



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/02997/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24<sup>th</sup> October 2018**

**Decision & Reasons  
Promulgated  
On 12<sup>th</sup> November 2018**

**Before**

**UPPER TRIBUNAL JUDGE KING TD  
UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**T V P**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms V Easty of Counsel instructed by B.H.T. Immigration  
Legal

Services

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Vietnam born on 1<sup>st</sup> September 1999. It was his claim that he had been trafficked into the United Kingdom. In an interview conducted on 6<sup>th</sup> April 2016 he set out his experiences.
2. In the decision of 15<sup>th</sup> February 2018 his account was generally accepted as credible by the respondent and it was accepted that indeed he had

been the victim of trafficking into the United Kingdom. It was, however, the position of the respondent in that decision that the appellant could safely return to Vietnam and for that reason his claim for asylum or other protection was refused.

3. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Lawrence on 5<sup>th</sup> April 2018. By a determination promulgated on 30<sup>th</sup> April 2018 the claim was dismissed.
4. Subsequently an appeal to the Upper Tribunal has resulted in that decision being set aside for an error of law. It is now before us for a full hearing of the claim.
5. Credibility is not in issue in this particular case, but rather the outcome of the appeal turns upon risk of return and/or human rights. It has come before us essentially focused upon the issues of sufficiency of protection, internal relocation and human rights generally.
6. The appellant was not called to give evidence, but rather adopted his witness statement. We are grateful to the parties for updated evidential material, which together with submissions informs our decision.
7. By way of background the appellant lived in Mong Cal with his mother and sister. When he was 6 or 7 years old they left him in the care of his grandmother. She died when he was 10. He continued to live in the home with the assistance of neighbours. He worked as a dishwasher. He moved away briefly to take up work decorating houses but returned and spent a further year working in a kitchen and as a caretaker.
8. When he was approximately aged 12 he was introduced to a man called Hung who employed him at a restaurant. He was a significant figure in the neighbourhood. The man attempted to sexually assault the appellant and beat him so badly that he spent two months in hospital. Afterwards he was forced to return to the control of Hung. He was threatened with violence should he attempt to escape. He was made to work but received no money.
9. In April 2014 Hung arranged for the appellant to be taken to China and to Russia, France and finally to the United Kingdom.
10. He found himself under the control of three Vietnamese men who were verbally and physically abusive to him. He was made to cook and clean for them and not allowed his liberty. He was told that he was working to pay the debt owed for transporting him to the United Kingdom.
11. Eventually he managed to escape from the men and from the property and wandered the streets until he found a Vietnamese nail shop. He went between nail bars in the Vietnamese community, working in some stores,

cleaning and serving drinks. He was encountered by the police at a particular nail bar on 8<sup>th</sup> October 2015 when it was raided by the police.

12. Since that time the appellant has been in the care of the local authority living with a foster carer, AC. She and her daughter attended the hearing and indeed gave evidence in the course thereof.
13. A particular and significant feature of this case is the vulnerability of the appellant, both emotionally and mentally arising from his experiences as summarised briefly above.
14. In that connection we have regard to the psychological report prepared by Alice Rogers dated 24<sup>th</sup> March 2018 arising from the interview of 12<sup>th</sup> March 2018. The appellant is in her opinion a vulnerable young man meeting the criteria for mild-moderate PTSD. Such had arisen because of the serious sexual and physical attacks that he had experienced in the past and his general experience at the hands of the traffickers. Such has led to significant attachment difficulties. He suffered a serious depressive episode some two years ago with associated high levels of risk and suicidality. He has shown a considerable improvement since then because of the stability afforded to him by his foster carer. He is no longer clinically depressed but has extensive psychological symptoms of depression, with high levels of shame, guilt and lack of self-worth. He is at risk of further episodes of depression given his PTSD and the severity of his former symptoms. His strong relationship with his foster carer has assisted in the healing process.
15. The report was based upon a three hour interview with the appellant.
16. The appellant attends college and sometimes can retain information well, on others less well. He has a family of Vietnamese friends with whom he visits, but otherwise he tends not to go out but stay closely within the safe environment of his foster carer and her family. He expresses himself as being afraid to return to Vietnam, particularly in case he is found and sold and trafficked once again.
17. In terms of emotional relationships the appellant presents very much as a younger child. According to AC, his foster carer, he is not interested in his peer group and hardly goes out. He finds difficulty in making relationships but is very close to her and her family. He appears to be very dependent upon her and the family situation. On occasions he continues to blame himself and think that he is a bad person and sometimes keeps himself to himself.
18. The conclusion of the report is indeed that the appellant has experienced significant and traumatic loss at an early age which has been highly detrimental to his subsequent development. His vulnerabilities are associated with social stigma and shame. He functions like a younger child in many ways. According to the report he has heightened levels of

