



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

Appeal Number: PA/11759/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2019**

**Decision & Reasons Promulgated
On 29 May 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**M - T - T
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Butler, Counsel instructed by Wilson & Co Solicitors

For the Respondent: Mr T Melvyn, Senior Home Office Presenting Officer

Interpreter: Mr Anh Huynh, interpreter to Vietnamese and English languages

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I continue the order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. A breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker; publishing her identity could create a risk for her in the event of her return. Additionally, I am satisfied that she is a vulnerable witness.

2. The appellant is a citizen of Vietnam. The appellant claims to have entered the United Kingdom irregularly in 2009.
3. She appealed to the First-tier Tribunal unsuccessfully a decision of the Secretary of State on 27 October 2017 to refuse her leave to remain on human rights grounds and/or protection as a refugee or humanitarian protection.
4. The decision of the First-tier Tribunal was promulgated on 13 September 2018 and was found to be wrong in law. Reasons for finding an error of law were promulgated on 28 February 2019. The decision was the decision of Mr Justice Waksman sitting as a Judge of the Upper Tribunal and myself although the misspelling of the word "weak" at the end of paragraph 10 is very much my error which will embarrass me for some time.
5. That decision is appended hereto for convenience.
6. The First-tier Tribunal erred because, essentially (full reasons have been given) the First-tier Tribunal Judge was unduly concerned by inconsistencies and incongruities in the appellant's own account which might have been caused by the appellant having been traumatised. The judge should have set deficiencies against the background of the medical evidence and the known behaviour of those the appellant claims to have feared.
7. In summary outline it is the appellant's case that she is a victim of a loan shark, that she was corrupted into prostitution and trafficked to the United Kingdom and has suffered ill-treatment leading to physical and lasting mental health problems and that she cannot be returned to Vietnam because she is a member of a particular social group who would risk persecution as a result, or failing that, she is entitled to humanitarian protection and/or would risk ill-treatment contrary to her rights under Article 3 of the European Convention on Human Rights or Article 8 of the European Convention on Human Rights.
8. There is an additional and very important dimension to this case. The appellant is a foreign criminal and is subject to deportation. At the Crown Court sitting at Manchester in January 2017 she was sent to prison for two years after pleading guilty to conspiracy to supply cannabis. The sentencing judge described her as part of an "organised, sophisticated, well-managed commercial enterprise".
9. It is also a feature of her case that she had claimed asylum before the claim leading to these proceedings. The application was refused on 31 July 2012. It was not the subject of an appeal and the appellant remained clandestinely in the United Kingdom until her arrest for the criminal offence indicated above. It is the Secretary of State's case that she is not a truthful witness who, in any event, can look to the authorities in Vietnam

for effective protection if she needs it or she can avoid problems by internal relocation.

10. During the course of these proceedings she has satisfied the competent authority that she has been trafficked. It was suggested in a skeleton argument that that decision binds me. It does not. I do not know precisely what the appellant said when she claimed to have been trafficked. I must make up my mind on the evidence that is before me although the fact that she has been recognised as a victim of trafficking by the competent authority is something to which I should and do give weight.
11. The earlier decision of the Secretary of State to refuse asylum does not bind me. There was medical evidence before me that was not available to the Secretary of State and it is medical evidence that is, at the very least, capable of making a considerable difference. In any event, appeals are not reviews. Judges must decide the issues that are before them.
12. Given this background I consider it appropriate to begin with the medical evidence rather than the appellant's own account of affairs.

Medical Evidence

13. There is a Detention Centre Rule 35(3) Report by a Dr A Mahmood dated 31 July 2017 which raised the concern that the appellant may have been a victim of torture
14. More importantly there is a report by Dr Razia Hussain MBBS MSc (Mental Health) who describes herself as an "adult psychiatrist" employed as a psychiatrist in the National Health Service.
15. The appellant told Dr Hussain that she tried to escape her creditors by removing to Ho Chi Minh City in Vietnam but they found her there while she was working in a restaurant. They kidnapped her and subjected her to a severe beating and raped her. The beating left her with injuries to her scalp and also an amputated small toe which, she said, was chopped off brutally by the aggressors as a warning to take them seriously. She was able to get hospital treatment but was very frightened and found an agent to take her to the United Kingdom but the agent abused her. Dr Hussain recorded the appellant complaining of low mood, a feeling of failure and having a sense of shame, guilt and humiliation as a consequence of being raped.
16. She was found to be rational in conversation and well-orientated. Nevertheless, she had fleeting thoughts of self-harm and Dr Hussain found physical, mental and emotional symptoms so that she concluded that the appellant suffered from Post-Traumatic Stress Disorder. Dr Hussain recommended an antidepressant medication and help from Cognitive Behavioural Therapy. The risk of self-harm was expected to escalate in the event of return.

17. There is a further “medico-legal report” dated 5 November 2017 prepared by Dr Syira Ahsan. Dr Ahsan’s is a well-qualified general medical practitioner, with a particular interest in obstetrics and gynaecology and, to some extent, emergency medicine. She has a postgraduate qualification described as “MRCPH Part 1” but I do not recognise that qualification and must apologise for my ignorance. More significantly she has experience with the Medical Foundation for the Victims of Torture.
18. I found Dr Ahsan’s summary of the appellant’s case convenient and I repeat it below:

“150 [The appellant] described violence at the hands of her husband when she was unable to pay to feed his drug habit. She borrowed money from loan sharks and was unable to keep up with the repayments and so left her village. She was found, beaten and had her left small toe amputated ‘as a warning’. She was raped. She was offered help to escape Vietnam but was trafficked to Europe and sexually exploited for long periods; i.e. she was essentially imprisoned to work as a prostitute in brothels in three different countries.”
19. Of particular interest is her finding a group of scars described as “highly consistent with” the appellant having been beaten as she described. These are supplemented by scars on the arm which the doctor found “highly consistent with” adopting a defensive position to protect against a beating.
20. The doctor also noted the missing small toe and marks on the feet that were “highly consistent with medical attention in a hospital to repair what remained of the toe”. It is the appellant’s case that the toe was cut off in an attack. It was impossible to say from the marks on the body what had caused the toe to be amputated. There was nothing that triggered the suggestion that it was the result of some kind of sporting or vocational injury. It is the kind of injury that sometimes follows a repair to a congenital defect but that is no more than a possible explanation that was not elevated by other evidence to be a probable explanation. The appellant attributed it to traumatic amputation.
21. Dr Ahsan made plain that she was drawing on her experience particularly with the Medical Foundation for the Care of Victims of Torture to inform her opinion. She also explained that diagnosing (not necessarily treating) common mental health problems, including Posttraumatic Stress Disorder is within the competence of a general medical practitioner.
22. I found paragraph 141 of Dr Ahsan’s report particularly pertinent and I set it out below:

“In my opinion [appellant] has symptoms that meet ICD-10 diagnostic criteria for post-traumatic stress disorder (Appendix B) including insomnia, nightmares and flashback memories in which she relives the beating and the rape in Vietnam (incident ii). I note that [the appellant] disclosed that she had previously been beaten by her husband (incident i) which gives rise to the possibility that her PTSD had arisen at that time. She also discloses

that she had been subjected to forced prostitution in Europe over a significant period (incident iii). However, she described no symptoms being present following (i) prior to (ii). In addition the contents of her flashbacks, nightmares, and other intrusive memories all relate to incident (ii) and none relate to incidents (i) and (iii). Criterion A requires 'Exposure to a stressful event or situation (either short or long-lasting) of exceptionally threatening or catastrophic nature, which is likely to cause pervasive distress in almost anyone.' Whilst the violence perpetrated upon her by her husband may have been frightening, nothing in the history she gave me indicated that it met the threshold for criterion A. I have no independent corroboration of [the appellant's] account; however, her presentation is in keeping with such a history. I cannot rule out the possibility that her PTSD has been exacerbated by incident (iii), but there are no clinical indications that incident (iii) was responsible for her PTSD."

