



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

Appeal Number: PA/00358/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 20 August 2021**

**Decision & Reasons Promulgated
On 12 October 2021**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**TDL (VIETNAM)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Gordon Lee, instructed by Duncan Lewis Solicitors
For the Respondent: Toby Lindsay, Senior Presenting Officer

DECISION AND REASONS

1. On 9 December 2021, I issued a decision in which I found that the First-tier Tribunal had erred in law in dismissing the appellant's appeal. I set aside that decision in full and acceded to a request made by Mr Lee of counsel to retain the matter in the Upper Tribunal for remaking. A copy of my first decision is appended to this one.

Background

2. The appellant is a Vietnamese national who was born on 23 November 1995. He states that he was raised by his mother in Hanoi. He never knew his father. He was diagnosed with Autism Spectrum Disorder in Vietnam. He has memory problems and mental health difficulties.

3. The appellant entered the United Kingdom in October 2012. He held entry clearance as a Tier 4 (Child) Migrant, valid until 25 October 2015. He lived with a host family, as required by the terms of his leave to enter. His leave was curtailed on 4 May 2014 because he was not following the course of study at the international school in Torbay.
4. On 9 September 2015, the appellant was issued with a notice in which the respondent indicated that he was to be administratively removed. He and his mother – who had by that stage entered the UK herself – claimed asylum in October 2015.
5. The basis of the original claim for asylum is unclear and there are contradictory indications in the papers before me. In a report by a Consultant Psychiatrist (Dr Cullen) dated 8 May 2016, the appellant's mother is reported to have said that she was a senior consultant in the Vietnamese Foreign Office and a self-employed businesswoman. In a January 2016 letter from the Croydon Home Treatment team of the Maudsley, the basis of her claim was said to be that she had come into possession of a top secret directory containing details of government and party officials and she would be imprisoned by the secret police if she returned to Vietnam. In a Care Plan letter dated 20 May 2016, the basis of her claim was said to be that she was scared of her ex-husband.
6. The appellant has stated consistently that his relationship with his mother was a difficult one. That difficulty was caused or compounded by his autism and their mental health problems. When his mother arrived in the UK, she took him from the family with whom he was living in the West Country and they lived together in London with her then partner. That relationship broke down and the appellant and his mother lived in a refuge. They were supported by the Red Cross from that point.
7. The progression of the appellant's asylum claim was significantly delayed for reasons I will consider momentarily. During that period of delay, in May 2018, the appellant alleged to a support worker from the Red Cross that he had been abused by his mother. He was initially moved to emergency accommodation of his own and then to NASS accommodation in August 2018, and it seems that they, or at least their asylum claims, parted company at this point.
8. In February 2016, the appellant's solicitors wrote to the respondent, expressing concern about the appellant's capacity to provide instructions. The respondent was invited to delay consideration of the asylum claim until such time as the appellant had been assessed by a psychiatrist. The respondent agreed to postpone consideration of the asylum claim on that basis.
9. On 8 May 2016, a report was produced by Dr Con Cullen. He had seen the appellant on 15 April 2016. Also present at the interview were the appellant's mother and an interpreter. Dr Cullen had a letter of instruction from the appellant's solicitors, along with the appellant's medical records and his asylum application, such as it was at that point. Dr Cullen found no evidence of mental illness. He considered it

possible that the appellant might have autism. He noted that the appellant's claim for asylum was based on a fear of discrimination or physical violence due to his autism. Dr Cullen detected no short-term memory impairment in the appellant but he concluded that he had long-term memory difficulties. He felt that the appellant's complaints of headaches should be investigated by a neurologist. Having noted the appellant's history of suicide attempts (including an attempted overdose two months before he was seen by Dr Cullen), the doctor expressed the opinion that the appellant had a moderate to high risk of suicide irrespective of immigration matters.