anxiety symptoms and depressive conditions, a feeling of low worth. He found it difficult to make friends or to manage social relationships due to his early experience. It was the view of Miss Rogers that the loss of the relationships which he has developed in his first foster family would be profound.

19. We heard evidence also from AC and her daughter ARC in relation to the appellant's current state of health. She confirms what the psychologist in her report had to say.
20. In terms of the return itself considerable reliance has been placed upon the report of Christine Beddoe, a specialist adviser on human trafficking and child exploitation dated 3<sup>rd</sup> April 2018.
21. In the report she sets out her experience in relation to human trafficking and modern slavery, and more particularly her experience working in Vietnam and her keeping up-to-date with current issues in Vietnam, particularly by discussing the matter with colleagues or by reading research papers.
22. For the appellant to gain any recognition in Vietnam as a victim of trafficking, involves in practice a very lengthy, complicated administrative process. There is no bilateral agreement between the United Kingdom and Vietnam so it will fall upon the appellant to convince the authorities as to his experience of being trafficked. Such in turn requires the appellant to produce cogent documentation as to his household family situation when in Vietnam and all relevant documents as to status and identification. The Vietnamese authorities have their own laws and policies for victim identification purposes. The appellant will be categorised as "self-returning" under the policy and thereafter there will be a complex administrative procedure which will require him to apply to the authorities on his return for them to investigate with the local authorities as well as the authorities in the country where the trafficking and exploitation took place. Such identification is often ineffective. There is a leisurely collecting of victims' preliminary information which leads to difficulties in formally identifying a victim's status. Such affects the access to victim protection, assistance and support.
23. In practice the appellant's introverted mental state and lack of engagement with outsiders would render his dealing with authorities and with the police extremely difficult for him. There would be a significant delay in the process in any event, whether successful or not, during which he would be without any status or grounds for protection.
24. A further obstacle in that path is that although the authorities recognise female trafficking, particularly for the purposes of sexual exploitation there is less recognition for the exploitation of young males for the purposes of working. Though there was sheltered accommodation for females, it was the opinion of Christine Beddoe that there were no such facilities available

for male or child victims, notwithstanding the indication to the contrary in the US State Department Trafficking in Persons Report 2017.

