



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

Appeal Number: PA/05848/2018

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice**

**On 17 September 2018**

**Decision & Reasons  
Promulgated**

**On 5 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**MANH [N]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Mahmood (instructed by Kothala & Co, Solicitors)

For the Respondent: Mr Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Manh Huu Nguyen, was born on 7 August 1996 and is a male citizen of Vietnam. He appealed against the decision of the respondent dated 24 April 2018 to refuse him international protection. The First-tier Tribunal (Judge Hodgkinson) in a decision promulgated on 1

June 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Permission was granted by Designated Judge Shaerf on 19 June 2018. Subsequently, Upper Tribunal Judge Gill issued detailed directions to the parties. Those directions reached the respondent but had not been seen by Mr Mahmood, who represented the appellant before the First-tier and Upper Tribunal. *Inter alia*, the directions provided for Mr Mahmood to prepare a witness statement concerning the notes of the First-tier Tribunal hearing. Obviously, that direction had not been complied with. I asked Mr Mahmood to contact his instructing solicitors during a brief adjournment but he was unable to reach them by telephone. As summarised by Judge Gill, ground 1 concerns a Rule 35 report of Dr Sayed who had interviewed the appellant with the help of a Vietnamese interpreter by telephone. Ground 2 concerns the appellant's delay in claiming asylum. Ground 3 concerns the grant of permission by Judge Shaerf in respect of arguably "inadequate reasons ... for [the First-tier Tribunals] adverse credibility assessment". Judge Gill noted that that ground had never been raised by the appellant. This led Judge Gill to issue directions to "clarify the precise scope of ground 3". It is those directions which, for whatever reason, have not been complied with.
3. Mr Clarke submitted, notwithstanding the directions issued by Judge Gill, it would have been for the appellant to have attended before the Upper Tribunal today in order to prove ground 3 which could only be done by adducing the evidence of proceedings before the First-tier Tribunal which are the subject of Judge Gill's directions. Since the appellant had failed to do so, ground 3 was bound to fail. I agree. Mr Mahmood, for the appellant, did not seriously seek to oppose that submission. In the circumstances, I proceeded with the hearing and I heard oral submissions from both representatives in respect of grounds 1 and 2.
4. Regarding ground 1, the parties agree that the appellant had, in effect, two interviews on successive days starting with the Rule 35 report submitted by Dr Sayed after an examination of scars on the appellant's body. It had been the appellant's account that he had been injured when detained by police in Vietnam in May 2014. However, it is apparent that the Rule 35 report contents differ from the account given by the appellant on the subsequent day in his asylum interview. Judge Hodgkinson refers to those inconsistencies at [31]:

"However, as noted in the appellant's asylum interview, the content of the Rule 35 report is inconsistent with other evidence of the appellant. In his asylum interview, the appellant gave clear indication that the attack upon him, described by Dr Sayed, was the 2014 attack when the police attended the family's home in May 2014. The Rule 35 report records the appellant was attacked by the police using sticks and handcuffs. In his asylum interview, the appellant replied that he was not attacked with handcuffs but with a cup. He answered the interpreter, at the Rule 35 interview with the doctor, "got it wrong". The appellant adds that he said (to the doctor) "that they picked up a

cup and hit me in the back of my head yesterday” (AIR Q92-99). As I understand it, the reference to “yesterday” is a reference to the fact the Rule 35 report was prepared the day before the asylum interview. I do not find it reasonably likely there would be a misinterpretation to the extent claimed by the appellant and I find this discrepancy to be materially damaging to his credibility.”

5. Further discrepancies are referred to by the judge at [32]. In his Rule 35 statement to the doctor, the appellant claimed that he had travelled to a clinic for treatment following his assault at the hands of the police. However, the appellant said at interview, “I did not say that when I went to the clinic to get treatment. I said I was running to a house to get treatment but not the clinic”. In the Rule 35 statement it is recorded that the appellant also claimed that he needed stitches at the local clinic. The appellant then went on to claim at the hearing (as recorded by the judge) that he had not had the interview record in connection with the Rule 35 report read back to him. He claimed that he had not said anything about receiving stitches at a clinic.
6. The grounds do little more than rely on the assertion that interpretation by telephone (as used here in the preparation of the Rule 35 report) is “less reliable” than face-to-face interpretation. I am aware, as Mr Mahmood submitted, that the appellant drew attention to what he claimed were inaccuracies in the interpretation as early as the following day when he had his asylum interview. However, I also agree with Mr Clarke, for the respondent, that the challenge to the First-tier Tribunal’s decision is essentially on the grounds of perversity. I find that it was open to the First-tier Tribunal to find that the two interviews contain significant discrepancies which impacted in a negative way on the appellant’s credibility. It makes no sense to assert that the difficulties of interpretation by telephone are such as to excuse very significant discrepancies in the account of past events. For example, it is difficult to see how an assault with “sticks and handcuffs” could possibly be mistaken by an interpreter for assault by a person using a “cup”. Given that the judge was not bound to reject the submission that there were discrepancies between the two accounts, he has reached a finding open to him on the evidence and has supported that finding by clear and cogent reasoning.
7. As regards ground 2, the appellant asserts that he had failed to make his claim for asylum at an earlier date because he feared “all authorities” having suffered at the hands of the authorities in Vietnam. I find that that ground has no merit. As the judge noted at [34], the appellant claims to have arrived clandestinely in the United Kingdom by lorry in late May 2016. He was encountered, by chance, by the authorities whilst he was working in a nail bar in Sheffield on 31 August 2017. The judge found that it was not reasonably likely that the appellant would have failed to gain sufficient knowledge of the asylum system in the United Kingdom on 4 August 2017 such as to enable him to make a claim for asylum. In essence, the judge rejected the appellant’s claim that he was afraid to

make such a claim. That again was a finding open to the judge on the evidence; it was not a perverse finding. In other words, the judge was not bound to accept the appellant's explanation which the grounds of appeal appear to suggest. Consequently, it was open to the judge to attach weight to the fact that the appellant had made no attempt to claim asylum and had only done so belatedly and having been detained by the authorities. The finding regarding the delay together with the discrepancies between the two interviews (see above) amply justified the negative credibility findings and the dismissal of the claim for protection and in respect of human rights. In the circumstances, the appeal is dismissed.

**Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 24 September 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT  
FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 24 September 2018

Upper Tribunal Judge Lane