10. As mental health concerns continued to be expressed by those who were supporting the appellant and his mother, the appellant's solicitors commissioned a second opinion by Professor Katona, whose expertise is well-known in this field. In an email dated 7 December 2017, Professor Katona suggested that another assessment was indeed required. He interviewed the appellant and a final report was produced on 10 July 2018. Professor Katona's report is lengthy but it suffices for present purposes to state that he considered the appellant to be suffering from Post-Traumatic Stress Disorder and secondary depressive symptoms and that the PTSD had been caused by traumatic experiences in Vietnam. He did not consider the appellant to be fit to be interviewed. Professor Katona also expressed the opinion that the appellant should have a full expert assessment for Autistic Spectrum Disorder ("ASD").
11. In light of the latter suggestion, the appellant's solicitors requested further time to commission a report from an expert in the field of autism. That report - written by Dr Gloria Dura-Villa on 7 December 2019, was provided to the respondent under cover of a letter dated 17 December 2019. Dr Dura-Villa concluded that the appellant met the DSM V-5 criteria for having level one ASD.
12. The appellant was not substantively interviewed by the respondent. The basis of his claims was taken from the medical evidence to which I have already referred and from the detailed statement and representations which were submitted to the respondent in November 2018. In his statement, the appellant stated that he suffered from serious memory problems and that he had difficulty answering questions. He detailed the support he had been receiving from the Red Cross and other agencies. He recounted the deterioration in his mother's mental health and the corresponding deterioration in their relationship. He had suffered in Vietnam as a result of his ASD and had been bullied at school. He had been diagnosed as a young boy and his mother had told him not to draw attention to himself or even to make eye contact with people. Even in the UK, he found that basic tasks such as cooking and washing took him much longer than other people.
13. The appellant detailed the basis upon which he was claiming asylum. He stated that he was a Christian and that he had attended the Thai Ha church in Hanoi. Once, when he was fourteen or fifteen, the appellant had been arrested by the police as he was leaving a Sunday church service. He had been held in a prison for a few days and fed only a bowl of rice every day. He had then been taken to an interrogation

toom and asked a lot of questions. During the questioning, he had been hit on the head and he fainted. He woke up in hospital and his mother was there. He had been in hospital for two weeks or so after this. When they returned home, the police had come to ask his mother questions on more than one occasion. This had worried his mother and she had decided that he should go to the UK to study. He remembered little of his life in Torbay or of what he had studied during his brief time at the international school there. His mother had moved him to London in June 2013. She had married a Vietnamese man in the UK in December 2014. Their relationship was physically and sexually violent. The police had become involved and he and his mother left the property in late 2015. His relationship with his mother had steadily deteriorated thereafter and she had very serious mental health problems. She had been physically and mentally abusive to him throughout his life. She had been admitted to hospital in June 2018. He had an overwhelming fear that she would treat him badly again if she was back in his life.

The Respondent's Decision

14. Having received Dr Dura-Vila's report, the respondent took a decision on the appellant's asylum claim swiftly. In her refusal letter of 31 December 2019, the respondent did not accept that the appellant was at risk of persecution in Vietnam for a Convention Reason because, although it was accepted that the appellant had an immutable characteristic (ASD) the group was not perceived as being different by the surrounding society: [22]. It was accepted that the appellant was Vietnamese: [23]-[25]. It was not accepted that the appellant had experienced any problems in Vietnam as a result of his religion. That claim was inconsistent with the background material and was internally inconsistent in various respects:[27]-[36]. The respondent concluded that the appellant would not be at risk as a result of his religion because Catholics were free to attend church: [38]-[41]. Nor did she accept that he was at risk of exploitation or trafficking because of measures which had been put in place by the Vietnamese government: [42]-[43]. The appellant would not need to live with his mother on return: [45].
15. The respondent did not consider the appellant to have an Article 8 ECHR claim under the Immigration Rules. In considering whether he would experience very significant obstacles to integration to Vietnam, she noted that he had spent most of his life in Vietnam and that he continued to speak the language. The skills he had learned in the UK would assist him to reintegrate: [58]-[64]. The respondent did not accept that there was a viable human rights claim outside the Immigration Rules. Although she noted what had been said by Dr Dura-Vila, she considered there to be support available for those suffering from ASD: [75]-[79]. Although she noted the concerns expressed by Professor Katona, she considered that the appellant had made progress whilst in the UK and she noted there to be help and support for those with mental health conditions in Vietnam: [80]-[86]. It was not accepted that the appellant would be at risk of suicide on return to Vietnam because he had no fear of return to that country and

because there were safeguards in place for those who presented with suicidal ideation: [87]-[91].