25. In that connection Mr Tufan drew our attention to the Country Policy and Information Note of Vietnam: Victims of trafficking Version 3.0 of September 2018, paragraph 2.5.5, which spoke of the Ministry of Labour, Invalids and Social Affairs providing protection and reintegration support operating some 400 social protection centres through local authorities which provide services to a wide range of vulnerable groups, including trafficking victims. Ms Beddoe indicated that that was to fundamentally misunderstand the policy that lay behind the setting up of those centres. They were designed for nine categories of person, namely the elderly, very elderly, HIV, orphaned children under 16, those who are very severely disabled physically and those who are suffering from severe and serious psychological and psychiatric illness. Such categories did not apply to the appellant and he would have no access to them as a young male.
26. We note indeed in paragraph 2.5.5 that there were no shelters designated exclusively for male and child victims, although existing shelters provided assistance to all victims as needed. The view of the expert was, however, that essentially it was to protect women and females rather than men. It was also stated that there were non-Government organisations in Vietnam who could assist the victims of trafficking. Little detail of those organisations have been provided.
27. In summary it was the view of the expert that the appellant would face extreme difficulties in persuading the authorities to accept him as a trafficked person, and indeed even if that succeeded, there was little by way of practical support that would be given, or could be given to him in the circumstances.
28. Indeed there was a suggestion that is contained in the Country Policy and Information Note of the Home Office, particularly at paragraph 4.1.11 quoting from the USSD TiP Report 2018, that the Government were decreasing efforts to protect victims. In 2017 authorities identified 670 victims, a decrease from 1,128 in 2016. However, there were very few statistics which identified those figures by type of trafficking.
29. We note also in the same report under profiles of trafficked victims and traffickers in paragraph 5.1.1 women and girls are considered more susceptible to trafficking than men due to unequal gender relations and socio-economic positions. They both are at risk from different forms of exploitation.
30. Even were it the case that the appellant was regarded as a young man returning to his country in order to find settlement and work, it is the view of Christine Beddoe that the circumstances of this particular case pose great difficulties. It is fundamental to the registration system in Vietnam that each household is given a household registration booklet ("So Ho

Khau”). Such records the details of all household members and their relationship with the household head. It is a document intimately tied to the place of residence. It controls the rights of the citizens to buy a house or land, to get married, to be employed, to train, to borrow from a bank and to register births, to drive or in any other way have access to community services. Such documents are held in a non-digital form at present, although the intention is to try and convert them to digital in 2020. The documents are held in the local area registry and would have to be sourced directly from such a venue. Such would entail the appellant going to his home area where he was first exploited or seeking some other means or some assistance through third parties to access that document. Given the length of time that he has been away from Vietnam, such may prove to be very difficult. She emphasises that it is a very bureaucratic process to access any documents through official channels and that corruption of officials is extremely high. That in itself would be an extremely difficult process for the applicant. Even if he were to succeed it would take a considerable amount of time, during which he would have no status and no rights.

31. His ability to relocate to another area, particularly to another city as is suggested he may by the respondent, requires possession of that document. Those who move to another area who have the So Ho Khau must still apply for a temporary residence status using that document. It would be then up to the town officials to decide in their discretion whether to grant a permanent status or not. The authorities’ concern has been to restrict the flow of people from the countryside into the towns and hence this process is designed to make changes of venue difficult. Even were the applicant to obtain a temporary residence status that would not afford him equal access to state-based affordable healthcare support and other services than residents with permanent registration are offered.
32. It was the view of Christine Beddoe, as reflecting the views of others, that migrants’ access to health and other social services is another critical problem. Local authorities and employers and destination places are not so much interested in the improvement of migrant access to safe housing, health and social services. Their main interest is centred on safeguarding their community. She said that most of the poor migrants are crowded into boarding houses without basic infrastructure and facilities, lack health insurance and other legal protection.
33. Christine Beddoe also suggests, particularly at paragraph 81 of her report, that being an internal migrant places the individual at greater risk of intimidation and bribery from corrupt police officers or officials. Lack of support may lead to the danger of loans and money lenders. Equally the lack of access to health conditions would constitute a significant disadvantage to the applicant given the fragility of his mental wellbeing and condition.

