



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

Appeal Number: PA/07901/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 9 November 2017**

**Decision & Reasons Promulgated
On 29 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**TVN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A H Khan of Counsel

For the Respondent: Mr P Nath a Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.
2. The appellant is a citizen of Vietnam whose date of birth is [] 1998. The appellant had applied for asylum in the UK and his claim was refused by

the Secretary of State by way of a decision made on 25 November 2014. The appellant was issued with discretionary leave as an unaccompanied minor from 25 November 2014 to 12 March 2016. Before the expiry of that leave he lodged an appeal against the refusal of the asylum claim on 15 December 2014 which was dismissed by the First-tier Tribunal on 25 March 2015. His applications for permission to appeal against that decision were refused by the first and upper-tier Tribunals.

3. The appellant made a further application for leave to remain on 11 March 2016. That was deemed to be an asylum claim. This was refused by the respondent on 11 July 2016 and it is against that decision that the appellant appealed to the First-tier Tribunal and it is that Tribunal's decision that is appealed to this Tribunal.

The appeal to the First-tier Tribunal

4. In a decision promulgated on 13 March 2017 First-tier Tribunal Judge Andonian dismissed the appellant's appeal. The First-tier Tribunal found that the appellant would not be at risk of persecution on return to Vietnam. The appellant applied for permission to appeal against that decision to the Upper Tribunal. On 31 July 2017 First-tier Tribunal Judge Lambert refused to grant permission to appeal. The appellant renewed his application for permission to appeal to the Upper Tribunal and on 15 September 2017 Upper Tribunal Judge Kamara granted the appellant permission to appeal.

The hearing before the Upper Tribunal

5. The grounds of appeal are that the First-tier Tribunal failed to resolve a material issue in the appeal. The judge has failed to consider the appellant's evidence with regard to his political opinion, his attendance at demonstrations in the United Kingdom and his prior political activities in Vietnam (which form the core of the appellant's claim). This evidence has not been dealt with by the judge as the focus is solely on religious persecution. It is asserted that the judge has failed to make an assessment of whether the appellant will continue to express his political opinion in the same manner in which he did before if he were to be returned to Vietnam. The assessment of risk on return focuses solely on religious persecution and is silent on the matter of how the appellant would behave on return to Vietnam, despite his evidence being he would continue to express anti-Government views, reference is made to the appellant's witness statement at paragraph 17.
6. Ground 2 asserts that the judge failed to consider objective evidence. The judge makes no reference to the objective evidence pertaining to political opponents in Vietnam despite that evidence being contained at pages 79 to 98 of the appellant's bundle. It is a finding of fact, as per the principles of **Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702** that the appellant participated in demonstrations, distributed leaflets at the demonstrations and was

arrested and detained as a result. In addition it is the appellant's account that he would continue to express his political opinions on return to Vietnam. The respondent's country policy information note on political opponents was updated in November 2016 after the first determination of Immigration Judge Cameron. Therefore that any findings with regard to the appellant's risk on return on the basis of his political beliefs need to be considered in light of the current objective evidence which indicates that conditions are worsening for such individuals. The judge's finding at paragraph 20 that "The appellant had not expressed any extreme or activist views in relation to either political or religious matters" is flawed. There is nothing in the objective evidence that indicates that risk on return is limited to those with extreme views. The policy summary states:

"Vietnam actively suppresses political dissent. Those who criticise the Government or who use the internet to publish ideas on Government policies, political pluralism and human rights or who otherwise express views which are seen as posing a threat to the Government or communist party of Vietnam are at risk of arbitrary arrest and detention on account of their political opinion".

7. Mr Khan submitted that there is no evidence that the judge has considered the witness statement of the appellant made on 20 February 2017. The only reference in the decision was to the witness statement made in 2016. The judge has ignored this statement and has not engaged with the political aspects apart from a brief mention at paragraph 6 which refers to the earlier statement and the photographs that were in the bundle. He submitted that the appellant is a political activist and that this is the substantial part of his claim for asylum. He has developed a resentment whilst in the UK with regard to the political situation in Vietnam, and as indicated in his evidence he would not be entitled to the same political rights in Vietnam as he has in the United Kingdom.
8. Mr Nath referred to paragraph 20 of the First-tier Tribunal's decision and submitted that the view reached by the judge was open to him. He referred to paragraph 31 of the decision and submitted that it is clear that the judge did consider the points raised by the appellant with regard to what his political view is. It is clear from that paragraph that the appellant's main concern was with his practice of religion and issues connected to it. That was the height of the appellant's political activity whilst in Vietnam. He left Vietnam when he was 13 years old and has not at any stage indicated that he was involved in anything other than a demonstration against taking land from the church. He submitted that at paragraph 38 the judge clearly had in mind the appellant's alleged political activities and he has dealt with those in his findings.
9. Mr Khan referred to paragraph 6 and submitted that it is clear that the judge, by referring to his recent statement of 8 March 2016 has not considered his later statement so that there is a gap in the evidence. He submitted that this is a material error of law as it might have led to a gap in the findings on the political aspect of the appellant's claim. He referred to paragraph 31 of the most recent statement which demonstrates that

the appellant used to disagree as a child with the Government and intends to continue to do that. The judge had followed the first decision of Tribunal Judge Cameron and had failed to take into account the current political activities in the United Kingdom and had failed to undertake an up-to-date assessment.