23. Dr Ahsan then outlined techniques for determining the veracity of the claimant's account and said that:

"Overall, I found nothing to suggest that she was trying to exaggerate or feign any psychological distress."

24. Dr Ahsan then expressed her concerns for the appellant's mental health in the event of return to Vietnam.

25. There is a medical report from a clinical psychologist Dr M F Nikopaschos who works for the Central and North West London NHS Foundation Trust and as a consultant for Vivo International on the development and provision of trauma focused psychological care for individuals affected by violence and conflict.

26. The report is dated 16 March 2019 following examination on 9 March 2019. It was admitted without objection having been served in March 2019 with reference to rule 15 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The important thing for my purposes is that Dr Nikopaschos confirmed Dr Ahsan's diagnosis that the appellant suffers from Post-traumatic Stress Disorder. Dr Nikopaschos put the appellant in the "moderate range". She explained the reasons for her opinion. Dr Nikopaschos referred to the appellant becoming "visibly emotionally distressed and physiologically aroused" when talking about her experience as a victim of trafficking. The appellant became "tearful, fidgety and tense in her body, taking deeper and sharper intakes of breath and avoiding eye contact." I note that whereas fidgety and tense behaviour can be acted, being literally tearful is, in my judgment, extremely difficult to feign.

27. Dr Nikopaschos expressed her concern for the appellant if she is returned to Vietnam because return there could be expected to exasperate her mental health problems.

28. I have also read the general reports provided dealing with the difficulties victims of trauma may experience in relating their experiences.

29. Overall I am satisfied that the medical evidence before me, which was not challenged, is honest, informed and reliable.

Home Office Background Material

30. I consider now the background material relied on by the Secretary of State. First is the CPIN Victims of Trafficking September 2018, in particular Sections 6 and 8 dealing with trafficking. Part 6 begins with the observation that the Vietnamese government has taken active measures to address trafficking problems and police capacity has been boosted. Efforts have been made to increase public awareness of the dangers of trafficking and the US State Department Report is cited noting both that the US State Department does not accept the government of Vietnam fully meets minimum standards for eliminating trafficking but also recognises significant efforts have been made to achieve that end.
31. More importantly for present purposes it is asserted that victims of trafficking in Vietnam do not form a particular social group within the meaning of the 1951 Refugee Convention. I find this a strange contention. The Secretary of State's document accept that the victims share an immutable characteristic (having been a victim of trafficking) but goes on "in view of their equality under the law and the general availability of state protection, they are not perceived as different and do not have a distinct identity in Vietnamese society." I struggle to understand how the availability of protection, or indeed equality before the law, prevents a group having a distinct identity.
32. Rather the availability of state protection and equality under the law go to the issue of whether a person needs international protection and not whether a person is a member of a social group at all. A person can be a member of a particular social group without risking persecution just as a person can hold religious or political opinions without risking persecution, but the availability of protection or the absence of persecution does not stop them being a member of a particular social group.
33. I accept that the need to be a distinct group within society is the most difficult thing for an alleged victim of trafficking to prove if she (in this case) is to show that she is a member of a particular social group for the purposes of refugee protection. But there is evidence that they form a distinct group within society. According to the September 2018 CPIN the Asia Foundation in 2017 noted that victims are often "reluctant to seek help for fear of further abuse by traffickers ... or stigma from being labelled as a prostitute." There was also reference to the "social stigma associated with prostitution" at 5.1.8 taken from the USSD TiP Report 2018. The USSD TiP Report also refers to "endemic social stigma associated with victimhood" discouraging many victims from seeking or benefiting from social protection services as are available. Women on their own are seen to be vulnerable to re-trafficking.

34. The CPIN Report of December 2018 under the heading general heading “Fear of illegal money lenders” asserts at 2.5.4 that the state appears willing and able to offer effective protection. However, that is of little evidential value because it is an unexplained expression of an opinion. The same report refers to corruption amongst the police being unpunished and confirms the widespread use of money lenders and their general ruthlessness in collecting fees that in many jurisdictions would have been regarded as unlawfully exorbitant.
35. As is indicated in other parts of the papers the Hokou registration system is to be replaced in 2020 by a computerised version managed through identification numbers. The implication is this will make it harder for misuse but I do not understand why that should be. This is not to say that it would be easier or harder just that the point has not been explained. In any event there is no evidence before me that it is yet in force.
36. The report on Home Office Fact-finding Mission to Vietnam has sections on trafficking and money lending. The report confirms that, typically, a victim of the traffickers is tricked into slave labour and attached to an unmanageable debt. There are shelters to help people, run both by government and non-governmental organisations but they seem to deal with only a small number of cases.
37. I have no hesitation accepting these reports as the result of a sincere attempt to summarise various strands of evidence but their value is limited by their very general nature and, as in the case of the opinion on the availability of protection, they are not always well sourced.
38. I am persuaded that the official statistics might significantly underestimate the prevalence of trafficking because, according to the US Department of State Report some officials “conflate trafficking with smuggling which precluded the identification of victims who voluntarily migrated abroad”. In other words, a person who was tricked would not necessarily be recognised as someone who had been trafficked. This is interesting but of little relevance to my task in determining the risk facing this person on return.
39. I was referred to the decision of this Tribunal in **Nguyen (Anti-Trafficking Convention: Respondent’s duties)** [2015] UKUT 170 (IAC) but I did not find it helpful. It was reported because of what is said about the duties of the Secretary of State in a “trafficking” case and they are not in issue before me. It was not country guidance and the fact that the Tribunal decided on the evidence before it that the appellant in that case could obtain effective protection is not determinative.

Expert Country Evidence

40. I turn now to the expert report of Professor Christopher Bluth.
41. Professor Bluth introduces himself as a Professor in International Studies at the University of Bradford. He has considerable relevant academic

experience and holds the degree of a doctor in philosophy from King's College London.