34. It is her submission in the report that the applicant would revert to having to do low paid and often exploitive items of work, as indeed he had done in the past, and that those would expose him to the very difficulties which he experienced in the past, namely exploitation and forced labour.
35. It is her consideration that in practical terms the ability of the appellant to obtain the requisite documentation would be very slim indeed and he would be forced to live in the shadowy black economy with no protection. In fact, he would be living in the same vulnerable state that he was when he first left home.
36. His fragile mental health and juvenile outlook would not assist him in dealing with authority, employers, or those said to misuse him or do him harm. He is not streetwise nor can he in reality stand up for himself and so will become, she suggests, almost inevitably another victim of trafficking once again linked with corruption and the abuse of power, particularly for those perceived to be weak would only add to the difficulties in this case. It is further her view that internal relocation is not a viable option for the appellant in any event.
37. She contends that it would be difficult enough for a fit young man in good physical health to cope in such an environment, let alone the appellant with his mental condition and abusive background.
38. In terms of documentation relied upon by the respondent, much weight is placed by the Home Office, not unsurprisingly, on its own Country Policy and Information Note of September 2018, such that paragraph 2.4.5 highlights the factors which may make the person at risk. Factors that make a person face an increased risk of being abused or re-trafficked include:-
  - having an outstanding debt to the traffickers;
  - the absence of a supportive family willing to take him back into the family unit;
  - having no other support network to assist;
  - no or little educational or vocational skills;
  - mental health conditions which may well have been caused by extensive abuse when originally trafficked;
  - material and financial deprivation – he would be living in poverty or conditions of destitution;
  - factors which may lower the risk of being abused or re-trafficked include the availability of a supportive family.

39. The report stresses that the risk of trafficking must be considered according to the facts of each individual case and their individual vulnerability to re-trafficking. It was also noted in the report that Vietnam does have anti-trafficking legislation and attempts to prosecute those involved in trafficking. Whilst legislation exists there is a lack of co-ordination across provincial agencies and a poor understanding of the relevant legislation resulting in uneven enforcement of the law. The decision makers must however give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis.
40. At paragraph 4.1.3, as reported in September 2016 by IRIN News, human trafficking is on the rise in Vietnam. At paragraph 4.1.7 trafficking in Vietnam continued to increase because it was difficult to control, according to a report from Vietnam News in an article published on 4 November 2017. It is recorded at paragraph 4.1.10 that on its website, Anti Slavery.org stated that the trafficking of vulnerable young people from Vietnam to the UK is on the rise, with the majority trafficked into cannabis production, nail bars and forced prostitution.
41. In terms of shelter and initial support such is considered at paragraph 7.1.2, quoting the USSD TiP Report of 2018, which makes reference to the 400 social protection centres already considered by Christine Beddoe. It is noted, however, that these centres are unevenly staffed, under-resourced and lacked appropriate trained personnel to assist victims. The women's unions in partnership with NGOs continue to operate three shelters in urban cities, including one dedicated to trafficking victims. The unions assisted fourteen victims in 2017 and helped to repatriate 35 Vietnamese women and children subjected to trafficking overseas. According to an international organisation report, reintegration assistance has been to eleven victims. There is insufficient record keeping to determine the total number of identified victims benefitting from Government or NGO protection services. The TiP Report did not report how many victims receive Government cash subsidies for food, clothing and other essential needs.
42. In terms of reintegration of victims of trafficking, it noted at paragraph 8.1.1 that victims of trafficking who escape and return to Vietnam have no legal protection. Many rural women find their land has been confiscated during their absence. The absence of a So Ho Khau creates illegal citizens deprived of the right to education and healthcare. The USSD TiP Report 2018 stated that in 2017 the Government reported assisting approximately 500 victims, a decrease from 600 in 2016. To a large extent the subsequent details in the report focus upon the difficulties faced by women.
43. In terms of risk of re-trafficking, set out at paragraph 8.4 the Asia Foundation, it was noted that even when victims manage to return to Vietnam they face tremendous difficulty in reintegrating in their communities, stigmatised by society and traumatised by their experience.

They are reluctant to seek help for fear of further abuse by traffickers, debt bondage, and as such seem perhaps to be more focused upon the stigma of sexual trafficking rather than trafficking associated with labour. However, we note at 8.4.3 that The Guardian reported in February 2018 that the Director of Advocacy at Pacific Links, a Vietnamese anti-trafficking charity indicated that because of lack of resources there was no specialised long-term support services for male victims of trafficking returned to Vietnam. This in turn may reproduce the conditions for re-trafficking, because the factors that led victims to be trafficked in the first place still exist and are even enhanced by what they have gone through.