16. The appellant appealed to the First-tier Tribunal. Additional expert evidence was adduced before the First-tier Tribunal, in the form of a country expert report from Dr Tran Thi Lan Anh, who was previously employed in a senior position in the Vietnamese state before coming to the UK to undertake his legal studies. Dr Tran opined on the risk to the appellant as a Catholic; the risks to him as an individual with ASD; and the availability of state and other support for those with ASD.
17. As foreshadowed in my first decision in this appeal, the appellant applied to adduce further evidence in advance of the hearing before me on 20 August 2021. The request related to an updated report from Professor Katona and was unopposed by Mr Lindsay. Professor Katona saw the appellant (by video call) on 15 July 2021 and completed his report on 29 July 2021. His opinion was largely as before. He considered that the appellant had moderate depressive symptoms and PTSD which had been aggravated by his treatment at the hands of his mother and step-father, although it was his opinion that these experiences were insufficient to have caused the PTSD. Professor Katona also noted that the appellant's cognitive function had improved significantly since his first assessment, indicating that he was no longer likely to have a lifelong learning disability.

Submissions

18. Mr Lee indicated that the appellant would not be giving evidence. Although, by convention, it would therefore have been for Mr Lee to make his submissions first, Mr Lindsay volunteered to open with submissions for the respondent.
19. Mr Lindsay adopted the refusal letter and submitted that the appellant's account of events in Vietnam was not reasonably likely to be true. It was notable that Dr Tran had not expressed an opinion on whether the appellant's account was plausible. The point made in the refusal letter that the account seemed to be inconsistent with the background material was well made, as were the points about the inconsistencies in the appellant's account. It was significant that the appellant had told a clinician in 2015 that his head injury had been caused by playing basketball.
20. Mr Lindsay noted that Professor Katona had opined that the appellant's PTSD was not solely rooted in his ill-treatment at the hands of his mother. If the account of ill-treatment at the hands of the police was found to be incredible, therefore, the diagnosis of PTSD fell away. The appellant's account of his mental health problems should not be taken at its highest. Professor Katona had noted in his second report that the appellant's cognitive function had improved significantly, and he had concluded that this indicated that it was unlikely that the appellant was feigning. But the converse was equally plausible; that the appellant had been feigning for the first report and had failed to do so for the second. The appellant had claimed significant memory problems throughout, but it was equally plausible that he was merely seeking to

explain the difficulties in that account by reference to poor memory. It was notable that further investigations into the memory problems had been recommended but that there was no further evidence in this regard.

21. It was clear from the recent Katona report that the appellant had improved. The appellant's autism was at level one when he was assessed by Dr Dura Vila and it was doubtful that he now required the support which she had recommended in 2019. There was no evidence to show what support, if any, was being received in 2021. There was actually very little evidence of the appellant's current circumstances. It seemed from the Katona report that there had been no significant clinical input since October 2020.
22. It was accepted by the respondent that the appellant might face some discrimination in Vietnam as a result of his ASD. But he is not a child. The respondent did not positively submit that the appellant would find work and integrate within a reasonable space of time. She submitted that he had failed to discharge the burden upon him of demonstrating that he would not do so. Dr Tran had been concerned that the appellant would be at high risk of exploitation. The factual basis for that concern - the appellant's need for support - was absent at the date of the hearing. The appellant suffered from ASD, which was not a binary disorder. He had clearly improved, and this was not predicted by Dr Tran. There was no risk to the appellant and there was no basis in the Refugee Convention or the ECHR to allow his appeal.
23. Mr Lee relied on the short skeleton he had helpfully provided at the start of the hearing. He confirmed that he did not seek to submit that the appellant would be at risk on return to Vietnam on account of his Christian faith. On consideration of the background material, it was accepted that this was not a viable submission. In making that concession, however, Mr Lee made it clear that he made no concession about the truthfulness of the appellant's narrative. In that respect, it was overly simplistic of the respondent to suggest that the appellant's account was inconsistent with the background material. It was clear, even from the material set out in the refusal letter, that occasional incidents of significant faith-based violence occurred in Vietnam. The inconsistencies in the appellant's account came to nothing when his vulnerabilities are taken into account. He had given a perfectly feasible explanation for stating in 2015 that his head injury had happened during a game of basketball. Whilst the appellant did not submit that he would be at risk on account of his faith, the account that he gave of historical ill-treatment should nevertheless be accepted as reasonably likely to be true.
24. The key question, Mr Lee submitted, was how the appellant would respond to a return to Vietnam. The Katona report was important in answering that question but the Dura-Vila report was the key to the claims under Article 3 ECHR and paragraph 276ADE(1)(vi) of the Immigration Rules. Uppermost in the Tribunal's deliberations should be the conclusion reached by Dr Dura-Vila that the appellant's ASD symptoms would increase in the event of an involuntary return to Vietnam. This was a properly reasoned conclusion in a report from the

pre-eminent expert on the subject and the author had been correct to conclude that the appellant would be at high risk of destitution in the event of his removal. Dr Tran's conclusion – which was also cogently reasoned – was that the appellant would receive no support at all on return to Vietnam. Despite the progress he had made in the UK, he would be in no position to fend for himself in Vietnam with enhanced levels of ASD.

