Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02405/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 November 2019	**On 14 November 2019**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

T T N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A M Shahjahan, legal representative, Morgan Hall Solicitors
For the Respondent: Ms. J. Isherwood, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Farrelly ('the Judge') sent to the parties on 15 August 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant him international protection was dismissed.

2. Upper Tribunal Judge Sheridan granted permission on all grounds.

Anonymity

3. The judge issued an anonymity direction and neither representative requested that it be set aside. I am mindful that the starting point for consideration of anonymity directions in this chamber of the Upper Tribunal, as in all courts and Tribunals, is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. I therefore confirm the anonymity direction in the following terms:

> *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 appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid the likelihood of serious harm arising to the appellant from the contents of the protection claim becoming known to the public.*

Background

4. The appellant is a national of Vietnam and is aged 30. He entered this country as a student in 2011 and subsequently overstayed from 10 February 2012. He acknowledges that he only attended half of his academic course before discontinuing his studies. He asserts that in January 2015 he founded, along with a friend, the Viet Tan Democratic Party in London and that he became its chairman. The appellant claimed asylum on 5 July 2018 and the respondent refused the application by means of a decision dated 22 February 2019. The respondent identified the core of the appellant's claim at [15] of the decision letter:

> *'You have claimed that on return to Vietnam you fear that the Police will arrest and torture you [AIR 41]. Alternatively, you are worried that the Police and the Communists will investigate your time in the UK when you were the Chairman of the Viet Tan branch in the UK [SCR 4.1].'*

5. The respondent rejected the appellant's assertion that he was the founder and Chairman of the Viet Tan Democratic Party, at [30] and [34]:

> *'You have stated that you are a founder and Chairman of the Democratic Viet Tan Party and as Chairman and founder, it is reasonable to expect that you would have detailed knowledge of the reasons for founding the Viet Tan Democratic Party, its aims, political affiliations and its political activities in the UK. You claim to be the Chairman and co-founder of the Viet Tan Democratic Party, a splinter group of the Viet Tan Party, founded in January 2015; but have also claimed that the Viet Tan Democratic Party was a group that you and your friends created [AIR 43, 44, 48, 100]. Alternatively, you have*

claimed that you were involved in the Dan Chu Viet Tan Party, which you joined in 2015 while in the UK, and you were elected as Chairman of the group [SCR 5.5] and that Dan Chu Viet Tan is the Democratic Viet Tan Party [AIR 104]. You have presented an incoherent and internally inconsistent narrative concerning the party that you allegedly founded or joined, and this damages your credibility and this aspect of your claim.

…

You were asked what the reason was for founding/joining the Democratic Viet Tan Party and you replied that it was to fight for Human Rights (HR) in Vietnam [AIR 65]. During a line of questioning you were asked to explain how you fought for HR and to expand on what HR you were fighting for [AIR 72-77]. Your responses during this line of questioning were vague and somewhat evasive, and lacking any depth of detail, detail it would be reasonable to expect, given that you were the Chairman of the Party [Air (sic) 74-77]. For example when asked which Human Rights you were fighting for you replied variously 'HR in Vietnam also for activist people' [AIR 74], 'Human Rights, rights for human being' [AIR 76] and 'Freedom rights, the right for people in Vietnam as a human' [AIR 76]. Consequently, your credibility and this aspect of your claim is undermined.'

6. The respondent provided further reasons for doubting the appellant's stated history at [35] - [37]:

'You have claimed that you started supporting the Viet Tan Party since you arrived in the UK [AIR 105] and you were asked a series of questions concerning your support, and your knowledge, of the Viet Tan Party [AIR 105-123]; it is also noted that you admitted that you found out more about the Viet Tan Party as part of your research on claiming asylum [AIR 141]. For someone claiming to have supported the Viet Tan Party for over 7 years, your answers were inconsistent with externally available information when describing the Viet Tan Logo as there is no red flag [AIR 109] and external information also indicates that the Viet Tan is located in the United States of America. Your answers to questions concerning the aims and objectives of the Viet Tan Party were also limited and lacking any depth of knowledge, and also inconsistent with externally available information. Your level of knowledge is thus considered to be inconsistent with the length of time you claim to have supported the Viet Tan Party.

