

## IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 1 November 2004

Date Determination notified:

.17<sup>th</sup> December 2004

Before:

Dr H H Storey (Vice President)

Mr P Bompas

Mr S S Percy

Secretary of State for the Home Department

**APPELLANT**

and

**RESPONDENT**

### Representatives

Ms K Amos, Home Office Presenting Officer, appeared for the appellant; Mr H Sadiq Solicitors of Tahirs Solicitors appeared for the respondent.

## DETERMINATION AND REASONS

1. The appellant, the Secretary of State, has appealed with leave of the Tribunal against a determination of Adjudicator, Mr P W Cruthers, allowing on Article 3 grounds only the appeal of the respondent, a national of Vietnam, against the decision to give directions for removal following refusal to grant asylum. To avoid confusion the respondent is hereafter referred to as the “claimant”.
2. The Adjudicator accepted that the claimant would face a real risk of serious harm in her home area of Binh Bien at the hands of gangs demanding repayments of loans made to her husband. He further concluded that if the claimant relocated there would be no real risk these gangs, being local, would be able to threaten her in other parts of

Vietnam. He nevertheless allowed the appeal on Article 3 grounds since he considered firstly that the claimant would face difficulties as a single mother with a baby and two young children – he emphasised that such a person would face societal lack of protection – and secondly that the claimant's children would experience difficulties accessing education.

3. The grounds of appeal contended that the Adjudicator erred in law in his assessment of the internal relocation issue. This was firstly because the objective evidence in its entirety did not bear out that a single mother would face systematic discrimination or harassment and secondly because the Adjudicator failed to state why the difficulties the claimant would face in accessing education would cross the threshold of severity and amount to a breach of Article 3.
4. We would accept that the Adjudicator did not appear to consider the objective evidence in its entirety in assessing the consequences for the appellant of relocating as a single mother with a baby and two young children. Certainly he should have made clearer how he correlated this finding with his earlier observation at paragraph 32 that: “Regarding persecution of an illegitimate child, issue of a single mother, the Vietnam Committee of Human Rights holds that there would be no systematic discrimination or harassment ...” However, we do not consider that this shortcoming on its own disclosed any error of law, since it was open to him to read the objective evidence as distinguishing between the problems a single mother would face as a result of having an illegitimate child and the problems she would have more generally, when compared to two parent families with whom she would have to compete for scarce resources. We do have a further criticism of the Adjudicator's treatment of this issue, but that is best dealt with below when considering his general approach in internal relocation.
5. Turning to the second main ground of appeal, we consider that the Secretary of State is right to say that the Adjudicator's findings on the question of internal relocation generally disclose a material error of law. Although he made reference to two leading Court of Appeal judgments on internal relocation (*Robinson* [1998] QB 929 and *Karanakaran* [2003] 3 All ER 449) and one of the leading Strasbourg judgments on the same topic (*Hilal v UK* [2001] 33 EHRR 31, ECHR), he nowhere appeared to apply the relevant test established in those cases, that of whether relocation would be “unduly harsh” for a claimant or whether, in the language of *Hilal v UK* it would offer a “reliable guarantee against the risk of ill-treatment” (paragraph 68). The Adjudicator appeared to find the refugee definition and the Article 3 threshold satisfied simply by virtue of the existence of “difficulties”.

In our view this was not a case in which there was evidence that “difficulties” facing the person would amount to serious harm or and undue difficulties.

6. Mr Sadiq sought to submit that we should infer from the Adjudicator’s reference to the test of reasonableness in paragraphs 49 and 53 that he had applied a serious harm or undue hardship test. We cannot accept this. Detached from any reference to Article 3 the reasonableness test applied by the Adjudicator simply appears to be synonymous with his reference to “difficulties”.
7. In relation to the evidence which was before the Adjudicator concerning single mothers, even if it showed single women would face problems of protection, it did not establish that the harassment they would face from the authorities or non-state actors would amount to serious harm or treatment contrary to Article 3.
8. On the evidence which was before the Adjudicator, there was also nothing to show that children of single mothers or other persons who relocate would be wholly denied education. At paragraph 30 he noted that documentation through the ho khau system in operation in Vietnam was necessary for all administrative processes, such as education, work, admission to hospital etc. However, there was no evidence before him to show that the claimant would be prevented from registering under the ho khau system. Hence there was no proper basis for considering she would not be able to renew her identity card. Furthermore, even if there had been evidence that this claimant would be forced to relocate outside this system, the Adjudicator had himself noted at paragraph 33 that, whatever the official position and notwithstanding that moving without permission restricted the ability of individuals to obtain legal residence permits, in practice many continued to move without approval, especially migrant or itinerant labourers moving from rural areas to cities in search of work. There was also no evidence to show that in general the children of persons who in this way live an unregistered existence do not in practice receive education from some source.
9. On the basis that we have identified a material error of law in the Adjudicator's determination we shall go on to consider the evidence for ourselves. It seems to us relevant in this case that Vietnam is a country with a large population (over 80 million, not “8.14 million” as stated by him reporting a Home Office submission in paragraph 15). Furthermore, whilst the objective materials do indicate that single mothers would face difficulties in relocating, these would not cross the threshold of undue hardship or treatment contrary to Article 3.

10. For the above reasons the appeal of the Secretary of State is allowed.

**DR H H STOREY  
VICE PRESIDENT**