25. There was no proper basis, Mr Lee submitted, for a conclusion that the appellant was feigning his mental health conditions. There was a great deal of medical evidence in the papers and there were clear themes running throughout that evidence. It was highly speculative to suggest that the appellant was feigning and there were obviously long-term issues. The appellant would suffer ill-treatment and destitution on return to Vietnam as a result of those issues. His appeal should therefore be allowed under the Refugee Convention or the ECHR. In relation to paragraph 276ADE(1)(vi) of the Immigration Rules, Mr Lee submitted that the appellant's case was the paradigm of a person who would fail to integrate upon return.
26. At the conclusion of Mr Lee's submissions, Mr Lindsay indicated that he had been unable to locate the source of the suggestion that the appellant had stated that his head injury was due to a basketball injury. For his part, Mr Lee was content to accept that this had indeed been said in 2015 (since it was accepted in the appellant's statement) but he too was unaware of the source. (I have subsequently located the source of the statement, which is recorded at paragraph 4.2 of Professor Katona's first report.)
27. I reserved my decision at the end of the submissions.

Analysis

28. Although Mr Lee quite properly disavowed any suggestion that the appellant would be at risk on return to Vietnam as a Christian, it remains necessary to consider whether his accounts of police brutality at the Thai Ha Church in Hanoi in approximately 2010 are reasonably likely to be true.
29. The obvious starting point for that assessment, in my judgment, is to consider the appellant's faith. It is not in issue between the parties that the appellant is a Christian. Nor, realistically, could that have been placed in issue by Mr Lindsay. The extensive medical evidence in front of me makes repeated reference to the appellant being a Christian and attending church in Vietnam and the UK. I proceed on the same basis as the respondent, therefore, and accept that the appellant is a Christian, and was therefore a follower of minority religion in Vietnam.
30. The respondent's letter of refusal sets out the regulated environment in which religious groups operate in Vietnam. It notes that a new law was passed in 2016 which would allow citizens to practise their religion more freely. This regulated but generally permissive environment is also not in issue between the parties and, as I have noted, Mr Lee did

not seek to submit that Christians (including Catholics) are generally at risk in Vietnam.

31. Despite that environment, it is clear from the material set out by the respondent and by Dr Tran that there is occasional tension between religious communities and the Vietnamese authorities. One example of this type of friction is detailed at page 7 of the refusal letter:

On July 30, 2011, Vietnamese police detained three Catholic activists in Ho Chi Minh City as they returned from abroad. Over the next three weeks, police arrested an additional twelve Catholic lay activists and bloggers from Vinh. Ten have been charged with violating Criminal Code Article 79, subversion of the administration, which can carry a sentence of 15 years to life. According to their lawyer, they were arrested for protesting appropriation of land from Thai Ha parish, circulating a petition online to free legal rights activist Cu Huy Ha Vu and against the government-run Bauxite mining project.

On November 3, 2011, an estimated 100 police and military assaulted the Thai Ha church and monastery, smashing the monastery's doors, intimidating parishioners with dogs, and reportedly beating several priests and resident monks. On December 2, police detained two priests and about 34 parishioners from Thai Ha who peacefully protested violence against their church. They were held in the city's rehabilitation center for prostitutes before being released. Government-run media continue to vilify members of the Thai Ha parish.

32. The key to understanding these passages is what is said by Dr Tran at 1.9 of his report. The state might view Catholics with a degree of suspicion but they are not targeted by the state for reason of their religion alone. What causes the authorities to take action against a particular religious community is the expression of dissent against the state or hostility to the Communist Party. What angered the state in the case of the Thai Ha church (which was the church attended by the appellant) was that it had protested against the appropriation of land from the church for a government-run Bauxite mining project. The United States Commission on International Freedom report of March 2012, from which the two paragraphs above were taken, indicates that these tensions had been ongoing since 2008 and that the relationship between the Vietnamese government and the Redemptorist Order (of which the Thai Ha Church is a part) continued to be tense in March 2012.
33. In light of the background material set out by the respondent and Dr Tran, I do not accept the submission made in the refusal letter and by Mr Lindsay that the appellant's account of being arrested outside the Thai Ha Church in Hanoi in the period 2009-2010 is implausible. On the contrary, it seems entirely plausible that a member of the church would have been arrested, detained and ill-treated by the police as a result of the ongoing tension.

