



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10109/2016

THE IMMIGRATION ACTS

Heard at Field House
On 24th August 2018

Decision & Reasons Promulgated
On 11th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MR H.D.N.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance by or on behalf of the Appellant

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant, a citizen of Vietnam (born 1st August 1989), appeals with permission against the decision of a First-tier Tribunal (Judge O'Garro) promulgated on 26th

January 2018, dismissing his appeal against the Respondent's decision of 7th September 2016 refusing to grant him international protection on asylum, humanitarian protection and human rights grounds.

Background

2. The Appellant's claim to international protection in summary is as follows. He was born into a family who were followers of the Hoa Hao Buddhist tradition. He said they followed the unregistered Pure sect of the religion. He claims he was arrested and beaten by police in 2002 following a ceremony organised by his family to mark the founder's birthday. Although detained for 5 days by the authorities he was released without charge. In 2004 he was at a religious ceremony at his girlfriend's house. This gathering was broken up by police and in an ensuing melee he was stabbed in the stomach and back with a broken bottle. He was hospitalised for 15 days as a result of the injuries sustained.
3. In 2008 the Appellant was arrested once again following a gathering at his girlfriend's house. He was detained for 9 days and beaten but released without charge following a warning that he would face harsh penalties if he transgressed again. The pivotal point however that caused the Appellant to flee Vietnam occurred on 9th April 2009. He was asked by his local leader to help distribute leaflets on behalf of a political party of which he was not a member, but one which complained about discrimination against members of his faith. He claimed that he was unaware of what the leaflets said. Bearing in mind the previous warning, he fled when police arrived on the scene fearing that he would be recognised and arrested.

The FtT Decision

4. In a lengthy decision, the FtTJ set out details of the Appellant's claim. She noted the Respondent's case and in particular that the Respondent, although accepting the Appellant's nationality, did not accept any part of the Appellant's claim. The Respondent did not accept that the Appellant was a follower of Hoa Hao Buddhism. The FtTJ noted that the Respondent had come to this decision following the Appellant's answers given during his asylum interview, when it was reported that his knowledge of the religion was vague and generic and many of the answers given were inaccurate.
5. The FtTJ noted therefore that the Respondent did not accept that the Vietnamese authorities had any interest in the Appellant, nor was it accepted that he had been arrested by the police for the reasons that he gave. It was not credible that he was unaware of the content of leaflets that he claimed to have been distributing.
6. The FtTJ noted that the Respondent had taken issue with the fact that the Appellant had not made an asylum claim at the earliest available opportunity. In short, this was an appeal where credibility lay at the heart of the issues.
7. The judge took into account an expert's report submitted on behalf of the Appellant. She noted that she had considered it and given it due weight. She heard evidence from

the Appellant, set out that there was a large amount of documentary evidence and noted further that the Appellant had provided a letter from a friend supporting his claim. So far as that letter was concerned, there was no attendance from the Appellant's friend, no cross-examination of the contents, and therefore the judge gave no evidential weight to it.

8. The judge made a finding that she disbelieved the Appellant's core claim that he practised Pure Hoa Hao Buddhism. She relied on the Respondent's conclusion following the Appellant's interview that his knowledge of the religion was insufficient to satisfy her that he was or is an active follower of the religion.
9. In coming to this conclusion, the judge did not accept the veracity of the ceremony organised to celebrate the founder's birthday and therefore did not accept the credibility of his claim that he had been detained and arrested by the police as a result of religious activity.
10. She made reference to the expert's report which she agreed lent credence to such arrests occurring. However she decided that, even so, she did not accept the Appellant's account because she did not find it credible that the Appellant, who had not been particularly active in the past in the Hoa Hao religion, would become active to the extent that he would risk opening his home for followers of the faith to attend and thus expose himself to the wrath of the Vietnamese authorities.
11. In coming to her conclusions and looking at the evidence in the round, the judge looked at the pivotal point which the Appellant said was the reason for him leaving Vietnam. Finding that she could not accept his credibility on his claim to be a follower of Hoa Hao religion, this in turn led her to disbelieve that the Appellant had been seen by the police distributing leaflets criticising the Vietnamese Communist Party and their treatment of Pure Hoa Hao Buddhism.
12. In arriving at her conclusions, and looking at the evidence in the round, the judge relied, as she was entitled to do so, upon the Section 8 issue. She noted that the Appellant claimed he left Vietnam in April 2009 and went to China for two months. He then travelled to France where he stayed three months but made no claim to asylum, instead travelling clandestinely to the UK arriving in October 2009. It was not until March 2016 that the Appellant made his claim to asylum. He claimed that the reason for the delay in making his claim was that he was held in captivity by the agents who had trafficked him to the UK and had only managed to escape from them in December 2014. Even so, she noted that he did not claim asylum until March 2016. She disbelieved his claim throughout, including his reasons for not claiming between the period of December 2014 to March 2016. She therefore dismissed his appeal.
13. Permission to appeal was granted on a renewed application before the Upper Tribunal. The grounds seeking permission are lengthy but the grant of permission is not. It says as follows:

