



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01664/2017**

THE IMMIGRATION ACTS

**Heard at Field House
On 4 October 2017**

**Decision & Reasons Promulgated
On 5 October 2017**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[H P]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr A A Khan, Counsel (instructed by Thompson & Co, Solicitors)

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Pickup on 7 August 2017 against the decision and reasons of First-tier Tribunal Judge Farelly who had allowed the Appellant's protection and human rights appeal. The decision and reasons was promulgated on 30 March 2016.

2. The Respondent is a national of Vietnam. As recorded by the trial judge at [10] of his decision and reasons, the Appellant accepted that the Respondent had taken part in an environmental protest on 8 May 2016 as well as an earlier demonstration, as was his account of having been arrested and abused. His protection claim had been refused on the basis that he had not been singled out from 200 protesters and would have been released earlier but for his refusal to sign a form of admission. The Appellant had claimed he was a political activist, following his father's footsteps, and had been active politically since his arrival in the United Kingdom. The judge found that the Appellant was not "particularly high profile", but was active albeit at a lower level. He was in effect genuine in his political commitment and would continue his activities and thus be at real risk on return. (The country background evidence concerning the lack of freedom and government oppression in Vietnam was not in dispute.)
3. Permission to appeal was granted to the Secretary of State by Judge Pickup because he considered that the judge had arguably erred by failing to give sufficient reasons for his decision, and had further erred by relying on a contentious and misconceived interpretation of HJ (Iran) [2010] UKSC 31.
4. Standard directions were made by the tribunal. A rule 24 notice contesting that there was a material error of law was filed by the Respondent, dated 20 September 2017.

Submissions

5. Mr Tarlow for the Appellant relied on the grounds of appeal and the grant of permission to appeal. He submitted agreed that the judge's approach had in effect been back to front. HJ (Iran) [2010] UKSC 31 was misunderstood. This was an appeal about political opinion and the Appellant was of no interest to the authorities. Moreover, internal relocation had not been considered at it ought to have been. The onwards appeal should be allowed and the original appeal reheard by another judge in the First-tier Tribunal.
6. Mr Khan for the Respondent submitted that the Secretary of State's appeal was misconceived and should be dismissed. The reality as the judge had noted was that there were no credibility issues to decide. The judge had to examine where the facts accepted by the Secretary of State took the appeal. The only issue to decide was future risk, which had been resolved in the Respondent's favour with adequate reasons. The HJ (Iran) query took the onwards appeal no further, and could not be a material error of law given the other findings.

Discussion – error of law

7. The tribunal accepts the submissions made by Mr Khan. The HJ (Iran) point taken on behalf of the Secretary of State is something of a red herring. The judge was required to determine the appeal effectively on the basis of agreed facts, as he recorded. There was no dispute that the current government of Vietnam is oppressive: see [17] of the decision and reasons where the judge noted the Home Office policy, including severe government restrictions on political rights and a nationwide crackdown on human rights activists. There were no credibility issues as such. Internal relocation did not arise for the judge's decision as the Respondent was found genuine in his commitment and so would continue his political activities and be at risk throughout Vietnam.
8. The judge's reference to HJ (Iran) seems to have been part of his consideration of whether or not the Appellant would continue to engage in political activism. This possibly was not an ideal approach. The reference to HJ (Iran) is confusing and unnecessary and it tended to invite an application for permission to appeal. It would have strengthened and clarified the decision if the judge had simply stated that on the basis of the Appellant's past record and his oral evidence, he accepted that the Appellant was a committed activist from an activist family who would continue his political activities. Although those activities were low level, they were sufficient to establish a real risk on return. In the tribunal's judgment, that was what the judge meant, as [21] of the decision shows.
9. The tribunal adds that this was a plain case, where the judge's conclusions were almost inevitable, given the concessions made by the Secretary of State and the undisputed country background evidence. Any error of law over HJ (Iran)'s relevance was immaterial.

DECISION

The onwards appeal is dismissed

The original decision and reasons stands unchanged

Signed

Dated 4 October 2017

Deputy Upper Tribunal Judge Manuell