34. The respondent also submits that the appellant's account has been inconsistent in various respects. The points taken at [33]-[34] of the refusal letter are extremely weak. It was said at [33] that the appellant said at one point of his witness statement that he thought he had been in hospital for two weeks, whereas at another point in his statement he said that he had not counted the days as he was too tired. There is no inconsistency here; the appellant did not state in the first version that he was definitely in hospital for two weeks; it was expressed as an estimate, and the fact that he did not count the days only serves to reinforce the fact that he was attempting an estimate.
35. At [34], the respondent found it inconsistent that the appellant had at one point said that he could not remember what had happened after he had returned home, whereas he had stated in another part of his statement that the police had come to the house. The latter contention appears to misunderstand the appellant's statement, in which he explained that his mother had told him that the police had come to the house; he did not claim to have any personal memory of those events.
36. I was more concerned by the point taken at [35] of the refusal letter, in which the respondent noted that the appellant had told a doctor in 2015 that his head injury had occurred when he had been playing basketball, and not when he was assaulted by the authorities in detention. As I have recorded above, the first mention of the basketball injury is not before me but Professor Katona, who had access to the appellant's full medical records, attributed it to a Trainee Ophthalmologist who had examined the appellant in July 2015 and had recorded that the appellant had suffered 'Right head injury 5 years ago while playing basketball - required scalp sutures' and that he had had 'right neurosurgery several months after injury - ? blood clot'.
37. I was also concerned by the absence of any reference in Dr Cullen's report to the appellant having been arrested at the Thai Ha Church, as I was by the fact that the appellant and his mother did not claim asylum until after they had been served with notices of intended removal in 2015.
38. In the final analysis, however, I have concluded that the events described by the appellant in Vietnam are reasonably likely to be true. He has provided a plausible explanation for the account he gave to the ophthalmologist in 2015, which was that he was wary of the interpreter and did not want to reveal the real reason that he had received hospital treatment in Vietnam. The appellant had not claimed asylum at that point and was in the UK unlawfully. It is plausible that he (and his mother) would be reticent about disclosing such matters in the presence of another Vietnamese person.
39. Above all, however, the prism through which these difficulties with the appellant's account must be viewed is that he suffered the events in Vietnam as a child and that he and his mother have clear and well-documented mental health problems. In addition to the appellant's diagnosis of ASD (which is not contested by the respondent), it is quite

clear from the range of medical evidence before me that the appellant has suffered with serious memory problems for some time. There is no proper basis for any suspicion that these problems have been feigned for many years, given the consistent expression of concerns by a range of physicians, even outside the context of the appellant's protection claim. I also note that the appellant's mother has suffered with such serious mental health problems that she has on occasion been admitted to hospital. The most recent such admission which is documented in the papers was in 2018, when she was admitted following a suicide attempt, which was not her first.

