



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10472/2019

THE IMMIGRATION ACTS

Decision under rule 34
On 27 January 2021

Decision & Reasons Promulgated
On 09 February 2021

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

YT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Decision made under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

1. This is an appeal against a decision of Judge of the First-tier Tribunal Fox ('the Judge') sent to the parties on 11 September 2020 by which the appellant's appeal against the decision of the respondent to refuse her leave to remain in this country on international protection grounds was refused.
2. By a decision sent to the parties on 18 October 2020 Upper Tribunal Judge Martin granted the appellant permission to appeal on all grounds advanced.
3. The appellant's legal representatives are ATM Law Solicitors, Ilford.

Rule 34

4. By means of her 'rule 24' response dated 2 November 2020, the respondent confirmed that she did not oppose the appellant's appeal at the error of law stage and requested that the matter be remitted to the First-tier Tribunal.
5. By correspondence dated 10 November 2020, ATM Law Solicitors confirmed upon behalf of the appellant that she agreed with the approach adopted by the respondent.
6. In considering whether to proceed under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') I am mindful as to the circumstances when an oral hearing is to be held in order to comply with the common law duty of fairness and as to when a decision may appropriately be made consequent to a paper consideration: *Osborn v. The Parole Board* [2013] UKSC 61; [2014] AC 1115 and *JCW v. President of the Upper Tribunal (Immigration and Asylum Chamber)* [2020] EWHC 3103 (Admin), at [6.1 - 6.14].
7. In the circumstances and being mindful of the importance of these proceedings to the appellant, the identified position of the respondent and the overriding objective that the Tribunal deal with cases fairly and justly, I am satisfied that it is just and appropriate to proceed under rule 34 of the 2008 Rules.

Anonymity

8. The Judge issued an anonymity direction. Neither party requested that the direction be set aside, and I confirm it at the conclusion of this decision. I do so in order to avoid the appellant's claim for international protection becoming publicly known.

Background

9. The appellant is a national of Vietnam. She asserts that she is fearful of the Vietnamese authorities consequent to her activities with the Assembly of Vietnamese Youth for Democracy ('YVD'), an organisation seeking political reform in Vietnam.
10. She relies upon her attendance at two demonstrations and also upon her having distributed a banned book at school which led to the arrest of a friend and the authorities issuing a summons in her name.

First-tier Tribunal decision

11. The appellant's appeal came before the Judge sitting at Birmingham on 3 September 2020. The Judge found the appellant to be incredible as to her claimed history of political activism in Vietnam and subsequent sur place activity in the United Kingdom: §100 of the decision.

Grounds of appeal

12. The appellant relies upon two grounds of appeal, drafted by Mr. Dhanji of Counsel, who represented her before the First-tier Tribunal. Ground 1 can properly be identified as encompassing seven separate challenges:
 - (i) Material errors of law when considering credibility:
 - (a) Failure to properly take account of the appellant's evidence;
 - (b) Failure to provide adequate reasons for material findings of fact;
 - (c) Unlawful reliance upon the use of false documents in a previous application where such assertion did not form part of the respondent's case and the Judge did not draw the appellant's attention to such concern;
 - (d) Making findings as to inconsistencies in evidence where no such inconsistencies arose;
 - (e) Failing to take into account the respondent's acceptance that the appellant displayed a good knowledge of the YVD;
 - (f) Unlawfully requiring corroborative evidence that was not reasonably available to the appellant;
 - (g) Failure to take proper account of a country expert evidence relied upon by the appellant.
 - (ii) Failure to adequately resolve the appellant's sur place claim.
13. In granting permission to appeal UTJ Martin succinctly addressed the grounds advanced:
 - '2. It is arguable that the judge erred in finding inconsistencies which were not, in failing to consider the expert's report as to the close links between the political group in Vietnam and the UK and in dismissing the Facebook pages as 'devoid of meaningful content' when arguably they are not. It is also arguable that the judge erred in finding the appellant had little knowledge of the political party, when she had displayed considerable knowledge at interview.'

Decision on error of law

14. By means of a concise rule 24 response authored by Ms. Pettersen, Senior Presenting Officer, the respondent confirmed:
 - '2. The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal by remitting the case to the First-Tier [Tribunal] for a rehearing on all issues.'
15. Having read the decision with care, I am satisfied that the respondent has adopted an entirely appropriate approach to the error of law consideration.

16. The decision of the Judge contains material errors of law and is therefore set aside. No findings of fact are to stand.

Remaking the decision

17. The nature or extent of any judicial fact finding which is necessary in order for the decision in this appeal to be re-made is such that, having regard to the overriding objective in rule 2 of the 2008 Rules, it is appropriate to remit the case to the First-tier Tribunal: paragraph 7.2(b) of the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal.

Notice of Decision

18. The decision of the First-tier Tribunal, dated 11 September 2020, involved the making of a material error on a point of law. I set aside the Judge's decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
19. No findings of fact are preserved.
20. The decision is to be remade by the First-tier Tribunal,

Anonymity Direction

21. Pursuant to Rule 14 of the relevant Procedure Rules I confirm the anonymity direction made by the First-tier Tribunal:

'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.'

Signed: *D. O'Callaghan*
Upper Tribunal Judge O'Callaghan

Dated: 27 January 2021