You were asked if the Viet Tan Democratic Party and the Viet Tan Party were one and you replied 'they are the same' [AIR 34], however this answer is internally inconsistent given your explicit acknowledgement that you consider the Viet Tan and Democratic Viet Tan parties to be distinct [AIR 46], and your responses to other questions in your asylum interview [AIR 45]. Your answer in AIR 34 is also externally inconsistent with available information that states that the Viet Tan Party was founded in September 1982 by Hoang Co

Minh, nearly 23 years before you claim to have founded your Democratic Viet Tan Party; and these inconsistencies undermine your credibility and this aspect of your claim.

You were also asked if the Viet Tan Party was aware of your party's existence or had endorsed you publicly or in any publications or articles and you replied 'yes', 'Yeah' and 'I think yes' [AIR 58, 59, 61]. When asked for more detail on where the Viet Tan Party had endorsed your party your reply was evasive [AIR 62], and when pressed further, you admitted that 'on paperwork they haven't done anything to accept us' [AIR 64]. Your narrative relating to your Democratic Viet Tan Party and the Viet Tan Party, including any affiliation between the two, is internally consistent and your admission that there is no affiliation between the to (sic), after saying that there was, undermines your credibility and this aspect of your claim.'

Hearing Before the FtT

7. The appeal came before the Judge sitting at Taylor House on 2 August 2019 and the appellant gave oral evidence. In refusing the appeal the Judge made a number of adverse credibility findings including, at [29] - [31]:

'He was asked why he was claiming protection. He said he belonged to the Vietnam Democratic party. He said that the police had taken his family home. He said that he was the chairman of the Democrat Viet Tan Party. However, the party did not have a website. He suggested there was an established organisation, Viet Tan who agreed to his organisation working with them and taking part in their demonstrations. He said there was no paperwork to confirm this. He said that his organisation used Facebook to keep in contact and to exchange views. No details were provided. He states they were opposed to the communist government. He said the leadership of his party consisted of himself and his friend and they had an assistant. He said all their members were voluntary. He was then asked about the Viet Tan Party.

His bundle contains what is described as an introductory leaflet to what he claims is the organisation he founded. The leaflet does not say anything about the party or its aims beyond that they struggle for a better life for Vietnamese. There is then another leaflet signed by a female. That leaflet contains slightly more details and refers to the party having a head office and provides a telephone number. In considering this documentation I have had regard to what was said in Tanveer Ahmed.

There are then some photographs outside the Vietnamese Embassy but nothing to suggest the appellant's party were involved. There are various photographs apparently taken in London of the appellant showing him talking to individuals. They are of minimal probative

value. There also are letters of protest and a petition apparently submitted to the Vietnam authorities. There is no confirmation as to the provenance of any this documentation (sic). For instance, there is no response to the correspondence said to have been sent back to the Vietnamese officials. It is my conclusion that this evidence is self-serving and adds little to the claim.'

8. In dismissing the appeal, the Judge observed that the newspaper article relied upon by the appellant as evidence of the family home being targeted in Vietnam detailed that the home was destroyed because it was built illegally on agricultural land. The Judge determined that the newspaper report was accurate, and this was the true position. The Judge reasoned at [35] that there was no sign of any violence taking place in the photographs relied upon and that the picture of the person lying on the ground, stated to be the appellant's mother, presented as staged.

Grounds of Appeal

9. The appellant relies upon four grounds of appeal, two of them confusingly referred to as ground 3. For the purpose of my consideration I refer to them as ground 3(1) and ground 3(2). The grounds are identified as:

(i) the Judge erred in failing to adjourn the hearing;

(ii) the Judge applied a higher than permitted evidential burden of proof;

(iii) the Judge applied a higher requirement for political activism; and

(iv) the Judge has not given the appellant the full benefit of the principles arising in *HJ (Iran) v. Secretary of State for the Home Department* [2010] UKSC 31; [2011] 1 AC 596.

