



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07337/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 January 2018**

**Decision & Reasons  
Promulgated**

**On 12 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE PITT  
DEPUTY UPPER TRIBUNAL JUDGE PARKES**

**Between**

**T H V B  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Vokes, Counsel instructed by Steven & Richard  
Solicitors LLP

For the Respondent: Ms Willocks-Briscoe, Senior Home Office Presenting  
Officer

**DECISION AND REASONS**

1. This is an appeal against the decision dated 11 August 2017 of First-tier Tribunal Judge Boylan-Kemp MBE which refused the protection and human rights claim of the appellant.
2. The background to this matter is that the appellant claims that she was involved in opposition demonstrations on two occasions in Vietnam in

September 2011 and February 2012, coming to the adverse attention of the authorities on both occasions and her activities leading to her father, a policeman, being demoted. She also maintains that in April 2012 she was arrested, detained and seriously mistreated during her detention. After her release she was placed under surveillance by the authorities. She found the situation too difficult and made arrangements to come to the UK. Fearing further mistreatment, she came to the UK on 27 December 2013 with a valid student visa.

3. On 26 April 2014 the appellant was encountered during an enforcement visit to a nail bar and found to be working in breach of her student leave conditions. Removal directions were set for 6 May 2014. The appellant then made an application for leave to remain under Article 8 ECHR which was refused. That refusal was the subject of a judicial review. She made further submissions on 4 May 2014. The removal directions set for 6 May 2014 did not proceed as the appellant was non-compliant.
4. A further judicial review application was made on 6 May 2014 following which the appellant was given temporary admission and placed on reporting restrictions. The second judicial review was refused on 27 January 2015.
5. The appellant was detained again on 19 June 2015. She made a further leave to remain application which was refused on 23 July 2015. She was granted temporary admission on 8 October 2015 but failed to report as required on 9 October 2015 and 4 December 2015.
6. On 10 May 2016 the appellant was again encountered working without permission. She was detained pending removal on 17 May 2016. She made an asylum claim on 20 May 2016, leading to the respondent's refusal of that claim on 4 July 2016. The appeal against that decision led to the proceedings before First-tier Tribunal Judge Boylan-Kemp.
7. The grounds of appeal against the decision of the First-tier Tribunal can be summarised under three main headings. Firstly, the First-tier Tribunal Judge took an improper approach to the expert report of Dr Bluth dated 23 January 2017. Secondly the judge took an improper approach to the Rule 35 medical report from Dr Ward. Thirdly, the judge failed to assess the appellant's claim that she would be at risk on return merely as a failed asylum seeker.
8. The First-tier Tribunal considered the report of Dr Bluth at [18] of the decision:

"18. Upon careful consideration of this evidence I find that the appellant's account is undermined by her failure in both her asylum interview or in her witness statement to name the organisation to which she claimed to be politically affiliated. I do not find it plausible that if she were as politically active as claimed that she would not have offered this information prior to speaking to the expert in January 2017, or that she would have not detailed it in her later witness statement. In respect of the expert report, I also find that little information is given as to the

credentials of the expert, Professor C Bluth, and from the brief information provided at paragraph 2 of his report (page 140) it appears that he is a university professor in international studies who has some experience in teaching about Vietnam but little further information is provided, such as details of any relevant scholarly articles or reports that he has authored to demonstrate his alleged expertise with this particular country, or where his “first hand knowledge” of the country came from. Therefore, in the absence of this professional information I find that overall I can place little weight upon the contents of the expert report in assessing the appellant’s claim.”

9. The appellant raises a number of objections to the conclusion that little weight could be placed on Professor Bluth’s report. No enquiry was made at the hearing as to Professor Bluth’s credentials which could have answered the concerns set out by the judge. It was not open to the judge to conclude that his opinion could not bear weight given that, at the very least, it showed that he is a Professor of International Relations and Security at Bradford University. The reasons given in [18] for placing little weight on the report were inadequate reasons and showed an irrational approach.
10. We did not find that the First-tier Tribunal Judge took an incorrect approach to the report of Dr Bluth such that the decision of the First-tier Tribunal discloses a material error on a point of law. Paragraph 2 of the report states under the heading “My Qualifications and Relevant Experience”:

“I am Professor of International Studies at the University of Bradford. My professional expertise is in international relations and I have a PhD from Kings College, London. I am not a legal expert, but I am giving evidence as a country expert and as I set out below I have considerable knowledge of the situation in Vietnam. As a specialist of the geopolitics of Asia, I have studied and taught about Vietnam for over twenty years and recently supervised a Vietnamese doctoral candidate who was engage in primary research on his country. As well as numerous students at Masters level. I also have first hand knowledge of the country.”