44. As Christine Beddoe indicated, freedom of movement is a constitutional right. However movement without the necessary documentation will confer few community or family rights.
45. Finally, and in fairness to the position of the respondent, we note at 6.1.6, that there is a suggestion that IOM established its Assessment Centre models in border provinces to provide a safe and supportive environment for trafficked persons to be assessed for reintegration by professional staff. It was matter which was put to Christine Beddoe by Mr Tufan. She indicated that to her knowledge there was no such clear trafficking support. IOM provided the means to bring people into the country but not to facilitate the assessment. She concluded that it was a cumbersome, lengthy bureaucratic procedure for the most part.
46. Indeed she, in her evidence, stressed the recent research conducted by the University of Bedfordshire in which anti-trafficking organisations were complaining at the difficulty in the claimants' accessing documentation and how the requirement of Ho Khau made such matters extremely difficult and provided little safeguards, if any, to those who were seeking protection from the authorities. She emphasised also that there was a prevailing currency of corruption among officials. Many worked to the benefit of those able to pay bribes to obtain documentation but not to be unhelpful to those who had little to contribute in that regard.
47. Having considered the report of Christine Beddoe and having noted her response to the questioning by Mr Tufan and the way in which he responded to the more recent Home Office and USS State Department Reports we place considerable weight upon her evidence and find that she is both accurate in her recollection and up-to-date in her knowledge of the relevant material.
48. In terms of asylum it is necessary for the appellant to show that he falls within one of the categories of individuals under the Convention and would face a real risk of persecution by reason of such matters upon return. In the alternative, consideration arises as to whether or not the appellant meets the test of humanitarian protection as set out in paragraph 339C of the Immigration Rules in that he does not qualify as a refugee as defined

in Regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 or that substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or owing to such risk, unwilling to avail themselves of the protection of that country. In such circumstances consideration of Article 3 ECHR must be given.

49. For the purposes of paragraph 339C serious harm consists of torture or inhuman or degrading treatment or punishment of a person in the country of return.
50. We are asked to consider that the appellant falls within the scope of the refugee convention by reason of being a member of a particular group, namely a trafficked person.
51. A particular social group is defined in the case of **K and Fornah (Secretary of State for the Home Department v K [2006] UKHL 46)** as being:-

“a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.”.

52. The court went on in their paragraph 100 of the judgment as follows:-

“The size of the group has sometimes been used as a basis for refusing to recognise ‘women’ generally as a particular social group. This argument has no basis in fact or reason, as the other grounds are not bound by this question of size. There should equally be no requirement that the particular social group be cohesive or that members of it voluntarily associate, or that every member of the group is at risk of persecution. It is well-accepted that it should be possible to identify the group independently of the persecution, however, discrimination or persecution may be a relevant factor in determining the visibility of the group in a particular context.”

53. The judgment went on to consider the UNHCR Guidelines and noted also “Their characteristics also identify them as a group in society, subjecting them to different treatment and standards in some countries”.
54. A person who has been trafficked can be said to have an immutable characteristic, namely, having been trafficked. However, some difficulty, it seems to us, arises if there is indeed a requirement that a particular social group must be recognised, seen or identified as such as a distinct group within society. It seems to us that the evidence that that is so is lacking in

this particular case. Indeed it is difficult to determine what particular status or special protection is offered to someone found by due process to have been trafficked. The use of the shelters is a temporary aspect, particularly for females, and seemingly less so for males. It seems to remain the obligation upon the individual to obtain for themselves the documentation of residence and/or identity. Having obtained the same there is little indication that there is any benefit conferred upon them in terms of housing, health or unity stability by reason of having achieved the definition of being trafficked.