42. He was asked to consider if the claimant's account was plausible, to assess the risks in the event of her return, to decide if there was a sufficiency of protection and if internal relocation was a viable option.
43. He analysed political and social conditions in Vietnam. He was particularly critical of the banking system which is generally unable to provide appropriate funding for people who in many contexts would be regarded as good risks. As a consequence of this is there is a big industry in illegal banking, often working in the shadow of legitimate pawnbroking, so that many people, such as students seeking to pay their education fees, borrow irregularly, frequently at high interest rates. He said at paragraph 5.2.9:

"These criminals are very adept at keeping track of their clients inside Vietnam who owed them money, because otherwise they can never collect. In order to be able to live in Vietnam a person needs household registration. Consequently, the possibility exists that if the loan sharks have bribed the appropriate authorities the appellant would come to their attention and they would be able to find her as they did before, or by using social media."
44. Professor Bluth also said that criminals in Vietnam use bribery to get support from the authorities to identify and find those who they believe owe them money.
45. This is important evidence and I have reflected on it. It is not explained. I am not told how these records are made and kept and who can access them. If, as appears to be the case, they exist for every adult citizen there must be literally millions of them. I can only speculate but I can imagine how a corrupt official might, for example, reveal the address of a person whose records were in his care but not how records could be used to keep tabs on a person by something analogous to a land charges register requiring an official to notify a criminal if, after a gap of perhaps years, a person's records were transferred to a different register. Quite simply too much is unexplained for me to be able to evaluate Professor Bluth's opinion about the misuse of the registration system.
46. He was aware that there are often links between money lenders and trafficking rings so that debtors who were vulnerable were often targeted for corruption into prostitution or other labour. Entering the United Kingdom illicitly having travelled via Russia, Germany or France was a well-known route. People are also trafficked from Vietnam for the purposes of cannabis farming although Vietnamese children are the main targets in that particular trade. He explained how potential victims of trafficking are typically ill-educated and vulnerable to skilled deceivers who offer apparently genuine jobs.
47. He also thought there was a real risk of re-trafficking. At paragraph 5.2.15 he said: "It is known that police has(sic) handed over returnees to Vietnam to the person who originally trafficked them for re-trafficking". This is a

very chilling observation but is supported merely by footnote 23 which says simply “Based on the evidence in other asylum cases the author was involved with”.

48. It was his view that the appellant “meets all the criteria set down in the Home Office Country Policy and Information Note (Vietnam: Victims of Trafficking) for a person at increased risk of being abused or trafficked”. This is supported with a reference to footnote 35, but that merely refers to the CPIN at paragraph 2.3.5 but does not identify it with a date. I have before me a such a report marked “Version 3.0 September 2018. There is no paragraph 2.3.5 but at paragraph 2.4.5 it sets out:

“Factors that may make the person face an increased risk of being abused or re-trafficked include, but are not limited to:

- The person having an outstanding debt to the traffickers
- The absence of a supportive family willing to take the victim back into the family unit
- The person having no other support network to assist them; no or little education or vocational skills; mental health conditions, which may well have been caused by experiences of abuse when originally trafficked; material and financial deprivation such as to mean that they will be living in poverty or conditions of destitution
- Factors that may lower the risk of being of(sic) abused or re-trafficked include, but are not limited to, the availability of a supportive family willing to take the person back into the family unit”

49. Professor Bluth suggested that even if the appellant has been untruthful about her reasons for coming to the United Kingdom she would now be in “debt bondage” because that is how immigration brokers operate. However, he found her account of being corrupted and exploited for the purposes of prostitution to be very much in line with the evidence about criminal activities of exploiters in Vietnam.

50. He then turned to the government efforts to prevent trafficking and protect against loan sharks. Much of this part of the report is concerned with how people in Vietnam generally might be corrupted into or protected from the activities of exploiters. It is of only limited value in determining what risk, if any, this appellant would face. Professor Bluth accepted that the Vietnamese government has put resources into tackling the problem of exploitation and trafficking but he noted that “there is no evidence however that such enforced protections have any discernible effect on the level of prostitution which remains at an extraordinarily high level.”

51. It was his view that although trafficking is certainly against the law and has been identified by various government agencies as a “serious problem” there are gaps in the legislation and the scale of the problems

means that it is not being addressed. For example, those who have identified themselves as victims but have escaped without the intervention of the authorities are not given support (para 5.3.1).

52. There are reports from many NGOs that traffic related corruption at a local level is widespread. At paragraph 5.3.4 he said:

“Intergovernmental agreements to receive victims of trafficking with Vietnam usually require merely that victims are identified to the Border Guards Command without further assistance to return back to home communities where such communities exist. Consequently, victims are at risk of being re-trafficked after they return to the country, and some victims have even been re-trafficked while being stranded at the border gate. There are also no mechanisms in place to assess the needs of victims after return and provide assistance for them.”

53. The above reference to re-trafficking is supported by a footnote at 41 referring to the Child Exploitation and Online Protection Centre (document entitled “The trafficking of women and children Vietnam report Hanoi 2011”).

54. Professor Bluth accepted that shelters exist but described them as “rudimentary, underfunded, and they do not have appropriately trained staff”. It is reported that victims do not want to stay at victim support facilities because they fear the social stigma of being a trafficked victim. He said:

“It is clear that there is a powerful social stigma against victims of trafficking and in particular against victims of sexual exploitation, compelling women to remain silent about the abuse as they would be viewed as belonging to a distinct group in society that is discriminated against socially.”

55. This claim is referenced at footnote 44 which identifies a variety of internationally respected sources.

56. He then made the depressing observation that “the government efforts to combat these problems have had virtually no effect on the scale of the problems and the ordinary citizens cannot rely on the authorities to protect them”.

57. He described the steps taken as “woefully inadequate” and suggests that that is the reason why the US State Department reported that the “government of Vietnam does not fully comply with the minimum standards for the elimination of trafficking”.

58. He said that the Home Office CPIN acknowledged there are only a “miniscule number of such shelters for female victims (compared to the scale of the trafficking) and those that are there are inadequately resourced and staffed”. The shelters are intended for social problems as a whole not distinctly for victims of loan sharks or exploitation and are just not enough. Professor Bluth again refers to the police handing over returnees to the original traffickers and there is a reference to footnote 47

which shows that the claim is “based on the evidence in other asylum cases the author was involved with”.