11. However, the report does not go on to “set out below” how Professor Bluth comes to have “considerable knowledge” of Vietnam or the particular details of the appellant’s claim and nothing in the report suggests how he comes to have “first hand knowledge” of Vietnam. It is not correct, as argued in the grounds, that where further information about Professor Bluth’s background was not in the report, it was incumbent on the judge to enquire at the hearing. It is well understood that the burden of proof lies upon the appellant. First-tier Tribunal Judge Boylan-Kemp therefore did not in stating in [18] that there was “little information” about Professor Bluth’s appropriateness as a source of expert evidence. We did not accept that the First-tier Tribunal erred in concluding that “little weight” attracted to the expert report.
12. We also noted that Professor Bluth’s report proceeds on the basis that the appellant was informally associated with the Viet Youth for Democracy Party (VYDP). As indicted in [18] above, the First-tier Tribunal judge was

concerned that the appellant had not been able to name this organisation in her asylum interview. At questions 83 to 86 of the interview, the appellant stated only that she was accused by the Vietnamese authorities of “working for an anti-government organisation”. At question 85 she was asked if she knew which organisation was being referred to by the authorities and her response was “They did not know, but accusing me of working for them and wanted us to speak about that”. Her claim in her later witness statement of February 2017 that in her detention in April 2012 she was asked about whether she was working for the YVDP, her first reference to the organisation, is not consistent with her responses in her asylum interview. This inconsistent aspect of her evidence was something the First-tier Tribunal was entitled to place adverse weight on regardless of the comments of Professor Bluth on possible risks to those associated with the VYDP.

13. For all of these reasons, we did not find that the judge’s approach to the expert report of Dr Bluth showed a material error in the decision of the First-tier Tribunal.
14. The second ground of challenge concerned the medical evidence of Dr Ward. This was contained within a Rule 35 letter prepared whilst the appellant was in detention in July 2016. The First-tier Tribunal said this at [21] about the medical report:

“The appellant has relied upon a number of scars to show that she was beaten whilst in police detention. To support this aspect of her claim she has provided a copy of her medical report authored by Dr R Ward on 25 July 2016 whilst the appellant was in detention. Dr Ward concluded that the appellant gave a detailed account of being detained and beaten and that her scars were consistent with the explanation given for them (page 29 of the appellant’s bundle). Again, little information is provided as to the credentials of the assessing doctor, although I do accept that she was appointed on behalf of the respondent. Also, there is no indication that the Istanbul protocol was assessment (sic) was adhered to when undertaking the review and reaching the conclusion set out in the report. However, if I am wrong on this and Dr Ward did comply with the Istanbul protocol then her use of the word “consistent” could be taken to mean that the scar could have been caused by the trauma as described, but that there are many other possible causes as well. Overall, I find that the medical assessment does not advance the appellant’s claim of being beaten or tortured and that little weight can be placed upon it due to the lack of detail in respect of the procedures used in making the assessment or in respect of the conclusions reached.”

15. The First-tier Tribunal was correct to indicate that the evidence from the Rule 35 letter at its highest was that the appellant’s claim to have injuries from her mistreatment in Vietnam amounted only to scarring that was “consistent” with her account. As indicated above, this allowed for there to be other causes of the scarring noted by Dr Ward. Where that was so, having assessed the medical evidence against the evidence as a whole, it was open to the judge to find that the medical report was not sufficient to show that the appellant’s account was credible. The judge’s comment at the end of [21] that she agreed with the respondent’s submission that

“[t]he appellant’s injuries could have been sustained in other ways besides her account of being beaten by the Vietnamese authorities” is in line with the medical report identifying the scarring only as “consistent” and not an error as suggested in the grounds.

16. The final challenge maintains that the judge erred in failing to assess whether the appellant would face a risk on return as a failed asylum seeker. Firstly, this ground relies on the comments of Professor Bluth on failed asylum seekers at section 5.4 of his report. As set out above, the First-tier Tribunal was entitled to place little weight on his report given the lack of information about his expertise. Secondly, the paragraphs in the report addressing risks on return to failed asylum seekers do not show that someone with this appellant’s profile, a failed asylum seeker *simpliciter*, would face a real risk of mistreatment on return. The report refers to mistreatment on return of individuals with a particular or heightened profile which this appellant does not have. At its highest, the report indicates only that the appellant could be questioned for an extended period at the airport on return but nothing about her profile indicates that more serious mistreatment would follow. The evidence before the First-tier Tribunal did not make out a risk on return for this appellant as a failed asylum seeker, therefore, and the outcome of the appeal could not have been different even had overt consideration been given to this issue in the decision.
17. For all of these reasons we found that the decision of the First-tier Tribunal did not disclose an error on a point of law and should stand.

### **Notice of Decision**

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:   
Upper Tribunal Judge Pitt

Date: 25 January 2018