



IAC-AH-SC-V1

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

Appeal Number: AA/11305/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons Promulgated
Birmingham
On 20th November 2015**

On 14th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

**XOAI VAN NGUYEN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Record of Counsel

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is from Vietnam. His appeal against refusal of asylum and removal to his home country was dismissed by Judge of the First-tier Tribunal D Mathews in a decision promulgated on 16th February 2015. The First-tier Tribunal Judge found the Appellant's claim to be at risk because of an unpaid loan made to him by a corrupt policeman and on account of his claimed part Chinese ancestry not to be made out to the lower standard.

2. The Appellant applied for permission to appeal, asserting that the judge had failed adequately to assess risk on return. He claimed that he would be at risk because of his attendance at demonstrations in this country, including meeting a person who had been granted asylum and who gave evidence at the hearing, and that his evidence had been that he would continue to demonstrate if returned to Vietnam.
3. Permission was originally refused by a Judge of the First-tier Tribunal but was granted by Upper Tribunal Judge Smith on 7th July 2015. In the grant of permission Judge Smith commented as follows:

“The Appellant seeks permission to appeal on two grounds – a failure by the judge to properly assess the risk on return by reference to his circumstances, heightened by his part Chinese ethnicity and a failure by the judge to properly consider the risk on return by reference to the Appellant’s *sur place* activities. I do not consider there is any arguable error in the judge’s determination in relation to the first of those grounds. There may though be an error in the approach to the *sur place* activities as the judge has failed to note that the Appellant had attended at least one demonstration since December 2011 (in December 2014), has failed to note the Appellant’s inference in evidence that he would be at increased risk of interest from the authorities due to his association with Mr Mai at that demonstration and has failed to consider the risk to the Appellant if, as he says he would, he were to continue to demonstrate on return to Vietnam.”.

In a response under Upper Tribunal Procedure Rule 24 the Respondent contended that there was no material error of law and opposed the appeal.

4. At the hearing before me Miss Record stated that the basis of the grant was the Appellant’s *sur place* activities. He said he had associated with Mr Mai and that even if arrested in Vietnam he would protest there. He said that he had been on demonstrations in Vietnam. The judge had looked at the situation as it was known in Vietnam but had not looked at the risk on return. He had failed to look ahead. She referred to objective evidence in the Appellant’s bundle which had been submitted for the hearing before the First-tier Tribunal, notably information from the Country of Information Report which indicated that there was a lack of independent judiciary and a risk of detention for those opposing the government. She submitted that the judge had only looked at past risk and not to the future, which he should have done in the light of the *sur place* activities. She added that the Appellant had since been on other demonstrations although she accepted that any evidence in that regard was not relevant in considering whether there was a material error of law in the decision made by the First-tier Tribunal.
5. In response Mr Mills said that there appeared to be an error in the grant of permission and there might have been some misreading of the decision of Judge Mathews. The judge at first instance had said that the Appellant had been on two demonstrations, the first in December 2011, but he had not said that that was the last one. He had focused on the first demonstration because it was surprising that if the Appellant were sought

by the authorities his family had not encountered any problems. That demonstration had been more than three years before the hearing and there had been no adverse impact in Vietnam on the Appellant's family. The judge was clearly aware also of the more recent demonstration.

6. He continued that in the Appellant's bundle there were photographs and there was no dispute that he had been on the two demonstrations in this country but there was no country guidance to the effect that there was monitoring of attendance at such demonstrations which would be likely to give rise to a risk on return and the judge was not bound to find that such a risk arose. The judge had found with good reasons that the Appellant had not been credible as to his core account. He had no profile before he left Vietnam. Not a great deal had occurred in the United Kingdom and there had been no repercussions for his family. The judge had been justified in reaching the conclusion that there was no future risk. Mr Mills accepted that there had been no specific findings on the evidence of the other witness who was a recognised refugee. However the determination of the appeal of that witness before the First-tier Tribunal had been produced for the hearing of the appeal and it was apparent that that witness had been granted status because of his religion, not because of his political opinions. He had demonstrated on a religious basis and there was evidence that people who practised religion openly faced a problem. He said it was hard to see that if the judge had gone into the evidence of the witness in more detail that could have made any difference. The Appellant made no claim to be opposed to the government on religious grounds and there was no suggestion that he was known. He submitted there was no material error which could arise out of a photograph which showed the two persons together. There was also no evidence adduced to show that the photographs had been made publicly available.
7. The other aspect was whether the Appellant would, as he had stated, in fact demonstrate in Vietnam. Mr Mills accepted that the judge had not addressed the point directly but said that in the light of the adverse credibility findings there was no basis why the judge would accept that he would demonstrate on return. If there were an error it was not material.
8. Finally in reply Miss Record said the point was risk on return. She said it was significant that the Appellant had met Mr Mai on a demonstration and Mr Mai had been detained by the Vietnamese government. The Appellant himself did say that he had been on demonstrations in Vietnam. The fact that parts of his evidence might be incredible did not dispose of risk on return.
9. Having heard those submissions I reserved my decision which I now give. The judge found the Appellant's claim to be at risk because of his failure to repay a loan to a corrupt police official and on account of alleged Chinese ancestry not to be made out, even to the lower standard. That finding is not challenged but that does not of course mean that for other reasons he might not face some risk on return to Vietnam. The judge noted that at

paragraph 29 of his determination. His principal findings now subject to scrutiny were as follows:

“24. The Appellant states that he has attended two demonstrations whilst in the UK. I have considered the objective evidence advanced and accept that there is [a] regime of government that suppresses opposition. But the Appellant was never viewed as an opposition activist in Vietnam and, significantly in my view, his family have made no mention to him of any adverse interest from the authorities since he attended a (sic) demonstrations in the UK. I found that the Appellant on his own account has only attended two demonstrations in the UK, and the first of those was now some time ago, it was in December 2011. I make that finding in view of the photographs and corroborative evidence of Mr Mai. I find the Appellant’s account of one demonstration since then, no membership of any particular party, inability to name the newspaper or website said by him to have coverage of the demonstration, and lack of any continuing political activity, fails to show that he has a profile of opposition that comes within the compass of those said in the Appellant’s objective evidence to be at risk. I find this to be supported by the lack of any interest in his family despite his attendance at a demonstration in 2011.

25. I view all evidence and issues of credibility in the round, a series of concerns are set out above, and whilst individually some of the concerns may not entirely undermine the Appellant’s account when taken together and viewed in the context of the objective evidence, they drive me to conclude that I find the Appellant’s account lacking in credibility for the reasons set out above and I keep in mind the low standard of proof required. I do not find that the Appellant has satisfied me as to any difficulties in Vietnam as claimed, any interest in him or his family by the authorities or Mr Phuong. I do not find any eventual basis for any interest in him in the event of his return to Vietnam.”

10. It is clear from the above that the judge was well-aware in fact of the Appellant having attended two demonstrations and his reference in particular to that which took place in December 2011 appears to be because of his point that there had been no adverse interest shown to the Appellant’s family in Vietnam notwithstanding the passage of time since that demonstration took place. The second demonstration, of which the judge was clearly aware, had taken place in 2014. In my view the judge did not misunderstand that evidence.

11. Miss Record submitted that the Appellant was at risk because of his association with Mr Mai. The judge made no specific finding on the evidence of Mr Mai and there is no reason to think that he did not accept it insofar as it related to matters directly within his knowledge. Mr Mai said that he had met the Appellant on a demonstration and they discovered that they had the same legal representative. He said in his statement that he was a recognised refugee as a persecuted Christian in Vietnam and the basis of his claim is clear from the determination of his appeal. Mr Mai said in his statement that the Appellant was frightened of a gangster

called Mr Phuong but the judge dismissed that claim on the part of the Appellant giving adequate reasons for that finding.

12. The only other evidence which Mr Mai gave was to the effect that he had met the Appellant at a demonstration in December 2014 and they had discovered that they had the same legal representative. The Appellant had told him that he was frightened to return because of a gangster called Mr Phuong. That is the claim which the judge found not to be made out. Mr Mai confirmed that the Appellant had attended the demonstration and said that he, Mr Mai, was due to go on more demonstrations. He said he was now friends with the Appellant whom he thought would suffer if he had go back to Vietnam but that view was clearly on the basis of the alleged fear of Mr Phuong. That evidence takes the Appellant's case no further. The judge did not find that there was evidence of the photographs having been on a website or otherwise published in a newspaper. On the evidence before him I cannot see that the judge could have found that the Appellant would face any risk because he had stood next to Mr Mai at a demonstration when Mr Mai was a religious refugee and when there was no evidence that images of the demonstration were in the public domain or that the identity of individuals at the demonstration had been established and monitored by the Vietnamese authorities. I find no material error of law made out in this respect.
13. Finally it was said that the Appellant had in evidence indicated that he would demonstrate on return to Vietnam. There is no mention of this in his original statement, which concentrated on the alleged threat from the corrupt policeman and his colleagues, but it was briefly mentioned in the penultimate paragraph of his statements prepared for the hearing before the First-tier Tribunal when he stated (at paragraph 15):

“Even if I was going to be arrested in Vietnam, I would still go on a demonstration. I just can't live without a proper and safe system of government. I now know why I went on demonstrations against the Vietnam government and I will carry on protesting against the poor human rights record in Vietnam.”
14. The judge found with adequate reasons why in numerous regards the Appellant's account was not credible. The whole of his story as to why he had left Vietnam was comprehensively disbelieved. The judge also found, as set out above, at paragraph 24 of his decision that the Appellant had a lack of any continuing political activity. Whilst he could have made his findings more explicit, his conclusion that the Appellant had a lack of any continuing political activity and had failed to show that he had a profile of opposition and bearing in mind that he found that the Appellant's original story had been concocted, indicates that the judge was of the view, albeit obliquely expressed, that the Appellant would not in fact go on demonstrations if he returned to Vietnam. Accordingly I find that on the evidence before him the judge did not make any material error of law in reaching his decision. The appeal therefore fails.

Notice of Decision

15. There was no material error of law in the making of the decision by the First-tier Tribunal and the decision that the appeal be dismissed therefore stands.
16. There was no request made to me for the making of an anonymity order and no such order is made.

Signed

Date 03 December 2015

Deputy Upper Tribunal Judge French