



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09608/2017

THE IMMIGRATION ACTS

Heard at Field House
On 31 August 2018

Decision & Reasons Promulgated
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR V V
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan of counsel

For the Respondent: Miss Kiss, a Home Office Presenting Officer

DECISION AND REASONS

Introduction and background

1. This is an appeal against a decision of the First-tier Tribunal where, following a hearing on 23 February 2018, First-tier Tribunal Judge Brewer dismissed the appellant's appeal against the respondent's refusal to recognise his asylum claim.
2. The background to the appeal is that the appellant comes from Vietnam. He claims to have suffered persecution at the hands of Government authorities or agents in

Vietnam. Between the years 2012 and 2014 he claims to have suffered persecution including detention and as a consequence claims to have left Vietnam in 2014 and travelled to China and then to Europe. He did actually return to China but subsequently returned to Europe staying for two days in France before subsequently travelling clandestinely to the UK.

The hearing before the Upper Tribunal

3. At the hearing before the First-tier Tribunal the respondent had maintained the position she adopted in her refusal, which was to take issue with the credibility of the account and one can well see there are credibility issues. Credibility issues included the failure on the part of the appellant to claim asylum in France, a safe third country. The appellant had stayed there for a couple of days before travelling to the UK. However, before me Miss Kiss has properly reviewed the case and she has accepted that the Immigration Judge's findings of fact cannot seriously be argued with. Given that her client has not put in a Rule 24 response or attempted to make any cross-appeal, and in the light of that fact that the findings of the First-tier Tribunal included a finding that the appellant's account was "reasonably consistent on key points", the respondent decided not to contest the appeal. Any findings by the Immigration Judge that were areas of concern to the respondent did not, Miss Kiss accepted, relate to the key points in the appellant's case. Secondly, in relation to paragraph 34 the Immigration Judge found that the appellant had given an accurate account of a period of arrest and detention. In particular, in that paragraph the Immigration Judge accepted the appellant was at risk of detention on return to Vietnam. Although that was to be no more "severe" than the short attention suffered previously, it followed, as the Immigration Judge ought to have found, that the appellant would also be at risk on return.
4. The Immigration Judge analysed the case against the background material and against the case law which he applied to the facts of the case. I will not characterise what Miss Kiss has said as a concession, but I will say that she has properly recognised the strengths of the appellant's appeal, and although the ultimate decision on the appeal has to be with the Tribunal, as this is an appeal before the Upper Tribunal, given her recognition that there is no cross-appeal on the facts, and given the Immigration Judge's clear findings of fact, she has properly recognised that this must result in a different result than the one reached by the First-tier Tribunal which was simply to dismiss the appeal. Miss Kiss recognises that this ultimately results in the grant of refugee status.

Conclusion

5. I am going to set aside the decision of the First-tier Tribunal and substitute a decision of the Upper Tribunal that the appellant's appeal against the refusal of the grant of asylum is allowed.

6. There is no need to make any additional findings in relation to Articles 2 and 3 of the European Convention on Human Rights and given that the grant of asylum is an enhanced form of protection, I do not think there is any need for me to say anything about humanitarian protection either.
7. I substitute for the decision of the First-tier Tribunal a decision to allow the appeal against the Secretary of State's refusal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal and it continues in the following terms:

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Fee award

No fee was payable in respect of the appellant's appeal. Immigration Judge made no fee award and that order stands.

Signed

Date 06 September 2018

Deputy Upper Tribunal Judge Hanbury