59. Professor Bluth said that the appellant would face a difficult time if she was returned. Migration brokers, loan sharks and traffickers are “part of a nexus of criminals who are very adept at keeping track of their clients inside Vietnam who owe them money” (5.3.1.) Professor Bluth then referred to the household registration system which requires interaction with citizens to purchase a house or land, to marry, to be employed, to register a training a course, to borrow from a bank and many other basic societal acts which means that a person cannot practically live in Vietnam without registering. According to Professor Bluth: “The endemic corruption means that it is common for loan sharks, traffickers and other criminals to track their targets using household registration”. This is clearly a very significant part of his evidence which, frustratingly, is not explained in detail or supported by any reference.
60. Professor Bluth described the anti-corruption policies as “token”.
61. Based on his experience of how such criminals operate, he would expect a person in the appellant’s position to owe money to the original brokers who helped her to leave Vietnam. He repeated his claim that he has knowledge of cases where individuals have been re-trafficked by the police who effectively put the person under the control of the original exploiters but said that even if that does not happen to the appellant, she is in a class of people who are targeted for trafficking. The point is that she has little education or legitimate means of support although I presume that the appellant would now be at least more sceptical if faced with offers of work outside Vietnam.
62. He started to summarise his conclusions at point 6. Professor Bluth clearly thought it likely that the appellant is in “debt bondage” and in the event of her return to Vietnam she will be at risk from her creditors and also from other criminal trackers as she tries to establish herself. In his opinion that the appellant faced a “high risk” of being targeted by trafficking gangs and other criminals in the event of her return and that there would be insufficient support to protect her. The efforts made by the government of Vietnam to combat trafficking were described as “token”. There are certainly clear examples of the authorities successfully breaking up trafficking rings but not of them making any impact on the scale of activity.
63. Overall he considered her account to be plausible.

Appellant’s Evidence

64. I have read the record of the screening interview dated 3 July 2012 and the substantive interview dated 24 July 2012. The appellant outlined her claim to fear return to Vietnam because she was indebted to loan sharks.

65. According to the record she said that she had a sister, who she named, who was then about 38 years old. She repeated this claim in her substantive interview. She also talked about sending money to her sister. She explained that her children did not want her to return to Vietnam but to continue working the United Kingdom to send her money (question 49). In answer to question 108 she said that planned to use her sister to channel her debt repayment.
66. She described how she lived in London with a “Vietnamese with British Nationality” (question 168) called “Lily” (she gave Lily’s full name). The appellant said that Lily had adopted her as a sister and supported her and that she offered some childcare and housekeeping skills in return.
67. The appellant gave evidence before me. Her solicitors had made it plain that they considered her to be vulnerable and I acceded to the unusual request that the hearing be conducted in private.
68. Mr Melvyn had considered the skeleton argument. He accepted that the appellant had been the victim of trafficking and that she had been trafficked as she tried to escape from loan sharks. He also accepted that she owed money which she had borrowed for her needs or to pay the debts of her husband.
69. He said that the thrust of the Secretary of State’s case was that appellant could relocate in Vietnam and obtain effective protection from the state. Mr Melvyn almost made plain that he did not accept that the appellant had no contacts in Vietnam or that she would be unable to have family support there.
70. There are particular difficulties in this case and although, in a sense, it was no more than he ought to have done, I record my appreciation of Mr Melvyn acknowledging the appellant’s vulnerability and his willingness to make appropriate concessions to avoid the witness being cross-examined unnecessarily.
71. The appellant adopted statements in the bundle dated January 2018 beginning at page 5 in the bundle and the supplementary statement dated August 2018 at Tab B page 1 in the bundle.
72. It is not necessary to set out every point made in the witness statements, especially as much has been accepted, responsibly, by the Secretary of State. Nevertheless, I will outline them.
73. In her first statement the appellant accepted that she had not been open and honest with the authorities in the United Kingdom. She said that she had not learned to trust the authorities anywhere and she was concerned for the safety of her children in Vietnam as well as being frightened of the traffickers and the “loan mafia”. She talked about her childhood. She was from a region of Vinh City. She was one of two children. Her sister was killed in a road traffic accident when she was about 10 years old and her

parents are now dead too. She started her married life in 1990. Her husband worked as a driver's assistant for a long distance coach firm and she took occasional work to supplement their income. They had a daughter born in 1991 and a son born in 1994.

74. Her husband did not support her properly and she realised after the birth of their second child that he had become a heroin addict. This led to his losing his job. He then became a drain on household resources, contributing nothing and constantly demanding money. She described how she became acquainted with one "Hung" or "Curly Hair". She described him as a "black market money lender in the same village as me". She started to borrow from him and initially paid back interest as required. However, she could not pay back the capital without selling land and the funds raised meant she had a high credit score with Hung. She took on debts that she could not pay back and lied to avoid, for a while, the need to repay.
75. She corrected an error in the assessment in the psychologist's report at paragraphs 20 and 21. It was incorrect to say that she discovered that the land did not belong to the family. She knew full-well that the land that she was pretending belonged to the family to satisfy the creditors was not hers to sell.
76. She outlined the debt collection methods which included visitors to the home wielding knives. She went to the police station to report threats. The police offered to help but did nothing however. Soon afterwards the gang said that they would kill her if she contacted the police again. She had not told them that she had been to the police and she relied on that conversation to show that the police are in communication with the loan sharks.
77. She knew she could not pay back the money. She left her home in Nghe An intending to establish herself in South Vietnam. She knew she would be easy to find if she remained in the home area. She left her children with a friend. They were in the Nghe An area but some distance away from her home. Her husband was an addict and she left him to his fate and later learned that he had died.
78. She paid interest until she left but was confident that if she were reunited with her creditors they would have records and, even now, would charge interest for the many years in which the son had not been paid.
79. Her new home was two days travel away and she found work easily.
80. She said at paragraph 30:

"When I arrived, I had to report to the local police for registration. If you move to a different place in Vietnam, you have to register your address with the police; if you are absent, you have to report it to them as well. From memory, you have to provide your name, date of birth I think, previous

address, and new address - I have the address of the boss who let me stay where I was working.”

81. The appellant registered with the police as is required and as is necessary. Nevertheless, she lived discretely and sent money for the support of her children.
82. She was in South Vietnam for over a year (witness statement, paragraph 33) and then learned that Hung was close to finding her. Soon afterwards Hung found her at her place of work. She had no opportunity to hide so followed him to his car. She was driven into the countryside and then told that she was going to be punished for daring to escape. Three men present raped her repeatedly. They hit her with wooden sticks on her head and neck tearing apart her head. They finished the beating by cutting off a toe and said they would kill her if she did not pay.
83. She was left at the roadside where she was eventually found or taken to hospital.
84. She lied to the hospital promising to pay. She left without paying and made her way to the friend where her children were staying.
85. Her friend introduced her to a man called “Son” and he told her that he would find her a job in another country. Work would be something like planting vegetables. She had to promise to pay him for his services. She was too frightened for her safety to consider another course. She then gave details of her journey and explained how she found herself work as a prostitute. She corrected an impression given by the psychologist that Son had remained with her. That is not what she had intended to say. Someone called Lam remained with her. She spent time in Russia and in Poland and then in France. In France she was in the company of two other “girls”. Arrangements were made to take them to the United Kingdom. She was confident that at least some of the people involved in her removal were Vietnamese.
86. She was told that she would have to work off the debt and then could find a better job. She had developed a reputation for being compliant and the controlling regime was less restrictive in the United Kingdom and she took advantage of some carelessness on the part of her captors to run away.
87. She then explained how she had managed after she had escaped. She claimed that she met a Vietnamese woman by chance and that woman befriended her and they became emotionally close. She had stayed in that woman’s house and contributed to the household by doing domestic work. She had no money with which to pay off the debt and had not contacted Hung since he had abandoned her at the roadside.
88. She was able to keep in contact with her children and she encouraged them to leave Vietnam. She was afraid they would be found by Hung. She understood that they had now left Vietnam and had established themselves somewhere in Laos.