10. By way of a decision dated 2 October 2019 UTJ Sheridan observed, at [2] - [3]:

'Given the procedural history and failure of the appellant to comply with directions, as set out at paragraphs 7 - 10 of the decision, it is understandable that the judge refused (and was suspicious of) the adjournment request.

However, given that the evidence the appellant claimed he would be able to obtain, if give a four-week adjournment, might have addressed the reasons given for not accepting the claim at paragraphs 34 and 35, I consider it arguable, having regard to the decision in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC), that the appellant was deprived of a fair hearing as a consequence of the adjournment being refused.'

11. Though UTJ Sheridan concentrated his reasoning on ground 1, permission to appeal was granted in all grounds.

12. No Rule 24 response was filed by the respondent.

Decision on Error of Law

13. The appellant asserts by means of ground 1:

> *'The learned IJ erred in law in failing to adjourn the hearing and deciding to proceed with the hearing. The Appellant requested an adjournment by way of a letter dated 29 July 2019 which was not dealt with prior to hearing and then the Appellant's representative requested an adjournment in person on the same basis that the Appellant's family had been arrested and tortured land seized (sic) based on his activities. He had just established contact with his family needed time (sic) to gather the full evidence (sic) as there was visual audio (sic) and independent organizations and media channels involved. There was no reply to the written adjournment request therefore the Appellant was obliged to attend with tentative (sic) early pictures but no video or other evidence. Only one article from the government social media sources confirming land seizure but covering it up as illegal land seizure. The learned IJ erred in law in not adjourning and merely confining the hearing to the evidence of the photographs and not allowing any time for the videos of the manners (sic) in the land confiscation which shows harassment and torture. However, the learned IJ then at paragraph 35 states that the province (sic) produced is not established … there is no sign of real violence… It is submitted the failure to adjourn and thus depriving the Appellant the real opportunity to present his case and evidence fully the learned IJ has erred in law. This error in law is compounded and very material as the learned IJ from his brief determination has used these (sic) lack of evidence against the appellant's credibility. The learned IJ has erred in his approach and findings.'*

14. Rule 4(3)(h) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chambers) Rules 2014 empowers the First-tier Tribunal to adjourn a hearing. Rule 2 of the Rules sets out the overriding objectives under the Rules that the Tribunal 'must seek to give effect' when exercising any power under the Rules. It follows that they are the issues to be considered on an adjournment application as well. The overriding objective is that the cases are dealt with fairly and justly and this includes dealing with the appeal in ways which are proportionate to the importance of the case, the complexities of the issues, the anticipated costs and the resources of the parties and of the Tribunal. The question for this Tribunal is not whether the First-tier Tribunal acted reasonably, but whether it acted fairly: *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC).

15. The decision is illuminative as to the issues considered by the Judge, which are wider than those acknowledged in the appellant's grounds of appeal. I observe [6] - [11] of the decision and reasons:

'Mr A M Shahjahan requested an adjournment. This was to gather unspecified evidence. He referred me to a letter of 29 July 2019 applying for an adjournment. It states that the appellant's family in Vietnam have been arrested and their land seized because of the appellant's political activities. It was said the appellant has only just been able to establish contact with his family and has received documentation from them. There is also reference to media evidence which is to be translated. Mr Shahjahan produced a series are (sic) photographs said to be of the appellant's family in Vietnam. He said that they were suffering because of the appellant's actions. He suggested a four-week adjournment would suffice. The presenting officer adopted a neutral stance.

I pointed out to the appellant's representative that no appeal bundle had been lodged on behalf of his client. He then produced a bundle consisting of 69 pages. The presenting officer, most agreeably, was willing to consider the bundle produced at this late state.