40. Making due allowance for the matters above in accordance with the Joint Presidential Guidance Note No 2 of 2010, I do not find that the late disclosure and inconsistencies in the appellant's account detract from it. I also take account of Professor Katona's report and find that his carefully-framed diagnosis of PTSD lends some support to the appellant's claims. Professor Katona is pre-eminent in his field and his reports have been considered in many reported decisions without, to my knowledge, any criticism of his methodology. In his first report on the appellant, Professor Katona explained why he considered the appellant to be suffering from PTSD specifically because of the events which had occurred in Vietnam. He stated in essence that the appellant continues to suffer from intrusive thoughts and nightmares which relate to what happened in Vietnam (paragraph 6.7 of the report refers). Whilst the assessment of credibility is necessarily a matter for me, I take into account that Professor Katona considered the appellant's presentation in 2018 to be clinically consistent with what his account of what happened to him in approximately 2010.
41. In many cases, a tribunal such as this might be concerned that an appellant had decided to 'swing the lead' (to use Mr Lee's expression) by researching the symptoms of PTSD and regurgitating those to a doctor so as to secure a diagnosis of PTSD in support of their asylum claim. That is inherently unlikely in this case, for two reasons. The *first* is that Professor Katona explained quite clearly why he did not consider the appellant to be feigning his symptoms. That explanation included the observation that there were occasions when the appellant disassociated from the session and that he suffered from a phenomenon called 'dissociative amnesia', as a result of which the details of what happened to him were only revealed with some difficulty. The *second* point arises as a result of the report of Dr Dura-Vila, who noted that the appellant had difficulty in 'creative and make-believe actions' and that he 'struggled with other tasks which drew on imagination' as a result of his autism: paragraphs 14.2 and 14.3 of the report refer. I consider it inherently unlikely that a young man with these difficulties would be able to manufacture the range of difficulties described to Professor Katona and to 'hoodwink' an expert with his considerable experience.
42. I therefore find on the lower standard that the appellant was arrested, detained and seriously assaulted by the Vietnamese authorities in approximately 2010. I accept that he was assaulted so seriously that he required neurosurgery in Vietnam. I accept that he suffers with PTSD and depression, both of which have their origin in the treatment

suffered by the appellant before he came to the UK. Those conclusions serve to inform my assessment of what was said by both advocates to be the key question in this case, of how the appellant will fare upon return to Vietnam. In order to answer that question, it is necessary to return to Dr Dura-Vila's report.

43. Mr Lee described Dr Dura-Vila as pre-eminent in her field. Mr Lindsay did not seek to submit otherwise and any such submission would not have been open to him. She is a Consultant Child and Adolescent Psychiatrist and Medical Lead of the Autism Spectrum Disorder Pathway at Surrey and Borders Partnership NHS Trust. She has published three books on the subject and several articles in peer-reviewed journals.
44. Dr Dura-Vila explains in her report that modern medicine has moved away from attempting to label the different levels of autism with terms such as 'high-functioning', in favour of using a spectrum to describe the level of autism experienced by an individual. There are three levels, of which level one is the least severe. Dr Dura-Vila concluded that the appellant's ASD fell under Level 1 - Requiring Support. The internationally-recognised DSM -V defines that level in the following way (which I take from Dr Dura-Vila's paragraph 16.2.2):

Without supports in place, deficits in social communication cause noticeable impairments. Difficulty initiating social interactions, and clear examples of atypical or unsuccessful response to social overtures of others. May appear to have decreased interest in social interactions. For example, a person who is able to speak in full sentences and engages in communication but whose to- and-fro conversation with others fails, and whose attempts to make friends are odd and typically unsuccessful. Inflexibility of behaviour causes significant interference with functioning in one or more contexts. Difficulty switching between activities. Problems of organization and planning hamper independence.

45. The appellant's particular difficulties, as noted by Dr Dura-Vila in her report, include the following: he struggles to provide sequenced information and to understand the reciprocal nature of conversations and social interactions; he finds it exhausting to interact with others; he lacks creativity and struggles with tasks which rely on imagination; he struggles with bold colours and loud noises and has significant sensory needs. Balanced against this, Dr Dura-Vila noted that the appellant had a number of strengths, including the fact that he was able to manage his own money; that he had a 'lovely' sense of humour; and that he was able to follow a part-time evening course in politics at Birkbeck.
46. In his attractive submissions on behalf of the respondent, Mr Lindsay submitted that the appellant had failed to establish that he would experience significant difficulties on return to Vietnam. He noted (without demur from Mr Lee) that there was no evidence before the Tribunal to show that the appellant was currently receiving any support for his autism. He also noted what had been said by Professor Katona

about the significant improvement in the appellant's cognitive abilities since his first assessment.

47. Whilst these submissions were attractively made, I accept the submission made in response by Mr Lee, which was that the respondent was not comparing like with like when she sought to submit that the appellant would manage in Vietnam as he is managing in the UK. Even if the appellant is currently receiving no ASD support in the UK (and there is nothing beyond October 2020 to suggest that he is), the fact remains that he has a settled routine and a familiar environment in the UK. The reports show that he has a friend called Ibrahim, that he has lived in the same place for some time, and that is able to budget the money he is given by way of NASS support. What is under contemplation in this appeal is not the continuation of that familiar environment and routine in a different country but the wholesale interruption of it. Asked to comment on what would happen to the appellant in the event of his removal, Dr Dura-Vila opined as follows:

16.7.1 As I have stated above, in my professional opinion, [the appellant's] ASD currently falls under Level 1 - Requiring Support with his current level of support. However, it is important to remember that the functioning level of an individual on the Autism Spectrum can significantly improve with the right support; conversely, the functioning level can also deteriorate with adverse events, for example with transitions, higher demands and expectations being placed on the individual or with the appearance of a mental health problem.