89. When she contacted the children the friend who looked after them said that money lenders were still searching for her.
90. She said that in 2009 she went with her benefactor to Manchester. There was a police check and she was detained at the police station because she did not have any identification documents. She lied to the police by giving a false identity. She said she was frightened of being returned to Vietnam. She came to realise that she was required to report back to the police but claims not to have known when she was released and she went back with her friend to London. She said she did not claim asylum because she knew nothing about asylum.
91. She said that her friend had advised her to claim asylum and pointed out that it could lead to having a legal right to be in the United Kingdom. Nevertheless, she did not feel able to take that advice because she was too frightened.
92. Nevertheless, she did claim asylum. She accepts that she made a claim in July 2012. She was not truthful. She said she did not trust the authorities in the United Kingdom or anyone else.
93. She denied saying that she owed 2 billion Vietnamese Dongs. She said that could not possibly be right. That is a great deal more money and she wondered if 200 million, which she speculated was the sum she did owe, had been written wrongly as 2 billion.
94. She left London and got a job in Liverpool without telling the authorities where to forward details of her asylum application. She only discovered the application had been refused when she was subsequently detained. She left the job in Liverpool because the family had made other arrangements for babysitting and she went to stay with a man called Minh and his girlfriend Van. She lived there at no cost to herself and obtained work as a casual babysitter.
95. She then went on to describe her relationship with her then partner who is identified herein as DM. The appellant described how she had formed a relationship with DM after they met at a party in London in 2014. He explained that he could not go to Vietnam because he was "wanted" there and had been allowed to stay in the United Kingdom by the UK government. They became close and he arranged for her to see a solicitor. At that time he was contemplating seeking UK citizenship. They started to cohabit in part with the deliberate intention of preparing evidence to prove cohabitation for the purposes of an application she intended to make. However, she said that the evidence was organised rather than contrived. It reflected their true circumstances.
96. She then explained about being arrested in 2016. She said she had lost contact with her children because the police kept all her belongings when she was arrested including her mobile 'phone. She did not know her

children's telephone number in Laos and she had not been able to speak to them since she was arrested.

97. She then explained how she and DM had a friend, a Chinese woman called "AT" and at AT's suggestion she went to the beach in Great Yarmouth. Her acquaintance AT was disturbed by a phone call at 5 o'clock in the morning and she was required to help AT with a suitcase. She understood AT to be involved with importing clothes from China and she assumed that she was required to carry something in connection with that legitimate business. She did not know that she was carrying drugs. She then went on to say how she had pleaded guilty to the offences leading to her imprisonment. She claimed not to realise she could go to prison. The person AT got bail and absconded.
98. The appellant then told the police that her boyfriend and AT were "in charge".
99. At the time of making her statement DM was in Wigan Prison and was still proposing marriage to the appellant after they had finished their prison sentences. The appellant now understood he too was subject to deportation.
100. Paragraph 118 of her statement is interesting if only because of it illustrating her apparent failure to understand what is happening. It says:

"The Home Office gave me a deport order because they said I am a risk of reoffending; however, I am not a risk of reoffending, because I did not mean to commit the offences for which I had been imprisoned and given a deport order for. I did not know what was happening or that there were drugs in those suitcases. I trusted AT which I really regret now."
101. As will be appreciated by anyone with even a modest understanding of the relevant law, and as was set out clearly in the relevant notice, the appellant is subject to deportation by operation of statute because she has been sentenced to two years in prison. A propensity to reoffend is of little relevance in an appeal and of no relevance to the decision that she be deported.
102. She then explained how solicitors helped her with submissions to support an asylum claim while she was in prison. There was extensive correspondence between her and DM but only samples have been produced. Her friend Van supported her asylum claim. Van is a close friend of Long, who has featured in the appellant's account and the appellant knew her from Vietnam although said they were not close but on speaking terms. Van had confirmed that the loan mafia were still looking for the appellant.
103. She noted that in her letter Van described the appellant as "my little sister". She said that the use of the word "sister" reflected Vietnamese culture and that she was not related to the writer.

104. She said she had not been frank with her solicitors. In particular she did not want to have to admit the shame of being trafficked. She was scared of being returned. She was scared of Son and Lam and more scared of Hung. She did not believe there was any effective protection from the authorities in Vietnam. She took issue with the Secretary of State's contention that her debt would have been forgotten. He said there is no evidence to support that.
105. She did not believe she could relocate. She had tried that and she was found in Ho Chi Minh City in South Vietnam. She said that the obligation to register with the authorities means that people are easy to trace.
106. She said she had no-one in Vietnam. Her parents were dead and her children had left. In her supplementary statement she explained she was living with a friend called Lyly who was happy to let her stay. She said how she found it very difficult to trust people and was haunted by her past experiences.
107. She had not had any contact with DM for a long time. She had been advised by Lyly to have no more to do with him because he involved her in crime. He was not honest with her. They were no longer partners. She explained that her friendship with Lyly began while she was living with Mrs T.
108. She repeated that she had given false information when she was arrested in 2009. She attributed this to being scared to being returned to Vietnam.
109. I noted that when the appellant gave her evidence she was weeping slightly. She repeated her claim to have no known relatives in Vietnam and to have lost contact with her children in 2016.
110. She was shown a letter from Van. She said it was given to her while she was in prison. She was no longer in contact with Van and had no contact with her since receiving the letter. She did not know how to contact her.
111. The appellant was cross-examined.
112. She repeated her claim that the description "younger sister" was culturally polite and not an indication of a biological relationship which she denied. The letter had been forwarded from a friend in Manchester. Van was not the person who looked after her children. She had no longer any contact with that person and had not had contact since her children left to go to Laos. She was vague about the year.
113. She was asked if she could explain why the writer of the letter would say the children were facing danger in Vietnam if they were in fact in Laos. She decided it must be a reference to what would happen if they returned.
114. She had not tried to contact Long who had featured in her account. His was one of the 'phone number she had lost with her 'phone. She understood he had a partner in Cambodia.