"It is arguable that the reasons given by the First-tier Tribunal Judge for holding the delay in claiming asylum are circular – the appellant claims he did not claim

earlier because he was in captivity; the judge states she has not found him to be a witness of truth and therefore doesn't believe the appellant.

It is arguable that the judge has failed to have adequate regard to the report by Dr Tran and/or to provide adequate reasons for preferring other evidence above his. It is arguable the judge failed to have regard to the expert evidence in terms of arrest and release."

14. Thus the matter comes before me to decide whether the decision of the First-tier Tribunal contains such error of law that it requires to be set aside and re-made.

Error of Law Hearing

15. Before me Mr Walker appeared for the Respondent; there was no attendance by or on behalf of the Appellant. The matter before me was set down for hearing on 24th August 2018. Notice of the hearing was duly served on both the Appellant and his named representatives, ATM Law Solicitors of Ilford. On 23rd August 2018 the Tribunal Service received a fax letter from ATM Law, outlining difficulty in receiving instructions from the Appellant and informing the Tribunal Service that they had received an email from a friend of the Appellant indicating that the Appellant wished to withdraw from the proceedings. The fax letter from ATM proposed that the hearing on 24th August 2018 be adjourned in order that the Appellant could be advised properly of his rights or in the alternative the hearing was conducted by reference to the documents which the Tribunal already had on file.
16. The fax letter was placed before Upper Tribunal Judge Gleeson who responded to it refusing the application for an adjournment and indicating that the matter would proceed on 24th August 2018. Nothing was heard in response to UTJ Gleeson's decision and therefore I proceeded with the error of law hearing on 24th August 2018.
17. I heard brief submissions from Mr Walker. He submitted that this case hinged on the credibility of the Appellant. The FtTJ had given careful consideration to the evidence before her and had set out fully both the Appellant's case and the Respondent's case. She had heard evidence from the Appellant. She noted that the Appellant had produced an expert's report, but whilst she accepted that the report lent some credence to elements of the Appellant's claim, the assessment of credibility was solely a matter for the judge.
18. He submitted that there was ample reason for the judge to disbelieve the Appellant's core claim. He had been in France for three months and not claimed asylum there and likewise after entering the UK in 2009, no claim was made until 2016. There was ample evidence to show that this was an opportunistic claim.
19. The judge had disbelieved the Appellant's account that he did not know how to claim asylum in the period following his said escape and the date that he made his eventual claim. She also noted, as the Respondent did, that at interview he gave incorrect answers when tested on his knowledge of Pure Hoa Hao Buddhism.

20. In short, the findings were open to the judge to make and the grounds amounted to no more than a series of disagreements with those findings.

Consideration

21. I find force in Mr Walker's submissions. I am satisfied that the FtTJ properly identified the issues before her, setting out fully the Appellant's case. She noted the expert's report but I am bound to agree with Mr Walker that the expert's report is generic and the assessment of the weight to be given to each piece of evidence is a matter solely for the Trial Judge. I keep in mind that she is the one who saw and heard from the Appellant. I am satisfied that she kept in mind when assessing the evidence before her, that the Appellant is a man who failed to claim asylum in France and did not claim in the UK until six and a half years after entry. It was open to the judge to find that even if she accepted his history of his captivity, nevertheless his account of how he escaped his captors in December 2014, and yet did not claim asylum until some fifteen months later, was greatly damaging to his credibility.
22. In short, I find that the decision made by the FtTJ is one which was open to her on the evidence before her. I agree with Mr Walker's submission, that the grounds amount to no more than a series of disagreements with the FtTJ's decision. It follows therefore that the decision of the FtTJ contains no material error of law and that the decision dismissing the Appellant's appeal therefore stands.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 26th January 2018 discloses no arguable error of law. The decision therefore stands. This appeal is dismissed.

Signed

C E Roberts

Date

05 September 2018

Deputy Upper Tribunal Judge Roberts