



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/06561/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House, London
On 17 February 2015**

**Decision Promulgated
On 27 July 2016**

Before

**THE HON. MRS JUSTICE THIRLWALL
DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

Between

**HTTN
(ANONYMITY ORDER MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Harris, instructed by Thompson & Co Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

Preliminary

We note that the First Tier Tribunal made an anonymity direction in relation to the appellant because of the nature of the case. We consider it appropriate to make a similar order in the Upper Tribunal under Procedural Rule 14(1) to prohibit the disclosure or publication of any matter likely to lead members of the public to identify the appellant. To give effect to this order the appellant is to be referred to as HTTN.

1. At the end of the hearing we announced the appellant's appeal to the Upper Tribunal is dismissed and therefore we uphold the decision of the First-tier Tribunal. Our reasons are set out below.

2. The appellant is from Vietnam. She arrived in the UK on 4 September 2012. The Secretary of State accepts she was trafficked to this country and this delayed her claim for asylum. The appellant claimed asylum on 12 February 2014 on the grounds that she has a well-founded fear of persecution in Vietnam because of her political opinion that arose from her involvement in distributing leaflets and DVDs for an opposition party. The Secretary of State rejected her claim on 5 August 2014 and the appeal against that decision was dismissed by First-tier Tribunal Judge Verity on 24 November 2014 on the basis that she did not find the appellant's account to be credible. It is against that decision that this appeal is brought.
3. Although Mr Harris, representing the appellant, relied on the grounds of appeal as settled in the application, he submitted that all turned on whether the First-tier Tribunal Judge had gone behind a concession and thereby fallen into procedural unfairness. We can summarise his submissions in the following way.
4. In the reasons for refusal letter, the SSHD conceded many aspects of the appellant's accounts. In particular, the SSHD had accepted that the appellant had supported the Viet Tan Party. Despite this concession, the Presenting Officer at the hearing in the First-tier Tribunal had cross-examined the appellant as to her motivations for distributing leaflets of that party. We note there was no objection to this course and, indeed, no proper objection could have been made. The answers to the cross examination raised doubts as to the concession given by the SSHD as to the appellant's support for the Viet Tan Party and led the judge to doubt that the appellant had been involved in politics in Vietnam other than as a means of earning money (see paragraph 25). By going behind a concession, the judge fell into procedural error because she had failed to give the appellant an opportunity to defend her case on this basis.
5. Mr Wilding submitted that there was no procedural unfairness.
6. We accept Mr Wilding's submission that the Presenting Officer in the First-tier Tribunal had good reason to cross-examine the appellant about her involvement in distributing leaflets. She had admitted in her asylum interview (question 93) that she had been paid 1 million Dong to distribute the leaflets and it was this point that the Presenting Officer pursued. Although it had been accepted that the appellant had provided a coherent account of her political affiliation up until the hearing, during the hearing that account completely unravelled as a result of this cross-examination. This is evident from both the record of proceedings and the decision and reasons statement. In those circumstances, despite the concession made in the reasons for refusal letter, once the evidence was before the judge he was bound to take a view on it. As the nature of the evidence had changed, it was open to the judge to make relevant findings irrespective of any concession previously given by the SSHD.
7. Given that the concession was undermined by the additional evidence, the only area of procedural unfairness would be if the appellant was not given a fair opportunity to address the changes to the case against her. It is clear from the First-tier Tribunal's record of proceedings that the appellant

had been represented by Mr Spurling of counsel. It would be unusual for a procedural issue such as that now pleaded not to have been identified by counsel during the hearing. In answer to our enquiries Mr Harris admitted he had not obtained any evidence from Mr Spurling. Because Mr Harris had no comments from Mr Spurling, he asked us to examine the record of proceedings and we confirmed that Mr Spurling re-examined the appellant regarding the allegedly novel issues and made relevant submissions. This is not a case where counsel did not recognise the relevance of the changes arising from the additional evidence.

8. The fact that there was no application to adjourn to deal with the obvious changes to the appellant's case is material to the issue of procedural fairness, as confirmed by the Court of Appeal in NR (Jamaica) v SSHD [2009] EWCA Civ 856. We can only conclude that Mr Spurling decided he could deal with the issue at the hearing. That was up to him. But having done so means that it was open to the judge to proceed as she did and the complaint relating to procedural unfairness falls away.
9. As the principal ground is not made out, the other grounds fall away. In any event, none was pursued by Mr Harris.
10. Even if we are wrong on the main ground of appeal, we recognise that it would make no difference to the outcome of the appeal. In the absence of any documentary evidence to substantiate the claim, the judge applied the credibility assessment found in paragraph 339L of the immigration rules (which transposes article 4(5) of the Qualification Directive (2004/83/EC)). She found that the appellant's account of her arrest, detention and escape to be implausible and therefore her account fell below the relevant threshold. Her findings and reasoning on those points is unchallenged.
11. We add that none of what we say means we are wholly untroubled by the First-tier Tribunal's decision and reasons statement. Some of the language used is immoderate, such as the expression "it beggars belief". However, we are satisfied that, notwithstanding our concerns, in this case the use of such language does not indicate any legal error.

Decision

The appellant's appeal to the Upper Tribunal is dismissed because there is no error on a point of law in the decision and reasons statement of the First-tier Tribunal. We uphold the decision of the First-tier Tribunal.

Signed
2016

Date **27 July**

Deputy Upper Tribunal Judge McCarthy