115. Mr Melvyn asked why she was not making more effort to contact the children. She said she had asked people who were trying to help her. She was asked to explain why DM described her as his wife in her correspondence if they were not in fact married. She said that was how they thought of each other. She denied that Mr Long was related and said they were just friends.
116. The letter supporting Mr Melvyn's cross-examination dated 12 October 2016 from Van does indeed identify the appellant as the writer's sister and is signed as coming from the "younger sister". The writer wondered why she had not been able to contact the appellant in recent months and then wanted to notify her of a dangerous situation. According to the writer, on 10 September 2016 Hung appeared at her house asking for the appellant's whereabouts and explaining that she owed money. The writer concludes, "I tried my best to contact with you but could not. I am afraid that your children shall face danger, so I am writing this letter to send you. Please contact me with anything."
117. The appellant denied that letter is contrived to bolster a claim.
118. There was no further oral evidence.
119. Mr Melvyn's case was straightforward and predicable and none the worse for that. He said the appellant's evidence was entirely unreliable and she had not shown there was any risk on return from loan sharks or traffickers or anyone else. The Secretary of State did not accept that she would be friendless and without family support in Vietnam. There was one letter out of the blue suggesting the contrary and its provenance had not been established or the reasons for writing it explained given its contrived arrival at a convenient time. It made no sense. The children were not at risk if as the appellant claimed they were in Laos. It made no sense.
120. Neither did he accept that there was any cultural habit of referring to each other as brother and sister in Vietnam.
121. The Home Office country evidence showed there was no risk and the appeal should be dismissed. He submitted that there was no meaningful claim on Article 8 grounds on their own.

Evaluation

122. There are many difficulties in this case. I remind myself that although the standard of proof is low, the burden is on the appellant to show that she faces a real risk of ill treatment in the event of her return if she is to establish her claim to be a refugee or that removing her would contravene her rights under article 3 of the European Convention on Human Rights.
123. I also remind myself that there is very good medical evidence that informs me that victims of trauma can often be extremely reluctant to tell other people about their experiences, in part because "telling" involves "reliving" and this is a case where the experiences might be thought

shameful or deeply embarrassing, even though the appellant is, in that sense at least, a victim.

124. Delay in making a claim is always discreditable in the circumstances set out in section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 but in a case such as this section 8 alone would be an inadequate reason to disbelieve the appellant. The fact that something is discreditable is not determinative and, in the context of this case read as a whole, it is of little importance.
125. As I confirm below, I have believed much of the appellant's evidence and do not disbelieve her because of late disclosure or poor chronology.
126. Nevertheless I cannot avoid finding that the appellant is a deeply untruthful witness who, on her own admission, will say what she thinks will bring the result she wants when she is dealing with authorities. I have in mind particularly her claim to have given a false identity when accosted by the police. Similarly her entirely plausible accounts of having one young sister who died in childhood in an accident or who as an adult wanted her to remain in the United Kingdom (screening interview, not the disputed letter) are quite irreconcilable.
127. She was also, on her own account, dishonest with her creditors and the hospital where she was treated. Perhaps the creditors deserve no better and I accept that the appellant was desperate for medical treatment but being dishonest comes easily to this appellant.
128. I found her explanation of her criminal conviction to be highly unsatisfactory. I do not believe that she pleaded guilty on the basis that she did not know what was in the suitcase that she helped to move because I do not see how that can be consistent with the necessary guilty knowledge. She has not told me the truth about that part of her case. It may be that her present solicitors will want to look into the safety of that conviction, even at this late stage, as the appellant has been recognised as a victim of trafficking and special consideration must be given to prosecuting such people.
129. I have already commented adversely on that appellant's inaccurate explanation of the reasons for her being subject to deportation. It is only relevant when I make findings of fact because it further illustrates the appellant's unreliability.
130. I accept that the appellant has fallen victim to loan sharks, largely as a result of her husband's drug addictions and consequential irresponsibility. I accept too that she has been "trafficked" into the United Kingdom and forced to work as a prostitute. This part of her story is inherently believable given the background and medical evidence. Even if the rest is invented, she had to finance her trip to the United Kingdom.

131. I accept that the appellant tried to enlist the help of the police in Vietnam but found that this exacerbated her problems because the report prompted a threat from the creditors. At that time she was living close to her creditor and reported to the police within that community (paragraph 25 of witness statement). The alleged subsequent reaction from the creditor fits with the evidence that there is a high degree of corruption in public life in Vietnam.
132. With less confidence, I accept that the appellant tried to relocate within Vietnam. It makes sense to me that she was in debt before she tried to leave Vietnam. I only have her (very unreliable) word to support her claim to have married a heroin addict who squandered family resources but it makes sense to me that she was prompted to leave Vietnam and leave behind her children by a crisis rather than by a general desire to improve herself and debt followed by internal relocation is plausible.
133. I accept too that she was found in Ho Chi Minh City. There is strong evidence that she has been beaten and I accept, mindful of the lower standard, that she did suffer the traumatic amputation of her toe and then a beating that included her being raped. I found Dr Ahsan's comments on this point helpful.
134. I do not know how the appellant was traced in Ho Chi Minh City. Clearly it was not a chance meeting. I accept that the money lenders have a strong interest in keeping in contact with their debtors, for if they did not then the incentive to run may well be stronger than the incentive to repay. The delay between registration and the visit suggests to me that registration was not the means of contact for if it had been then an earlier visit could be expected. The appellant was in touch with her children who lived in the same "village" (I take that to mean a community rather than a distinct settlement with clear boundaries between houses and the countryside). There was opportunity for someone to have spoken out of turn either carelessly or maliciously. I cannot know how the information was passed on but I accept that it was.
135. I accept too that the kidnap, beating, rape and mutilation that the appellant says followed her being accosted in Ho Chi Minh City did indeed happen then as she claimed. There is little reliable evidence for this but I have no doubt that she was ill treated and the claim that she was ill treated then has been made clearly. It would explain why she changed from being someone running away from a debtor to someone seeking overseas work.
136. It follows that in the event of her return she would be returned to a country where she has been ill treated by people who have ill treated her previously. This is something that must be given considerable weight in my predictions about what is reasonably likely to happen in the event of her return. I remind myself that paragraph 339K of HC 395 provides that that fact that a person has been subject to serious harm "will be regarded as a serious indication of the person's well founded fear of persecution or

a serious risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated” and even if it does not bind me I regard it as useful summary of a well-known principle.

137. Any risk on return is closely linked to how she will establish herself. I recognise that an asylum seeker may have many reasons for wanting to stay in the United Kingdom that are not indicative of being at risk but merely that the person thinks that she will be better off in the United Kingdom. However there is no evidence that the appellant is doing particularly well in the United Kingdom. She does not have regular employment and she has been to prison but I am satisfied that she is fearful for her safety in the event of her return even if that fear is not justified objectively or is not for the reasons that she has advanced.
138. I found many frustrating deficiencies in Professor Bluth’s evidence. He is an expert and I am entitled to give weight to his opinion but in crucial evidence of the risk on return I found his report unsatisfactory.
139. It is not helpful to know that his conclusion that the appellant would face a risk of re-trafficking because of other cases in which he was involved, and particularly not when the level of decision maker is unclear or what evidence supported the conclusion, assuming that it was the conclusion of the judge.
140. The suggestion that traffickers would know of the appellant’s return or that the authorities would do nothing to help in the event of her arrival at an international airport is not persuasive in the absence of supporting evidence. Whilst accepting the evidence of wholesale corruption I do not disregard the evidence that the authorities in Vietnam are making some efforts to address the problem. I cannot accept that there is a real risk of the appellant being handed over to traffickers by, or with the acquiescence of, the authorities on return.
141. I do accept that victims of trafficking may often present an air of vulnerability that will be noticed by traffickers as they seek to establish themselves. I accept that evidence that victims have a sense of shame and risk being ostracised because of how they are perceived. I have no hesitation in finding that “victims of trafficking” constitute a particular social group in Vietnam within the meaning of the phrase in the Refugee Convention.
142. However I do not accept that the appellant would be unsupported in the event of her return.
143. It is a feature of this case that the appellant, if she is telling the truth, has found considerable support within the Vietnamese community in the United Kingdom. It is hard to see why she could not find support in the event of her return. She would surely be more sceptical now about promises of work overseas.