16.7.2 In my professional opinion, his removal to Vietnam will lead to a dramatic deterioration of his mental health and his ASD severity level will consequently increase. [The appellant] told me about the stigma that people with ASD face in Vietnam and how when he was living there he was condemned to a life of trying to mask his difficulties associated with AD at great expense to his mental health. He provided convincing examples of how he was forced to camouflage his difficulties to avoid not only stigma but also aggression from others. In order to protect himself, he was asked by his mother to look 'normal'. For example, as he is unable to modulate his eye contact and has a tendency to stare intensely at people, he was asked by his mother to walk around looking down as others would hit him if he overtly stared at them.

48. There is nothing in the evidence before me which suggests that this opinion was wrong when it was expressed or that subsequent events cast doubt on its ongoing correctness. Even if the appellant's cognitive abilities have improved since he was first seen by Professor Katona and even if he is able to survive in the UK without much - or any - support for his ASD, I accept that the appellant's removal to Vietnam at today's date would still lead to a dramatic deterioration in his mental health and an increase in the severity of his ASD. That is precisely the sort of

transition of which Dr Dura-Vila spoke in her 16.7.1 as potentially resulting in a deterioration in functioning level. It is highly relevant, in considering that likely deterioration, that the appellant would be returning to a country in which he has no support mechanism and in which he has previously suffered not only years of societal abuse but also ill-treatment at the hands of the authorities. On the basis of the expert evidence before me, I accept that the appellant's mental health and ASD levels would increase significantly in the event of a removal to Vietnam and that he would require careful support in order to prevent the suffering thereby occasioned to result in a breach of Article 3 ECHR.

49. As will be apparent from my summary of Mr Lindsay's submissions above, the submissions he made for the respondent rested on the premise that the appellant's condition was no longer severe and that his removal would not therefore breach the UK's international obligations. He made no positive submission that there were mechanisms in place in Vietnam to support and protect an individual such as the appellant. He was correct not to attempt that submission. Having considered Dr Tran's report, it is quite clear to me that the social protection centres to which the respondent referred in the refusal letter would not cater for a person in the appellant's position because his conditions, whilst undoubtedly serious from a Western perspective, would not be viewed as such in Vietnam (paragraph 2.4 of Dr Tran's report refers). I accept Dr Tran's opinion, expressed in the subsequent paragraph, that it is 'very unlikely' that the appellant would qualify for support from one of these centres. It is also notable that ASD is not recognised as one of the five specific groups of disability covered in Vietnam's Law on Persons with Disabilities, as Dr Tran also explains in his report. What support does exist is therefore provided by NGOs, who have what Dr Tran describes as limited capacity.
50. In considering whether these NGOs would provide any assistance for the appellant within their limited capacity, it is relevant that the appellant has no one in Vietnam who can signpost him to these organisations or to make out his case for assistance. His mother is in the UK and is in poor health herself. He never knew his father or his other family members and any other connections he might have had to Vietnam when he came to the UK in 2012 have, I accept, ceased to exist. It would be for the appellant, in the midst of heightened ASD levels and worsening mental health, to attempt to locate these NGOs and to persuade them that he is deserving of their assistance. On the basis of Dr Tran's evidence and the absence of any contrary assertions by the respondent, I do not consider that the appellant would be able to navigate his way to securing support from an NGO.
51. On the basis of these foreseeable consequences of removal, I accept Mr Lee's submission that the appellant presents the paradigm case of an individual who can satisfy paragraph 276ADE(1)(vi) of the Immigration Rules. Given the situation in which he will find himself in Vietnam, I accept that he will experience very significant obstacles to his re-integration to his country of nationality. Because of his ASD and his mental health problems, all of which will foreseeably worsen upon

removal, he is unlikely to be able to operate on a day-to-day basis in Vietnam and to build up within a reasonable time a variety of human relationships there. Applying the test in the Immigration Rules as construed in SSH D v Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152, I find that the appellant satisfies the demanding threshold in paragraph 276ADE(1)(v) and that his appeal must be allowed on Article 8 ECHR grounds due to the satisfaction of the Rules.