55. Ms Easty submits that the appellant as a young male could fall into the narrower category of trafficked person, particularly given the lack of any shelter or housing available as a consequence. It does not seem to us, however, to make a material difference in the particular circumstances of this case. There is no indication, for example, that the Vietnamese authorities actively discriminate in their assessment of someone who is trafficked by reason of gender. Rather, the focus of consideration, perhaps understandably, has been on the sexual safety of women rather than of the exploitation arising from labour. The lack of shelter provided would seem to us to be a matter of perception that young men are less needy of such matters than are women, rather than of a positive decision to discriminate against them. There is little to indicate that those who have been trafficked who return to society will be regarded in any different way by members of the society with whom they associate, or indeed with the Government or civic authorities. Indeed, it is to be hoped with the assistance of the authorities that they would be allowed to resume with some safety their lives as general citizens of Vietnam.
56. Thus although being trafficked may be a characteristic, it is not one that is readily perceivable by the community at large. Though certain sexual activities, such as prostitution, may have a stigma attached to them, it is difficult to consider that same situation to arise in terms of employment. The purpose for return is hopefully that the experiences of being trafficked are not repeated, for the normality of everyday life is the aim and purpose of reintegration.
57. It seems to us therefore that in the particular circumstances of this case that it is the provisions of paragraph 339C that have more application linked particularly with the considerations of Article 3 ECHR.
58. It is clear that in the past the appellant has suffered torture, inhuman and degrading treatment at the hands of those who have abused him, both physically and in terms of his labour. He has been violently assaulted, both sexually and physically and has been put in fear of his safety. His very identity has been put in question by the nature of the slavery to which he was addressed. The focus of our consideration must therefore be, applying the appropriate burden and standard of proof, as to whether there is a real risk that such an experience will be repeated if he returns to Vietnam. We find that it would.

59. Were he to return to his home area we find that he is a person having an outstanding debt to the traffickers; there is an absence of any supportive family willing to take the appellant back; there will be no other support network to assist him with little or no education or vocational skills.
60. We find that any access to official documentation to assist his status would be lengthy and protracted, if indeed successful. His situation would of necessity cause him to need to contact police or officials and publish thereby his returning presence to the area from which he was originally trafficked. We note what he says about Hung and the potential influence that Hung had. In his lack of education and skills we find that the appellant would be back doing the casual jobs in restaurants and cleaning that he engaged in when he was first on the streets which drew him to the attention of the traffickers.
61. Of particular relevance in this case is his mental fragility, particularly his lack of engagement with the wider community. There is little doubt that he would find it difficult to integrate within the community and would readily be perceived as an outsider and therefore somebody who would be an obvious target to be re-trafficked. Indeed his need to be supported emotionally is just the sort of need that can be exploited by potential traffickers who seek initially to befriend him and then use him for their own purposes.
62. We note the cumbersome process which he would need to follow in order to have his trafficked status recognised. It is a cumbersome process and one that involves considerable engagement with authority. The appellant's mental condition as we have gleaned, both from his foster carer and from the psychological report is to indicate that he would not manage that process very well or give any good account of himself in the process. Given the length of time that he has been absent from his area, it seems to us to be speculative as to whether or not the appellant will achieve any recognition of his trafficked status. Even if he does it does not seem apparent to us that there is any particular protection or assistance that would be available to him. We note the absence of hostels, the absence of any other indication of support that would be available to him.
63. During the process of the investigation there will be no particular benefits or protections available to him and he would therefore remain vulnerable in such a circumstance. He would, in the absence of having the proper documentation, be unable to access healthcare, accommodation, work or support and that can only exacerbate what is his fragile mental state to his detriment.
64. Although it is not to be doubted that the authorities in Vietnam are actively seeking to counter trafficking, it is to be noted that there have been few, if any, prosecutions and that the number of those recognised as

being trafficked has decreased. There is nothing to lead us to the conclusion that there would be any sufficiency of protection to the appellant were he to return to his home area. We bear in mind also the corruption that is endemic which clearly supports those who have influence but not those who have no standing or influence. For these reasons we conclude that there is indeed a very real risk that the appellant will be re-trafficked were he to return to his own area.