Discussion

10. The first ground of appeal argues that the judge failed to consider the appellant's claim on the basis of his political opinion focussing solely on the claim to fear religious persecution. It is important to consider how the judge dealt with the evidence. The First-tier Tribunal set out:

"8. The appellant confirmed to me that he had attended demonstrations in 2012 in Vietnam when he was (sic) [was] about 13 years of age, and was involved in a protest to try and keep the land for the church as that was where he lived. He stated that he was helping to distribute leaflets to the catholic people. The leaflets were about the demonstration and he had been asked by the priest to hand them out. The appellant had said that he was not in contact with the priest since he left Vietnam. The priest went with him to the airport but he was stopped and could not accompany the appellant. I say this because the appellant said that the plan was that the priest would attend with him and make sure he arrives safely. However, he was turned back at the airport and that was the last time he saw the priest. He does not know what has happened to him.

9. The appellant was asked by the presenting officer what had been written on the leaflets. He said that he did not have a look at the leaflets to read what they said. He said he was not sure, but he was asked by the Father to give them out to the Catholic people. He said he knew they were about demonstrations. It is possible that as a 13-year-old or there about then, may not have been bothered to read the details in the leaflets. Suffice it that he and the parishioners knew the church had to be saved from compulsory acquisition of the land and he was told to distribute leaflets which were about that protest."

11. The judge set out in a number of paragraphs the background information with regard to the oppression of practitioners of the Catholic faith indicating that the appellant would not be at risk and would be permitted to practice his religion. At paragraph 16 and following the judge found:

"16. The respondent accepts as I did [the] appellant's age as given and that he comes from Vietnam. The appellant provided a limited amount of information on his religion, however considering his age, life experience and education and his current attendance at church in the UK the respondent accepted that he is a Catholic. I have no reason to disbelieve that he is a Catholic. The immigration Judge at first instance also considered that he is a Catholic. There are millions of Catholics living in Vietnam however who practice their religion without being harassed, and I had to see what distinguishes this appellant from the other Catholics.

17. There are circumstances where the Government has seized church land and I can well understand that Catholics could demonstrate about

that. So, on the lower standard of proof I accept that the appellant may have been detained for that reason whilst demonstrating with a large crowd of others there, but he was not mistreated, and was held with others who had been demonstrating. He was held overnight according to his evidence and then released. The priest had also demonstrated and then released.

18. By the appellant's own previous account, he had not had difficulties practicing his religion in Vietnam, aside from the problem he stated he experienced attending the 2012 demonstrations. I note from the objective evidence that citizens of Vietnam can practice any religion. The evidence shows that all religions are equal before the law. In fact, it appears that the Roman Catholic Church can now select its own bishops and priests, but they must be approved by the government. I also note that many restrictions on charitable activities have been (sic) [been] lifted.

...

20. The appellant had not expressed any extreme or activist views in relation to either political or religious matters.
21. Furthermore, the appellant did not take up in any further activities [(sic) [activities]] after the June 2012 demonstration, which would have brought him adversely to the attention of the authorities. Despite some discrimination against the Catholics the objective evidence does not indicate that the appellant would not be able to practice his religion in Vietnam (sic).

...

31. The appellant was asked what his opinion of the Vietnam government was and he stated he felt he did not understand why they would want to take the land from the church as it belonged to the church. ... In cross examination, the appellant was referred to the answers he had given about the leaflets and he said he did not have a look at the leaflets so he did not know what they were about but they were about encouraging people to demonstrate.
32. The appellant was asked if the leaflets had anything to do with the Catholic religion and he said that the leaflets were given to him by the father priest who asked him to give them out to Catholic people."