144. Most importantly she has two adult children. She says that they are on Laos and that she has lost contact with them. I do not believe that she has lost contact with them. I can accept that she might have lost their 'phone numbers when her 'phone was confiscated by the police but I do not accept that the police would be indifferent to a request to be given information from the 'phone that they hold, at least not when encouraged by representatives acting for the appellant but there is no evidence that any such attempt was made. At the very least they would explain why they could not, or would not, help.
145. Further I do not believe that two adults in Laos could become uncontactable by their mother if she lost their 'phone numbers. It is so likely that there are mutual friends somewhere who could help that I do not accept the appellant's denials. Even if, extraordinarily, there are no such people it is well-known that certain organisations (the Salvation Army is one example) offer considerable assistance to missing persons seeking to trace each other but there is no evidence that any such attempt was made. I find that inconsistent with the appellant's claim to be distressed to have lost contact with her children.
146. It would suit the appellant's case to have detailed statements from her children in Laos to explain how they are settled there. It is not forthcoming. Instead there is an unbelievable explanation for saying that the mother has lost contact.
147. I discount the suggestion that the appellant has a sister. I have read the letter on which she was cross-examined and note the writer described herself in sisterly terms. The letter from the husband described a man not said to be a brother in brotherly terms. I have no expert evidence on the point but I have decided to believe the appellant when she said that the phrase is used to reflect cultural respect rather than a real relationship. One of my reasons for reaching this conclusion is that it is, in my experience, unnatural for a sibling to identify himself as such. The writer would know if the letter came from her sister. There was no need to tell her. I also note that it is suggested that the letter was written for the purposes of improving her case and it does not improve the appellant's case to know she has a sister. I do not know if the appellant has a sister in Vietnam but for the purpose of my decision I have assumed that she does not.
148. I do not know what conditions the appellant would face on return but she has not persuaded me that she would be on her own.
149. I do not accept that her creditors would know about her return. It is not the appellant's case that she is presently in contact with her creditors either directly or through people she knows in the United Kingdom. This is important. I have reflected on Professor Bluth's suggestion that even if the appellant has been untruthful in many respects she must still owe money to the traffickers and they will want the debt paid. I accept those observations and, as indicated elsewhere, I have real concerns about the

reasons behind the appellant being supported in the United Kingdom but it is not her case that the traffickers know her present whereabouts and will be informed of her return to Vietnam.

150. I am not persuaded that registering in Vietnam would draw attention to her return now. As indicated above, there is no explanation of the record system before me and the contention that a person would be identified and reported to a particular identified loan shark more than 10 years after she left the country is not, without explanation, believable.
151. I have thought hard on that and given it all proper weight. The appellant is a damaged woman and I am satisfied that she has been damaged by the circumstances associated with her being trafficked to the United Kingdom. Making every allowance that I feel I should and mindful of the low standard of proof I do not believe this appellant in several material respects.
152. I accept that she has been a victim of trafficking. I accept that she owes a considerable sum of money and that she has been tricked into working overseas to repay that money and the tricking was of the most repugnant kind because it required her to work as a prostitute. This is wholly consistent with background evidence about what tends to happen and although advanced by the appellant in a less than satisfactory way it is clearly her case. It has been accepted and not challenged but I agree that that has been established.
153. I agree too that failure to pay the debt has caused her to be beaten badly and indeed to have a toe cut off. The evidence of beating and amputation is compelling. She has given an explanation for it and no better one suggests itself.
154. The problem for the appellant is proving that she would need or could not get effective protection in the event of return.
155. Much is made of the fear instilled by the debt collectors and I understand that is likely to be justified. Their trade is illegal. They cannot collect debts lawfully. They need to enforce their debts else they would not be able to trade. I have decided that I am persuaded that she was found in Ho Chi Min City. I do not know how that came about. It was not a chance meeting. Hang knew where to go. However, he had contacts with the place the appellant had left. However careful she thought she had been it is not unbelievable or even particularly unlikely that somebody said something that they should not have done either carelessly or maliciously.
156. I have not seen evidence that she was traced through the internal record keeping system. Professor Bluth speculates that this could be used but there is no given example of it being used in that way or explaining how it would work. Even allowing for a very high standard of diligence I do not understand how it can be reasonably likely that the appellant would draw attention to herself even if she did register using that system.

157. In short she would not be in the position that she was in previously because she would not be traced, she has more experience and has two adult children who can be expected to help her.
158. I am not persuaded that this appellant would face any risk in the event of her return and I am not persuaded there is any reason for her to go to her home area but she could relocate using her willingness to work almost anywhere in that country of 90 million plus people. I am not persuaded that the need to register with the authorities would trigger any link.
159. It is important that I am not persuaded she would be on her own. Lone women can have a difficult time. I have not concluded that effective protection is generally available in Vietnam for returning victims of trafficking because I have not had to decide that point.
160. The appellant is not a refugee. She is not in need of humanitarian protection. Removing her would not be contrary to her rights under Article 3. I remember she is subject to a deportation order. There is no reason to allow the appeal on Article 8 grounds. This is a deportation case and Part 5A of the Nationality Immigration and Asylum Act 2002 applies. The worries expressed about her mental health do not reach the kind of level necessary for to be irremovable. She does not come under any exceptions. She has never had permission to be in the United Kingdom and there is a strong public interest in her deportation.
161. There is nothing here that attracts any significant weight in the Article 8 balancing exercise. I see no point in labouring this point. The facts are not there to warrant it.
162. I have endeavoured to give this case all the anxious scrutiny that it deserves. This woman has established that she has suffered terribly but she has also committed a serious criminal offence and she had not established that she can be returned safely to her country of nationality.
163. It follows that I dismiss her appeal.

Notice of Decision

The appellant's appeal is dismissed on all grounds.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 27 May 2020



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

Appeal Number: PA 11759 2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2019**

Decision & Reasons Promulgated

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Before

**THE HONOURABLE MR JUSTICE WAKSMAN
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE PERKINS**

Between

**M...T...T...
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith, Counsel instructed by Wilson & Co Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. We make this order because the appellant is an asylum seeker and publication of her identity could create a risk for her in the event of her return.
2. This is an appeal by a citizen of Vietnam against a decision of the First-tier Tribunal on 13 September 2018 dismissing her appeal against a decision

of the Secretary of State refusing her leave to remain on human rights grounds and/or protection as a refugee.

