



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No.: UI-2024-000101
First-tier Tribunal No:
PA/51094/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

NNP (VIETNAM)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Abigail Smith, Counsel instructed by the
South West London Law Centre

For the Respondent: Ms Sandra McKenzie, Senior Home Office Presenting
Officer

Heard at Field House on 28 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant has been granted permission to appeal against the decision of Judge Maka promulgated on 26 November 2023 (“the Decision”). By the Decision, Judge Maka dismissed the appellant’s appeal against the decision of the respondent dated 27 January 2023 to refuse to recognise him as a refugee, or to grant him leave to remain on human rights grounds.

Relevant Background

2. The appellant is a national of Vietnam, whose accepted date of birth is 11 October 2004.
3. The appellant entered the United Kingdom illegally by boat in May 2021 and he was initially detained on suspicion that he was an adult asylum-seeker. He was given a screening interview as an unaccompanied asylum seeking minor on 21 September 2022. In his interview, he said that he worked in China for a person named “Aty”, who was Chinese, and that Aty had brought him to the UK for work. In answer to questions about his journey to the UK, he said that he left Vietnam on 12 August 2019. He had gone to China, where he was for 3 months. He then went to Russia, where he was for one year, and then to France before ending up in the UK. Aty had made the decision for him to come to the UK. Aty had promised him work here.
4. The appellant had earlier made a witness statement in support of his claim on 28 July 2022. He said that in January 2018 he decided to leave Vietnam as some people in his village told him that there was plenty of work in China. When he first arrived in China, he was helping other Vietnamese people who were working on a construction site. People he stayed with helped him find his first two jobs. The people he stayed with received his wages on his behalf and gave money to him. He thought they took away some of his money. From May to June 2019, he worked as a porter loading goods from a lorry to the warehouse. For his jobs at a toy factory and as a porter he had received 4 million Vietnamese dong. While he was working as a porter, he met a Chinese man called Aty who was his employer.
5. He returned to Vietnam in July 2019 after Aty promised to find him a job somewhere else with better pay. Aty said that he could send him to the UK for work, but the journey would cost him £15,000 sterling. He told Aty that he did not have that amount of money. Aty asked him to pay whatever he had, and when he started working in the UK he could pay him the balance. He decided to return to Vietnam, as he wanted to visit his grandmother’s grave for the last time, and he also wanted to get his grandmother’s money from his neighbour Tan.
6. A Vietnamese man who was working for Aty took him back to Vietnam. The appellant went back to his village, and on 12 August 2018 he took a coach to Lang Son to meet up with Tan. When he got there, Tan gave him the money.

7. When he returned to China, Aty arranged a place for him to stay with other Chinese and Vietnam people while he made arrangements for them to leave China. They used to take turns to cook and tidy up the house, but they were not allowed to leave the house. The house was kept locked all the time. He stayed in the house for 3 months, and during this time he was not working. At the end of December 2019, he was smuggled in a lorry from China to Russia. In Russia he was put to work in a factory with other people. He did not get any wages for the work he did at the factory. The other Vietnamese people told him that he should not leave the place, and there were two Russian men always guarding the factory. There was a time when he wasn't well, and he asked them whether he could take the day off. But they did not allow him to do so.
8. The appellant telephoned Aty after a few months, and asked him why he was staying in Russia when he promised that he was going to the UK. Aty told him that he had to stay working in Russia until he had made all the arrangements for him to go to the UK.
9. Eventually, he was taken in a lorry with others on a journey to Western Europe. He arrived at a campsite in the forest, and he was told that they were in France. He heard some people say that they were in Dunkirk, and others saying that they were in Calais. Although he was in contact with Aty in France, he lost contact with Aty on the boat journey to England, as his phone became unusable as it got wet.
10. On arrival in the UK, he was taken to a detention centre. He only told Immigration Officers what he happened to him Vietnam and how he had travelled from Vietnam to Russia, but he did not mention that he was forced to work in Russia, and he did not mention Aty. This was because other Vietnamese at the detention centre said that he should not say too much in case he was released and the traffickers got hold of him.
11. He was scared that if he was returned to Vietnam, Aty or his people could find him and harm him for not repaying the money, or that they would traffick him again and would force him to work.
12. In the refusal decision, the respondent accepted that the appellant had been forced to work and was thereby a member of a particular social group, as a victim of trafficking. While he knew the trafficker and might have an outstanding debt to him, the person in question by his account was Chinese, and by his account he had encountered him outside Vietnam and that he operated out of China. He could not provide any reason why he would know of his return to Vietnam. Consequentially, it was not accepted that he would be at risk of re-trafficking.

The Hearing Before, and the Decision of, the First-tier Tribunal

13. The appellant's appeal came before Judge Maka sitting at Hatton Cross on 16 November 2023. Both parties were legally represented.

14. In the Decision at [31], the Judge accepted the appellant's nationality, identity, his membership of a particular social group, and the fact that he was forced to work and was therefore a victim of trafficking. He accepted that the trafficking took place in China, where the appellant went voluntarily to look for work. On his own evidence, the appellant had worked in China for a year-and-a-half, and just over a month for Aty.
15. At paras [33]-[35], the Judge gave his reasons for finding that the appellant did not have a well-founded fear of the Vietnamese authorities on account of his participation in the Formosa protest at the age of 11 or 12.
16. At paras [36]-[48], the Judge gave his reasons for not accepting the appellant's account of a continuing fear of, or risk from, his traffickers. Part of his reasoning was that he did not accept that the appellant was not paid for his work in Russia, contrary to what the appellant stated in his witness statement. He did not find it plausible that Aty would pay him for his work in China, but then not pay him for his work in Russia. He noted that the country expert did not deal with this important issue. He found that the appellant was paid for his employment in China and Russia, and this was the reason why he was taken by Aty towards an agreed journey to the UK. This also explained why, despite the passage of time and despite his extensive claimed network in the UK, the appellant had not been threatened by Aty, nor had he been forced to work for Aty in the UK to repay his outstanding debt to him. This was because, he found, there was no outstanding debt.
17. The Judge went on to dismiss the appeal on all grounds raised.