65. In considering the aspect of internal relocation we bear in mind the decision in **Januzi [2006] UKHL 5**. It has to be established that such relocation is not unduly harsh and that the appellant would be able to conduct his life with access to work, accommodation and to survive in an economic manner as a citizen. We do not find that in his circumstances that that is a realistic consideration of the situation. Were the appellant to obtain his certificate of registration he would be entitled initially to temporary residence with the disadvantages that that would bring. We consider it more likely than not that the appellant would be unable to produce the requisite documentation and remain very much on the margins of society, as indeed he did when he first left home. Once again the mental state of the appellant is of utmost relevance to his ability to interact in a community sense. For reasons that we have given we consider that the nature of his psychiatric and psychological make-up renders him to be seen very much as a vulnerable individual to be exploited. We have no doubt that whether he returns to his home area or elsewhere, he remains very much at risk of being re-trafficked and thereby suffer torture, harm or humiliation as before. We do not find that the efforts of the authorities, would be effective to guarantee him any safety or protection.
66. In terms of the wider aspect of human rights we bear in mind the requirements of the Immigration Rules, particularly 276ADE of Appendix FM. We consider whether there are very significant obstacles to his reintegration were he to be returned. It follows from the comments that we have set out above that we come to the conclusion upon the requisite standard that he would. We bear in mind his psychological fragility and all the matters that have been advanced on his behalf in that respect so that he would find it very difficult to establish himself on any official basis, or indeed to be in a position to stand up for himself in finding work in what would be a very difficult circumstance. Although he is now 19 it is the evidence of the psychologist and indeed of his foster carer is that he is emotionally much younger than that. Such would severely hamper him in any steps to establish any economic viability for himself in the situation of return. We note the cumbersome procedure for even establishing recognition of his difficulties with the authorities, or indeed of obtaining any documentation to assist him as to his status. We have little doubt therefore that there would be very significant obstacles to his integration.
67. In terms of his Article 8 ECHR as a whole it is to be recognised that it is important for him to have the stability of a caring family home. There is

no doubt at all that his condition has improved thanks to the care and attention of his foster family. We understand that his care can be officially supported until he is 21 and thereafter as Mrs Collins has indicated he can continue to live with her and her family if need be. She regards him as a member of her family.

68. Given his experiences we find that there is an emotional dependence that he has upon his foster family which is more than normal and meets therefore the test in **Kugathas [2003] EWCA Civ 31**. We have no doubt that it is important for his development and mental health for him to remain in education and be supported, both by his foster family and also receive counselling and treatment for his PTSD. He is much younger than his age emotionally and mentally. It is right therefore to bear that matter also significantly in mind.
69. We find the appellant meets the Immigration Rules as to 276ADE and that there are compelling circumstances which require that he continues to live and be supported in the United Kingdom with his foster parents. Such matters inform us as to the balance to be struck between the specific interest to control immigration and the proportionality of removal in the circumstances. We can see no benefit at all to the appellant in being returned. It would be rather a detriment to his condition. All the evidence that we have points conclusively to the importance and terms of his own personal identity and safety to be one of remaining in the United Kingdom. We find indeed that to return the appellant to Vietnam will expose the appellant to such risk of harm at the hands of third parties and that would potentially engage Article 3 of the ECHR, and if not to that level, then certainly to engage Article 8 of the ECHR.
70. Thus, in conclusion we find firstly that the appellant meets the requirements of paragraph 339C and Article 3 ECHR as he would face a real risk of suffering serious harm were he to be returned to Vietnam. Further, we find that the provisions of 276ADE are applicable to him and that the situation and circumstances of his removal are such as to engage adversely his human rights, such that Article 3 and/or 8 are engaged.

### **Notice of Decision**

71. The appeal is allowed as to humanitarian protection, the Immigration Rules and human rights, in particular Article 3 and 8 of ECHR.

### **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 his 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.

A handwritten signature in black ink, appearing to read "P. L. King", is enclosed within a thin black rectangular border.

Signed

Date 1 November 2018

Upper Tribunal Judge King TD