material misdirection of law on any material matter;

vi) Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;

> vii) Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made."

Findings of fact open to the judge

27. Ground 1 consists of a series of general criticisms of the judge's decision, none of which demonstrates that she fell into error. At paragraph 5, the grounds contend that the judge did not have a "clear understanding" of the appellant's initial medical diagnosis and subsequent prognosis, before going on to highlight the appellant's earlier grant of leave on health grounds, coupled with the submission that "there had been no material change in the appellant's initial diagnosis and the prognosis of the condition". Those criticisms are without merit. The judge's decision regularly outlines the full spectrum of the appellant's medical conditions, and the evidence that the appellant had relied upon in support of her appeal.

28. The judge was entitled to conclude that the evidence demonstrated that the appellant's clinicians had been guided by her (understandable) resolve to avoid invasive hip replacement treatment, and that it was far from the case that she had the pressing need for treatment that she claimed to have: see the letter of Mr Akram of the Royal National Orthopaedic Hospital ("the RNOH") dated 5 June 2019, quoted at [43]:

> "… I had a long chat with [the appellant] today and she still doesn't want to go down the arthroplasty route and tells me that her symptoms are improving but would like an opinion from the Young Adult Hip Team. I am going to do another referral letter to the Young Adult Hip Team and requested they can review her in one of the clinics for an opinion regarding the joint preservation procedure…"

29. The appellant's evidence to the judge left the judge with the "clear impression" that the appellant considered that a hip replacement was a medical necessity as soon as the pandemic lockdown restrictions would have permitted the procedure to be conducted. The judge was entitled to contrast the appellant's oral evidence as to her diagnosis with the written materials generated by her treating clinicians, including Mr Akram's letter. As the judge quoted at [44], the appellant was recorded as having reported experiencing no symptoms, and not wanting any interventions, as recently as 19 September 2019, to Dr Khan of the RNOH.

30. The reality is that there was no up to date medical evidence demonstrating that the appellant's health conditions were as poor as they were at the time of her grant of leave outside the rules in August 2017. The medical evidence was lacking in relation to the most significant health conditions upon which the appellant based her human rights claim. Mr Talacchi placed his most significant reliance on materials which pre-dated the appellant's application to the Secretary of State dated 4 February 2020, and the appeal below, by a considerable margin, such as a letter from a Dr Taussig of the Royal Marsden NHS Foundation Trust, for the attention of the Home Office, dated 16 September 2016. Putting to one side the age of the document (nearly five years, at the date of the hearing before the judge), taken on its own terms it states that the appellant needs an extension to her leave to remain for two years, to allow her leukaemia to be treated; there was no equivalent letter before the judge on this occasion. The appellant had already

enjoyed the two year grant of leave the Secretary of State was implored to make by the 16 September 2016 letter.

31. The only correspondence which got remotely close to being contemporary medical evidence was a letter dated 18 December 2019 from Dr Chloe Anthias, a Consultant Haematologist at the Royal Marsden Hospital, which the judge quoted extensively at [49]. It is true that the letter describes the appellant as experiencing a range of health conditions. However, at [50] the judge found that the contents of Dr Anthias' letter "do not demonstrate that the appellant must remain in the UK to complete [her] treatment." Those were observations that were entirely open to the judge on that evidence: the language adopted by Dr Anthias was simply that "I imagine that she will need to remain under… follow-up for the effects of her treatment for at least the next two years". For the reasons given by the judge at [50] to [52], the diagnosis and prognosis in Dr Anthias' letter were in stark contrast to the case notes recorded by Dr Taussig in September 2016. Those were reasons that were entirely open to the judge to give for rejecting the appellant's claim to have experienced health conditions that were as poor as she claimed they were. It cannot be said that the judge's findings were "plainly wrong"; properly understood, this ground of appeal is a disagreement of fact and weight, and does not disclose an error of law.

32. Ground 2 contends that the judge reached contradictory and inconsistent findings. It falls, as Mr Talacchi readily accepted, under the same umbrella as Ground 1. Mr Talacchi submitted that the judge's finding at [48] that the appellant is receiving no present medical treatment is inconsistent with [43] of her decision, in which the judge quoted from Mr Akram's June 2019 letter (see 28, above) setting out the appellant's then treatment. There is no merit to this criticism. First, the judge was entitled to conclude that the import of Mr Akram's letter was that the appellant was considering whether to undergo a hip replacement procedure, but that she was not subject to a pressing need to receive it. In my judgment, Mr Akram's letter does not demonstrate that the appellant was in receipt of such treatment. Rather, it supports the judge's conclusion that she was *not*. Secondly, Mr Akram's letter was dated 5 June 2019, some two years before the appeal before the judge in August 2021; whatever Mr Akram's letter did say it was, at its highest, evidence that was over two years old. There is no merit to this criticism.

