



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

Appeal Number: PA/06521/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 November 2017**

**Decision & Reasons  
Promulgated  
On 28 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

**MRS HIEN THI TRAN  
(No anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Malik

For the Respondent: Mr Nath

**DECISION AND REASONS**

1. The appellant is a citizen of Vietnam born in 1960. She appeals against a decision of the respondent made on 9 June 2016 to refuse her protection claim. The claim was also refused on humanitarian protection and human rights grounds.

2. The basis of her protection claim is that she is at risk because of imputed political opinion, in particular, she had been an opponent of state corruption.
3. The respondent did not accept that the appellant had organised protests in Vietnam and had been arrested for such by the authorities.
4. She appealed.

### **First tier hearing**

5. Following a hearing at Taylor House on 15 February 2017 Judge of the First-Tier NM Paul dismissed the appeal on asylum, humanitarian protection and human rights grounds.
6. His findings on the protection claim are found at paragraphs [34-38].
7. In summary, a document verification report indicated that an arrest warrant was a forgery [34]; she made no mention in her screening interview that she had been arrested due to her imputed political opposition to the government, her position there being that she did not want to return because she had nothing there and she was fed up with the regime [34]. Also, the judge did not believe her account of having been able to escape from custody, a guard having been bribed [36]. The judge went on to place 'little weight' on two psychiatric reports as the writers 'have to base their conclusions solely on what the appellant has said' [37]. Further, the production of photographs purporting to show her protesting in the UK, several years after she arrived here, were considered to be an attempt to bolster her case.
8. As for brief consideration of a claim to family life with a British citizen partner, the judge found there to be a lack of evidence of cohabitation and even if there was, a lack of evidence as to its durability or extent.
9. She sought permission to appeal which was refused. Permission was granted on 20 September 2017 on reapplication to the Upper Tribunal.

### **Error of law hearing**

10. The grounds, which Mr Malik repeated at the error of law hearing before me, concentrated on one point. In respect of the protection claim the judge made no reference to an expert's report in his findings. It was an error of law not to have regard to material evidence.
11. Mr Nath had nothing to add to the rule 24 response. The judge had regard to all the evidence presented and considered the report as part of his findings. Further, the report writer gave views on the appellant's credibility. The credibility assessment was a matter for the Tribunal alone and not the expert providing an opinion.

### **Consideration**

12. In considering this matter the report by Dr Tran Thi Lan Anh, (who states he has a Ph.D in international law and his main research interest is international human rights law in socialist political country systems including Vietnam) is dated 18 November 2016 and headed 'Report on the Socialist Republic of Vietnam and the risk of being returned as a failed political asylum seeker'. It is some twenty three pages long. He comments on a number of issues including the plausibility of the appellant's account, the household registration and healthcare systems and other matters.
13. It is clear that the report was before the judge and that he was aware of it. He refers to it at paragraph [5]. Unfortunately, he makes no reference whatsoever to it thereafter. He simply fails to engage with it in his analysis.
14. Whether or not Dr Tran exceeded his remit in some of his comments, the judge's failure to make any reference to the report in his analysis was a material error. An expert report is a material matter. He had a duty to consider that evidence (along with the other evidence), when reaching a decision in an even handed and impartial manner. In assessing the evidence before him he was required to attach such weight as he considered appropriate to that evidence. Whilst it may on occasions be appropriate to reject the conclusions reached by an expert what is crucial is that a reasoned explanation is given for doing so.
15. I would add that the judge made no reference at all to the background material before him (which included material referred to in the refusal letter and, more recently, a Home Office Country Policy and Information note). Credibility findings can only really be made on the basis of a complete understanding of the entire picture placing a claim into the context of the background information regarding the country of origin.
16. In failing to have regard to material evidence the judge materially erred such that the decision must be set aside to be heard again.

### **Notice of Decision**

The making of the decision of the First-Tier Tribunal involved the making of an error on a point of law. It is set aside. None of its findings are to stand.

In terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the case is remitted to the First-Tier Tribunal for a fresh hearing.

The member(s) of the First-Tier Tribunal chosen to consider the case are not to include Judge NM Paul.

No anonymity order made.

Signed

Date

Upper Tribunal Judge Conway