52. I also find that the appellant would be positively at risk on return to Vietnam and that the Vietnamese state has inadequate mechanisms in place to provide this particular appellant with a sufficiency of protection. The risk flows from the circumstances in which the appellant will find himself on return to Vietnam. With increased ASD, worsened mental health and a lack of appropriate support to ameliorate those difficulties, the appellant will find himself in an extremely vulnerable position. Dr Tran's opinion was that a young man in these circumstances would be at 'very high risk of exploitation and human trafficking.' In reaching that conclusion, Dr Tran drew on the respondent's 2018 Country Information and Policy Note., which includes the following amongst the factors which are likely to increase the risk of being abused or trafficked:

- The person having no other support network to assist them and material and financial deprivation such as to mean that they will be living in poverty or in conditions of destitution
- No or little education or vocational skills
- Mental health conditions, which may have been caused by experiences of abuse when originally trafficked

53. Whilst the appellant has not previously been trafficked, the logic behind each of these risk factors applies squarely to him. In my judgment, he will be utterly bereft upon return to Vietnam. He will have no means of support, significant mental health problems and no skills or experience on which he can draw to support himself. It is, frankly, difficult to imagine a young man who fits more squarely into the risk profile of those who are vulnerable to trafficking and exploitation. Drawing on Dr Tran's report, I consider that there is at least a reasonable likelihood that the appellant would be subjected to trafficking or exploitation on return to Vietnam. That risk engages Article 3 ECHR quite separately from the obvious risks of mental health collapse and destitution which also exist in this case.

54. Despite the material cited by the respondent in the refusal letter, I do not consider there to be a sufficiency of protection from these risks for this particular appellant. The refusal letter cited the rather tentative conclusions of the Upper Tribunal in Nguyen (Anti-Trafficking Convention: respondent's duties) [2015] UKUT 170 (IAC). That was not a country guidance decision on the question of sufficiency of protection (or, for that matter, on the risk of trafficking) but the Upper Tribunal did conclude that there was 'evidence to support' the respondent's conclusion that there was a sufficiency of protection for that appellant. As the respondent states at 2.5.5 of the refusal letter, that finding was largely based on the 2010 US Department of State Human Rights

Report. The report actually stated that the government of Vietnam 'did not make sufficient efforts' to protect victims of trafficking during the year. The same paragraph of the refusal letter goes on to state that efforts to protect victims actually decreased subsequently. The bleak picture which emerges from the refusal letter chimes with the views expressed in part 4 of Dr Tran's report. There is no other material before me which could justify any conclusion other than one that this particular appellant - with his constellation of vulnerabilities - would not receive sufficient protection against the pervasive risk of trafficking and exploitation in Vietnam.

55. It remains for me to consider whether the risk which I have accepted to exist in the preceding paragraphs engages the Refugee Convention. It was accepted in the refusal letter that those with ASD share an immutable characteristic. That is necessarily the case and I need say no more about it. The respondent did not accept that those with ASD in Vietnam had a distinct identity and were perceived as being different by the surrounding society. The respondent did not accept, therefore, that the Particular Social Group relied upon by the appellant engaged the Convention due to its failure to satisfy the second limb of the test in regulation 6(1)(d)(ii) of the Refugee or Person in Need of International Protection Regulations 2006.
56. With reference to the appellant's own evidence, supported as it is by what is said by Dr Tran at Part 6 of his report, I disagree with the respondent's conclusion in this regard. The appellant has explained how he was discriminated against in Vietnam as a result of his ASD. It seems that his tendency to stare at people (as also noted by Dr Dura-Vila) caused particular difficulties, such that his mother required him to change his behaviour to mask the traits associated with his ASD. Dr Tran confirms in his report that people with ASD do suffer from social stigma in Vietnam. In the circumstances, the appellant clearly belongs to a particular social group which is perceived as being different in Vietnam. He would be at risk of exploitation and trafficking on return to Vietnam for reasons of his membership of that group and he is entitled to succeed on Refugee Convention grounds accordingly.

Notice of Decision

The decision of the FtT having been set aside, the decision on the appeal is remade as follows. The appeal is allowed on Refugee Convention and ECHR grounds.

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.

M.J.Blundell

Appeal Number: PA/00358/2020

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 September 2021