



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

Appeal Number: IA/03916/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 13th September 2013

**Determination
Promulgated**

On 9th October 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

QUOC TUAN TRAN

Respondent

Representation:

For the Appellant: Mr D Grand

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Dickson made following a hearing at Bradford on 7th March 2013.
2. The claimant is a citizen of Vietnam born on 19th February 1982. He arrived in the United Kingdom illegally in August 2003, was arrested by

immigration officials as a suspected illegal entrant in the UK in 2007 and served with notice of his liability to detention and removal. On 27th October 2011 he submitted an application for leave to remain in the UK which was refused on 16th January 2012. He then submitted two further applications for leave to remain as the spouse of a settled person which were both refused on 5th December 2012. Finally he made an application on the basis that his removal would breach the UK's obligations under Article 8 of the ECHR, which was refused on 22nd January 2013, and the subject of the appeal before Judge Dickson.

3. The claimant and his wife met each other in June 2004 and have lived together since September 2004. She is a British citizen who works in the UK. She suffers from a congenital disorder as a consequence of her father's exposure to the agent Orange.
4. The judge made a number of detailed findings of fact, accepting that the claimant was married and in a genuine relationship and that he lived with his wife in Lincolnshire. He concluded that removal would be disproportionate.

The Grounds of Application

5. The Secretary of State appealed on the basis that the judge had given insufficient reasons for finding that the claimant was in a genuine and subsisting marriage. In the alternative, even if the relationship was genuine, the claimant was aware that his immigration status was precarious and whilst his partner states that she has medical problems there is no evidence that she could not obtain medical assistance in Vietnam. Had the judge placed more weight on the negative credibility points identified in the determination, on balance he would have reached a different conclusion.
6. Permission to appeal was granted by Judge Landes on 16th April 2013.
7. The claimant served a Rule 24 response defending the determination.

Submissions

8. Mr Diwnycz did not pursue his grounds with any vigour at all. He accepted that they amounted to a disagreement with the decision.

Findings and Conclusions

9. The reasons for refusal letter accepts that the claimant is in a genuine subsisting relationship with his wife.
10. The two remaining grounds are merely trying to re-argue the Secretary of State's case. The judge did make a number of adverse findings in the context of his consideration of whether the claimant could meet the requirements of the Rules with respect to Article 8, and his findings are set

out in a slightly confusing way. However, on analysis, and as Mr Diwnycz properly acknowledged, there is nothing in them.

11. It was open to the judge to conclude that removal would be disproportionate for the reasons which he gave.

Decision

12. The judge did not err in law. The Secretary of State's appeal is dismissed and the claimant's appeal allowed.

Signed

Date

Upper Tribunal Judge Taylor