In considering the application I have regard to the chronology to the appeal. The respondent's decision was taken on 22 February 2019. The appeal was received on 13 March 2019. Directions were issued the following day, with the substantive hearing listed for 11 April 2019. The appellant was to provide an indexed bundle of all documents relied upon as well as a witness statement. There was then an adjournment request dated 26 March 2019 and dealt with on the 28 March 2019. This was accompanied by a letter dated 12 March 2019, requesting an adjournment for six weeks. The appellant's representatives indicated they wanted a transcript of the substantive interview to compare it was the audio recording. It was alleged there were major mistakes in the written record but what they were is not specified. There is then a reference to an expert preparing a report as to the risk on return.

A case management review took place on 28 March 2019. The appellant was to serve an appeal bundle along with any amendments to the proposed asylum interview transcript within seven days of the substantive hearing. The appellant was also to provide a typed statement and a skeleton argument as well as any medical evidence relied upon.

None of the above has been complied with. I could not see evidence to indicate the appeal was being pursued with due diligence. Nothing was provided to confirm an expert had been instructed or when any report would be available. No appeal bundle had been lodged until Mr Shahjahan was asked at hearing. What further evidence was being sought remained vague. The letter of 29 July 2019 refers to the photographs received but it was not apparent what further investigation was required beyond the appellant explaining them. There is in fact an English version of the news article referred to.

I am conscious that the ultimate consideration is fairness. Given that we now had a bundle and the presenting officer was not objecting to its late production I concluded we were in a position to proceed. I explained that the appellant at hearing could go through the photographs and explain the relevance of them.'

16. The Judge noted that there was a lack of precision as to the evidence being sought. This is now said to be visual and audio evidence as well as evidence from independent organisations and media channels. It remains unexplained before this Tribunal, as well as before the First-tier Tribunal, as to how such evidence will establish that the demolition of the family home was political in nature and aimed against the appellant, particularly in circumstances where the corroborative evidence presented at the original hearing detailed that the demolition was as a consequence of the family home having been built illegally on agricultural land. The Judge was lawfully entitled when assessing the issue of fairness to note the failure of the appellant and his legal representatives to abide by directions previously issued by the Tribunal. Reasonable weight was given to the appellant's previous successful request for an adjournment that was predicated upon a desire to secure further evidence in circumstances where there was a consequent failure to actually take such steps. The evidence for which the previous adjournment was sought was never secured prior to the hearing before the Judge. I observe that in *Vasconcelos (risk- rehabilitation)* [2013] UKUT 00378 (IAC) the then President, Blake J, held that the failure to comply with directions is a matter that can be lawfully considered when assessing the fairness of adjourning a hearing.

17. I am mindful that the precise requirements of fairness will depend on the context of an appeal, including the interests involved, the nature of the application and decision, and the nature of the body making the decision. What will be fair in some circumstances may be unfair in others.

18. In this matter I am aware that the appellant asserted that there had been recent developments in his home area and that he only had partial information as to the nature of those events. I further observe the appellant's contention that his family was deliberately targeted because of his political activity in this country. However, the Judge was reasonably entitled to note that the media report that had been filed by the appellant with the Tribunal contradicted his assertion that this had been a targeted campaign by the authorities against his family. Further, the Tribunal was lawfully permitted to weigh in the assessment the fact that a previous hearing had been adjourned because the appellant's representatives had asserted that they wished to require important evidence specific to the appeal but then had failed to do so. Unfortunately, even after the passage of time that has flowed as this appeal proceeded from the First-tier Tribunal to this Tribunal, the appellant's representatives have been unable to provide the evidence they indicated they wished to secure. I was informed, somewhat vaguely, by Mr Shahjahan that he now had video evidence, but was further informed that no transcript had been prepared and he was not entirely sure as to its contents. He further indicated that

he was hoping to receive an expert report and also documents from unnamed human rights organisations, but he was unable to provide any further detail as to the contents of these documents. Though several apologies were received from Mr. Shahjahan as to such failure, the present position is that the evidence upon which the adjournment was sought is not presently available some five months after the Judge proceeded with the appeal. The Tribunal in its assessment of fairness has been left very much in a situation faced by the Judge as to assertions that certain evidence would be helpful in the progression of the appeal but that the true nature of such evidence continues to be presented in a vague and unhelpful manner. In the circumstances, with no 'Rule 15(2)(a)' application being made under the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce new evidence and Mr Shahjahan being unclear as to the nature of the evidence the appellant has now secured or hopes to secure in the near future, I find that the Judge's reasons for refusing the adjournment were cogent and in accordance with the obligations upon the Tribunal. In such circumstances there has been no breach of natural justice and this ground of appeal must fail.