The Grounds of Appeal to the Upper Tribunal

18. Ms Smith of Counsel (who appeared below) settled the grounds of appeal to the Upper Tribunal. Ground 1 was that the Judge had made material errors of fact amounting to errors of law, as per *E* [2004] EWCA Civ 49, in relation to the appellant's account of having been forced to work. In particular, the Judge made material errors of fact in relation to the chronology of time spent in China and Russia at paras [31], [38] and [41]. The Judge misunderstood that the appellant initially went to China with other villagers to find work as a child. This was not trafficking. He was there for over a year on that occasion and worked in various low-paid jobs. He met a man called Aty whilst working as a porter, and this man groomed him with a promise of a job in the UK. The appellant then went back to Vietnam to get his grandmother's compensation money from the Formosa Company to make part-payment to Aty for the journey to the UK, before returning to China. When the appellant returned to China, he did not work for the traffickers there, but rather he was kept in a house for three months until arrangements were made for him to travel to Russia, where he was forced to work in a factory and not paid. He did not work in China on the

second occasion, as the Judge wrongly asserted at para [41]. He was there for three months, and not 14 months as the Judge incorrectly stated.

19. While the Judge accepted that the appellant was a victim of trafficking at para [31], he nonetheless proceeded to pull apart the appellant's account based on a mistake in relation to the facts. The Judge's finding at para [41], that the appellant was paid to work for Aty in both China and Russia, was based on a misunderstanding of the facts, and it was inconsistent with the respondent's position that the appellant was forced to work.

The Reasons for the Grant of Permission to Appeal

20. On 4 January 2024, First-tier Tribunal Judge Gumsley granted permission to appeal on Grounds 1, 2, 3, 4 and 6, and refused permission to appeal on Ground 5. Judge Gumsley's reasoning with respect to Ground 1 was that, on the basis of the evidence that was recited in the grounds, and acknowledging what seemed to be an ambiguity in the way the appellant's statement was drafted on the matter, it was arguable that the First-tier Tribunal Judge had made a mistake as to fact. Given the effect that this appeared to have had on the assessment of the appellant's credibility as a whole, it was arguable that this mistake of fact was material.

The Hearing in the Upper Tribunal

21. At the hearing before me to determine whether an error of law was made out, Ms McKenzie informed me at the outset that she was minded to concede the appeal. She was of the view that there was merit in all five grounds of appeal for which permission had been granted. After exploring her reasons for the concession, and having discussed with both representatives the error of law challenge advanced in Ground 1, I decided that the concession was appropriate, and I ruled that a material error of law was made out such that the decision should be set aside in its entirety, and the appeal should be remitted to the First-tier Tribunal at Hatton Cross for a complete rehearing. I said that I would provide short, written reasons for my decision, and these are set out below.

Reasons for Finding an Error of Law

22. Overall, the Decision is well-constructed and well-reasoned, but I am persuaded that an error of law is made out as set out in Ground 1.
23. The starting point is that in the refusal decision the respondent accepted without qualification the appellant's account of being trafficked. While the respondent took issue with the appellant's subsidiary claim that he had previously come to the adverse attention of the Vietnamese authorities, the respondent did not question the credibility of the appellant's account of being forced to work in Russia without receiving any payment. The respondent also did not challenge the appellant's account that he had been trafficked to the UK in order to work in the UK to repay his outstanding debt to his trafficker.

24. The Judge was not obliged to accept the appellant's trafficking account in all its aspects, notwithstanding the position taken by the respondent in the refusal decision. But the Judge had to work within the scope of the concession that the appellant had been forced to work by his trafficker. Accordingly, on the face of it, the Judge's postulation that the appellant was paid by his trafficker for his work in Russia is inconsistent with the respondent's concession. The Judge failed to explain how his case theory fitted in with the concession that the appellant had been forced to work, given that it was only in Russia that the appellant said he had been forced to work without payment.
25. As well as the Judge's case theory not being easily reconcilable with the concession, it was also in part based on a mistake of fact. The Judge's error was not as stark as it is presented in Ground 1. The Judge was not wrong to say that the appellant had worked for Aty in China. The appellant's evidence was that Aty was his employer when he was working voluntarily as a porter in China. So, to that extent it was correct that the appellant had worked for Aty in China. But the Judge was mistaken in treating the appellant's work for Aty in China as being part of the trafficking enterprise, so as to postulate that what the appellant earned in China, when added to what the appellant earned in Russia, must have been sufficient to cover the debt he owed to Aty for arranging his journey to the UK.
26. The mistake is material to the outcome, as the Judge's finding in para [41] underpins his conclusion that the appellant is not credible in his claim to have an ongoing fear of his trafficker.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law, and accordingly the decision is set aside in its entirety.

Directions

This appeal will be remitted to the First-tier Tribunal at Hatton Cross for a fresh hearing before any Judge apart from Judge Maka, with none of the findings of fact made by the previous Judge being preserved.

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
6 March 2024