3. The appellant was born in January 1972. She entered the United Kingdom without permission sometime around the end of December 2007 and has remained there. She has committed a criminal offence. At the Crown Court sitting at Manchester in January 2017 the appellant was sent to prison for two years for conspiracy to supply cannabis. It was said by the sentencing judge that the appellant was part of an “organised, sophisticated, well managed commercial enterprise”.
4. The appellant has previously claimed asylum. The application was refused on 31 July 2012. Although her application was unsuccessful the appellant remained clandestinely in the United Kingdom, next coming to the attention of the authorities when she was arrested for the criminal offence considered above.
5. She claimed asylum for a second time on 26 February 2017 after being served with a decision to deport her. The application was refused on 27 October 2017 and she appealed. The First-tier Tribunal Judge found the appellant wholly lacking in credibility and said so in extremely clear terms and dismissed the appeal. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Kekić. She said of the appellant that she:

“was convicted of drugs offences but argues she cannot be deported because she fears loan sharks and traffickers in Vietnam.

It is arguable that the judge erred in the assessment of the medical evidence, disregarded the positive reasonable grounds decision of the respondent in respect of the appellant’s claim to have been trafficked for sexual exploitation, and failed to make findings on other material matters as set out in the grounds”.
6. In summary, it was the appellant’s case that she was the victim of loan sharks in Vietnam and was lured into travelling to the United Kingdom expecting to evade her creditors but found that she had been corrupted into sex trafficking. She worked as a prostitute for a time before eventually escaping.
7. The appellant’s grounds have five points. It is more helpful not to deal with them in the order in which they are written.
8. Ground 5 complains that the judge made unfair criticisms of the appellant’s legal representatives although whether the target of the criticism was the present or previous representatives is not entirely clear. Whilst we can understand solicitors being anxious to preserve their reputation, the criticisms are not material to the decision and we see no merit in engaging with ground 5 any further.
9. Ground 2 complains that the judge failed to take into account that the “respondent had made a Positive Reasonable Grounds Decision in relation

to the Appellant's claim to be a Victim of Trafficking for the purposes of sexual exploitation on 12 July 2018".

10. There was such a decision but the Competent Authority has subsequently decided that the appellant is not a victim of trafficking and although that decision is itself subject to challenge elsewhere, it is not important. As is well understood, a person claiming to be the victim of trafficking faces a two stage investigation by the Competent Authority. The first step is to decide if there is a sufficiently cogent case to be worth considering further, which is what happened in this case. If there is then the second step is to decide if the person is a victim. It is settled law that neither decisions in any way determined the findings that the Tribunal must make but the reasoning and conclusions of the Competent Authority may well be persuasive. It is also recognised that the initial decision that a person may have been the victim of sexual exploitation is no more than an indication that there is at least a very weak prima facie case worthy of further consideration. It is of extremely limited evidential value in an asylum and human rights appeal and failing to consider it expressly in the mix of the evidence here is not materially wrong. It was one weak strand of evidence amongst many.
11. Ground 4 is the one we find the easiest to resolve, and to resolve in the appellant's favour. The ground states:

"Further the judge failed to make any or any adequate finding about the indisputable facts supported by the medical evidence that the Appellant is missing a toe which is compelling evidence that the Appellant was tortured by the loan shark as she claims and could only be rejected on a reasoned basis. This is not a peripheral fact but a significant one that is consistent with her account of ill-treatment and therefore required a clear finding to be made on it."
12. We have no hesitation in agreeing that this is an important contention about which a clear finding should have been made but in fact no finding was made. It would be wrong to overstate the significance of the amputated toe. There has clearly been clinical attention after the amputation (or possibly at the time of amputation) so there is nothing about the injury itself which supports the claim that the amputation was traumatic and the result of torture. Nevertheless, the fact of the amputation (which is surely not in dispute) needed to be considered carefully with the rest of the evidence and particularly the appellant's evidence about how it came about. Failure to make any findings on this point is, we find, highly material. As will be explained below, this is a case where there are huge inconsistencies in the appellant's own account and it was therefore more than ordinarily important to make clear and thoughtful findings about the objective strands of evidence.
13. We just do not agree with Mr Melvin's written submission at paragraph 11 of his Rule 24 notice, repeated in oral submissions before us, that the missing toe is "one small part of claimed evidence is not sufficient to detract from the numerous adverse credibility aspects of the appellant's

appeal". It is direct evidence supporting the appellant's claim that she was mutilated which, if true, could be highly helpful to the appellant's case. This is a point that needed to be considered and determined. It is an irreparable error.

14. Grounds 1 and 3 can be considered together. Ground 1 complains at the judge improperly disregarded medical evidence that the appellant suffers from Post-Traumatic Stress Disorder, and ground 3 complains that the judge has dealt inadequately with the appellant's explanation for delaying her claim to have been trafficked.
15. The common thread in these two grounds (1 and 3) is that there is considerable learning to support the appellant's contention that people who have been victims of trafficking, which frequently involves the very worst kind of abuse, might find it difficult to discuss their experiences, even in a context of trying to ensure their own safety.
16. The grounds criticise the judge for not accepting that the appellant suffers from PTSD but it is not clear that that was her finding. However, the judge certainly did not accept that the PTSD prevented the appellant from giving a full account of her experiences (paragraph 87) and concluded that she was just not telling the truth. We do not follow the judge's reasoning on this point. There is clear expert medical evidence from apparently competent people that the appellant suffers from Post-Traumatic Stress Disorder. The suggestion that this is the result of the appellant's experiences in Vietnam or in Russia on her way to the United Kingdom was rejected by the judge who speculated that she was worried about the impending deportation. This is just speculation and is difficult to reconcile with the medical opinion that she is suffering from Post-Traumatic Stress Disorder, that is *trauma* caused by something that *has* happened, rather than worrying about something that is likely to happen in the future. We do not accept that the judge has given proper reasons for disregarding the possibility that the inconsistencies in the appellant's account are the consequences of stress and trauma, rather than the consequence of a dishonest mind. Given the lower standard of proof applicable to proceedings, it is particularly important that these findings are made properly.
17. For all the reasons we concluded that the decision is unsatisfactory in law because key findings have either not been made or not explained adequately. We therefore set aside the decision of the First-tier Tribunal.
18. The appeal will be decided in the Upper Tribunal. The parties are directed to send any updated material or evidence on which they seek to rely no later than fourteen days after the date of this decision (or such further time as may be ordered). The respondent is directed to consider if this is a case where the Tribunal should be considering Section 72 of the Nationality, Immigration and Asylum Act 2002 and if the appellant is precluded from protection against refoulement as a consequence of her criminal conviction.

Decision

The First-tier Tribunal erred in law. We set aside its decision and direct that the appeal be heard again in the Upper Tribunal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 February 2019

Signed
Mr Justice Waksman
Sitting as a Judge of the Upper Tribunal