19. The appellant's second ground asserts that the Judge irrationally superimposed a higher evidential requirement: see [31] and [32]:

> *'There are then some photographs outside the Vietnamese Embassy but nothing to suggest the appellant's party were involved. There are various photographs apparently taken in London of the appellant showing him talking to individuals. They are of minimal probative value. There also are letters of protest and a petition apparently submitted to the Vietnamese authorities. There is no confirmation as to the provenance of any this documentation. For instance, there is no response to the correspondence said to have been sent to the Vietnamese officials. It is my conclusion that this evidence is self-serving and adds little to the claim.*
>
> *There is an extract from the respondent's own guidance on Vietnam. 6.3.1 refers to prosecutions taking place against protestors and human rights defenders. There are then various articles about freedom of expression in Vietnam. However, the appellant does not claim to have been active in any way in Vietnam.'*

20. Particular criticism is made as to the Judge's findings that there is 'no evidence' that 'this is the document that he actually posted to this other destination.' A concern arising in this matter is that Mr Shahjahan was unable to identify this quote from within the decision and it is upon this purported quote that ground 2 relies. There is grave concern as to the lack of care that has been taken in the drafting of this ground, and also the manner in which this ground has been advanced, because it is misleading. It was not the position of the Judge that he disbelieved that documents had been posted by the appellant, as asserted by the appellant. Rather, the Judge observed that even if they had been sent to the Vietnamese authorities in this country, they had elicited no response, which suggested that they aroused no interest in the Vietnamese authorities. He simply

concluded that the evidence provided was self-serving and possessed little weight. At its heart this ground is simply exhibiting a dislike of a decision made by the Judge and reasserts the appellant's case. The Judge considered the photographs, letters of protest and petition with care and gave cogent reasons for finding that there was no evidence that they had aroused persecutory measures within the Vietnamese authorities. The Judge's reasoning has to be considered in the round and this requires consideration of [34]:

> *'I considered all the information provided. I do not find the appellant has established he is at any real risk if returned to his home country. I agree with the respondent that his account of his political involvement is very superficial. The documentation he has produced is amateurish and could easily have been produced to try and manufacture a claim. It is up to him to demonstrate the documents can be relied upon and that it supports his claimed risk.'*

21. Having holistically examined the evidence with care the Judge applied the correct standard and burden of proof and there is meritorious no basis for the appellant's assertion that the Judge irrationally superimposed a higher evidential requirement. There are no merits to this ground.

22. Ground 3(1) claims that the Judge applied a higher requirement of political activism upon the appellant than lawfully permitted. In essence, it is claimed that the Judge erred in finding that only a person of profile or a committed opponent or someone with significant profile would be at risk in Vietnam. It is again appropriate to consider the Judge's actual reasoning. He concluded that the appellant's political activity was very superficial, see [33] - [35]:

> *'There is nothing to indicate his activity here would come to the adverse attention of the Vietnamese authorities. He produced a letter which he claims he sent to the authorities in protest. However, no response has been produced. Beyond his say-so in relation to the photographs produced there is nothing to connect his family with his activities here. The photographs produced do not establish the people shown are his family. Even if they were, the newspaper article indicates the authorities were demolishing the house because it had been built illegally. The photographs do not show any violence on the part of the officials.*
>
> *I considered all the information provided. I do not find the appellant has established he is at any real risk if returned to his home country. I agree with the respondent that his account of his political involvement is very superficial. The documentation he has produced is amateurish and could easily have been produced to try and manufacture a claim. It is up to him to demonstrate the documents can be relied upon and that it supports his claimed risk.*
>
> *I see nothing to suggest that his family have been subjected to adverse treatment because of him. The province (sic) of the*

photographs produced is not established. They may relate to family members and the destruction of their home. However, the newspaper article refers to property being demolished because it was built illegally on agricultural land. On the face of it, this appears credible. There is no sign of any real violence taking place in the photographs and the picture of the person he says his mother lying on the ground appears staged (sic).'