12. The appellant criticises both Judge Cameron and Judge Andonian for failing to consider separately his claim based on his political opinion. The appellant attended 2 demonstrations in connection with his local church in Vietnam when he was a child aged 13. The demonstrations were concerned with the seizure of church land. He had handed out leaflets to the congregation during mass and at the demonstrations. He was arrested and detained overnight, was not ill-treated and released without charge. He moved to another church in Hanoi because the priest said that the police were looking for them where he remained until told he should leave Vietnam with the priest. Any reference to risk because of his political opinion was linked to these events. Simply adding the words 'political opinion' without any specific basis for a separate fear does not lead to the conclusion that a separate basis of claim was made as suggested by Mr

Khan in oral submissions namely - *'the appellant used to disagree as a child with the Government ...the appellant is a political activist and that this is the substantial part of his claim for asylum'* There was no evidence at all that the appellant expressed any anti Government political opinions beyond what might be a criticism of the Government for seizure of church land which is hardly surprising given he was 13 years old. His claim was based on fear of religious persecution and that is how it was pleaded before First-tier Tribunal judge Cameron in 2015. The findings of the First-tier Tribunal in 2015 are the starting point. First-tier Tribunal judge Cameron found:

'80 ...Taking into account the profile I have found for the appellant, that is he is an ordinary practicing Catholic who would not be seen as an activist or having views the authorities would consider to be destabilising towards the government, and given that I am not satisfied that he has shown that he would be of adverse interest to the authorities on return, I am not satisfied that there is a real risk that he would suffer serious harm on return to Vietnam'

13. It is incorrect to suggest that the substantial part of his asylum claim is his political opinion. Before First-tier Tribunal judge Andonian the claim was focused on the religious persecution. However, the appellant in both his witness statements refers specifically to his political activities in the UK. He refers in his witness statement of March 2016 to not having attended any demonstrations in the UK but wanting to attend a demonstration in May (2016), that the purpose of the demonstration is to ask for human rights and democracy and to ask Vietnam to release political prisoners and that he is against the Vietnamese Government and the communist party since they have taken away basic rights. In his witness statement of February 2017 he mentions that he did not attend the demonstration in May because he was misinformed of the time but he took part in a demonstration on 11 December 2016 and that he intends to attend more demonstrations in the future.

14. At paragraph 17 of his 2017 witness statement he says:

'I cannot return to Vietnam as I was involved in demonstrations in Vietnam and was arrested whilst distributing leaflets at the demonstration. I continue to be active to express my political belief against the Vietnamese government and had done so by attending demonstration in the United Kingdom. If I go back to Vietnam I will continue to attend demonstration to express my political views against the Vietnamese Government'

15. At paragraph 6 and following the judge set out:

"6. The appellant said in his recent statement that he worked as a nail technician part time in Woodford green (sic). He said he had not taken part in any demonstrations in the UK because he said he spoke limited English and had not been aware of 'the such demonstrations'. He then said that he knew there was one in May which he wanted to attend. This is after he had said that he had not attended demonstrations in the UK because 'I speak limited English'. See paragraph 8 of his statement signed 8th March 2016. He said the purpose of the

demonstration was to ask the Vietnamese government to release political prisoners. I did not consider the appellant's evidence about demonstrations to be credible. One does not have to speak English to go on a demonstration, particularly since as here the appellant would be demonstrating with Vietnamese nationals from his country. Any demonstrations that he attended here were merely self-serving I refer to section B of the appellant's bundle as regards those demonstrations.

7. The appellant had said that he wishes to stay in the UK to practice his religion freely as in Vietnam people are oppressed in that regard. He said that if he goes back to Vietnam he would be put in prison as he had in the past because of his political and religious beliefs."
16. As set out above the judge records that the appellant at the hearing when asked what his opinion of the Vietnam government was stated he felt he did not understand why they would want to take the land from the church as it belonged to the church and found that the appellant had not expressed any extreme or activist views in relation to either political or religious matters. That finding was one that was entirely open to the judge on the evidence in this case. The appellant has attended one demonstration in the UK. He has been here since 2014. His claim was based on his religious beliefs and he has very late in the day attended a demonstration in the UK. The judge found that this was merely self-serving, a finding open to the judge on the evidence.
17. It is asserted that the judge does not appear to have taken the 2017 witness statement into account. It is not clear whether the judge did or did not take it into account. However, the judge clearly was aware that he had attended a demonstration as he refers to him attending and to the documentary evidence of his attendance contained in the appellant's bundle. I do not consider that even if the judge did not take that statement into account it would amount to a material error of law as the judge found that the appellant had not expressed any extreme or activist views and that this late claim to hold and express an anti-government political opinion was merely self-serving.
18. The appellant asserts that the judge erred by requiring the appellant to hold 'extreme' views in order to be considered at risk on return- the risk on return is not limited to those with extreme view. The judge did not essentially raise the threshold for risk on return by requiring an extreme view to be held. The judge referred to extreme **or** activist views.
19. There were no material error of law such that the decision of the First-tier Tribunal should be set aside.
20. Given my conclusions on the above the second ground of appeal falls away.

Notice of Decision

The appeal is dismissed. The decision of the Secretary of State stands.

Signed P M Ramshaw

Date 27 November 2017

Deputy Upper Tribunal Judge Ramshaw