33. As to Mr Talacchi's criticism of the judge's conclusion, at [48], that "aside from outpatient appointments to check the appellant's blood, and the fertility appointments, the appellant is receiving no further medical treatment at present", I consider this to be a disagreement of weight and expression. The decision of the judge in this respect is tolerably clear. The judge was fully aware that the appellant was subject to ongoing monitoring for the spectrum of medical conditions she experiences; see the judge's analysis of Dr Anthias' letter at [49]. While another judge may have spent more time addressing the appellant's claim to experience lumps under her skin in light of the contents of that letter, the bottom line was that there was no contemporary medical evidence going to the appellant's claim to be experiencing that – or any other – condition to any significant extent. The only recent medical evidence before the judge on that issue was from December 2019, when Dr Anthias summarised the condition, and said that follow up treatment would be required for two years. Against that background, the judge was entitled to conclude that, 20 months later at the date of the hearing before the First-tier Tribunal, the absence of the appellant having sought treatment for her skin lumps was a significant factor.

34. The constant refrain of the judge throughout the decision is that the appellant had not relied on up to date medical evidence (for example at [45], "*…it would have been easy to obtain an up to date diagnosis in respect of her hip…*"; at [46], "…*I am unable to make any findings as to the diagnosis of these, since the appellant has not yet been medically assessed…*"; at [52], "*…in the absence of further and more recent medical evidence…*"; at [53], "…*there is no medical evidence in the appellant's bundle to support that this is the opnion of the doctors at present…*"). Even Mr Talacchi acknowledged in his submissions that the evidence in the case is characterised by a dearth of such evidence, stating that it was "unfortunate" that, in relation to the appellant's hip conditions, the most recent evidence was from September 2019, in relation to a hearing in August 2021. Drawing this analysis together, the judge was entitled to reach the conclusions she did in respect of the appellant's claimed medical conditions. Her findings were open to her on the evidence. She was not "plainly wrong", to adopt the terminology of *Volpi v Volpi* at [2(i)]. By contrast, she was entitled to reach those findings concerning the medical evidence.

35. Grounds 3 to 5, criticising the judge's remaining credibility analysis, were categorised and advanced separately by Mr Talacchi. At [17] of the grounds of appeal, Mr Talacchi appears to contend that all remaining credibility findings were flawed on account of the judge's "wrong" findings under Grounds 1 and 2.

36. The remaining grounds of appeal are further facets of disagreement with the judge's primary analysis concerning the medical evidence, largely restating the primary disagreements of fact that are contained in Grounds 1 and 2. To the extent that Mr Talacchi's submissions under Grounds 3 to 5 rely on Ground 1 or 2 being established, they therefore fall away. The judge gave reasons that were entirely open to her for rejecting the appellant's claim to be unable to obtain funds for medical assistance in Vietnam. At [65], the judge concluded that the appellant's education would make a well-placed to look for work on her return. That observation was open to her, particularly in light of her findings of fact, and the impact those findings had on distinguishing Dr Bluth's report, by highlighting the flawed premise upon which much of its reasoning was based, namely the grave condition of the appellant's health. Secondly, also at [65], the judge highlighted the success the appellant had enjoyed through crowdfunding through friends in this country, and her general comfortable financial situation; her bank balance was over £16,000, and she had received over £7500 through crowdfunding conducted by her friends on her behalf. In this respect, the judge was entitled to highlight the absence of any up-to-date financial evidence on the part of the appellant.

37. Drawing this analysis together, therefore, the judge reached conclusions she was entitled to reach concerning the impact of the appellant's health conditions, and the remaining evidence in the case. The judge had the benefit of hearing the appellant give live evidence. In turn, she reached findings that were open to her concerning the Article 3 impact of the appellant's prospective removal, and any article 8 implications of her return to Vietnam (which, I note, have not been expressly challenged in these proceedings, other than by bald assertion in the grounds of appeal, unsupported by any additional analysis).

38. That being so, the judge's analysis of the proportionality of the appellant's removal was conducted in terms with which this tribunal will not interfere. The appeal is dismissed.

Notice of Decision

This appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of an error of law such that it must be set aside.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Stephen H Smith Date 16 May 2022

Upper Tribunal Judge Stephen Smith