23. The appellant asserts that bloggers are subject to arbitrary detainment and ill-treatment. He further asserts that there is no threshold for the level of blogging that will lead to such ill-treatment. His case, therefore, is that any Vietnamese national who blogs critically against the authorities is at risk of being subjected to persecutory ill-treatment. Unfortunately, when considering this ground, I observe that references are made to a number of purported COIS reports within the grounds of appeal. Unfortunately, the titles of the reports are not mentioned and despite efforts by this Tribunal to find the COIS reports by reference to the detailed paragraphs, that has proven impossible. At the hearing Mr Shahjahan was unable to identify the reports beyond the quotes detailed in the grounds, which can only be considered to be unhelpful. Mr. Shahjahan accepted that the COIS reports relied upon are of such age as to have been in all likelihood replaced and confirmed that I could consider the up-to-date situation. I informed Mr. Shahjahan that I would consider the respondent's CPIN, 'Vietnam: Opposition to the State' (version 3.0) September 2018 at [9.2.1] to [9.2.6] and [9.3.3] to [9.3.6]. I also confirmed that whilst considering the document as a whole, I would consider [2.4.20] and [2.4.21] with the former paragraph identifying:

'Decision makers must establish that persons claiming to be journalists or bloggers are able to demonstrate that their activities have brought, or will bring them to the adverse attention of the Vietnamese authorities, bearing in mind that the state heavily monitors media and internet activity. Decision makers should give consideration to all relevant factors, including in particular:

- *the subject matter;*
- *language and tone of the material;*
- *the method of communication;*
- *the reach and frequency of the publication;*
- *the publicity attracted; and*
- *any past adverse interest by the authorities.'*

24. The Judge gave cogent and lawful reasons for not accepting that the appellant was being truthful as to the extent of his political activity. Any blogging conducted by the appellant is opportunistic in nature and is not derived from the sincerity of his political convictions. Even if the Judge

erred and should have given greater consideration to the appellant's blogging, which I do not find to be the case, the appellant does not have a credible claim of being a politically activist. He can therefore simply stop posting on social media, which he currently and unsuccessfully undertakes in an effort to bring himself to the adverse attention of the Vietnamese authorities. Neither my attention, nor that of the Judge, has been directed to background evidence establishing to the required standard that even those persons plainly making opportunistic efforts through political blogging in an effort to remain abroad are at risk if returned to Vietnam. The objective evidence identifies a sophisticated effort by the authorities to address real political dissent expressed through blogging and such efforts can readily ascertain the opportunistic nature of the appellant's purported political actions.

25. Ground 3(2) asserts, inter alia, that the Judge ought to have considered the position where the appellant continued his blogging activities upon return to Vietnam even if, which the appellant disputes, they are low-level activities in nature. The Judge found that the appellant's true political engagement is very superficial and so is opportunistic in nature. For the reasons addressed above, the appellant's political activity is simply a means of preventing his return to Vietnam and there is no credible evidence that he would continue to so act on his return. In such circumstances he secures no benefit from the guidance of the Supreme Court in *HJ (Iran)*. There is no merit in this ground and in all of the circumstances this appeal must fail.

Notice of Decision

26. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law. The decision of the First-tier Tribunal is upheld and the appeal is dismissed.

27. The anonymity direction is confirmed.

Signed: D O'Callaghan

Upper Tribunal Judge O'Callaghan

Date: 11 November 2019

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there can be no fee award.

Signed: D O'Callaghan

Upper Tribunal Judge O’Callaghan

Date: 11 November 2019