



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/06534/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2015**

**Determination
Promulgated
On 27 April 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR NAM NGOC PHAM
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellants: Mr S Kandola, Home Office Presenting Officer
For the Respondent: Mr M Harris, Counsel (Direct Access)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by Deputy Upper Tribunal Judge Bruce on 11 February 2015 against the decision of First-tier Tribunal Judge Oakley made in a determination

promulgated on 20 October 2014, dismissing the Respondent's asylum and humanitarian protection appeal, but allowing his appeal on Article 3 ECHR grounds.

2. The Respondent is a national of Vietnam, born on 30 May 1978. He had appealed under section 82 of the Nationality, Immigration and Asylum Act 2002 against the Secretary of State's decision to refuse him asylum and to remove him from the United Kingdom. The Respondent had claimed that he was at real risk if returned to Vietnam because he was wanted by the police because of his involvement in a fraudulent bank loan scheme. Judge Oakley found that the Respondent was not a refugee within the Refugee Convention but that he not could return safely to Vietnam because he would not receive a fair trial and would be at risk of torture or inhuman and degrading treatment.
3. Judge Oakley found that the Respondent's evidence had been broadly consistent and so accepted his account of events in Vietnam. As to the Respondent's claim that he been arrested, fingerprinted and released in connection with charges of cannabis farming in the United Kingdom, the judge found that the Secretary of State had produced no evidence to show that the PNC had in fact been checked as claimed and that there was no trace of the Respondent. The judge also found that the Secretary of State had failed to conduct checks to verify the Respondent's documents from Vietnam, when that could and should have been done.
4. When granting permission to appeal, Deputy Upper Tribunal Judge Bruce considered that it was arguable that Judge Oakley had erred in his approach to the Vietnamese "wanted" poster as it was unclear that the document could easily have been verified by the Secretary of State. There was less merit in the Secretary of State's claim that the judge ought to have placed weight on the reasons for refusal letter without the production of evidence showing that checks had indeed been made on the Police National Computer database.
5. Standard directions had been made by the tribunal and the appeal had been listed for adjudication of whether or not there was a material error of law. The Respondent filed no notice under rule 24 indicating that the appeal was opposed, but Mr Harris indicated at the start of the hearing that the onwards appeal was indeed opposed.

Submissions

6. Mr Kandola for the Appellant relied on the grounds of onwards appeal earlier submitted and the grant of permission to appeal by the Upper Tribunal. He contended that Judge Oakley had imposed an impossible evidential burden on the Secretary of State. There was nothing on the PNC. Given what the country background evidence said about Vietnam, it was hardly possible for the Secretary of State to have made any enquiries without placing the Respondent at risk. It was potentially a double jeopardy situation. The judge's credibility findings were flawed and the appeal should be remitted to the First-tier Tribunal and reheard.
7. Mr Harris for the Respondent submitted that this was a situation where the Secretary of State had confused assertions of fact with evidence. The PNC was in the United Kingdom and contained records readily accessible to the Appellant. It could not have placed the Respondent at any risk to have produced evidence that the PNC had been accessed to verify his story. There had been no explanation for the absence of evidence. A simple print out was all that was needed. The judge had not erred in reaching that finding. The Respondent had produced supporting evidence as to his documents from Vietnam and had explained how he had obtained access to them. The Secretary of State had had the option of taking the same procedures and in particular of contacting the lawyer in Vietnam identified by the Respondent. That would not have created a double jeopardy situation for the Respondent.
8. Mr Kandola indicated that there was nothing he wished to add by way of reply.

No material error of law

9. The tribunal reserved its determination at the conclusion of submissions, which it now gives.
10. The problem with the Secretary of State's submissions about the PNC records (concerning which Deputy Upper Tribunal Judge Bruce had expressed reservations) was that no supporting evidence was produced to the First-tier Tribunal. It was reasonable for the judge to have expected that the assertion made at [26] of the reasons for refusal letter that there were no records corresponding to the Respondent's claim that he had been arrested and fingerprinted in the United Kingdom would have been supported by documentary evidence. All judges of the First-tier Tribunal are familiar with the standard form of

PNC print out, which state the names against whom a search has been run, and also state the identity of the person entitled to access the computer. Nothing could be simpler, yet no evidence was provided. It would, of course, have been possible for the judge to have accepted the Secretary of State's assertions as amounting to assurances, but he was not bound to have done so. His decision on that issue was open to him and discloses no error of law.

11. As to the judge's observation about the Secretary of State's failure to check the Respondent's documents from Vietnam, no doubt the judge had in mind the Respondent's witness statement where the Respondent described in detail the check he had made on the Vietnamese government website. The Respondent also named his lawyer contact. It was thus open to the Secretary of State to have run elementary verification checks. Her failure to do so left the Respondent's evidence unchallenged before the judge, meaning that it was open to him to give weight to the Respondent's documents as he did. Again no error of law has been shown.
12. The judge's findings were reached following a careful and logical analysis of the evidence to the lower standard. The determination, prepared by an experienced judge, is of good quality. The judge plainly applied anxious scrutiny to a full and balanced in the round assessment.
13. Thus the tribunal finds that there was no error of law in the determination. There is no basis for interfering with the judge's decision to allow the Respondent's appeal on Article 3 ECHR grounds.

DECISION

The tribunal finds that there is no error of law in the original decision, which stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell